



REQUEST FOR BIDS
ADDENDUM NUMBER: **TWO (2)**

DATE: February 7, 2017

PROJECT: Compressed Natural Gas (CNG) Fueling Station
Birmingham-Shuttlesworth International Airport
Birmingham, Alabama

FROM: Birmingham Airport Authority (BAA)
5900 Messer Airport Highway
Birmingham, Alabama 35212

TO: All RFB Participants

GENERAL:

This Addendum will form a part of the Contract Documents and modifies the original Request for Bids (RFB) Documents dated January 5, 2017. The following Conditions, Drawings, Specification changes, etc. take precedence over items in the Drawings and Specifications of the RFB Documents. Portions of the RFB Documents not changed by this Addendum remain in effect. Recipients of this Addendum are advised to provide this Addendum to anyone to whom they further distribute without the BAA's knowledge.

Respondents are required to acknowledge receipt of this Addendum in their Bids. Failure to do so may subject the Respondent's bid to disqualification.

ADDITIONAL INFORMATION / CLARIFICATIONS / ATTACHMENTS DESCRIBED BELOW:

1. The following list of bid documents, including plan sheets, being issued under this Addendum, have been revised and shall become a binding requirement of this RFB package:
 - a. Draft of Proposed Agreement: **note** that this is not the actual final agreement draft. This version is being provided as an example of the language and format of the anticipated Agreement. The final version will be provided by the BAA Chief Legal Officer following selection of the successful Bidder.
 - b. Revised partial RFB **Section D: Instructions to Bidders and Bid Submission Requirements** specifically only to include a revised list of required Federal (FAA) Contract Provisions. Bidders shall refer back to the original RFB to obtain the necessary forms to be included with their Bid.
 - c. Davis Bacon Wage Rates for this project.
2. Below is a list of RFI's with the associated responses:
 - A. **QUESTION:** Will the owner pay progress payments on project specific equipment that is being manufactured at the factory with proper insurance and storage?
RESPONSE: Yes
 - B. **QUESTION:** Please describe in detail the scope of the fiber optic cable and connections. The fiber optic cable is not shown on the civil utility plan.

RESPONSE: The purpose of the Fiber Optic cable is to link this facility directly to the Airport. The final decision is to be made by the Owner. The routing will be determined based on field conditions and the exact termination point of the cable at the airport.

C. **QUESTION:** Can internet be provided to the site using a wireless 4G router (Verizon or AT&T)?

RESPONSE: Yes but coordinate with Owner for their requirements prior to commencement of project.

D. **QUESTION:** Sheet C302 is only showing (2) ESD buttons. There is not a site ESD button to exit the equipment area. Is this correct?

RESPONSE: There should be an ESD button located next to the gate/exit of the equipment area. Please add.

E. **QUESTION:** Sheet E104 is showing (1) 1" conduit from each storage tank to each of the compressor skids. Are these conduits needed?

RESPONSE: Provide the material as indicated per plans and specs.

F. **QUESTION:** Is a lightning protection system required? It is in the spec book, but nothing reflected on the drawings.

RESPONSE: Specification Section is a performance spec and will be unique to the canopy manufacture requirements. Provide lightning protection as specified.

G. **QUESTION:** Is the ATS required to be integral with the MDP or can we provide a separate SER ATS?

RESPONSE: Provide the electrical distribution system as indicated and specified.

H. **QUESTION:** The conduits are shown from each piece of equipment, but they do not reflect the number or size of conductors from equipment to MCP.

RESPONSE: Conduit sizes and fill is noted on the drawings. Some of the conduits are noted "EC" (empty conduit). Please review the plans, notes, and legend sheet.

I. **QUESTION:** Sheet I001, Note 1 calls for a breakaway device below the base of the dispenser. This option is not available. The dispensers can be equipped with a vibration switch that can automatically shut off the gas valves at the priority panel if the dispenser is hit by a vehicle for example. Is this option acceptable?

RESPONSE: No objection provided the dispenser valve closes in a "fail safe" mode.

J. **QUESTION:** The CNG station will require daily, weekly, monthly preventative maintenance as well as emergency repair maintenance starting day one of its operation. This is different from the warranty requirement described in the RFB.

i. **QUESTION:** Should the maintenance agreement start from day one of the operation of station? We recommend this option.

RESPONSE: Yes.

ii. **QUESTION:** OR will the owner perform the preventative maintenance during the first year of the warranty.

RESPONSE: No, all preventative maintenance shall commence upon final completion of the project.

iii. **QUESTION:** How will repairs be addressed after the warranty period?

RESPONSE: The Owner will issue work orders accordingly.

iv. **QUESTION:** Is the maintenance agreement for preventative maintenance only or for repair and maintenance as well. Should the repairs be billed separately as they happen after the warranty period?

RESPONSE: The requirements of the maintenance agreement shall include those items recommended by each specific equipment components in accordance with the manufacturer's recommendations, including preventative maintenance. Repairs for damage(s) not covered by manufacturer's warranty shall be billed separately to the Owner. Contractor shall notify the Owner **prior to** incurring any cost to be billed back to the Owner and shall obtain the necessary Work Order(s) before ordering any material or performing any work which is not covered under warranty.

- v. **QUESTION:** What type of preventative Maintenance will be required to be performed by the contractor? Daily, Weekly, Monthly? Can the owner perform any of the daily or weekly?

RESPONSE: **All** maintenance of the facility's equipment shall be in accordance with the specific equipment manufacturer's recommendations and corresponding maintenance schedule. General cleaning and similar tasks shall be the Owner's responsibility unless included otherwise by the specific manufacturers.

- vi. **QUESTION:** How will the repairs (for damage caused by the end user) be handled during the warranty period. Would that be billed separately?

RESPONSE: Yes, as long as the damage is the direct result of Owner. Repairs for damage caused by the Owner shall be billed directly to the Owner. However, the Contractor shall notify the Owner **prior to** incurring any cost to be billed back to the Owner and shall obtain the necessary Work Order(s) before ordering any material or performing any work which is not covered under warranty.

- vii. **QUESTION:** The warranty calls for 24h response time. Is that acceptable even if the system is down?

RESPONSE: Yes, a response within (24) hours of being notified by the Owner is acceptable.

- K. **QUESTION: RE: SPECIFICATION SECTION 15-45-09: 1.3 Section D "Calculations must be stamped by a mechanical engineer currently registered in the State of Alabama":** Would that include AECOM engineers?

RESPONSE: No

- L. **QUESTION: RE: SPECIFICATION SECTION 15-45-09: 1.7 Section B #4 "Long-term maintenance and service requirements":** In order to maintain the manufacturer's warranty, specific parts of this type of service is not possible for the "in-house" service techs to perform without receiving the manufacturer's certified training. This requires the tech's to be flown out of state to attend a specified training course to perform more than the "routine maintenance."

RESPONSE: All technicians must be trained in accordance with manufacturer's requirements. If the manufacturer elects to waive certain requirements of training, that is up to the manufacturer.

- M. **QUESTION: RE: SPECIFICATION SECTION 15-45-09: 1.7 Section B #7 "Emergency Fueling Support":** Can this type of support be the CNG refueling facility located within 4 miles of the airport CNG station?

RESPONSE: Yes

- N. **QUESTION: RE: SPECIFICATION SECTION 15-45-09: 2.4 Section F "The dispenser shall be compatible with the Owner's existing fuel management system":** I understand we are waiting to confirm the system brand. Can you confirm what they are managing? For example, are you trying to track vehicle/driver info with key fobs or simply collect credit card transaction data?

Response: There is no existing Fuel Management System for this facility. Contractor shall include (with their Bid) a detailed description of the Fuel Management System that is included with the manufacturer / equipment / system which they are proposing.

O. QUESTION: RE: SPECIFICATION SECTION 15-45-09: 2.5 Section A.a. "The station shall be equipped with a one-inch priority valve panel.": Sheet #1101 specs a ¾" priority panel. Is that a typo?

RESPONSE: 1" priority valve panel.

P. QUESTION: RE: Sheet #1101 indicates that the CNG Storage PRV vent lines are to be routed through the canopy to the atmosphere: Are they referring to the canopy above the dispensers?

RESPONSE: No, the storage vessels are located under the shade canopy.

Q. QUESTION: RE: Sheet #1101, E103 indicate that the dispenser vent lines are to be routed through the canopy to the atmosphere: How do you want them routed? I.e., along the outside of the canopy support post, straight-up above the dispenser?

RESPONSE: Prefer them to be mounted to the canopy support, however, coordination with the Canopy Manufacture once the project commences.

R. QUESTION: Regarding the vehicles to be converted: The only EPA conversion kits that are currently available are "Dedicated CNG" kits. Basically, the vehicles will not be able to run on petrol once the vehicle is converted. Is that ok?

RESPONSE: Yes

S. QUESTION: Regarding the vehicles to be converted: What is the time frame required for the vehicles to be converted?

RESPONSE: All vehicle conversions must be completed within (6) months of the Notice to Proceed.

T. QUESTION: Regarding the vehicles to be converted: Is there a specific CNG fuel capacity required?

RESPONSE: Vehicle to be converted to provide the same equivalent capacity to the existing converted vehicle.

U. QUESTION: The project shows (3) cameras being installed, but it does not show how they are going to connect back to the airport. All the drawings show is a CAT 6 going to the camera.

RESPONSE: This is an owner decision to be determined once the project commences as to best connect this facility back to the airport for monitoring. The Contractor shall provide the specified components (equipment and power) and the Owner will establish network / connectivity back to Airport Operations / Maintenance.

V. QUESTION: 2.1-F.4 - this section states "Made in America Certification" required. Please confirm which Buy America regulations are to be applied, as there are several to choose from.

RESPONSE: There are (2) types of certifications under this provision. Bidders shall incorporate *Projects for a Facility* which uses the Certificate of Compliance Based on Total Facility

W. QUESTION: 2.4-A.1.f Please provide details of the Owner's existing fuel management system.

RESPONSE: See response to 2N above.

X. QUESTION: 2.5-I.a - the duplex starter panel for this size compressor is a standard design with power distribution only for the CNG station components and ESD system. It is recommended that outside loads such as lights and generator jacket heater etc. be powered from a separate independent distribution panel. Please confirm this is acceptable.

RESPONSE: Provide what is indicated on the drawings and in the specs.

Y. QUESTION: 2.8-C - the standard ESD valves used on our system are latching type, not momentary contact. Please confirm this is acceptable.

RESPONSE: Acceptable

- Z. QUESTION:** 2.10-A There are no details provided for the make and model of the required Fuel Management System. Please advise.
RESPONSE: See response to 2N above. Also, the CNG system is to be compatible with the CNG dispenser and ancillary items.
- AA. QUESTION:** 2.10-B.1 Please provide details for the owner's accounting system provider to ensure compatibility of the Fuel Management System.
RESPONSE: See response to 2N above.
- BB. QUESTION:** Please provide the Owner's contacts at Alagasco and Alabama Power.
RESPONSE: Ken Rhoden, Alabama Power; phone (205) 226-1872; there is no specific account manager for Alagasco.
- CC. QUESTION:** Please provide the following for the vehicles that are to be converted:
- i. **QUESTION:** Are the vehicles gaseous prepped? It is my understanding they must be gaseous prepped when ordered from Ford, otherwise the Ford warranty is cancelled after the CNG conversion.
RESPONSE: No, they are not prepped for any type of gaseous equipment. Contractor is responsible for a complete conversion of the vehicles and shall include warranty only for the components that are installed with the conversion.
 - ii. **QUESTION:** What type engines on each type vehicle?
RESPONSE: (1) Model Ford E450 (6.8L gas engine) (2) the Ford Transit Cargo Van has not been purchased yet.
 - iii. **QUESTION:** What size CNG fuel tanks on each type vehicle?
RESPONSE: Vehicle to be converted to provide the same equivalent capacity to the existing converted vehicle.

END OF ADDENDUM NUMBER TWO (2)

REQUEST FOR BIDS
ADDENDUM NUMBER: **TWO (2)**
February 7, 2017

ATTACHMENT #1A:
Draft of Proposed Agreement
(51) pages

**Agreement for Construction Services
Between Owner and Contractor
for a New Compressed Natural Gas Fueling Station
for the Birmingham-Shuttlesworth International Airport**

RECITALS

WHEREAS, the Owner seeks professional construction services for a specific project;

WHEREAS, the Contractor possesses qualifications and abilities to perform such efforts, and;

WHEREAS, the Contractor is willing to provide such services in accordance with the terms and conditions set forth herein.

THEREFORE, in consideration of their mutual benefit, the Owner and Contractor agree in respect to the performance of professional services by the Contractor and payment for those services by the Owner, as set forth below:

AGREEMENT made as of this _____ day of _____ in the year 2017 and continuing until project is complete through warranty period in accordance with project specifications.

Between the **Owner**:

Birmingham Airport Authority (BAA)

5900 Airport Highway

Birmingham, AL 35212

Telephone: (205) 595-0533

and the **Contractor**:

for the following **Project**

Project Title: Compressed Natural Gas Fueling Station
BAA Project #LA11.000.000

Location: Birmingham-Shuttlesworth International Airport
5900 Messer Airport Highway
Birmingham, AL 35212

Scope: All labor, material, equipment, permits, overhead and profit required to complete the construction of a new Compressed Natural Gas Facility in accordance with all plans and specifications prepared by AECOM and subsequent addenda issued by the BAA

THE OWNER AND CONTRACTOR AGREE AS FOLLOWS: the Table of Articles Included in and comprising the entirety of this Agreement are as follows:

PREFACE DEFINITION OF TERMS

ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 RELATIONSHIP OF THE PARTIES
- 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 5 CONTRACT SUM / GUARANTEED MAXIMUM PRICE
- 6 CHANGES IN THE WORK
- 7 COSTS TO BE REIMBURSED
- 8 COSTS NOT TO BE REIMBURSED
- 9 DISCOUNTS, REBATES AND REFUNDS
- 10 SUBCONTRACTS AND OTHER AGREEMENTS
- 11 ACCOUNTING RECORDS
- 12 PAYMENTS
- 13 DISPUTE RESOLUTION
- 14 TERMINATION OR SUSPENSION
- 15 GENERAL CONDITIONS OF THIS AGREEMENT
- 16 SUPPLEMENTAL CONDITIONS OF THIS AGREEMENT: FAA PROVISIONS
- 17 **EXHIBITS** TO THIS AGREEMENT
 - EXHIBIT A Contractor's Bid
 - EXHIBIT B Owner's Request for Bid Package
 - EXHIBIT C Federal Provisions Governing This Agreement
 - EXHIBIT D Contractors Safety and Security Program Requirements

PREFACE: DEFINITION OF CERTAIN TERMS INCLUDED IN THIS AGREEMENT:

AASHTO: The American Association of State Highway and Transportation Officials, the successor association to AASHO.

Access Road: The right-of-way, the roadway and all improvements constructed thereon connecting the Airport to a public road or highway.

Addenda: Amendments or additions to the Contract Documents that are added prior to the submission of Bids.

Advertisement: A public announcement, as required by local law, inviting Bids for Work to be performed and materials to be furnished.

AIP: The Airport Improvement Program, a grant-in-aid program, administered by the Federal Aviation Administration.

Air Operations Area (AOA): For the purpose of these specifications, term Air Operations Area shall mean any area of the Airport used or intended to be used for the landing, takeoff or surface maneuvering of aircraft. An air operation area shall include such paved or unpaved

areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiway, or apron.

Airport: Airport means the area of land or water which is used or intended to be used for the landing and takeoff of aircraft, and includes its buildings and facilities, if any. As used herein, "Airport" means all of the area comprising the Birmingham-Shuttlesworth International Airport.

Application for Payment: The monthly request for payment submitted by the Contractor to the Engineer and OAR containing an itemized applications for payment for Work completed in accordance with the schedule of values or unit price schedule, including, such data required by the Contract Documents substantiating the Contractor's right to payment (such as copies of requisitions from Subcontractors and material suppliers) and reflecting retainage in the amount provided in the Contract Documents or agreed to by the Owner at its sole discretion.

ASTM: The American Society for Testing and Materials.

Award: The acceptance, by the Owner, of the successful Bidder's Proposal.

Bid or Proposal: The written offer of the Bidder (when submitted on the approval proposal form) to perform the contemplated Work and furnish the necessary materials in accordance with the provisions of the Plans and Specifications.

Bidder: Any individual, partnership, firm, corporation or entity, acting directly through a duly authorized representative, who submits a Proposal for the Work contemplated.

Bid Documents: The documents available to Bidders before submission of Bids, including Drawings, Plans, Specifications, written Instructions to Bidders, Invitation to Bid, Addenda, and the documents, reports and information referenced in such Bid Documents.

Bid Guaranty or Proposal Guaranty: The security furnished with a Proposal to guarantee that the Bidder will enter into a Contract if its Proposal is accepted by the Owner.

Building Area: An area on the Airport to be used, considered, or intended to be used for Airport buildings or other Airport facilities or rights-of way together with all Airport buildings and facilities located thereon.

Calendar Day: Everyday shown on the calendar.

CBMPP: Construction Best Management Practices Plan.

Certification of Payment: The written certification by the Engineer or OAR to the Owner, based upon the Engineer's and OAR's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated in the Contractor's Application for Payment, that the quality of the Work is in accordance with the Contract Documents, and that Contractor is due to be paid the amount claimed in the Application for Payment.

Change Order: A written order to the Contractor covering changes in the Plans, Specifications, or Proposal quantities and establishing the basis of payment and Contract Time adjustment, if any, for the Work affected by such changes. The Work, covered by a Change Order, shall be within the scope of the Contract.

Claim: A demand or assertion by the Owner or Contractor seeking, as a matter of right, adjustment or interpretation of Contract Document terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice.

Contract: The entire and integrated written agreement between the parties hereto which supersedes prior negotiations, representations or agreements, either written or oral. The Contract shall include, but is not limited to: the Advertisement for Bids; the Contract form; the Proposal; the Performance Bond; the Payment Bond; any required insurance certificates; the

Specifications; the CBMPP; the Plans, and any Addenda issued to Bidders. The Contract may be amended only by a Contract Modification. The Contract shall also include, if applicable, conformed Contract Documents, which are the Bid Documents that have been revised to incorporate information contained within the Addenda. If the Contract Documents have been conformed, the Contractor is responsible for verifying that the Addenda are accurately incorporated into the Conformed Contract Documents before relying on them for purposes of construction. Conformed Contract Documents are for convenience and do not supersede the information contained within the Contract Documents.

Contract Documents: Those documents, execute between the Owner and the Contractor, comprising the Contract. The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

Contract Item (Pay Item): A specific unit of Work for which a price is provided in the Contract.

Contract Modifications: (a) A written amendment to the Contract signed by both Parties, (b) a Change Order, (c) a Construction Change Directive, (d) a Field Change Order, or (e) a written order for a minor change in the Work issued by the Owner.

Contract Time: The number of Calendar Days or Working Days, stated in the Proposal, allowed for completion of the Contract, including authorized time extensions. If a Calendar Date of completion is stated in the Proposal, in lieu of a number of Calendar Days or Working Days, the Contract shall be completed by that date.

Contractor: The individual, partnership, firm, or corporation primarily liable for the acceptable performance of the Work Contracted and for the payment of all legal debts pertaining to the Work who acts directly or through lawful agents or employees to complete the Contract Work.

CSPP: Construction Safety and Phasing Plan.

Day: Unless specified to the contrary herein, "Day" shall mean a Calendar Day.

DBE: A disadvantaged business enterprise.

Drainage System: The system of pipes, ditches, and structures by which surface or subsurface waters are collected and conducted from the Airport area.

Drawings or Plans: The official graphic and pictorial portions of the Contract Documents which show the design, location, character, dimensions and details of the Airport and the Work to be done and which are to be considered as a part of the Contract Documents supplementary to the Specifications. The Plans generally include plans, elevations, sections, details, schedules and diagrams.

Engineer: The individual, partnership, firm or corporation duly authorized by the Owner (Sponsor) to be responsible for engineering supervision of the Contract Work and acting directly or through an authorized representative. The terms Engineer, Architect and Consultant may be used interchangeably within the confines of this project.

Equipment: All machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the Work.

Extra Work: An item of Work not provided for in the awarded Contract as previously modified by

Change Order or Supplemental Agreement, but which is found by the Engineer to be necessary to complete the Work within the intended scope of the Contract as previously modified.

FAA: The Federal Aviation Administration of the U.S. Department of Transportation. When used to designate a person, FAA shall mean the Administrator or its duly authorized representative.

Federal Specifications: The Federal Specifications and Standards including supplements, amendments, indexes thereto that are prepared and issued by the General Services Administration of the Federal Government.

Final Acceptance: The final acceptance in writing of the Work by the Engineer or OAR after the Final Inspection.

Final Completion: The date on which all of the Work contemplated by the Contract is completed in accordance with the Contract Documents, Plans and Specifications.

Final Inspection: The final inspection of the Work by the Engineer that reveals that all construction provided for and contemplated by the Contract is completed in accordance with the Contract Documents, Plans and Specifications.

Final Payment: The Final Payment under the Contract by the Owner to the Contractor, including release of the Retainage. Final Payment will be made only after all of the conditions and requirements for the close out of the Contract have been satisfied.

Force Account: Work performed on a time and material basis. If the Owner and Contractor cannot reach an agreement on an equitable adjustment to the Contract Price, or to the Contract Price for Work not covered by Unit Price Items, or cannot reach an agreement on an equitable Unit Price for additional major Unit Price Work, for the performance of certain Work, then the Work will be performed on a Force Account basis.

Initial Decision Maker: The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims and to certify termination of the Agreement.

Inspector: An authorized representative of the Engineer assigned to make all necessary inspections and/or tests of the Work performed or being performed, or of the materials furnished or being furnished by the Contractor.

Instruments of Service: Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Consultant and the Consultant's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

Intention of Terms: Whenever in these Specifications or on the Plans, the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of the like are import are used, it shall be understood that the direction, requirement, permission, designation, or prescription of the Engineer is intended; and similarly, the words "approved," "acceptable," "satisfactory," or words of like import, shall, mean approved by, or acceptable to, satisfactory to the Engineer, subject in each case to the final determination of the Owner.

Any reference to a specific requirement of a numbered subsection of the Contract Specifications or a cited standard shall be interpreted to include all general requirements of the entire section, specification item, or cited standard that may be pertinent to such a specific reference.

In the interest of brevity, 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.

Laboratory: The official testing laboratories of the Owner or such other laboratories as may be designated by the Engineer.

Lighting: A system of fixtures providing or controlling the light sources used on or near the Airport or within the Airport buildings. The field lighting includes all luminous signals, markers, floodlights, and illuminating devices used on or near the Airport or to aid in the operation of aircraft landing at, taking off from, or taxiing on the Airport surface.

Liquidated Damages: The agreed upon amount of daily damages set forth in the General Conditions of the Contract that Owner may assess against Contractor if the Work is not substantially completed and finally completed within the time set forth in the Contract Documents.

Major and Minor Contract Items: A Major Contract Item shall be any item that is listed in the Proposal, the total cost of which is equal to or greater than (20%) percent of the total amount of the awarded Contract. All other items shall be considered Minor Contract Items.

Materials: Any substance specified for use in the construction of the Contract Work.

NAVAIDS: Include but not be limited to, ASR, UHF, NDB and VHF Receivers and Transmitters, National Weather Service Facilities, Lighting, electric cables and controls relating to such NAVAIDS and facilities and other electric power cables serving other facilities.

Notice of Intent to Award: A written notice to a Bidder by the Owner that Owner intends to Award the Contract to such Bidder.

Notice to Proceed: A written notice to the Contractor to begin the actual Contract Work on a previously agreed to date. If applicable, the Notice to Proceed shall state the date on which the Contract Time begins.

OAR (Owner's Authorized Representative): the person duly authorized to act on behalf of the Birmingham Airport Authority.

Owner: The term Owner shall mean Birmingham Airport Authority, an Alabama public corporation. For AIP Contracts, the term "Sponsor" shall be used in place of the term Owner.

Pavement: The combined surface course, base course, and subbase course, if any, considered as a single unit.

Payment Bond: The approved form of security furnished by the Contractor and its Surety as a guaranty that the Contractor will pay in full all bills and accounts for materials and labor used in the construction of the Work.

Performance Bond: The approved form of security furnished by the Contractor and its Surety as a guaranty that the Contractor will complete the Work in accordance with the terms of Contract Documents.

Plans: The official drawings or exact reproductions which show the location, character, dimensions and details of the airport and the work to be done and which are to be considered as a part of the contract, supplementary to the specifications.

Project: The total sum of the defined scope of Work (including bidding, construction & warranty phases) of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate Contractors.

Record Documents: Those documents, assembled by the Engineer or Contractor, at the conclusion of the Contractor's performance of construction or service. Record Documents are developed from as-built Drawings, as-built Specifications and any other documents required by the Contractor for closing out the Project.

Runway: The area on the Airport prepared for the landing and takeoff of aircraft.

SPCD: Safety Plan Compliance Document

Specifications: Those portions of the Contract Documents containing the written directions and requirements for materials, Equipment, construction systems, and Workmanship for Work and the performance of related services. Standards for specifying materials or testing which are cited in the Contract Specifications by reference shall have the same force and effect as if included in the Contract physically.

Structures: Airport facilities such as bridges; culverts; catch basins, inlets, retaining walls, cribbing; storm and sanitary sewer lines; water lines; under drains; electrical ducts, manholes, Lighting fixtures and bases; transformers, flexible and rigid Pavements; navigational aids; buildings; vaults; and, other manmade features of the Airport that may be encountered in the Work and not otherwise classified herein.

Subcontract: A contract between the Contractor and a supplier of materials, equipment or labor for the completion or all or a portion of the Work. All Subcontracts shall be subject to the terms of the Contract, and no Subcontract shall alter or limit the Contractor's liability to the Owner to complete the Work as provided in the Contract.

Subcontractor: A person or entity that enters into a Subcontract with the Contractor.

Subgrade: The soil which forms the Pavement foundation.

Submittals: Shop drawings, samples, mix designs, material certifications, product data and other items or documents required to be submitted by the Contractor for approval of the Engineer or OAR prior to incorporation into the Work.

Substantial Completion: The stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and when all required occupancy permits, if any, have been issued so the Owner can occupy or utilize the Work for its intended use.

Superintendent: The Contractor's executive representative who is present on the Work during progress, authorized to receive and fulfill instructions from and Engineer, and who shall supervise and direct the Work.

Supplemental Agreement: A written agreement between the Contractor and the Owner covering: (a) Work that would increase or decrease the total amount of the awarded Contract, or any Liquidated Damages, by more than (20%), such increased or decreased Work being within the scope of the originally awarded Contract; or (b) Work that is not within the scope of the originally awarded Contract.

Surety: The corporation, partnership, or individual, other than the Contractor, executing Payment Books or Performance Bonds which are furnished to the Owner by the Contractor.

Taxiway: For the purpose of this Contract, the term "Taxiway" means the portion of the Air Operations Area of an Airport that has been designated by a competent Airport Authority Representative for movement of aircraft to and from the Airports Runways or aircraft parking areas.

Total Contract Price: The total price the Owner will pay to the Contractor for the Work, when fully completed, subject to such additions and deductions as may be provided for in the Contract Documents. The initial Total Contract Price will be set forth by the Contractor in the Bid and will be accepted by the Owner in the Contract Agreement. The Total Contract Price may be changed only on written agreement from time to time as set forth in the Contract Documents.

Work: The construction and services, including the furnishing of all labor, materials, tools, equipment, and incidentals necessary or convenient to the Contractor's performance of all duties and obligations of the Contractor imposed by the Contract Documents, Plans and Specifications. The Work may constitute the whole or a part of the Project.

Working Day: A Working Day shall be any day other than a legal holiday, Saturday or Sunday on which the normal working forces of the Contractor may proceed with regular Work for at least (6) hours toward completion of the Contract. Unless Work is suspended for causes beyond the Contractor's control, Saturdays, Sundays, and holidays on which the Contractor's forces engage in regular Work, requiring the presence of an Inspector, will be considered as Working Days.

Other capitalized terms may be defined in other Sections of the Contract Documents. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

ARTICLES COMPRISING THIS AGREEMENT ARE AS FOLLOWS:

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement 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. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Consultant and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The Date of Commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a Notice to Proceed issued by the Owner.

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than _____ calendar days from the Date of Commencement or Notice to Proceed.

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work, as defined in Article 7, including the Contractor's Fee.

§ 5.1.1 The Contractor's Fee: _____ See Article 5.2 below _____.

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work, including overhead and profit, shall be limited to the percentage allowed by Federal Regulations governing this Agreement.

§ 5.1.3 Limitations of a Subcontractor's overhead and profit for increases in the cost of its portion of the Work shall be limited to the percentage allowed by Federal Regulations governing this Agreement.

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed the percentage allowed by Federal Regulations governing this Agreement.

§ 5.1.5 Unit prices, if any, are included as follows and shall remain in effect, without escalation, for the duration of the Project:

ITEM	UNITS	PRICE PER UNIT (IN U.S. CURRENCY)
<u><i>This is a lump sum, Guaranteed Maximum Price (GMP) contract based on the scope defined in the plans and specifications. Unit Priced items are included for use only in adjusting final quantities confirmed and approved by the Engineer / Architect of Record.</i></u>		

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum, inclusive of Contractor's Overhead, Profit and Fee, is guaranteed by the Contractor not to exceed _____ subject to additions and deductions by Change Order as provided in the Contract Documents.

Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Any Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

Project Cost Savings: The Contractor is encouraged to seek out various cost saving opportunities, in the best interest of the Project, and present any such opportunities to the Owner for approval. Upon written direction from the Owner, the Contractor shall proceed to incorporate the project savings measures whereas both parties agree to participate in a 70/30 split of any realized savings against the original Contract Sum, where the Owner retains 70% of the savings and the Contractor shall retain 30% of the savings.

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any:

§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Consultant, the Contractor has provided in the Guaranteed Maximum

Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in the General Conditions of the Contract for Construction.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" shall have the meaning and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

§6.5 ALTERATION OF WORK AND QUANTITIES

The Owner reserves and shall have the right to make such alterations in the Work as may be necessary or desirable to complete the Work originally intended in an acceptable manner. Unless otherwise specified herein, the Engineer, as agent for the Owner and with the Owner's approval shall be and is hereby authorized to make such alterations in the Work as may increase or decrease the originally awarded Contract quantities, provided that the aggregate of such alterations does not change the total Contract cost or the total cost of any Liquidated Damages by more than (20%) (total cost being based on the unit prices and estimated quantities in the awarded Contract). Alterations which do not exceed the (20%) limitation shall not invalidate the Contract nor release the Surety, and the Contractor agrees to accept payment for such alterations as if the altered Work had been a part of the original Contract. These alterations which are for Work within the general scope of the Contract shall be covered by "Change Orders" issued by the Engineer. Change Orders for altered Work shall include extensions of Contract Time where, in the Engineers opinion, such extensions are commensurate with the amount and difficulty of added Work.

Should the aggregate amount of altered Work exceed the (20%) limitation hereinbefore specified, such excess altered Work may be covered by Supplemental Agreement. If the Owner and the Contractor are unable to agree on a unit adjustment for any Contract Item that requires a Supplemental Agreement, the Owner reserves the right to terminate the Contract with respect to the item and make other arrangements for its completion.

All Supplemental Agreements shall be approved by the FAA and shall include valid wage determinations of the U.S. Secretary of Labor when the amount of the Supplemental Agreement exceeds \$2,000. However, if the Contractor elects to waive the limitations on Work that increases or decreases the originally awarded Contract or any Liquidated Damages by more than (20%),

the Supplemental Agreement shall be subject to the same, U.S. Secretary of Labor wage determination as was included in the originally awarded Contract.

All Supplemental Agreements shall require consent of the Contractor's Surety and separate Performance Bonds and Payment Bonds.

§6.6 OMITTED ITEMS

The Engineer may, in the Owners best interest, omit from the Work any Contract Item, except Liquidated Damages. Liquidated Damages may only be omitted by the Owner. Such omission of Contract Items shall not invalidate any other Contract provision or requirement.

Should a Contract Item be omitted or otherwise ordered to be non-performed, the Contractor shall be paid for all Work performed toward completion of such item prior to the date of the order to omit such item. Payment for Work performed shall be in accordance with the Subsection titled Payment for Omitted Items.

§6.7 EXTRA WORK

Should acceptable completion of the Contract require the Contractor to perform an item of Work for which no basis of payment has been provided in the original Contract or previously issued Change Orders or Supplemental Agreements, the same shall be called Extra Work. Extra Work that is within the general scope of the Contract shall be covered by written Change Order. Change Orders for such Extra Work shall contain agreed unit prices for performing the Change Order Work in accordance with the requirements specified in the Change Order, and shall contain any adjustment to the Contract Time that, in the Engineer's opinion, is necessary for completion of such Extra Work.

When determined by the Engineer to be in the Owner's best interest, he may order the Contractor to proceed with Extra Work by Force Account as provided in the Subsection titled Payment for Extra and Force Account Work.

Extra Work that is necessary for acceptable completion of the Project, but is not within the general scope of the Work covered by the original Contract shall be covered by a Supplemental Agreement as hereinbefore defined in the Subsection titled Supplemental Agreement.

Any Claim for payment of Extra Work that is not covered by written agreement (Change Order or Supplemental Agreement) shall be rejected by the Owner.

§6.8 TYPES OF CHANGES IN WORK

Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order ("CO"), Construction Change Directive ("CCD"), Field Change Order ("FCO") or order for a Minor Change in the Work ("Minor Change"), subject to the limitations stated in this Subsection 4 and elsewhere in the Contract Documents.

A Change Order shall be based upon agreement between the Owner and Contractor. A Construction Change Directive shall be issued unilaterally by the Owner and may or may not be agreed to by the Contractor. Both a Change Order and Construction Change Directive must be approved by the Owner's Construction Committee and the Birmingham Airport Authority Board, subject to limits of approvals set forth in the Owner's Policies and Procedures. An order for a Minor Change in the Work resulting in zero dollar change may be issued by the OAR or Engineer alone. A Field Change Order may be issued by the Owner's Senior Director of Engineering & Construction as provided in Subsection 7 of this Section.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, Field Change Order, or order for a Minor Change in the Work.

If unit prices are stated in the Contractor's Bid or Proposal and are accepted by the Owner, or if they are subsequently agreed upon by the Owner and Contractor, the Owner may authorize increases or decreases in quantities of a Major Work Item without any change in the applicable unit price, provided that the aggregate change in quantity of a Major Work Item does not increase or decrease by a net amount of (20%) compared to the quantities stated in the unit price schedule contained in the Contract at the time of award. If the cumulative or aggregate amount of the quantity of a Major Work Item changes (either increases or decreases) by a net amount in excess of (20%), then the Owner and Contractor shall mutually agree upon an increase or decrease in the unit price. In the event the Owner and Contractor are unable to agree upon the unit price adjustment, the Owner may issue a CCD consistent with Subsection 6 or terminate the Contract with respect to the disputed items and perform the Work through separate Contractors or the Owner's own forces. A Major Work Item constitutes twenty percent (20%) or more of the Total Contract Price.

For all Change Orders, Construction Change Directives, and Field Change Orders, except those based upon established unit prices, regardless of the method used to determine the adjustment of the Total Contract Price, the maximum mark-up for overhead and profit on allowable costs which the Contractor and Subcontractors or suppliers shall receive is controlled by the following table:

Value of Changes	Contractor's Mark-up on Work by Contractor's Own Forces	Contractor's Mark-up on Work Performed by Subcontractors or Suppliers	Subcontractors' or Suppliers' Mark-up on Work Performed by Own Forces
\$1 to \$25,000	9%	9%	9%
\$25,001 to \$500,000	9%	9%	9%
\$500,001 and above	9%	9%	9%

The appropriate maximum mark-up payable to Subcontractors and suppliers for Work performed by their own forces for each separate Change Order or Construction Change Directive shall be determined by the dollar value of the Work performed by a particular Subcontractor or supplier.

The appropriate maximum mark-up payable to the Contractor for administration of Work performed by Subcontractors or suppliers for each separate Change Order or Construction Change Directive shall be determined by the cumulative dollar value of Work being performed by Subcontractors or suppliers, on each separate Change Order, Construction Change Directive, or Field Change Order.

The maximum mark-up for overhead and profit for Work performed by Subcontractors or suppliers will be a cumulative maximum markup over allowable costs, regardless of the number of tiers of Subcontracts or supply Contracts involved. For deductive changes, the Owner shall be entitled to a credit on the net amount of the change commensurate with the mark-up provided to the Contractor and its Subcontractors or suppliers for additive Change Orders, Construction Change Directives, or Field Change Order. There shall be no mark-up allowed for the cost of Surety Bonds. The Contractor shall be allowed reimbursement for the actual cost of Surety Bonds required by the Contract.

If the Change Order, Construction Change Directive or Field Change Order provides for an adjustment of the Total Contract Price, the amount of the adjustment shall be based upon one

of the following methods which shall be selected by the Owner.

Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation which data shall include, at a minimum, copies of such books and records of the Contractor and its Subcontractors to verify actual material and equipment costs, wage rates, payroll taxes, insurance rates, actual bond premiums and any other data used by the Contractor in estimating the value of the changed Work; or

Unit prices stated in the Contract Documents or subsequently agreed upon; or in a manner otherwise agreed upon by the Owner and the Contractor; or as provided below described as "Force Account".

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 7.3 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ 7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 7.6.3 PERMITS AND FEES

The Contractor shall secure and pay for the Building Permit and other permits and governmental fees for licenses and inspections necessary for proper execution and completion of the Work which are customarily secured for performance of the Work, including, but not limited to, any applicable building, engineering, dewatering, NPDES storm water management or other construction permits required to complete the Work. The Contractor shall procure all certificates of inspection, use, occupancy, permits and licenses, and give all notices necessary and incidental to the due and lawful prosecution of the Work, including, without limitation, all required notices and approvals from FAA. Certificates of inspection, use and occupancy shall

be delivered to the Owner upon completion of the Work in sufficient time for occupancy of the Project in accordance with the schedule for the Work. The costs of such procurement, payment and delivery are included within the Total Contract Price.

The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities and the FAA bearing on performance of the Work.

It shall be the obligation of the Contractor to review the Contract Documents to determine and to notify the Owner and Engineer of any discrepancy between building codes and regulations of which the Contractor has knowledge or should be reasonably able to determine. The Contractor shall not violate any zoning, setback or other locational requirements of applicable laws, codes or ordinances, or of any recorded covenants of which the Contractor has knowledge. If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, rules or regulations, the Contractor shall promptly notify the Owner and Engineer in writing, and necessary changes shall be accomplished by appropriate Contract Modification after approval by the Owner.

If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Engineer and Owner, the Contractor shall assume full responsibility for correction of such Work and shall bear the applicable costs.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by other provisions of the Contract Documents and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ 7.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 OTHER COSTS AND EMERGENCIES (FORCE ACCOUNT)

Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner, include:

§ 7.7.1 Force Account Work shall be documented, consistent with the procedures of Subsection 6, and verified jointly by the Contractor and the Engineer. The Contractor bears the responsibility for obtaining daily approval of all allowable Force Account charges described below. The Contractor shall not be paid for Claims arising from unapproved time charges. The Contractor shall provide any documentation requested by the OAR including but not limited to:

Time sheets shall be approved daily by the Engineer (or authorized site representative, designated for this purpose) for the actual hours spent by manpower and equipment listed.

Substantiation for net direct cost of the Contractor's labor and foremen while directly performing the Force Account Work activity, but excluding any costs associated with any of the Contractor's Superintendents, Project Engineers, or Project managers, which Contractor acknowledges are compensated. Required records shall include certified payroll records, as well as timesheets, summarizing all pertinent information for recoverable labor costs, increased by the Contractor's actual documented cost to cover all allowable benefits and expenses.

Major Equipment Cost Information that substantiates the rental cost of rented equipment or Contractor-owned equipment. The Contractor shall use the criteria set forth below: (a) Originals or certified copies of Rental Invoices are to be submitted to the OAR. Contractor-owned equipment rates and rental rates shall not be more than Thirty percent (30%) of the properly adjusted rates indicated in the most recent Rental Rate Blue Book by Dataquest Inc. ("Blue Book"), applicable to the date the Force Account Work activity was performed, for the period of actual use of such equipment; (b) No charges shall be made for the use of hand tools and other small equipment normally available at the site nor for highway vehicles normally assigned to the Project site; (c) Rates for equipment and vehicles owned by the Contractor or Subcontractor and specifically assigned to the Force Account Work activity shall be established according to Subsections (a) above; (d) Maximum rates for equipment not listed in the Blue Book shall be established by capacity comparisons to other listed equipment; (e) No overtime charges shall be made for equipment operating longer than 8 hours per Day and only daily or prorated weekly or monthly rates per Day shall be allowed depending on the actual rental period; (f) Contractor-owned equipment daily rates shall be based on 1/30th of the monthly rates, and hourly rates (not to exceed a total of 8 hours per Day) shall be based on 1/240th of the monthly rate; (g) No payment will be made for repairs or repair down time; (h) Operating costs, if not included in the Blue Book rates, shall be no greater than 15% of the rental rate for actual operating hours; (i) In no event shall the Contractor be entitled to payment for idle or standby equipment.

Substantiation for final calculations - Within seven (7) Days of the completion of the Force Account Work activity, the Contractor shall compile a packet of information containing all backup documentation for accrued charges and submit all documentation not previously provided to the Engineer with a request for reimbursement of the cost plus Contractor's mark-up for overhead and profit.

The Contractor specifically agrees that no other Claims shall be asserted against the Owner for such Force Account Work.

Upon verification of the total charges the OAR will prepare a Change Order for this Force Account Work.

The term "net" as used herein refers to costs exclusive of the mark-up percentages.

§ 7.7.2 Costs resulting from action taken to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in Article 15;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article 7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article 7; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Consultant. The Owner shall then determine, with the advice of the Contractor and the Consultant, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 When a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment submitted to the Consultant by the Contractor and Certificates for Payment issued by the Consultant, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 12.1.3 Provided that an Application for Payment is received by the Consultant not later than the 5th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the last day of the same month. If an Application for Payment is received by the Consultant after the application date fixed above, payment shall be made by the Owner not later than (30) days after the Consultant receives the Application for Payment

except where Federal, state or local laws may require payment otherwise.

§ 12.1.4 With each Application for Payment, the Contractor shall, upon request by Owner, submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Consultant to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Consultant may require. This schedule, unless objected to by the Consultant, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of ten percent (10%). The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Consultant has withheld or nullified a Certificate for Payment.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage

held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Consultant shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Consultant has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Consultant has made exhaustive or continuous on-site inspections; or that the Consultant has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.1.9 Contractor will be required to follow the Birmingham Airport Authority's Contractor Application for Payment and Material Payment procedures which may include, depending upon the Project's funding sources, substantial documentation and accounting requirements. The Contractor shall request from Owner, no less than (4) weeks prior to submitting any invoice for payment, a copy of the required forms and procedures.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Consultant.

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Consultant by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Consultant will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Consultant's reasons for withholding a certificate. The Consultant is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Consultant's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Consultant's final Certificate for Payment.

§ 12.2.4 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Consultant's final Certificate for Payment.

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming

Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 MEDIATION - Claims, disputes or other matters in question arising out of or relating to the Contract Documents, with an alleged value over \$100,000, exclusive of interest, costs and attorneys' fees, shall be subject to a single round of mandatory mediation by a mediator to be selected by the parties. Mediation may be scheduled before a lawsuit is filed, but must occur no later than (120) days after a lawsuit has been filed unless a later date is mutually agreed upon by the parties. The parties shall split the cost of mediation proceedings.

§ 13.2 BINDING DISPUTE RESOLUTION - This Agreement is made and entered in the State of Alabama and shall be governed by its laws. If the parties do not resolve their dispute through mediation pursuant to Article 2.5, the method of binding dispute resolution shall be as follows: Any unresolved Claim, dispute or other matter in question arising out of or relating to the Contract Documents or the breach thereof, except for Claims which have been waived by the making and acceptance of Final Payment, shall be brought only in a court of competent jurisdiction within Jefferson County, Alabama or the United States District Court for the Northern District of Alabama.

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 TERMINATION OR SUSPENSION - Owner may terminate this agreement by providing thirty (30) days written notice to the other party and the Contractor may terminate this Agreement by providing sixty (60) days written notice, however, the party seeking to terminate this Agreement shall not be in default. In the event of such termination, the Owner shall pay Contractor for all services rendered and expenses incurred prior to date of termination. The Airport is not obligated to pay any fees or expenses which specifically involve negligent acts or omissions on the part of Contractor. Upon receipt of a termination notice by the Owner, Contractor shall promptly discontinue all services (unless the notice directs otherwise) and deliver or otherwise make available to Owner, all data, surveys, reports, drawings, databases, estimates, summaries, and such other information and materials, as may be accumulated by Contractor in performing this Agreement, whether completed or in process.

ARTICLE 15 GENERAL CONDITIONS OF THIS AGREEMENT

§ 15.1 The information and assumptions contained under these General Conditions of this Agreement shall be incorporated into and become a part of the Agreement

§ 15.2 Responsibilities of the Parties to this Agreement: The Owner and the Contractor shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project Team.

§ 15.2.1 OWNER The term Owner refers to the Birmingham Airport Authority and may also be identified as "BAA", "the Airport", "BHM" and "the Authority" throughout this Agreement.

§ 15.2.2 The Owner's Designated Representative(s) is authorized to act on the Owner's behalf with respect to the Project.

§ 15.2.3 The Owner's responsibilities are outlined in this Agreement and limited to those provided for under the originating Request for Bids (RFB) and subsequent addenda.
(EXHIBIT B)

§ 15.2.4 CONTRACTOR – The services that the Contractor and its sub-Contractors shall provide are outlined in this Agreement and further defined in **EXHIBIT A**.

§ 15.2.5 The Contractor's Designated Representative(s) is authorized to act on the Contractor's behalf with respect to the Project.

§ 15.2.6 The Contractor shall provide copies of all Federal requirements governing this Agreement to and shall enforce the same with its own Sub-Contractors.

§ 15.2.7 The Contractor shall perform its services in accordance with applicable standards of professional skill and care. When applicable law requires that services be performed by licensed professionals, the Contractor shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions.

§ 15.2.8 The Contractor shall provide copies of all Federal requirements governing this Agreement to and shall enforce compliance of the same with all of its own Sub-Contractors.

§ 15.2.9 The Contractor shall submit, for the Owner's approval, a schedule for the performance of the Contractor's services which initially shall be consistent with the time periods established in **ARTICLE 15** of this Agreement.

§ 15.2.10 The Contractor shall maintain the confidentiality of information specifically designated by the Owner in writing as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Contractor from establishing a claim or defense in an adjudicatory proceeding. The Contractor shall require similar agreements from its sub-Contractors.

§ 15.2.11 Except with the Owner's knowledge and consent, the Contractor shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Contractor's professional judgment with respect to the Project.

§ 15.3 CONTRACTOR'S BID - The Contractor's Bid shall include all costs, charges and expenses directly related to the defined scope of services.

§ 15.4 COMPLIANCE WITH LOCAL, STATE AND FEDERAL REGULATIONS – Contractor shall comply with all Local, State and Federal regulations applicable under this Agreement.

§ 15.5 ASSIGNMENT – This Agreement is binding on the parties entered into it. Neither party shall assign or transfer its interest or responsibilities without written consent from all parties assigned therein.

§ 15.6 INSURANCE REQUIREMENTS - the Contractor shall maintain in full force at all times during the term of this Agreement the following amounts and types of insurance coverage insuring Contractor and naming Owner as named insured:

- a. Workmen's Compensation Insurance covering all employees of Contractor to the extent required by law with Statutory Limits for Coverage A and Employer's Liability limits of \$1,000,000 / \$1,000,000 / \$1,000,000.
- b. Comprehensive General Liability Insurance against liability for bodily injury to or death of persons and damages to or loss of property occurring on or about the Airport or in any way related to the Project, in an amount of not less than \$2,000,000 aggregate. General Liability policy shall include CG2010 and CG2037 providing coverage for both on-going and completed operations.
- c. Professional Liability / Errors and Omissions Insurance: Contractor shall maintain and keep in full force and effect, and shall cause any third party's providing services under this

Agreement, professional liability/errors and omissions insurance policies having minimum limits of \$1,000,000 per occurrence; and

- d. Automobile Liability Insurance against liability for bodily injury to or death of persons and property damage, including coverage for owned, hired, and non-owned vehicles, for any vehicle used in the services under this agreement or brought on Birmingham Airport premises in an amount not less than a combined single limit of \$1,000,000.
- e. The Contractor shall furnish, and shall cause any third parties to furnish Owner with proper certification that such insurance is in full force and effect and will also furnish additional certifications whenever changes are made in such insurance. Additional certification shall be supplied not less than thirty (30) days prior to any such change.
- f. All such insurance policies shall provide that coverage is primary and non-contributory, includes waiver of subrogation and provides the Owner 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.
- g. *Indemnification: The Contractor hereby agrees to indemnify, defend and hold Owner, its agents, employees and designees ("Indemnities") harmless from all losses, claims, liabilities, injuries, damages and expenses, including attorney's fees, that the Indemnities may incur by reason of any injury or damage sustained to any person or property (including, but not limited to, any one or more of the Indemnities) arising out of or resulting from, in whole or part, the negligent performance, or lack of performance, by Contractor of its duties and obligations under or pursuant to this Agreement and Amendments.*
- h. *Additional requirements for Contractor's Insurance:*

It is highly recommended that each Bidder request that its current insurance broker/agent review the insurance requirements in this Contract before completing and submitting a Bid, so each Bidder will be aware of any additional cost that may be incurred to meet the Owner's insurance requirements for this Contract. No such additional costs shall be part of the Bid price, and the selected Bidder/Contractor shall be responsible for paying the same.

The selected Bidder / Contractor will be required to provide to the Owner prior to commencement of any Work certificates evidencing the insurance coverages listed below, including separate endorsements naming the following entities as additional insureds on all such insurance policies (excluding Worker's Compensation insurance): Birmingham Airport Authority, City of Birmingham, Alabama, and their respective directors, council members, agents and employees, including, with limits, the OAR; and the Engineer and the other named consultants, their officers, agents and employees. The Bidder/Contractor's policy will be primary to any other valid and collectible insurance available to the airport. Contractor shall have its insurance broker/agent complete and submit with the required evidence of insurance the Notice to Contractor's Insurance Agent or Broker attached to this Section as Attachment "A".

Contractor is also advised of the statutory immunity of negligence applicable to the owner and its directors, which is contained in Article 2, Chapter 3 of Title 4 Section 4-30-50 of the Code of Alabama, 1975.

The selected Bidder/Contractor must provide proof (in the form of insurance certificates or policies and endorsements) of the following insurance coverages at the time of execution and delivery to the Owner under the Contract Agreement:

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BAA CONTRACTOR INSURANCE REQUIREMENTS
CONTRACTOR PROVIDED INSURANCE FOR NON-AIRSIDE PROJECT COVERAGE

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Worker's Compensation	Statutory
Employee's Liability	\$1,000,000 Each Accident \$1,000,000 Disease – Policy Limit \$1,000,000 per Employee
	Requirements:
	1. Voluntary Compensation Endorsement 2. Waiver of Subrogation
General Liability	\$1,000,000 each occurrence \$2,000,000 General Aggregate \$2,000,000 Completed Operations/Products Aggregate \$2,000,000 Personal Injury \$5,000 Medical Payments
	Requirements:
	1. XCU Perils Coverage 2. Completed Operations Extended 3 Years 3. Broad Form Property Damage 4. Fellow Employee Coverage 5. Primary & Non-Contributory 6. Waiver of Subrogation 7. 30-day notice of Cancellation to Certificate Holder 8. CG2010 and CG2037 Endorsements 9. Contractual Liability applicable to Contractor's indemnification obligations
Business Automobile	\$2,000,000 per occurrence combined limit for bodily injury liability and property damage
	Requirements:
	1. Covers owned, non-owned and hired autos 2. Primary & Non-Contributory 3. Waiver of Subrogation 4. 30 Day- Notice of Cancellation to Certificate Holder
Umbrella	\$5,000,000
Builder's Risk Policy	Amount of Project
	Requirements:
	1. Contractor shall provide coverage for Contractor's material & equipment on the job site and that which is scheduled for the Work but has not been delivered to the Job Site. 2. Coverage shall insure interest of Owner and Contractor 3. Provide Replacement Cost 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 5. Coverage includes flood and earth movement 6. Per Project Aggregate
Pollution Policy	\$1,000,000 <i>(Depending on project)</i>
Professional Liability	\$1,000,000 <i>(Depending on project)</i>

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

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Worker's Compensation	Statutory for Coverage A
Employee's Liability	\$1,000,000 each Accident \$1,000,000 Disease – Policy Limit \$1,000,000 per Employee Requirements: 1. Voluntary Compensation Endorsement 2. Waiver of Subrogation
General Liability	\$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 Requirements: 1. XCU Perils Coverage 2. Completed Operations Extended 3 Years 3. Broad Form Property Damage 4. Fellow Employee Coverage 5. Primary & Non-Contributory 6. Waiver of Subrogation 7. 30-day notice of Cancellation to Certificate Holder 8. CG2010 and CG2037 Endorsements 9. Contractual Liability applicable to Contractor's indemnification obligations
Business Automobile	\$2,000,000 per occurrence combined limit for bodily injury liability and property damage Requirements: 1. Covers owned, non-owned and hired autos 2. Primary & Non-Contributory 3. Waiver of Subrogation 4. 30-day notice of Cancellation to Certificate Holder
Umbrella	\$10,000,000
Builder's Risk Policy	Amount of Project

The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in Alabama (which company or companies shall, at a minimum, have a rating of not less than "A-" as to management and "X" as to strength in the latest edition of Best's Insurance Guide). Such insurance as to protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. If the Owner requires that the insurance requirements set forth in the Contract Documents be varied, the Contractor agrees to enter into suitable modifications of the provisions hereof, provided the Owner bears any additional cost reasonably occasioned thereby. The Contractor's insurance shall include the following coverages in the amounts set forth above:

- I. *Workers' Compensation to cover full liability under the Workers' Compensation laws of the State of Alabama.*
- II. *Employer's Liability:*
 - a. *bodily injury, including damages for care and loss of services, because of bodily injury, occupational sickness or disease, or death at any time resulting therefrom, sustained by any person or persons;*
 - b. *Personal Injury, including damages for care and loss of services, because of personal injury, including death at any time resulting therefrom, sustained by any person or persons.*
 - c. *Property Damage for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom.*
 - d. *Automobile Liability for all owned, non-owned and hired automobiles and other vehicles used in connection with the Work or arising out of ownership, maintenance or use of a motor vehicle.*
 - e. *Contractual Liability applicable to the Contractor's indemnification obligations*

Coverages, whether written on an occurrence or claims made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment and termination of any coverage required to be maintained after Final Payment. 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.

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 required to remain in force after Final Payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment by the Contractor. Information concerning reduction or cancellation of coverage shall be immediately furnished by the Contractor to the Owner.

If the Owner or its insurance carrier requests the Contractor to provide new or additional insurance coverage or terms other than the insurance required herein, the Contractor agrees to enter into such suitable modifications of its coverages provided the Owner bears any additional costs reasonably occasioned thereby.

The Contractor shall provide coverage for the Contractor's equipment on the job site and all construction material and equipment which is scheduled for the Work but has not been delivered to the job site with an All Risk Builder's Risk Insurance Policy or with an Installation Floater Policy, insuring the interest of the Owner and the Contractor and providing replacement cost coverage, which insurance shall include but not be limited to the perils of fire, lightning, windstorm, hurricane, hail, explosions, riot, vandalism, and malicious mischief. In the event of loss covered by this insurance, the proceeds of a claim shall be paid to the Owner, who shall apportion the proceeds between the Owner and the Contractor as their interests may appear.

ATTACHMENT "A"

Notice to Contractor's Insurance Agent or Broker

Your insured is required to provide evidence of insurance to the Birmingham Airport Authority (the "Owner") and to submit to the Owner an executed original of this Notice to Contractor's Insurance Agent or Broker in connection with a contract between the Owner and your insured. In order to fulfill your insured's obligations, the Owner requires copies of the declaration page(s) of the policy and endorsements OR completion of an ACORD Certificate of Insurance modified to delete the wording: "This certificate is issued as a matter of information only and confers no rights upon the certificate holder" AND "endeavor to" AND "But failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

In order for your insured's evidence of insurance to be acceptable to the Owner, you must affirm (check) all items on the following checklist:

- _____ I represent to the Owner that I am authorized by each of the insurers to complete a Certificate of Insurance in the form required by the Owner.
- _____ A copy of this certificate has been sent to each of the insurers.
- _____ I have obtained the A.M. Best Rating for each insurer from the _____ (date of latest) edition of Best's Insurance Reports, and all insurers are rated not less than "A-" as to management and "X" as to strength in such edition.
- _____ I am aware that the Owner requires confirmation that the Policy is Primary to Airport Authority's insurance and a (60) day notification of any substantial changes in coverages or non-renewal or termination or cancellation of the policies.
- _____ I have requested that the general liability insurer, automobile liability insurer and excess insurer endorse their policies to state: "The Birmingham Airport Authority, the City of Birmingham, Alabama and their respective directors, council members, agents and employees, including, with limits, the OAR are hereby included as additional insured as required by the terms of the Contract between the named insured and the Birmingham Airport Authority."
- _____ None of the policies (except excess liability) contain a self-insured retention or deductible provision with respect to third party coverage. If you cannot affirm this statement, please specify whether or not the policy contains a self-insured retention or deductible amount.
- _____ Self-Insured Retention OR _____ Deductible; Amount \$ _____
- _____ All of the insurers shown on the Certificates of Insurance are authorized to write the coverages shown in the State of Alabama.
- _____ I have completed this checklist and my signature appears below and on the Certificates of Insurance provided.

Broker/Agent for: _____

By: _____
Signature

Name & Title

§ 15.7 The Owner's Designated Representative is as follows:

Tom Wesley, Project Manager
Birmingham Airport Authority
5900 Airport Highway
Birmingham, AL 35212
Telephone: (205) 595-0533
Email: twesley@flybirmingham.com

§ 15.8 The persons or entities, if any, in addition to the Owner's Designated Representative, who may be required and will be authorized to review and approve this Agreement and shall have governing authority, as allowed by Law, are as follows:

THE FEDERAL AVIATION ADMINISTRATION

15.9 NOT USED

§15.10 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§15.10.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§15.10.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§15.10.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§15.11 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Consultants.

§15.12 INTERPRETATION

In the interest of brevity 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.

§15.13 OWNERSHIP & USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§15.13.1 The Consultant and the Consultant's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. 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 Consultant's or Consultant's consultants' reserved rights.

§15.13.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Consultant and the Consultant's consultants.

§15.14 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§15.15 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§15.16 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Consultant's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Consultant. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§15.17 CONTRACTOR - GENERAL

§15.17.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§15.17.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§15.17.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Consultant in the Consultant's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§15.18 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§15.18.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§15.18.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Consultant any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Consultant may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§15.18.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Consultant any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Consultant may require.

§15.18.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Consultant issues in response to the Contractor's notices or requests for information, the Contractor shall make Claim and provide Notice to the Owner within (5) days. If the Contractor fails to perform the obligations previously noted, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Consultant for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§15.19 SUPERVISION AND CONSTRUCTION PROCEDURES

§15.19.1 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 including coordination of the duties of all trades, unless the Contract Documents give other specific instructions concerning these matters.

The Contractor shall control its operations and those of its Subcontractors and Suppliers to assure the least inconvenience to the traveling public. Under all circumstances, safety shall be the most important consideration.

The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a Contract with the Contractor.

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Engineer or OAR in their administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

If any of the Work is required to be inspected or approved, the Contractor shall cause such inspection or approval to be performed. No test, inspection or examination performed or failed to be performed by the Owner hereunder, shall be a waiver of the enforcement of any of the

Contractor's obligations hereunder.

The Contractor is fully responsible to provide a sufficient number of skilled Workers, supervision, and project management personnel, to prosecute the Work and insure that the Work is completed within the Contract Time. Failure to fully staff the Project with skilled Workers, supervision, or project management personnel shall be cause for termination of the Contract in accordance with Section 00180 of this Contract or such other remedies set forth in the Contract Documents. The Contractor assumes all risks of delays or extra costs which may be associated with labor disputes involving the Contractor, its Subcontractors or Suppliers and in no event shall the Contractor be entitled to additional compensation or an extension of Contract Time due to any such dispute.

§15.19.2 The Contractor shall be responsible to the Owner for 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, the Contractor or any of its Subcontractors.

§15.19.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§15.19.4 CONTRACTOR'S KEY PERSONNEL

The Contractor shall employ a competent Project Manager and Superintendent during the performance of the Work. The Contractor's Superintendent shall be on the site at all times during the performance of the Work. The Project Manager shall represent the Contractor, and communications given to the Project Manager shall be binding on the Contractor. Important communications shall be confirmed in writing. The Owner shall have the right but not an obligation to require the Contractor to dismiss from the Project any or all of the Contractor's Project personnel whose performance is not satisfactory to the Owner, and, in such event, the Contractor shall replace such personnel with personnel satisfactory to the Owner.

The resumes of the Contractor's key personnel that the Contractor intends to use on the Project, including but not limited to the Project Manager and Superintendent, and a chain-of-command organizational chart shall be submitted to the Engineer prior to the commencement of Work.

§15.20 LABOR AND MATERIALS

§15.20.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§15.20.2 Except in the case of minor changes in the Work authorized by the Consultant , the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Consultant and in accordance with a Change Order or Construction Change Directive.

§15.20.3 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 properly skilled in tasks assigned to them.

§15.21 WARRANTY

The Contractor warrants to the Owner and Consultant that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality

of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Consultant, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The Contractor shall execute the Warranty forms provided by the Owner, located in the General Conditions of the original Bid Package.

§15.22 CLEANING UP

The Contractor, on a daily basis, shall keep the premises and surrounding area free from the accumulation of waste materials or rubbish caused by operations under the Contract. At the completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials caused by operations under the Contract. The Contractor shall not dispose of debris or waste material on the Owner's property or in waste containers (dumpsters) leased by the Owner without prior approval of the Owner.

If the Contractor fails to keep the site clean as provided in the Contract Documents, then, following the Owner's written notice to the Contractor the Owner may take appropriate action to clean the site and charge such costs to the Contractor.

§15.23 NOT USED

§15.24 CONCEALED OR UNKNOWN CONDITIONS - If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Consultant before conditions are disturbed and in no event later than (21) days after first observance of the conditions. The Consultant will promptly investigate such conditions and, if the Consultant determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Consultant determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Consultant shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Consultant's determination or recommendation, that party may proceed as provided in this Agreement.

§15.25 ALLOWANCES

§15.25.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§15.25.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances and (2) changes in Contractor's costs.

§15.25.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§15.26 SUPERINTENDENT

§15.26.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§15.26.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Consultant the name and qualifications of a proposed superintendent. The Consultant may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Consultant has reasonable objection to the proposed superintendent or (2) that the Consultant requires additional time to review. Failure of the Consultant to reply within the 14 day period shall constitute notice of no reasonable objection.

§15.26.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Consultant has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§15.27 CONTRACTOR'S CONSTRUCTION SCHEDULES

§15.27.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Consultant's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§15.27.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Consultant's approval. The Consultant's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Consultant reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§15.27.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Consultant.

§15.28 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders, CBMPP, CSPP, SPCD and other critical construction related documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner and Consultant at all times

during the Term of this Agreement. These documents shall be delivered to the Consultant for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§15.29 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§15.29.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§15.29.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§15.29.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§15.29.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Consultant is subject to the limitations of Section 4.2.7. Informational submittals upon which the Consultant is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Consultant without action.

§15.29.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Consultant or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§15.29.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Consultant that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§15.29.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Consultant.

§15.29.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Consultant in writing of such deviation at the time of submittal and (1) the Consultant has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Consultant's approval thereof.

§15.29.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Consultant on previous submittals. In the absence of such written notice, the Consultant's approval of a resubmission shall not apply to such revisions.

§15.29.10 The Contractor shall not be required to provide professional services that constitute the practice of a Consultant or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Consultant will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Consultant. The Owner and the Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Consultant have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Consultant will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§15.30 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§15.31 CUTTING AND PATCHING

§15.31.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§15.31.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§15.32 CLEANING UP

§15.32.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§15.32.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§15.33 ACCESS TO WORK

The Contractor shall provide the Owner and Consultant access to the Work in preparation and progress wherever located.

§15.34 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Consultant harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Consultant. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Consultant.

§15.35 ADMINISTRATION OF THE CONTRACT

§15.35.1 The Consultant will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Consultant issues the final Certificate for Payment. The Consultant will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§15.35.2 The Consultant will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Consultant will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Consultant will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided otherwise under this Agreement.

§15.35.3 On the basis of the site visits, the Consultant will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Consultant will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Consultant will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§15.36 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Consultant about matters arising out of or relating to the Contract. Communications by and with the Consultant's consultants shall be through the Consultant. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§15.36.1 Based on the Consultant's evaluations of the Contractor's Applications for Payment, the Consultant will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§15.36.2 The Consultant has authority to reject Work that does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable, the Consultant will have authority to require inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Consultant nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Consultant to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§15.36.3 The Consultant will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant's action will be taken in accordance with the submittal schedule approved by the Consultant or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Consultant's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Consultant's review of the Contractor's submittals shall not relieve the Contractor of the obligations under this Agreement. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§15.36.4 The Consultant will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor; and issue a final Certificate for Payment.

§15.36.5 The Consultant will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Consultant's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§15.36.6 The Consultant's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§15.36.7 The Consultant will review and respond to requests for information about the Contract Documents. The Consultant's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Consultant will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§15.37 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§15.37.1 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 through the Consultant the names of persons or entities (including those who are to

furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Consultant may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Consultant has reasonable objection to any such proposed person or entity or (2) that the Consultant requires additional time for review. Failure of the Owner or Consultant to reply within the 14-day period shall constitute notice of no reasonable objection.

§15.37.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Consultant has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§15.37.3 If the Owner or Consultant has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Consultant has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§15.37.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Consultant makes reasonable objection to such substitution.

§15.38 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Consultant. Each subcontract agreement shall preserve and protect the rights of the Owner and Consultant under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§15.39 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§15.39.1 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 or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided under this Agreement.

§15.39.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§15.39.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§15.39.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract.

§15.40 MUTUAL RESPONSIBILITY

§15.40.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§15.40.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Consultant apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§15.40.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§15.40.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors.

§15.40.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§15.41 CHANGES IN THE SCOPE OF WORK

§15.41.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§15.41.2 A Change Order shall be based upon agreement among the Owner, Contractor and Consultant; a Construction Change Directive requires agreement by the Owner and Consultant and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Consultant alone.

§15.41.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§15.42 CHANGE ORDERS

§15.42.1 A Change Order is a written instrument prepared by the Consultant and signed by the Owner, Contractor and Consultant stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§15.43 CONSTRUCTION CHANGE DIRECTIVES

§15.43.1 A Construction Change Directive is a written order prepared by the Consultant and signed by the Owner and Consultant, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§15.43.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§15.43.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee

§15.43.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§15.43.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Consultant of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§15.43.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§15.43.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Consultant shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Consultant may prescribe, an itemized accounting together with

appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§15.43.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Consultant. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§15.43.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Consultant will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Consultant determines, in the Consultant's professional judgment, to be reasonably justified.

§15.43.10 When the Owner and Contractor agree with a determination made by the Consultant concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Consultant will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§15.44 MINOR CHANGES IN THE WORK

The Consultant has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Consultant and shall be binding on the Owner and Contractor.

§15.45 TIME

§15.45.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§15.45.2 The date of commencement of the Work is the date established in the Agreement and may be issued under a separate Notice to Proceed.

§15.45.3 The date of Substantial Completion is the date certified by the Consultant in accordance with Section 4.3.

§15.45.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§15.45.5 Time limits stated in the Contract Documents are of the essence of the Contract. By

executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§15.45.6 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§15.45.7 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§15.45.8 It is agreed that if the Work is not substantially completed and finally completed as defined in these General Requirements within the established time frames or within such further time, if any, as shall be allowed for such completion in accordance with the Contract Documents, the Contractor or the Contractor's Surety shall, at the sole discretion of the Owner, pay to the Owner as Liquidated Damages, and not as a penalty, for such delay, One Thousand and 00/100 Dollars (\$1,000.00) per Calendar Day for each and every consecutive Calendar Day elapsing between the date fixed for Substantial Completion of the Work under the Contract Documents and the date Substantial Completion is actually achieved, and One Thousand and 00/100 Dollars (\$1,000.00) per Calendar Day in excess of thirty (30) calendar days elapsing after actual Substantial Completion is achieved and Final Completion.

§15.45.9 COMPUTATION OF TIME: In computing the time in which Contractor, Owner or the Engineer have to submit documents or respond to inquiries during the Pre-Construction phase of this Project, intermediate Saturdays and Sundays will be included in determining the permissible number of Days. If the final date for delivery of documents or responses to inquiries falls on a Saturday, Sunday or legal holiday when the Owner's offices are closed, the applicable deadline shall be extended until the next Day that is neither a Saturday, Sunday or legal holiday.

§15.45.10 TIME OF COMPLETION: The time of completion is of the essence of this Contract and, upon delivery of an executed Contract, the Contractor shall proceed with the Work in accordance with the approved schedule and within the Contract Time specified in the Contract Documents. In the event of failure to complete the Work within the time specified, the Owner may assess damages as provided by law or the Contract Documents, including Liquidated Damages, unless an appropriate extension of time has been granted.

The time of completion or Contract Time for this Agreement shall be (240) calendar days from the Contractor's Notice to Proceed with construction for the Work, inclusive of the base bid and any or all Alternates as awarded.

§15.46 DELAYS AND EXTENSIONS OF TIME

§15.46.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Consultant, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Consultant determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Consultant may determine.

§15.46.2 Claims relating to time shall be made in accordance with applicable provisions under this Agreement.

§15.46.3 This Section does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§15.47 SUBSTANTIAL COMPLETION

§15.47.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§15.47.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Consultant a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§15.47.3 Upon receipt of the Contractor's list, the Consultant will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Consultant's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Consultant. In such case, the Contractor shall then submit a request for another inspection by the Consultant to determine Substantial Completion.

§15.47.4 When the Work or designated portion thereof is substantially complete, the Consultant will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties 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.

§15.47.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§15.48 SAFETY AND SECURITY REQUIREMENTS

§15.48.1 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 also be required to adhere to (& require the same of all Subcontractors) the **BAA Contractors Safety and Security Program located in Contract EXHIBIT D.**

§15.48.2 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 also be required to adhere to (& require the same of all Subcontractors) the **FAA safety provisions also located in Contract EXHIBIT D.**

§15.49 SAFETY OF PERSONS AND PROPERTY

§15.49.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- a. employees on the Work and other persons who may be affected thereby;

- b. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- c. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§15.49.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§15.50 CORRECTION OF WORK

§15.50.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Consultant or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Consultant's services and expenses made necessary thereby, shall be at the Contractor's expense.

§15.50.2 AFTER SUBSTANTIAL COMPLETION

In addition to the Contractor's obligations under this Agreement, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under this Agreement, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Consultant, the Owner may correct it in accordance with the terms of this Agreement.

The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§15.50.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§15.50.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§15.50.5 Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Article 15.50.3 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.

§15.50.6 MISCELLANEOUS CONTRACT PROVISIONS

§15.50.6.1 Federal Provisions Governing This Agreement (EXHIBIT C) to this Agreement contains additional Federal Provisions governing this agreement and the Contractor, by signature of this Agreement, acknowledges that they have obtained each individual provision and have or will executed all documents accordingly.

§15.50.6.2 FAA Inspections Contractor shall allow any authorized representative of the FAA to inspect and review any Work or materials used in the performance of this Contract.

§15.50.6.3 Withholding of Payments Whether or not payments or advances to the Owner are withheld or suspended by the FAA, the Owner may withhold accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any Subcontractor on the Work the full amount of wages required by this Contract.

§15.50.6.4 Nonpayment of Wages If the Contractors or Subcontractor fails to pay any laborer or mechanic employed or working on the site of the Work any of the wages required by this Contract, the Owner, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance of funds to the Contractor or Subcontractor until the violations cease.

§15.50.6.5 Subcontracts The Contractor shall insert, in each of its Subcontracts, the provisions contained in this primary Contract between Owner and Contractor and shall also require a clause requiring the Subcontractors to include these provisions in any lower tier Subcontractors which they may enter into, together with a clause requiring this insertion in any further Subcontracts that may in turn be made.

ARTICLE 4.0 EXHIBITS TO THIS AGREEMENT

- EXHIBIT A** Contractor's Bid
- EXHIBIT B** Owner's Request for Bid Package
- EXHIBIT C** Federal Provisions Governing This Agreement
- EXHIBIT D** Contractors Safety and Security Program Requirements

This Agreement entered into as of the day and year first written above.

The Birmingham Airport Authority
COMPANY NAME

COMPANY NAME

OWNER SIGNATURE

CONTRACTOR SIGNATURE

PRINTED NAME & TITLE

PRINTED NAME & TITLE

DATE

DATE

DRAFT

CONTRACT EXHIBIT A:
CONTRACTOR'S BID

DRAFT

**CONTRACT EXHIBIT B:
OWNER'S REQUEST FOR BID**

DRAFT

CONTRACT EXHIBIT C:
FEDERAL PROVISIONS GOVERNING THIS AGREEMENT

DRAFT

CONTRACT EXHIBIT D:
CONTRACTORS SAFETY AND SECURITY PROGRAM REQUIREMENTS

DRAFT

REQUEST FOR BIDS
ADDENDUM NUMBER: **TWO (2)**
February 7, 2017

ATTACHMENT #1B:

Revised Partial RFB Section D: Instructions to Bidders and Bid Submission Requirements
(Specifically a revised list of required Federal (FAA) Contract Provisions)
(34 pages)

REQUEST FOR BIDS
ADDENDUM NUMBER: **TWO (2)**
February 7, 2017
Attachment #1B:

**Revised RFB Section D: Instructions to Bidders and Bid Submission Requirements
(Including a revised list of required Federal (FAA) Contract Provisions)**

SECTION E – FEDERAL CONTRACT PROVISIONS (REVISED UNDER ADDENDUM #2)

This project is being partially funded with Airport Improvement Program (AIP) funds from the Federal Aviation Administration (FAA). As is required with federal projects, the Respondent must meet the following federal provisions. A copy of the language required by each of these provisions is included in the section following this outline. The required provisions for this Project are outlined below:

- A. ACCESS TO RECORDS AND REPORTS
- B. AFFIRMATIVE ACTION REQUIREMENTS
- C. BREACH OF CONTRACT
- D. BUY AMERICAN PREFERENCES
- E. CIVIL RIGHTS – GENERAL
- F. CIVIL RIGHTS – TITLE VI
- G. CLEAN AIR AND WATER POLLUTION CONTROL
- H. CONTRACT WORK HOURS AND SAFETY STANDARDS
- I. COPELAND ANTI-KICKBACK
- J. DAVIS-BACON REQUIREMENTS
- K. DEBARMENT AND SUSPENSION
- L. DISADVANTAGED BUSINESS ENTERPRISE
- M. DISTRACTED DRIVING
- N. ENERGY CONSERVATION
- O. EQUAL EMPLOYMENT OPPORTUNITY
- P. FEDERAL FAIR LABOR STANDARDS ACT
- Q. LOBBYING FEDERAL EMPLOYEES
- R. PROHIBITION OF SEGREGATED FACILITIES
- S. OCCUPATIONAL SAFETY AND HEALTH ACT
- T. PROCUREMENT OF RECOVERED MATERIALS
- U. RIGHTS TO INVENTIONS
- V. SEISMIC SAFETY
- W. TERMINATION OF CONTRACT
- X. TRADE RESTRICTION
- Y. VETERAN’S PREFERENCE

ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade: **20%**

Goals for female participation in each trade: **6.9%**

These goals are applicable to all of the contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is Birmingham, Alabama (Jefferson County).

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the contractor or its 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.

Owner will provide [**Contractor** / *Consultant*] written notice that describes the nature of the breach and corrective actions the [**Contractor** / *Consultant*] must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the [**Contractor** / *Consultant*] must correct the breach. Owner may proceed with termination of the contract if the [**Contractor** / *Consultant*] fails to correct the breach by deadline indicated in the Owner's notice.

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

BUY AMERICAN PREFERENCE

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR TOTAL FACILITY

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter "X".

- Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
- a) Only installing steel and manufactured products produced in the United States; or
 - b) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
 2. To faithfully comply with providing US domestic products.
 3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
 4. To furnish US domestic product for any waiver request that the FAA rejects.
 5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

- a) Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c) Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

Type 4 Waiver – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using US domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR MANUFACTURED PRODUCTS

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter "X".

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States, or;
 - b) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
 2. To faithfully comply with providing US domestic product
 3. To furnish US domestic product for any waiver request that the FAA rejects
 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of the item components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a) Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c) Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

Type 4 Waiver - Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using US domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

GENERAL CIVIL RIGHTS PROVISIONS

The 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.

This provision binds the contractor and sub-tier 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.

TITLE VI SOLICITATION NOTICE:

The Birmingham Airport Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

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:

- 1. Compliance with Regulations:** The contractor (hereinafter includes consultants) 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:** The contractor, with regard to the work performed by it during the contract, 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. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract 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 the 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 the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
- 4. Information and Reports:** The 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 sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor 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 a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor 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 the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The 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. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances.

NOW, THEREFORE, the Federal Aviation Administration as authorized by law and upon the condition that the **Birmingham Airport Authority** will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program or other program for which land is transferred**), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the **Birmingham Airport Authority** all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (*Exhibit A attached hereto or other exhibit describing the transferred property*) and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the **Birmingham Airport Authority** and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the **Birmingham Airport Authority** its successors and assigns.

The **Birmingham Airport Authority**, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to

any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the **Birmingham Airport Authority** will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the **Birmingham Airport Authority** pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds 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 said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (***Title of Sponsor***) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (***Title of Sponsor***) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (***Title of Sponsor***) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED
UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the **Birmingham Airport Authority** pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") 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 said facilities, (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 the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, **Birmingham Airport Authority** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, the **Birmingham Airport Authority** will there upon revert to and vest in and become the absolute property of the **Birmingham Airport Authority** and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 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);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- 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);
- 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);
- 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 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination 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;
- 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);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon

discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

1. **Overtime Requirements:** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall 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.
2. **Violation: Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph (1) of this clause, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such 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 (1) of this clause, 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 (1) of this clause.
3. **Withholding for Unpaid Wages and Liquidated Damages:** The Federal Aviation Administration (FAA) or the Owner 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 moneys 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 2 of this clause.
4. **Subcontractors:** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) 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 (1) through (4) of this clause.

COPELAND "ANTI-KICKBACK" ACT

Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each

Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

DAVIS-BACON REQUIREMENTS

1. Minimum Wages

(i) 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.

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 paragraph (1)(iv) 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 (including any additional classification and wage rates conformed under (1)(ii) of this section) 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.

(ii)(A) The contracting officer shall require that 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. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) 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.

(C) 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.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, 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.

(iii) 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.

(iv) 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.

2. Withholding.

The Federal Aviation Administration or the sponsor 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, sponsor, 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.

3. Payrolls and basic records.

(i) 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.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, 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 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) 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 provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i) 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.

(C) 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 paragraph (3)(ii)(B) of this section.

(D) 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.

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the sponsor, 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, sponsor, 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.

4. Apprentices and Trainees.

(i) 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.

(ii) 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 that 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.

(iii) 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.

5. Compliance with Copeland Act Requirements.

The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

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.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of 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.

8. Compliance with Davis-Bacon and Related Act Requirements.

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.

9. Disputes Concerning Labor Standards.

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.

10. Certification of Eligibility.

(i) 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).

(ii) 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).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

DISADVANTAGED BUSINESS ENTERPRISE

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

As a condition of bid responsiveness, the Bidder or Offeror must submit the following information with their Bid on the forms provided herein:

- (1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;

- (2) A description of the work that each DBE firm will perform;
- (3) The dollar amount of the participation of each DBE firm listed under (1)
- (4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal;
- (5) If Bidder or Offeror cannot meet the advertised project DBE goal; evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR Part 26.

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in their commitment. This Bidder or Offeror must submit the DBE's written confirmation of participation with the Bid.

The requirements of 49 CFR Part 26 apply to this contract. It is the policy of the **Birmingham Airport Authority** to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

Contract Assurance (§ 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than {specify number} days from the receipt of each payment the prime contractor receives from {Name of recipient}. The prime contractor agrees further to return retainage payments to each subcontractor within {specify the same number as above} days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the {Name of Recipient}. This clause applies to both DBE and non-DBE subcontractors.

DISTRACTED DRIVING TEXTING WHEN DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

ENERGY CONSERVATION REQUIREMENTS

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*).

EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identify or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or

vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
 - (1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period and the contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

- e.** Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.
- f.** Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g.** Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h.** Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- i.** Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j.** Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- k.** Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l.** Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m.** Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions

hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The [**Contractor** | *Consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [**Contractor** | *Consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

CERTIFICATION REGARDING LOBBYING FEDERAL EMPLOYEES

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts

under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

PROHIBITION of SEGREGATED FACILITIES

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

PROCUREMENT OF RECOVERED MATERIALS

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use of products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- a) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or,
- b) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/epawaste/consERVE/tools/cpg/products/.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

RIGHTS TO INVENTIONS

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within in the 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

SEISMIC SAFETY

DESIGN CONTRACTS

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

CONSTRUCTION CONTRACTS

The Contractor agrees to ensure that all work performed under this contract, including work performed by Subcontractors, shall conform to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

TERMINATION OF CONTRACT

TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

- a) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- b) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
- c) reasonable and substantiated claims, costs and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- d) reasonable and substantiated expenses to the contractor directly attributable to Owner's termination action

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

TERMINATION FOR DEFAULT (CONSTRUCTION)

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights and remedies associated with Owner termination of this contract due default of the Contractor.

TERMINATION FOR DEFAULT (EQUIPMENT)

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract if the Contractor:

1. Fails to commence the Work under the Contract within the time specified in the Notice- to- Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements;
6. Becomes insolvent or declares bankruptcy;

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.

TERMINATION FOR DEFAULT (PROFESSIONAL SERVICES)

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

a) Termination by Owner: The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:

1. Perform the services within the time specified in this contract or by Owner approved extension;
2. Make adequate progress so as to endanger satisfactory performance of the Project;
3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

b) Termination by Consultant: The Consultant may terminate this Agreement in whole or in part, if the Owner:

1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror -

- 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 as published by the Office of the United States Trade Representative (U.S.T.R.);
- 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 included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R; and
- c. has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

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, United States Code, Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- (3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

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 provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

REQUEST FOR BIDS
ADDENDUM NUMBER: **TWO (2)**
February 7, 2017

ATTACHMENT #1C:
DAVIS BACON WAGE RATES
(4) PAGES

General Decision Number: AL170050 01/06/2017 AL50

Superseded General Decision Number: AL20160050

State: Alabama

Construction Type: Building

County: Jefferson County in Alabama.

BUILDING CONSTRUCTION PROJECTS

(does not include single family homes or apartments up to and including 4 stories)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date
0 01/06/2017

ELEC0136-002 06/01/2016

	Rates	Fringes
ELECTRICIAN	\$ 24.55	10.37

ENGI0312-007 09/01/2011

	Rates	Fringes
Operating Engineers: Crane, Cherry Picker, Forklift, and Front End Loader	\$ 25.90	10.65
Oiler	\$ 22.83	10.65

Cranes with 100 ft. or more boom receive \$0.25 extra per hour, Cranes with 200 ft. or more boom receive \$0.50 extra per hour, Cranes with 350 ft. or more boom receive \$1.10 extra per hour, Cranes with 500 ft. or more boom receive \$1.45 extra per hour, Tower Cranes, Derricks, Climbing Cranes, Ringer Cranes shall receive \$0.35 in addition to A-rate and boom pay per hour

	Rates	Fringes
* IRON0092-002 05/01/2016		
IRONWORKER, STRUCTURAL	\$ 24.06	13.68

SUAL2007-042 10/02/2007

	Rates	Fringes
BRICKLAYER	\$ 17.31	1.78
CARPENTER, Includes Drywall Hanging, and Form Work	\$ 13.77	0.00
CEMENT MASON/CONCRETE FINISHER	\$ 11.70	0.00
FLOOR LAYER: Hardwood Floors	\$ 13.63	0.00
HVAC MECHANIC (Installation of HVAC Duct	\$ 12.76	0.00

	Rates	Fringes
IRONWORKER, REINFORCING	\$ 8.00	0.00
LABORER: Common/General, including Landscaping	\$ 9.45	0.00
LABORER: Pipelayer	\$ 9.15	1.18
MILLWRIGHT	\$ 11.88	0.00
OPERATOR: Backhoe	\$ 14.86	5.71
OPERATOR: Bulldozer	\$ 14.89	2.47
OPERATOR: Excavator	\$ 16.00	0.00
OPERATOR: Grader/Blade	\$ 13.83	0.00
PAINTER: Brush, Roller and Spray	\$ 13.07	0.00
PIPEFITTER, Including HVAC Pipe Installation	\$ 10.97	0.00
PLUMBER, Excludes HVAC Pipe Installation	\$ 14.28	0.00
ROOFER, Includes Built Up, Polyurethan Foam, Shake & Shingle, Single Ply and Metal Roofs	\$ 9.59	0.00
SHEET METAL WORKER, Excludes HVAC Duct Installation	\$ 13.00	0.00
TILE SETTER	\$ 13.00	0.72
TRUCK DRIVER	\$ 11.33	1.53

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey.

Example:

PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal

number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 8/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1. Has there been an initial decision in the matter? This can be:
 - an existing published wage determination
 - a survey underlying a wage determination
 - a Wage and Hour Division letter setting forth a position on a wage determination matter
 - a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in (2) and (3) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2. If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3. If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION