

Request for Statement of Qualifications

For

A Construction Manager at Risk

For

The Hangar Development Program

MAYOR AND COUNCIL:

Phil Goode, Mayor
Connie Cantelme, Council Member
Lois Fruhwirth, Council Member
Ted Gambogi, Council Member
Brandon Montoya, Council Member
Eric Moore, Council Member
Cathey Rusing, Council Member

CITY CLERK:

Sarah M. Siep

AIRPORT DIRECTOR:

Rick Crider

**REQUEST FOR STATEMENT OF QUALIFICATIONS
FOR A CONSTRUCTION MANAGER AT RISK (CMAR)
FOR
THE HANGAR DEVELOPMENT PROGRAM**

DESCRIPTION: The City of Prescott, Arizona, solicits interest from qualified Contractor/Teams to provide pre-construction design and Construction Manager at Risk (CMAR) services for the Hangar Development Program Construction Project.

MANDATORY PRE-SUBMITTAL CONFERENCE: February 13, 2025, at 3:00pm, City of Prescott Airport Administration Building, 6630 Airport Ave, Prescott, AZ 86301. Or, virtually via Microsoft Teams (Meeting ID: 279243729531 Passcode: yG75bb2u)

PROPOSAL OPENING: Thursday, March, 6 2025, at 2:00pm **City Council Chambers 201 N. Montezuma Street, 3rd Floor, Prescott, AZ 86301.**

In accordance with local and State law, sealed SOQs will be received by the **Office of the City Clerk at 201 N. Montezuma Street, Suite 302, Prescott, Arizona 86301**, until 2:00p.m. on the date specified above, for the services specified herein. Statements will be opened and read aloud at the above noted date, time, and location. Any submittals received at or after 2:00p.m. on the referenced date will be returned unopened.

The City of Prescott reserves the right to accept or reject any or all submittals, and waive any irregularities deemed in the best interest of the City and to reject the submittals of any persons who have been delinquent or unfaithful in any contract with the City.

Copies of the Request for Statement of Qualifications and Contract Documents are available free of charge on the City's website at <https://prescott-az.gov/budget-and-finance/purchasing/>.

PUBLISH: January 26 and February 2, 2025

**Request for Statement of Qualifications
For A Construction Manager at Risk
For The Hangar Development Program**

TABLE OF CONTENTS

I.	GENERAL INFORMATION	5
	A. PROJECT DESCRIPTION.....	5
	B. SCOPE OF WORK	6
	C. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS.....	7
	D. REQUESTS FOR INFORMATION.....	8
	E. MANDATORY PRE-SUBMITTAL CONFERENCE:	8
	F. PROPOSED PROJECT SCHEDULE	9
II.	STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA	9
	A. GENERAL REQUIREMENTS.....	9
	B. PROPRIETARY INFORMATION	10
	C. SUBMITTAL REQUIREMENTS.....	10
	D. DELIVERY OF SUBMITTALS	11
	E. MINIMUM TEAM QUALIFICATIONS.....	11
III.	EVALUATION CRITERIA	11
	A. EXPERIENCE AND CAPABILITIES FOR PERFORMING CMAR DESIGN AND CONSTRUCTION PHASE SERVICES AT PUBLIC COMMERCIAL SERVICE AIRPORTS.....	11
	B. OBSERVATION OF EXISTING CONDITIONS AND GRASP OF KEY PROJECT ELEMENTS	12
	C. APPROACH TO PLANNING AND CONSTRUCTION INCLUDING INNOVATING IDEAS	12
	D. EXPERIENCE AND QUALIFICATIONS OF CONTRACTOR’S PROJECT MANAGER.....	12
	E. EXPERIENCE OF OTHER KEY PERSONNEL ASSIGNED TO PROJECT.....	12
	F. DEMONSTRATE DISADVANTAGE BUSINESS ENTERPRISE (DBE) GOOD FAITH INITIATIVE.....	13
	G. GENERAL INFORMATION	13
IV.	EVALUATION AND SELECTION PROCESS	13
	A. OVERVIEW.....	13
	B. FINAL RANKING AND CONTRACT NEGOTIATION.....	14
	C. TERM OF CONTRACT.....	14
	D. TERMINATION OF CONTRACT	14
	E. PROTEST POLICY	14
	K. BUY AMERICAN PREFERENCE.....	16
	L. CONTRACTOR IMMIGRATION WARRANTY	16

V.	ATTACHMENTS	18
	A. INSURANCE REQUIREMENTS	18
	B. SUBCONTRACTOR SELECTION PLAN.....	18
	C. SAMPLE CONTRACTS	18
	D. SITE LOCATIONS	18
	E. DBE REQUIREMENTS / FORMS.....	18
	F. FEDERAL REQUIREMENTS	18
	G. CONTRACT PROVISION GUIDELINES FOR OBLIGATED SPONSORS AND AIRPORT IMPROVEMENT PROGRAM PROJECTS.....	18

I. GENERAL INFORMATION

The City of Prescott (hereinafter “City”) invites interested and qualified persons or firms (hereinafter “firms”) to submit a written Statement of Qualifications (SOQ) for pre-construction design services and Construction Manager at Risk (hereinafter “CMAR”) to provide pre-construction design phase assistance and complete construction services for the Hangar Development Program Construction Project. The selected CMAR will work as a team with the designer of record and City staff to ensure an efficient design approach for the project. The project site is located at Prescott Regional Airport, 6630 Airport Avenue, Prescott, AZ 86301.

The estimated construction cost for the project is between \$5.6M and \$6.0M, with the initial phase one (1) estimated between \$1.15M and \$1.35M and is anticipated to be funded by the Federal Aviation Administration (FAA) through a Bipartisan Infrastructure Law (BIL), Airport Infrastructure Grants (AIG). **No cost estimate for CMAR services fees or construction cost estimates should be given with the Statement of Qualification.**

The Phoenix Airports District Office (PHX ADO) has approved the City of Prescott (COP), Prescott Regional Airport – Ernest A. Love Field for concurrence of an Alternative Project Delivery Method (APDM) for the proposed Hangar Development Program. Pursuant to Federal Aviation Administration (FAA) Order 5100.38D (AIP Handbook), Table U-9 AIP Handbook Clarification of 49 CFR § 18.36(d)(3) (2 CFR § 200.320(d) procurement by competitive proposals) an airport sponsor shall “Obtain ADO Concurrence Prior to Award. Per 49 USC § 47142, the sponsor must not award AIP funded design build proposals prior to obtaining ADO concurrence. Per FAA policy, this also applies to construction manager-at-risk proposals...”.

A Disadvantaged Business Enterprise goal will be established prior to the start of construction.

This project will utilize federal funds and is subject to the requirements of 49 Code of Federal Regulations Part 26 and the U.S. Department of Transportation DBE Program.

The contract shall be awarded on the basis of demonstrated competence and qualifications pursuant to A.R.S. § 34-604. To be eligible for consideration, firms must submit a single SOQ demonstrating appropriate competence, qualifications, and relevant experience.

The successful Contractor will be selected through a two-step process which is a qualifications-based selection that includes a cost value element.

A. PROJECT DESCRIPTION

The initial phase of the proposed Hangar Development Program consists of constructing a four (4) unit hangar building approximately 14,880 square feet, an 8,600 square foot wash rack facility and additional hangar development in later phases.

The project will include the following components:

- Hangar Building with restroom facilities
- AC pavement taxiway improvements
- Utilities and other supporting infrastructure construction
- Aircraft wash rack

B. SCOPE OF WORK

The CMAR will begin in an agency support role for design phase services (preconstruction services) and may hold the construction contract with the City for construction of the project. Prior to construction, the CMAR will assume the risk of delivering the project through a Guaranteed Maximum Price (GMP) contract. The CMAR will be responsible for construction means and methods and will be required to solicit bids from pre-qualified subcontractors to perform the work using an approved subcontractor selection process. The CMAR is responsible for self-performing a minimum of 45% of the construction work as measured by total contract price for construction.

The preferred CMAR shall have construction experience in an active airport operations area, familiarity with FAA Advisory circulars and experience in coordinating projects with airport user groups. Services will be phased to include preconstruction and construction services. The CMAR may also compete to self-perform work.

All work shall be performed in accordance with the Federal Requirements as listed in Exhibit F.

1. Preconstruction phase (design phase) services starting at Architecture and Engineering 60% plan submittal by the CMAR:

- Provide detailed cost estimating and knowledge of marketplace conditions
- Provide project planning and scheduling
- Provide construction phasing and scheduling that will minimize interruption to Airport Tenant Operations
- Provide possible alternate site evaluation and constructability review
- Advise City of ways to gain efficiencies in project delivery
- Provide long-lead procurement review
- Coordinate with the City to obtain the appropriate Davis-Bacon Wage Determination required for construction services
- Coordinate with the City to confirm compliance with the Buy American requirements of the contract in all materials packages
- Select subcontractors/suppliers for this project (see Attachment B - Subcontractor Selection Plan)
- Provide GMP cost proposal(s) for the project

2. Construction phase services by the CMAR:

- Construction of a 4-unit Hangar and Wash Rack and supporting infrastructure
- Coordinate with various City departments, other agencies, utility companies, airport tenants, etc.

- Arrange for procurement of materials and equipment
- Schedule and manage site operations
- Bid, award, and manage all construction-related contracts
- Provide quality controls
- Bond and insure the construction
- Assist with federal, state and local permitting requirements
- Maintain a safe work site for all project participants
- Provide Project Warranty – 2 Years
- Coordinate Facility Start up
- Assist in receiving and preparing all closeout documents including, without limitation, warranties, record drawings, operating and maintenance manuals
- Provide the services listed above on a Phase II (2) Hangar Development project to begin within one (1) year of Phase I (1) completion

All respondents are advised that some of the services identified above may not be required, and that the City reserves the right to initiate an additional procurement action for any of the services included in this procurement.

C. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

The City of Prescott (City) on behalf of the Prescott Regional Airport (PRC) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City has received Federal financial assistance from the DOT, and as a condition of receipt of funding, the City has signed an assurance that it will comply with 49 CFR Part 26. It is the City of Prescott's policy to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to receive and participate in U.S. DOT-assisted contracts. The City's policy also includes the following:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law.
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts.
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities.

7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Submitters are required to meet the DBE Program requirements detailed in this clause and, by the submittal of qualifications or subsequent acceptance of a contract, agrees to provide opportunities for the fair and full utilization of DBEs by complying with the submittal and post-award requirements of this clause. See Exhibit E.

D. REQUESTS FOR INFORMATION

Firms who desire clarification of the procurement terms, selection criteria or submittal requirements shall restrict their inquiries to written communications only. All communications (other than delivery of the proposal as defined below) shall be addressed to the City project representative at the following:

Jaimie Sventek
Contracts Coordinator
City of Prescott – Purchasing
contracts@prescott-az.gov

Requests for information must be received by the project representative prior to 5:00p.m. on Tuesday, February 25, 2025. Responses, or addenda as required, will be issued no later than 12:00pm (noon) on Friday, February 28, 2025. Receipt of addenda must be acknowledged on the required form in the firm's submission. It is the submitter's sole responsibility to check the City's website for periodic updates or addenda.

All firms/contractors/teams interested in this project (including the firms/contractors/teams employees, representatives, agents, lobbyists, attorneys, subcontractors and subconsultants) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the evaluation panel, the City Manager, Assistant City Manager, Deputy City Managers, Department Heads and other staff. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public and to protect the integrity of the selection process. All contact on this selection process should be addressed to the authorized representative identified above.

E. MANDATORY PRE-SUBMITTAL CONFERENCE:

The pre-submittal conference is mandatory for potential submitters. Submittals will only be accepted from contractors in attendance as established on the sign-in sheet and Microsoft Teams Attendance List.

The pre-submittal conference will be held on **Thursday, February 13, 2025, at 3:00p.m.**, at the City of Prescott Airport Administration Building, 6630 Airport Avenue, Prescott, AZ 86301.

Virtual attendance will be an option via Microsoft Teams Meeting (ID: 279 243 729 531 with a Passcode: yG75bb2u) at the same time as listed above.

F. PROPOSED PROJECT SCHEDULE

The following tentative schedule has been prepared for this project. These milestones are earliest dates for planning purposes only. They are subject to change and shall not represent any contractual commitment whatsoever on the part of the City.

Pre-submittal Conference:	February 13, 2025, at 3:00p.m.
Request for Information Deadline	February 25, 2025, at 5:00p.m.
SOQ Submittal Deadline:	March 6, 2025, at 2:00p.m.

Award of Contract (if negotiations are successful): March/April, 2025

The CMAR selected for this project will be notified directly by the City. Notification to all other CMARs on the status of contract award for this project will be posted on the City's website at: <https://prescott-az.gov/budget-and-finance/purchasing/>.

CMARs wishing to respond to a disqualification or a procurement outcome may refer to the protest policy referenced herein.

II. STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA

The City will apply a qualifications-based selection process based on the criteria below to select the successful CMAR under this procurement.

CMAR responses to this request must be in the form of a Statement of Qualifications (SOQ), as outlined in this document.

A. GENERAL REQUIREMENTS

Interested firms are required to submit information relative to their qualifications, experience, project delivery approach, ability to meet the project's goals and objectives, and other criteria as listed. All information must be provided as requested for all firm/contractor members and their key personnel to be assigned to this project.

The SOQ shall address the evaluation criteria and shall include the following:

- Cover letter indicating interest in providing services.
- Location of the firm.
- Description of specific technical capabilities, qualifications, and years of prior experience.
- Brief resume for key project team members outlining their credentials and experience.
- Description of at least three (3) but no more than five (5) similar projects in which the firm participated. Describe the firm's role in the project and scope of work that demonstrates the firm's expertise. Provide the name and contact information for each project.
- Description of how the firm would approach, manage, and complete the project.
- List of applicable Arizona professional licenses held, including license numbers, and note whether licenses are held by firms or individuals.

- List and provide a brief description of projects currently under contract with other government agencies.

The City reserves the right to cancel this request, reject in whole or in part any and all submittals, waive or decline to waive irregularities in any submittals, or determine not to enter into one or more of the multiple contracts as specified if determined by the City to be in the City's best interests. The City assumes no liability for the cost of preparing a response to this request.

B. PROPRIETARY INFORMATION

All materials submitted in response to the solicitation, including samples, shall become the property of the City and are therefore subject to public release, upon request, after the Contract award. Firms shall clearly mark any proprietary information contained in its submittal with the words "Proprietary Information". Firms shall not mark any Solicitation Form as proprietary. Marking all or nearly all of a submittal as proprietary may result in rejection of the submittal.

Firms should be aware that the City is required by law to make its records available for public inspection. All firms, by submission of materials marked proprietary, acknowledge, and agree that the City will have no obligation to advocate for non-disclosure in any form nor will the City assume any liability to the firms in the event that the City must legally disclose these materials.

C. SUBMITTAL REQUIREMENTS

Statements of Qualifications (SOQ) shall be submitted as **one (1) original (not stapled or bound)** along with **one (1) flash drive** with same submittal and must conform to this request.

The SOQ shall be limited to no more than twenty (20) pages within a single response submittal. Pages shall be letter size (8½ x 11 inches), single-sided, with a minimum font size of 12. Combinations of text and graphic material may be used at the firm's discretion to appropriately communicate facts and qualifications. Resumes for each key team member shall be limited to a maximum length of one (1) page and should be incorporated as an appendix as the end of the SOQ. Five (5) additional pages of appendices are allowed which may include graphs, charts, photos, or additional resumes. Front and back covers, table of contents, and tabbed divider pages will not be counted if they do not contain submittal information.

The cover letter shall not exceed one (1) page and is exclusive of the page count limitation for the SOQ. The letter shall be on the firm's company letterhead and shall be signed by an officer or principal of the firm with contracting authority.

Within the submittal package (preferably on the SOQ cover or within the cover letter), provide all contact information including the firm's name, address(es), email address(es), website address, phone, and name(s) of principals. This information will be utilized for all correspondence related to this request. Notification of the final list and assignment of contracts will be delivered to the contact information as provided in the SOQ.

Do not include any fees or pricing related to this project with the SOQ submittal. These materials will not be considered at this time and failure to comply with this provision may result in the rejection of the submittal.

D. DELIVERY OF SUBMITTALS

Sealed SOQs will be received **before 2:00p.m. on Thursday, March 6, 2025**, at the **City Clerk's Office, 201 N. Montezuma Street, Suite 302, Prescott, Arizona 86301**, at which time all submittals will be publicly opened in the City Council Chambers.

Any submittals received at or after 2:00p.m. on the above-stated date will be returned unopened. Firms are solely responsible for the delivery of their submittals to the above location by the time and date specified. The City is not responsible for lateness of mail, carrier, etc. The city will not accept delivery of the bid at any other city locations. The time and date stamp in the City Clerk's Office shall be the official time of receipt. Electronic or facsimile submittals will not be considered. Modifications to submittals will not be considered after the 2:00p.m. deadline.

The outside of the submittal envelope shall indicate the name and address of the respondent; shall be addressed to the City Clerk, City of Prescott, at the above address; and shall be clearly marked:

**Statement of Qualifications:
Construction Manager At Risk (CMAR)
For The Hangar Development Program
Due before 2:00p.m. on March 6, 2025**

E. MINIMUM TEAM QUALIFICATIONS

Firms shall possess the qualifications and Arizona licenses as required by law, in addition to having extensive knowledge, expertise and experience. The selected firm will be required to execute and meet the terms of the City's standard Pre-Construction Services Agreement and/or Construction Contract, including insurance requirements, in a form acceptable to the City Attorney. Approval of the City Council may also be required for award of contract(s). Sample Agreements and/or Contracts are provided with this request.

III. EVALUATION CRITERIA

The SOQ shall clearly and accurately display the capability, knowledge, and experience of the firm/contractor to meet the technical requirements of the request. Qualifications shall be prepared simply and economically, providing a straightforward, concise description of the firm's/contractor's ability to meet the requirements of this request. Emphasis shall be on quality, completeness, clarity of content, responsiveness to the requirements, and understanding of the City's needs.

The SOQs will be evaluated by a Review Committee appointed by the City according to the following criteria:

A. EXPERIENCE AND CAPABILITIES FOR PERFORMING CMAR DESIGN AND CONSTRUCTION PHASE SERVICES AT PUBLIC COMMERCIAL SERVICE AIRPORTS 25 points possible

- Provide a Resume of experience with CMAR Design and Construction Phase Services at Public Commercial Service Airports.
- Highlight all experience at Regional or Non-Hub Commercial Service Airports.
- Highlight all Hangar Construction projects using CMAR and/or Design, Bid, Build (DBB) delivery methods.

B. OBSERVATION OF EXISTING CONDITIONS AND GRASP OF KEY PROJECT ELEMENTS

15 points possible

- Provide details of your observation of the existing conditions
 - Describe the existing conditions of the site.
 - What site constraints or challenges do you see with the existing site?
- Describe your understanding of the Key Project Elements
 - Grading and Utilities
 - Horizontal, surface and underground improvements

C. APPROACH TO PLANNING AND CONSTRUCTION INCLUDING INNOVATING IDEAS

20 points possible

- Describe your firm's project management approach and team organization during design and construction phase services. Describe systems used for planning, scheduling, estimating, and managing construction. Briefly describe the firm's experience on quality control, dispute resolution, and safety management.
- The project has a critical deadline for the design phase completion. Describe your firm's approach to provide cost estimating, value engineering, and GMP development services during the design phase without impacting the schedule. Provide actual examples from your firm's past projects.
- Discuss how the firm's planning and innovative ideas will be utilized to overcome the site constraints or challenges that have been noted above.
- Describe the firm's understanding of FAA-related issues relating to construction; and the firm's approach to address those issues.

D. EXPERIENCE AND QUALIFICATIONS OF CONTRACTOR'S PROJECT MANAGER

10 points possible

- Statement of the firm's understanding of the purpose and scope of the project.
- Discuss the firm's past project management experience with similar projects.
- Outline the experience and qualification for the firm's project manager anticipated for this project.
- Reference information (two current names with telephone numbers per project)

E. EXPERIENCE OF OTHER KEY PERSONNEL ASSIGNED TO PROJECT

10 points possible

- For each key person identified, list their length of time with the contractor and comparable projects in which they have played a primary role. Provide the following:
 - Description of project
 - Role of the person
 - Project's original contracted construction cost and final construction cost
 - Construction completion dates
 - Project owner
- List any proposed consultants, including DBE's, and key staff names with the experience and qualifications of these individuals.

F. DEMONSTRATE DISADVANTAGE BUSINESS ENTERPRISE (DBE) GOOD FAITH INITIATIVE
10 points possible

- Discuss what Good Faith initiatives the firm intends to deploy to encourage DBE participation.
- Outline past DBE experience, highlighting participation success.

G. GENERAL INFORMATION
10 points possible

- Provide a general description of the firm / contractor that is proposing to provide construction management services and general construction services. Explain the legal organization of the proposed firm / contractor. Provide an organization chart showing key personnel.
- Provide the following information:
 - List the Arizona professional and contractor licenses held by the firm / contractor and the key personnel who will be assigned to this project. Provide the license numbers and explain if held by an individual or the contractor.
 - Provide a statement of the Company's bonding capacity.
 - If selected for this project, the firms will be required to provide a statement from an "A" or better surety company describing the Company's bonding capacity.

STATEMENT OF QUALIFICATION EVALUATION (100 POINTS TOTAL)

Experience and Capabilities for Performing CMAR Design and Construction Phase Services at Public Commercial Service Airports	25
Observation of Existing Conditions and Grasp of Key Project Information	15
Approach to Planning and Construction Including Innovative Ideas	20
Experience and Qualifications of Contractor's Project Manager	10
Experience of Key Personnel Assigned to Project	10
Demonstrate Disadvantage Business Enterprise (DBE) Good Faith Initiative	10
General Requirements	10
Total Points	100

IV. EVALUATION AND SELECTION PROCESS

To qualify for evaluation, the SOQ must be submitted on time and materially satisfy all requirements identified in this request. If, in the judgment of the City, a SOQ does not conform to the format specified herein, or if any section is absent or significantly incomplete, the City reserves the right to reject the submittal.

A. OVERVIEW

The successful Contractor will be selected through a two-step process which is a qualifications-based selection that includes a cost value element.

This is a qualifications-based selection process as authorized by A.R.S. § 34-604. The process will involve an evaluation and scoring of each firm's/contractor's qualifications and relevant experience, as indicated in its SOQ. A Review Committee appointed by the City for this procurement will individually evaluate the SOQs according to the criteria and weighting as indicated. Following evaluation of the SOQs, a final list (and may select up to five (5) firms as finalists) of the highest ranked firms/contractors will be determined. These finalists will proceed to the second step of the procurement, which is the Request for Proposal (RFP) process.

During the second step, the RFP will be issued to up to five (5) finalists. The up to five (5) finalists will submit technical and price proposals in response to the RFP. The finalists' proposals will be evaluated and scored in accordance with the RFP scoring methodology. The firm with the highest composite scores for the technical and price proposals will be selected for the procurement. The final step is the recommendation for award of the CMAR.

B. FINAL RANKING AND CONTRACT NEGOTIATION

Using the individual Review Committee member's scores from the SOQs, the committee shall rank the firms / contractors to generate a final list of at least three (3) but no more than five (5) CMAR firms. The City will then notify each of the candidate firms / contractors of the final rankings. The firm selected for this project will be notified directly by the City. Notification to all other firms of the status of a selection on this project will be posted on the City website: <https://prescott-az.gov/budget-and-finance/purchasing/>.

The City expects to create a final list of at least one (1), but not more than three (3) firms for this project. The City will enter into negotiations with the selected firm and will be required to execute and meet the terms of the City's standard Pre-Construction Services Agreement and/or Construction Contract upon completion of negotiation of contract terms, including insurance requirements, in a form acceptable to the City Attorney. Approval of the City Council may also be required for the award of a contract.

If the City is unsuccessful in negotiating a contract with the best-qualified firm, the City may then negotiate with the next qualified firm until a contract is executed, or the City may decide to terminate the selection process. Once a contract is executed with the successful firm, the procurement is complete.

C. TERM OF CONTRACT

The term of each of the contracts shall be confirmed during contract negotiations with the firm's / contractor's. If contract renewals result in changes of the terms or conditions, such changes shall be in writing as an amendment to the contract(s) and such amendment shall not become effective until fully executed by both parties.

D. TERMINATION OF CONTRACT

The City reserves the right to terminate any part of or the entirety of any contract that may result from this proposal, without cause and at any time with thirty (30) calendar day written notice. In such case, the consultant shall be paid for services rendered through the date of the termination notice, and the results of all such work through that date shall become the property of the City.

E. PROTEST POLICY

Any protest against the solicitation or award must be filed with the City Clerk's Office by 4:00p.m. up to ten (10) days after issuance of the final list. All such protests shall be in

writing and contain the following: 1) Name, address, email address and telephone number of the interested party; 2) Signature of the interested party or its representative; 3) Identification of the purchasing department and Project name; 4) Detailed statement of the legal and factual grounds for protest including copies of relevant documents; and 5) Form of relief requested. Protesting parties must demonstrate as part of their protest that they made every reasonable effort within the schedule and procedures of this solicitation to resolve the basis or bases of their protest during the solicitation process, including asking questions, seeking clarifications, requesting addenda, and otherwise alerting the City to perceived problems so that corrective action could be taken prior to the selection of the successful firms. The City will not consider any protest based on items which could have been or should have been raised prior to the deadline for submitting questions or requesting addenda. The filing of a protest shall not prevent the City from executing an agreement with any other proposer.

- F.** This Agreement/Contract shall be construed under the laws of the State of Arizona.
- G.** This Agreement/Contract represents the entire and integrated Agreement/Contract between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement/Contract may be amended only by written instrument signed by both the City and the Firm/Contractor. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.
- H.** In the event any provision of this Agreement/Contract shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- I.** Indemnification: To the fullest extent permitted by law, the Firm/Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Firm/Contractor, its employees, agents, or any tier of subcontractors in the performance of this Agreement/Contract, Firm/Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees that arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Agreement/Contract including any employee of the Firm/Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Firm/Contractor may be legally liable.
- J.** No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement/Contract, and none of the provisions of this Agreement/Contract shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in

writing. No evidence of modification or waiver other than evidence of any such written notice, waiver or modification shall be introduced in any proceeding.

K. BUY AMERICAN PREFERENCE

The Buy American Preferences under 49 U.S.C. § 50101 require that all steel and manufactured goods be produced in the United States. Grant recipients must certify that all steel or manufactured products used on any portion of the project are produced in the United States and are of 100 percent U.S. materials. A waiver may be issued through the PHX ADO if the total project is at least 60% American Made. More information may be obtained at https://www.faa.gov/airports/aip/buy_american.

L. CONTRACTOR IMMIGRATION WARRANTY

Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. § 34-301, “Employment of Aliens on Public Works Prohibited”, and A.R.S. § 34-302, as amended, “Residence Requirements for Employees”.

Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors (“Subcontractors”) will comply with and are contractually obligated to comply with all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter “Contractor Immigration Warranty”).

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of subcontractors to ensure compliance with Contractor’s Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a Contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

M. Israel: Vendor certifies that it is not currently engaged in and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in Ariz. Rev. Stat. § 35-393, of Israel.

N. Force Labor of Ethnic Uyghurs Certification: Pursuant to A.R.S. § 35- 394, Contractor / Vendor / Firm certifies that the firm does not currently, and agrees for the duration of the contract that it will not, use:

1. The forced labor of ethnic Uyghurs in the People’s Republic of China
2. Any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and
3. Any Contractor / Vendor / Firm, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

If the Contractor / Vendor / Firm becomes aware during the term of the Contract that the company is not in compliance with the written certification, the Firm shall notify the City of Prescott within five business days after becoming aware of the noncompliance. If the Contractor / Vendor / Firm does not provide City of Prescott with a written certification that the Company has remedied the noncompliance within 180 days after notifying the City of Prescott of the noncompliance, this Contract terminates, except that if the Contract termination date occurs before the end of the remedy period, the Contract terminates on the Contract termination date.

O. Contracting with small and minority firms, women's business enterprise and labor surplus area firms:

1. The Company will take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible.
2. Affirmative steps shall include:
 - a. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists
 - b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources.
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises.
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises.
 - e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

V. ATTACHMENTS

A. INSURANCE REQUIREMENTS

B. SUBCONTRACTOR SELECTION PLAN

C. SAMPLE CONTRACTS

D. SITE LOCATIONS

E. DBE REQUIREMENTS / FORMS

F. FEDERAL REQUIREMENTS

**G. CONTRACT PROVISION GUIDELINES FOR OBLIGATED SPONSORS AND AIRPORT
IMPROVEMENT PROGRAM PROJECTS**

ATTACHMENT A INSURANCE REQUIREMENTS

Professional Services Insurance Requirements

The Professional shall obtain and maintain in effect during the term of, and until final acceptance of all work under this Agreement, a policy, or policies of liability insurance with the following coverage:

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury, broad form contractual liability, and XCU coverage.

General Aggregate	\$ 2,000,000	
Products – Completed Operations Aggregate	\$ 2,000,000	(if applicable)
Personal and Advertising Injury	\$ 1,000,000	(if applicable)
Each Occurrence	\$ 1,000,000	
Fire Legal Liability (Damage to Rented Premises)	\$ 100,000	(if applicable)

The policy shall be endorsed to include the following additional insured language:

“The City of Prescott shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Professional.”

2. Professional Liability (Errors and Omissions Liability)

Each Claim	\$ 1,000,000
Annual Aggregate	\$ 2,000,000

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Professional warrants that any retroactive date under the policy shall precede the effective date of this Contract and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years at the time work under this contract is completed.

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

3. Business Automobile Liability (if applicable) Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$ 1,000,000
-----------------------------	--------------

Prior to commencing work under this Agreement, the Professional shall provide City with evidence that it is either a “self-insured employer” or a “carrier insured employer” for Workers’ Compensation as required by A.R.S. § 23-901 et seq., or that it employs no persons subject to the requirement for such coverage.

Additional Insurance Requirements: The policies shall include, or be endorsed to include the following provisions:

1. On insurance policies where the City of Prescott is named as an additional insured, the City of Prescott shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

**Additional Insured:
City of Prescott
201 N. Montezuma Street
Prescott, AZ 86301**

2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

All certificates required by this Contract shall be emailed directly to coi@prescott-az.gov. The City contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

Any Renewal of insurance certificates with endorsements will need to be emailed to the above emails at least two weeks prior to expiration.

City and Professional waive all rights against each other and their directors, officers, partners, commissioners, officials, agents, sub-contractors, and employees for damages covered by property insurance during and after completion of the Services.

All insurance required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. § 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

Notice of Cancellation: With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of Prescott Risk Management Division. All insurance is to be placed with an insurer admitted in the state in which operations are taking place.

Verification of Coverage: Professional shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Please note the contract number on the Certificate.

Construction Insurance Requirements

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

ADDITIONAL INSURANCE REQUIREMENTS:

The policies shall include, or be endorsed to include the following provisions:

1. On insurance policies where the City of Prescott is named as an additional insured, the City of Prescott shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

**Additional Insured:
City of Prescott
201 N. Montezuma Street
Prescott, AZ 86301**

2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

All certificates required by this Contract shall be emailed directly to coi@prescott-az.gov. The City contract number and project name/description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. Any Renewal of insurance certificates with endorsements will need to be emailed to the above emails at least two weeks prior to expiration.

NOTICE OF CANCELLATION:

With the exception of a ten (10) day notice of cancellation for non-payment of premium, and changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of Prescott. General liability, automobile liability, and worker's compensation insurance is to be placed with an insurer admitted in the state in which operations are taking place.

VERIFICATION OF COVERAGE:

Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project and warranty period as set forth in the warranty letter. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

MAG Specifications, Sections 103.1 through 103.8, including: Unless otherwise specifically required by the Special Conditions, the minimum limits of public liability and property damage liability shall be as follows:

1. Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a following form basis.

Commercial General Liability – Occurrence Form –

Policy shall include bodily injury, property damage, broad form, contractual liability and XCU coverage.

- General Aggregate \$ 3,000,000
- Products – Completed Operations Aggregate \$ 3,000,000
- Personal and Advertising Injury \$ 1,000,000
- Each Occurrence \$ 1,000,000
- Fire Legal Liability (Damage to Rented Premises) \$ 100,000 (if applicable)

The policy shall be endorsed to include the following additional insured language:

“The Contractor agrees to endorse the City of Prescott as an Additional Insured on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured coverage, the CG 2010 10 01 Additional Insured - Owners, Lessees, or Contractors, or CG2010 07 04 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement in combination with the additional endorsement of GC2037 10 01 Additional Insured – Owners, Lessees, or Contractors – Completed Operations shall be required to provide back coverage for the contractor’s “your work” as defined in the policy and liability arising out of the products-completed operations hazard.”

Business Automobile Liability: Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$ 1,000,000

The policy shall be endorsed to include the following additional insured language:

“The City of Prescott shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles, owned, leased, hired, or borrowed by the Contractor.”

Worker's Compensation and Employer's Liability

Workers' Compensation Employer's Liability	Statutory
• Each Accident -	\$1,000,000
• Disease – each employee -	\$1,000,000
• Disease – policy limit -	\$1,000,000

Policy shall contain a waiver of subrogation against the City of Prescott for losses arising from work performed by or on behalf of the Contractor.

Professional Liability (Errors and Omissions Liability) – *if applicable*

• Each Claim	\$ 1,000,000
• Annual Aggregate	\$ 2,000,000

1. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years at the time work under this contract is completed.
2. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

Notice of Cancellation: With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

Such policy shall not exclude coverage for the following:

1. Injury to or destruction of any property arising out of the collapse of/or structural injury to any building or structure due to grading of land, excavation, borrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work.
2. Injury to or destruction of wires, conduits, pipes, mains, sewers, or other similar property or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating, drilling; or injury to or destruction of any property at any time resulting there from.
3. Injury to or destruction of any property arising out of blasting or explosion.
4. Motor vehicle public liability and property damage insurance to cover each automobile, truck, and other vehicle used in the performance of the Contract in an amount of not less than \$1,000,000.00 for one person, and \$1,000,000.00 for more than one person, and property damage in the sum of \$1,000,000.00 resulting from any one accident which may arise from the operations of the Contractor in performing the work provided for herein.

The Contractor shall carry and maintain fire and extended coverage with an endorsement for vandalism and malicious mischief in Contractor's name and also in the name of the City in an amount of at least ONE HUNDRED PERCENT (100%) of the Contract amount (if applicable).

The Contractor shall secure "all risk"-type builder's risk insurance for work to be performed. Unless specifically authorized by the City, the amount of such insurance shall not be less than ONE HUNDRED PERCENT (100%) of the contract price. Such policy shall include coverage for earthquake, landslide, flood, collapse, or loss due to the results of faulty workmanship, during the contract time and until final acceptance of work by the City (if applicable).

ATTACHMENT B

SUBCONTRACTOR SELECTION PLAN

The firm shall submit a proposed subcontractor selection plan based on the following guidelines. The final approved subcontractor selection plan may be amended as agreed to by both the City and the CMAR.

1.1 MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

1.1.1 The selection of major subcontractors and major suppliers may occur prior to submission of a GMP proposal. Major subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of major subcontractors and suppliers is the responsibility of the CMAR. In any case, the CMAR is solely responsible for the performance of the selected subcontractors and suppliers.

1.1.1.1 The CMAR will prepare a subcontractor/supplier selection plan and submit the plan to the City for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be selected by qualifications only per Section 1.1.2 and those subcontractor trades anticipated to be selected by qualifications and competitive bid in accordance with Section 1.1.3. This plan will also identify those subcontractors that will not be selected through a formalized qualifications-based selection process. The subcontractor selection plan must be consistent with the selection requirements included in this Contract.

1.1.2 Selection by qualifications only: The City may approve the selection of a subcontractor(s) or suppliers(s) based only on their qualifications when the CMAR can demonstrate it is in the best interest of the Project.

1.1.2.1 Qualification based selection of a subcontractor(s) or supplier(s) should only occur during the design phase to achieve maximum benefit of the subcontractors' involvement prior to the submittal of the GMP proposal.

1.1.2.2 The CMAR shall apply the approved subcontractor selection plan in the evaluation of the qualifications of a subcontractor(s) or supplier(s) and provide the City with its review and recommendation.

1.1.2.3 The CMAR must receive City approval of the selected subcontractor(s) and supplier(s).

1.1.3 The CMAR will negotiate costs for services and supplies from each subcontractor and supplier selected under this method.

1.1.4 Selection by qualifications and competitive bid: The CMAR shall apply the subcontractor selection plan in the evaluation of the qualifications of a subcontractor(s) or supplier(s) and provide the City with its process to prequalify prospective subcontractors and suppliers. All Work for major subcontractors and major suppliers shall then be competitively bid to the prequalified subcontractors unless a subcontractor or supplier was selected

pursuant to paragraph 1.1.2 above. Competitive bids may occur prior to or after the GMP proposal(s).

- 1.1.4.1 If the City objects to any nominated subcontractor or supplier or to any self-performed Work for good reason, the CMAR will nominate a substitute subcontractor or supplier that is acceptable to the City.
- 1.1.4.2 The CMAR will distribute Drawings and Specifications, and when appropriate, conduct a pre-bid conference with prospective subcontractors and suppliers.
- 1.1.4.3 If the CMAR desires to self-perform certain portions of the Work, it will request to be one of the approved subcontractor bidders for those specific bid packages. The CMAR's bid will be evaluated in accordance with the process identified below. If events warrant and the City concurs that in order to ensure compliance with the Project Schedule and/or cost, the CMAR may self-perform Work without bidding or re-bidding the Work.
- 1.1.4.4 The CMAR shall request the prequalified subcontractors to provide a detailed bid for the services requested. The subcontractor bid, provided on the subcontractors' letterhead, shall contain sufficient information (i.e. unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. The CMAR shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CMAR, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of subcontractor and supplier bids will be done with the City in attendance to observe and witness the process. The CMAR will resolve any subcontractor or supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.
- 1.1.5 The CMAR will be required to prepare two different reports on the subcontracting process.
 - 1.1.5.1 Within fifteen (15) calendar days after each major subcontractor and supplier bid opening process, the CMAR will prepare a report for the City's review and approval identifying the recommended subcontractors or suppliers for each category of Work. The report will provide: 1) the name of the recommended subcontractor or supplier and the amount of the subcontractor or supplier bid for each sub-agreement, 2) the sum of all recommended subcontractor and supplier bids received, 3) a copy of the bids received from each subcontractor, and 4) trade work and its cost that the CMAR intends to self-perform, if any.
 - 1.1.5.2 Upon completion of the subcontractor and supplier bidding process, the CMAR shall submit a summary report to the City of the entire subcontractor and supplier selection process. The report will indicate, by bid process, all subcontractors and suppliers contacted to determine interest, the subcontractors and suppliers solicited, the bids received, and costs negotiated, and the recommended subcontractors and suppliers for each category of Work.

- 1.1.6 The approved subcontractors and suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.
- 1.1.7 If after receipt of sub-bids or after award of subcontractors and suppliers, the City objects to any nominated subcontractor or supplier or to any self-performed work for good reason, the CMAR will nominate a substitute subcontractor or supplier, preferably if such option is still available, from those who submitted subcontractor bids for the Work affected. Once such substitute subcontractor and supplier are consented to by the City, the CMAR's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.
- 1.1.8 Promptly after receipt of the Notice of Intent to Award, the City will conduct a pre- award conference with the CMAR and other project team members. At the pre-award conference, the CMAR will (a) review the nominated slate of subcontractors and suppliers and discuss any concerns with or objections that the City has to any nominated subcontractor or supplier; (b) discuss City concerns relating to any proposed self-performed work; (c) review the CMAR's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining CMAR Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of Commencement of the Contract Time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.

ATTACHMENT C



PRE-CONSTRUCTION SERVICES AGREEMENT CONSTRUCTION MANAGER AT RISK

****Project Title**

Contract No. **-*****

WHEREAS the City of Prescott (hereinafter referred to as “City”) is in need of certain pre-construction services; and

WHEREAS the City completed the procurement process for pre-construction services in accordance with the City’s Procurement Code and Arizona law; and

WHEREAS ** (hereinafter referred to as “CMAR”), has expertise in providing pre-construction services and is willing and able to provide said professional services to the City for the project known and described as ** Project, Project No. ** (hereinafter referred to as “Project”).

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS HEREIN CONTAINED, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

THIS AGREEMENT, made and entered into this ** day of **, 20**, by and between ** of the city of **, county of **, state of **, hereinafter designated “CMAR”, and the City of Prescott, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated “City”.

WITNESSETH: That the said CMAR, for and in consideration of the sum to be paid him by the said City, in the manner and at the time hereinafter provided, and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds provided, hereby agrees for himself, his heirs, executors, administrators and successors, and assigns the following: (The following sections prescribe the services and responsibilities required for the proper

execution and completion of the Work by the CMAR. They are not organized in any specific order and may pertain to all phases of the Work. The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.)

ARTICLE I - SCOPE OF WORK: The CMAR shall provide the “Services” set forth on the attached Exhibit A Scope of Services in accordance with the terms and conditions of this Agreement. The CMAR shall furnish any and all labor, materials (other than those listed as supplied by the City), equipment, transportation, utilities, services and facilities required to perform all work for the CMAR of the ** Project, to completely and totally design and construct the same and install the material therein for the City, in a good and workmanlike and substantial manner and to the satisfaction of the City.

City and the CMAR commit at all times to cooperate fully with each other, and proceed on the basis of trust and in good faith, to permit each party to realize the benefits afforded under the Contract Documents.

ARTICLE II – PROFESSIONAL RESPONSIBILITY: The CMAR shall perform the work hereunder in accordance with the standards of care, skill, and diligence normally provided by a professional in the performance of such services with respect to work similar to that contemplated hereunder. In the event of the CMAR’s failure to observe and adhere to such standards, the CMAR shall, upon notice from authorized City staff, promptly re-perform the work at the CMAR’s sole expense.

A. **PROFESSIONAL SERVICES:** The CMAR shall, consistent with applicable state licensing laws, provide qualified, licensed design professionals employed by the CMAR, or procured from qualified, independent licensed design consultants, the necessary Design Services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permitted CMAR to complete the Work consistent with the Contract Documents. The CMAR’s design professionals shall seal with an Arizona registered professional seal all plans, works and deliverables prepared by them for this Agreement as required by state law.

The CMAR shall provide services to the City in relation to the said Project as indicated in Exhibit A (Request for Statements of Qualification, Scope of Work, Task and Fee Estimate and Project Schedule) and as requested by the City. In addition to those services identified in Exhibit A, the CMAR shall also perform all subordinate tasks not specifically referenced but necessary to the full and effective performance of the tasks specifically referenced.

The standard care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the services, which standards are to be set forth in an exhibit to this Contract, the design professional services shall be performed to achieve such standards.

The CMAR shall be responsible for the completeness and accuracy of the plans, specifications, supporting data, and other work prepared or compiled under its obligation for the Project and shall correct, at its expense, all errors, omissions and negligent acts therein which may be discovered. Correction of errors, omissions and negligent acts discovered on the architectural or engineering plans and specifications shall be the

responsibility of the CMAR. The cost of the design necessary to correct those errors attributable to the CMAR shall not be reimbursable costs to the CMAR. Any damage incurred by the City as a result of additional construction cost caused by such errors, omissions or negligent acts shall not be reimbursed to the CMAR to the extent that such errors, omissions and negligent acts fall below the standard of care and skill that a registered professional in Arizona would exercise under similar conditions. The fact that the City has accepted or approved the CMAR's product shall in no way relieve the CMAR of any of its responsibilities. The settlement of any complications or disputed expenses arising from a CMAR's adjustment shall be borne by the CMAR at their own expense.

- B. DESIGN SERVICES:** The CMAR shall provide all interim design submissions and deliverables as prescribed by the City and as shown on the Project Schedule. The City shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in the CMAR's City-approved Project Schedule. The CMAR shall provide drawings in AutoCAD format compatible with City technology.

The Project design must meet all applicable Maricopa Association of Governments (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision; the City of Prescott Supplement to MAG, latest revision; all City building and engineering standards; and shall include any general provisions provided by the City. The Project design criteria and specifications shall be in accordance with all codes, standards and requirements as adopted by ordinance. Variances from the standards and guidelines must be identified in writing by the CMAR and approved by the City. The CMAR shall identify conflicts between the design standards and guidelines and the requirements listed in the paragraph above and shall obtain concurrence with resolution of the conflict. The design standards and guidelines or approval of variances or resolution of conflicts shall not be deemed to transfer any design liability to the City.

The CMAR shall not specify any construction materials known to be hazardous or potentially hazardous, including asbestos, lead or any derivative thereof unless specifically approved in writing by the City.

The CMAR shall coordinate with private, public and City utilities regarding standard utility issues and incorporate pertinent information in the plans. The CMAR shall be responsible for scheduling, submitting to, obtaining approval and retrieving all required Construction Documents from the various required reviewing agencies. The CMAR shall obtain all necessary permits, approvals and licenses required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project. Copies of these permits and notices must be provided to the City prior to starting the permitted activity. The City shall be responsible for providing fees related to City permits.

The CMAR when requested by the City, will attend, make presentations and participate as may be appropriate in public agency and/or community meetings relative to the Project. The CMAR's attendance at design or other meetings in which the CMAR is provided the opportunity to but does not actively participate and/or is not properly prepared, is not acceptable. Repeated instances of non-participation and/or lack of preparedness shall be grounds for termination of this Contract for default. The CMAR will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any such meetings.

- C. **CONSTRUCTION SERVICES:** The CMAR shall, except as provided otherwise in this Contract or any attached Bid, furnish all supervision, labor and materials, and obtain all licenses and permits required for performance of the work. The CMAR shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. The CMAR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction in accordance with the Maricopa Association of Governments (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision; the City of Prescott Supplement to MAG, latest revision; all City building and engineering standards; and any general provisions and/or conditions provided by the City.

The CMAR shall submit to the City, Construction Documents setting forth in detail drawings and specifications describing the requirements for construction. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting.

ARTICLE III - NON-EXCLUSIVE AGREEMENT: Nothing in this Agreement is to be construed as granting to the CMAR an exclusive right to perform any or all of the City's requirements of the type contemplated hereunder.

ARTICLE IV- CONTRACT DOCUMENTS: The Request for CMAR Qualifications, Scope of Work, Statement of Qualifications, Plans, Specifications, Special Provisions, Addenda (if any), the CMAR's Proposal (as accepted by the Mayor and Council per the meeting minutes of **, 20**), this Contract, Exhibit B - Certificates of Insurance and Required Endorsements, Contract Modifications including but not limited to, Change Orders, and Contract Amendments, are by this reference the Contract Documents and are made a part of the Contract to the same extent as if set forth herein in full.

ARTICLE V- TIME OF COMPLETION: The Project involves the health, safety, and welfare of the general public; therefore, delivery time is of the essence. All Services shall be completed to the satisfaction of the City and shall be performed in compliance with the Professional's approved project schedule identified in Exhibit A. Any request by the Professional for an extension in time shall be in writing and include a revised project schedule, which will be considered for approval by the City. Neither Party shall be bound by any change in project schedule unless mutually agreed upon in writing and mutually signed by the authorized representatives of the Parties.

- A. The Professional shall complete all Services by **(date). Or **(The Professional shall complete all Services within ** Calendar Days from the Contract Execution Date (located just before the signature page)). If a further or more detailed schedule is set forth in Exhibit A, the Professional shall strictly comply with said schedule and failure to do so, without the prior written agreement of the City, shall be a material breach of this Agreement. The Professional shall promptly respond (and in no event more than ten (10) calendar days after receiving the request) to any requests for approvals, information, or clarification within sufficient time to allow the City to timely respond to contractors or other parties involved in the Project, so as to not delay the Project.
- B. The Project Schedule shall be established, updated and maintained throughout the Work as provided by the General Conditions and Contract Documents. The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not

relieve the CMAR of its obligations to complete Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Failure on the part of the CMAR to adhere to the Project Schedule may be the basis for termination of this Agreement by the City.

- C. The activities making up the schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work. The schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the CMAR's activities.
- D. The CMAR covenants and agrees at his own proper cost and expense, to do all work as aforesaid for the CMAR of said improvements and to completely design and construct the same and install the material therein, as called for by the Contract Documents, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the Contract Documents.
- E. Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made, and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of this Agreement.

ARTICLE VI – CONTRACT AMOUNT: The CMAR shall be paid, pursuant to the provisions as set forth in the General Conditions and Contract Documents, the total sum of ** dollars and ** cents (\$**), plus any approved Contract Amendments, for the full and satisfactory completion of all Work as set forth in the Project Specifications and Contract Documents. Retention shall be in accordance with A.R.S. § 34-221.

- A. **PAYMENTS TO CONSTRUCTION MANAGER AT RISK:** For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, and in accordance with the directions of the City, the City agrees to pay the CMAR the amount earned, computed from actual quantities of work performed and accepted or materials furnished at the unit CMAR price in the CMAR Bid and to make such payment in accordance with applicable Arizona Revised Statutes, after final inspection and acceptance of the work.
 - a. The CMAR Agrees that this Agreement, as awarded, is for the stated work, and understands that payment for the total work will be on the basis of the indicated amount(s), as stated in the CMAR bid.
 - b. Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

- c. Prior to final payment to the CMAR, the City shall deduct therefrom any and all unpaid privilege, license and other taxes, fees and any and all other unpaid moneys due the City from the CMAR, and shall apply to those moneys to the appropriate account. The CMAR shall provide to the City any information necessary to determine the total amount(s) due.
- B. **PAYMENTS TO SUBCONTRACTORS:** The foregoing sum includes payment for any and all services to be rendered by the CMAR or Subcontractors, which the CMAR may employ for this Contract. It is expressly agreed by and between the parties that the CMAR is solely responsible for any and all payment to other Professionals or Subcontractors retained by the CMAR.
 - a. The CMAR shall pay to his Subcontractors or material suppliers, and each Subcontractor shall pay to his Subcontractor or material supplier, within seven (7) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the CMAR or Subcontractor on account of the work performed by his Subcontractors, to the extent of each such Subcontractor's interest therein, except that no Contract for the CMAR may materially alter the rights of any Contractor, Subcontractor or material supplier to receive prompt and timely payment as provided under ARS § 34-221(E). Such payments to Subcontractors or material suppliers shall be based on payments received pursuant to that Section. Any diversion by the CMAR or Subcontractor or payments for work performed on a Contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for disciplinary action by the Registrar of Contractors. The Subcontractor or material supplier shall notify the Registrar of Contractors and the City in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in that Section.
 - b. Nothing herein prevents the CMAR or Subcontractor, at the time of application and certification to the City or CMAR, from withholding such application and certification to the City or CMAR for payment to the Subcontractor or material supplier for (a) unsatisfactory job progress, (b) defective CMAR work or materials not remedied, (c) disputed work or materials, (d) third-party claims filed or reasonable evidence that a claim will be filed, (e) failure of a Subcontractor to make timely payments for labor, (f) equipment and materials, (g) damage to the CMAR or another Subcontractor, (h) reasonable evidence that the Subcontract cannot be completed for the unpaid balance of the Subcontract sum, or (i) a reasonable amount for retention that does not exceed the actual percentage retained by the City.
- C. **REIMBURSEABLE EXPENSES:** No reimbursable expenses or costs of any kind (such as travel expenses) shall be paid by the City unless expressly approved by the City in writing as part of the accepted rates and reimbursement schedule. Any approved reimbursable expenses will be paid at the actual cost without any markup applied by the Professional and will be paid only after they are incurred.

ARTICLE VII - NON-AVAILABILITY OF FUNDS: Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this

provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this section.

ARTICLE VIII – INTELLECTUAL PROPERTY: All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative services / works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, services / work product and other materials that are delivered to City under this Agreement or prepared by or on behalf of the CMAR in the course of performing the Services (collectively, the "Deliverables") shall be owned exclusively by City. The CMAR agrees and will cause its personnel to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a "work made for hire" for City. To the extent that any of the Deliverables do not constitute a "work made for hire," the CMAR hereby irrevocably assigns and shall cause its personnel to irrevocably assign to City all Intellectual Property Rights worldwide in the Deliverables. The CMAR shall cause its personnel to irrevocably waive, to the extent permitted by applicable law, any and all claims such personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Deliverables.

- A. All Intellectual Property Rights in all documents, data, know-how, methodologies, software, and other materials provided by or used by Professional in performing the Services and developed or acquired by the Professional prior to or independently of this Agreement (collectively, "Pre-Existing Materials") shall be owned exclusively by Professional and its licensors. Professional hereby grants City an irrevocable, perpetual, fully paid-up, royalty-free, worldwide, non-exclusive license to use, display, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell and otherwise exploit any Pre-Existing Materials to the extent incorporated in or otherwise necessary for the use of the Deliverables. All other rights in and to the Pre-Existing Materials are expressly reserved by Professional. The Professional understands that the Intellectual Property and Pre-Existing Materials may be used by the City for the purposes of construction and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof, or for construction of the same type of project at other locations, by the City and others retained by the City for such purposes. The Professional may re-use any standard specifications and details included in the Intellectual Property that were not developed by the Professional specifically for the Project.
- B. Upon completion of the Project and/or termination of the Agreement for any reason, the CMAR shall deliver to the City full sized and usable copies (including any and all CAD, BIM, and/or computer files) of all data documents, designs, drawings and specifications generated by the CMAR, including those generated by any suppliers, or Subcontractors.
- C. The City shall retain all rights and ownership of all documents, designs, drawings, maps, studies, specifications, other information and/or styles, including copies thereof, provided to the CMAR by the City in relation to this Agreement and the Project. The CMAR shall not utilize any such material in relation to any other services / work or project and such materials are to be returned to the City on request or at the completion of the Services.

- D. Should the CMAR's officers, employees, agents, or assigns (or anyone of a like nature), in the performance of the work or as a result of performing the work, develop any trade secret, prepare any copyrighted material, make any improvement, originate any invention, develop any process, or otherwise, such trade secret, copyright, improvement, invention, or process shall be the property of the CMAR. However, the CMAR shall grant or cause to be granted to the City the right and/or license to permanently use, or cause to be used for the benefit of the City any such trade secret, copyright, improvement, design, invention, or process in any manner for so long as the City desires to use the same for the City's own internal use.

ARTICLE IX - OTHER WORK IN PROJECT AREA: The City, any other contractors, whether under contract with the City, a third party, and/or utilities, may be working within the project area while this Contract is in progress. The CMAR herein acknowledges that delays and disruptions may, and in all likelihood, will occur due to other work. The CMAR's bid shall be deemed to have recognized and included costs arising from and associated with other work in the project area disclosed by the Contract Documents or which would be apparent to an experienced contractor exercising due diligence during inspection of the project documents, the question and answer session in the pre-proposal process or during site inspection. No payment will be made for any delays or disruptions in the work schedule that are wholly the fault of the CMAR, its agents, employees or any of the CMAR's Subcontractors. In the event that the CMAR encounters delay or disruption in the project schedule due to factors not wholly the fault of the CMAR or within the CMAR's control then the Contract may be adjusted pursuant to the Delay's and Extension of Time provisions of the General Conditions and Contract Documents and a timely request submitted for Contract Amendment. Failure to submit a timely request for Contract Amendment shall be deemed a waiver of any entitlement to additional compensation.

ARTICLE X – NONDISCLOSURE: Except as otherwise required by law or this Agreement, the CMAR, its officers, employees, Subcontractors, agents, and assigns shall not divulge to third parties (without the prior consent of the City) any information obtained by it in connection with its performance under this Agreement.

ARTICLE XI - INDEPENDENT CONTRACTOR: The CMAR shall perform the work hereunder as an Independent Contractor, and all persons or entities employed by or under contract with the CMAR in connection herewith shall be employees of the CMAR and are not employees of the City in any respect.

ARTICLE XII – NONWAIVER: The failure of the City to insist upon or enforce strict performance by the CMAR of any of the provisions of this Agreement, or to exercise any of its rights hereunder, shall not be construed as a waiver or relinquishment to any extent of the City's right to assert or rely upon such terms or rights on any future occasion.

ARTICLE XIII - SAVINGS CLAUSE: In the event any phrase, clause, sentence, paragraph, section, article or other portion of this Contract shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Contract shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

ARTICLE XIV - CONFLICT-OF-INTEREST: Pursuant to A.R.S. § 38-511, the City may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the agreement on behalf of the City is, at any time while the agreement or any extension of the agreement is in effect, an employee or agent of

any other party to the agreement in any capacity or a consultant to any other party of the agreement with respect to the subject matter of the agreement. In the event of the foregoing, the City further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating this agreement on behalf of the City from any other party to the contract, arising as a result of this contract.

ARTICLE XV - COMPLIANCE WITH FEDERAL AND STATE LAWS

- A. All Services performed by the CMAR shall be performed in compliance with all applicable federal, state, county, or city laws, rules, regulations, and ordinances, including, without limitations, those set forth on the attached Exhibit C, if applicable. The CMAR, at the CMAR's expense, shall be responsible for obtaining all necessary licenses, permits and governmental authorizations required to perform the Services. The CMAR understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.
- B. **NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY:** Professional and any Subcontractors are required to comply with all applicable provisions of Title VII of the Civil Rights Act, Sections 501 and 505 of the Rehabilitation Act, Section 109 of the Housing and Community Development Act, the Age Discrimination Act, the Americans With Disabilities Act, the Equal Pay Act, the Genetic Information Non-Discrimination Act, the Vietnam Era Veterans Readjustment Act, and all applicable federal regulations or executive orders related to these laws. Additionally, the Professional and any Subcontractors are required to comply with Arizona law on nondiscrimination and equal employment opportunity, including the Arizona Civil Rights Act and Arizona Governor Executive Orders 99-4, 2000-4 and 2009-09, as amended. The CMAR agrees not to discriminate on the grounds of age, race, color, national origin, religion, sex, disability, pregnancy, veteran, familial status, or any other protected status in the selection and retention of employees and subcontractors, including procurement of materials and leases of equipment.
- C. The CMAR shall at all times comply with all applicable laws, statutes, rules, regulations, and ordinances in its performance under this Contract, including without limitation those governing wages, hours, employment discrimination, and safety as provided in the General Conditions. The CMAR shall also comply with equal opportunity laws and regulations to the extent they are applicable.
- D. This Agreement shall be construed under the laws of the State of Arizona.
- E. This Contract constitutes the entire Contract between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous Agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.
- F. In the event of a discrepancy between this Agreement and other documents incorporated into this Agreement, this Agreement shall control over Exhibit "A".
- G. **ISRAEL:** Contractor certifies that it is not currently engaged in and agrees for the duration of this Agreement that it will not engage in a "boycott", as that term is defined in A.R.S. § 35-393, of Israel.

- H. **FORCE LABOR OF ETHNIC UYGHURS CERTIFICATION:** Pursuant to A.R.S. § 35-394, Contractor certifies that the firm does not currently, and agrees for the duration of the contract that it will not, use:
1. The forced labor of ethnic Uyghurs in the People's Republic of China
 2. Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and
 3. Any Contractor subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- I. If the Contractor becomes aware during the term of the Contract that the company is not in compliance with the written certification, the Firm shall notify the City of Prescott within five business days after becoming aware of the noncompliance. If the Contractor does not provide City of Prescott with a written certification that the Company has remedied the noncompliance within 180 days after notifying the City of Prescott of the noncompliance, this Contract terminates, except that if the Contract termination date occurs before the end of the remedy period, the Contract terminates on the Contract termination date.
- J. **CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS:**
1. The Company will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
 2. Affirmative steps shall include:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises.
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises.
 - e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- K. **NOTIFICATIONS:** Notice shall be deemed effective five (5) business days after deposit for delivery or at time of receipt, whichever is earlier. Any notices to be given by either party to the other shall be in writing, and personally delivered or mailed by prepaid postage, at the following addresses:

City of Prescott
201 N. Montezuma Street
Prescott, AZ 86301
contracts@prescott-az.gov

ARTICLE XVI – GENERAL PROVISIONS

- A. **INTEGRATION AND AMENDMENT:** This Agreement represents the entire and integrated Agreement between the City and the CMAR regarding the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. Any prior understandings, commitments, or representations, expressed or implied, written or verbal, between the Parties shall not be construed to alter or waive any part of this Agreement. This Agreement may be amended only by written instrument signed by both the City and the CMAR. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision herein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary. In the event a conflict exists between this Agreement and any other Contract Documents or Exhibits, the order of precedence, listed in descending order shall be as follows: 1) change orders or amendments, 2) this Agreement, and 3) any Exhibits.
- B. **INTERPRETATION:** This Contract is the result of negotiations by and between the parties. Although it has been drafted by the City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.
- C. **SEVERABILITY:** Any provisions of this Contract prohibited or rendered unenforceable by local, state, or federal law, or by the ruling of any court of competent jurisdiction, shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Contract.
- D. **FORCE MAJEURE:** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, epidemic, pandemic, computer virus, power outage, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.
- E. **WAIVER:** No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver or modification shall be introduced in any proceeding. One or more waivers by

either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party

- F. **ASSIGNMENT:** The Professional shall not assign or subcontract this Agreement nor any performance hereunder, in whole or in part, nor delegate any monies which shall become due to Professional under this Agreement, without the prior written consent of the City. Any assignment or delegation by Professional without City's prior written consent shall be void and not merely voidable.

ARTICLE XVII – TERMINATION: This Agreement may be terminated by either party upon ten (10) days written notice, with or without cause, or upon completion of services. If this Agreement is terminated, the CMAR shall be paid for authorized services satisfactorily performed to the date of the CMAR's receipt of such termination notice.

- A. Pursuant to A.R.S. § 38-511, the City may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the foregoing event, the City further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of the City from any other party to the Agreement arising as a result of this Agreement.
- B. Either party may terminate this Agreement, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party (a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach; (b) becomes insolvent; (c) admits its inability to pay its debts generally as they become due; (d) becomes subject to any bankruptcy proceeding which is not dismissed or vacated within 30 days after filing; (e) is dissolved or liquidated; (f) makes a general assignment for the benefit of creditors; or (g) has a receiver, trustee, custodian, or similar agent appointed by court order to take charge of or sell any material portion of its property or business. In case of default by the CMAR, the City may, by written notice, cancel this Agreement and repurchase from another source and may recover the excess costs by deduction from an unpaid balance due to CMAR, or may use any other remedies as provided by law.
- C. Upon receipt of a written notice of termination, the CMAR shall stop all services / work as directed in the notice, notify all Subcontractors of the effective date of the termination, and minimize all further costs to the City. The CMAR shall also promptly deliver to City all preliminary materials, draft services / work products, or deliverables which have been completed as of the termination date or are in progress as of the termination date.
- D. All representations and warranties of CMAR made herein shall survive the termination of this Agreement.

ARTICLE XVIII - DISPUTE RESOLUTION: The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The CMAR further agrees that this provision shall be contained in all subcontracts related to the project, which is the subject of this Agreement.

The CMAR agrees that notwithstanding the existence of any dispute, the Contractor shall continue to perform the obligations required of the CMAR during the negotiation and resolution of any such dispute unless specifically enjoined or prohibited by an Arizona Court of competent jurisdiction.

ARTICLE XIX - RECOVERY OF ATTORNEY FEES: The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney fees, either pursuant to the Contract, pursuant to A.R.S. § 12-341.01 (A) and (B), or pursuant to any other state or federal statute, court rule, case law or common law. The CMAR further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.

ARTICLE XX – INDEMNIFICATION: Subject to the limitations of A.R.S. § 34-226 and to the fullest extent permitted by law, the CMAR shall indemnify, defend, and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, damages, losses, costs, fines, judgements, expenses or lawsuits, including reasonable attorneys' fees, and court costs, arising out of or resulting from the CMAR, its agents, employees or any tier of the CMAR's Subcontractors negligent, reckless, or intentional acts, errors, or omissions, pursuant to this Agreement. The CMAR further releases and discharges the City, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the City, from any and all claims which the CMAR has or may have against the City, its agents or employees, arising out of or in any way connected with the CMAR's activities under this Agreement, other than those acts which occur due to the negligence of the City or its employees.

The CMAR's duty to defend, hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by the CMAR's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of the CMAR, any tier of the CMAR's Subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the CMAR may be legally liable.

The CMAR shall indemnify, defend, and hold harmless the City, its officers, employees, agents and successors, against and from all claims, demands, losses, costs, expenses, suits, settlements, judgments, and damages (including attorneys' fees), of any kind or nature whatsoever on account of infringement of any patent, copyrighted work, secret process, trade secret, un-patented invention, article, or otherwise, including claims thereof pertaining to, or arising from the CMAR's performance under this Contract.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

ARTICLE XXI - RIGHT TO ASSURANCE: If the City in good faith has reason to believe that the CMAR does not intend to or is unable to perform or continue performing under this Agreement, the Director may demand in writing that the CMAR give a written assurance of intent to perform. Failure by the CMAR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Agreement.

EXHIBITS

- A. Scope of Services
- B. Insurance Requirements

SAMPLE

DATED: _____ day of _____, 20____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their duly authorized representatives and bind their respective entities as of the Contract Execution date above.

**Company/Firm

City of Prescott, a municipal corporation

(Authorized Signature)

Philip R. Goode, Mayor

By: _____
(Printed Name)

Title: _____

Email: _____

ATTEST:

APPROVED AS TO FORM:

Sarah M. Siep, City Clerk

Joseph D. Young, City Attorney

Pre-Construction Services Agreement

Exhibit A – Scope of Services

SAMPLE

Pre-Construction Services Agreement

Exhibit B – Insurance Requirements

The Professional shall obtain and maintain in effect during the term of, and until final acceptance of all work under this Agreement, a policy, or policies of liability insurance with the following coverage:

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury, broad form contractual liability, and XCU coverage.

General Aggregate	\$ 2,000,000	
Products – Completed Operations Aggregate	\$ 2,000,000	(if applicable)
Personal and Advertising Injury	\$ 1,000,000	(if applicable)
Each Occurrence	\$ 1,000,000	
Fire Legal Liability (Damage to Rented Premises)	\$ 100,000	(if applicable)

The policy shall be endorsed to include the following additional insured language:

“The City of Prescott shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Professional.”

2. Professional Liability (Errors and Omissions Liability)

Each Claim	\$ 1,000,000
Annual Aggregate	\$ 2,000,000

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Professional warrants that any retroactive date under the policy shall precede the effective date of this Contract and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years at the time work under this contract is completed.

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

3. Business Automobile Liability (if applicable) Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$ 1,000,000
-----------------------------	--------------

Prior to commencing work under this Agreement, the Professional shall provide City with evidence that it is either a “self-insured employer” or a “carrier insured employer” for Workers’ Compensation as required by A.R.S. § 23-901 et seq., or that it employs no persons subject to the requirement for such coverage.

Additional Insurance Requirements: The policies shall include, or be endorsed to include the following provisions:

1. On insurance policies where the City of Prescott is named as an additional insured, the City of Prescott shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

**Additional Insured:
City of Prescott
201 N. Montezuma Street
Prescott, AZ 86301**

2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

All certificates required by this Contract shall be emailed directly to coi@prescott-az.gov. The City contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

Any Renewal of insurance certificates with endorsements will need to be emailed to the above emails at least two weeks prior to expiration.

City and Professional waive all rights against each other and their directors, officers, partners, commissioners, officials, agents, sub-contractors, and employees for damages covered by property insurance during and after completion of the Services.

All insurance required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. § 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

Notice of Cancellation: With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of Prescott Risk Management Division. All insurance is to be placed with an insurer admitted in the state in which operations are taking place.

Verification of Coverage: Professional shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Please note the contract number on the Certificate.



CONSTRUCTION CONTRACT

****Project**

Contract No. 20-*****

THIS AGREEMENT made and entered into this ** day of **, 20**, by and between ** of the city of **, county of **, state of **, hereinafter designated “Contractor”, and the City of Prescott, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated “City”.

WITNESSETH: That the said Contractor, for and in consideration of the sum to be paid by the said City, and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds provided, hereby agrees, for him/herself, his heir, executors, administrators, successors and assigns as follows:

ARTICLE I - SCOPE OF WORK: The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities, required to perform all work for the construction of the project described as City of Prescott: ** Project and install the material therein for the City, in a good and workmanlike and substantial manner and to the satisfaction of the City through its engineers and under the direction and supervision of the Airport Director, or their properly authorized agents and strictly pursuant to and in conformity with the Plans and Specifications prepared by the engineers for the City, and with such written modifications of the same and other documents that may be made by the City through the Airport Director or their properly authorized agents, as provided herein.

ARTICLE II - CONTRACT DOCUMENTS: The Notice Inviting Bids, Project Plans and Specifications, MAG Specifications and Details, City Supplement to MAG, Special Provisions, Addenda, Contractor’s Affidavit Regarding Settlement of Claims and Certification of Completion of Warranties, Contractor Bid Proposal as accepted by the Mayor and Council per Council Minutes of **, 20**, Proposal Guarantee, Performance Bond, Payment Bond, Certificates of Insurance and required Endorsements, Contract Allowance Authorizations and Contract Amendments, are by this reference made a part of this Contract to the same extent as if set forth herein in full.

ARTICLE III - TIME OF COMPLETION: The Contractor hereby agrees to commence work on or before the tenth (10th) day after written notice to do so, unless such commencement of work is mutually agreed to be extended by the parties due to material unavailability and delayed lead times. The Contractor will complete the work within ** (**) calendar days after the date of the written notice to commence work, subject to such extensions of time as are provided by the City Supplement to MAG. The contract will close 60 days after the substantial completion date, to finalize the payment process.

ARTICLE IV - COMPENSATION: Contractor shall be paid, pursuant to the provisions as set forth in the Contract Documents, a not to exceed amount of ** dollars and ** cents

(\$**), plus any approved contract amendments, for the full and satisfactory completion of all work as set forth in the Project Plans, Specifications and Contract Documents. Retention shall be in accordance with A.R.S. § 34-221. If the Contractor claims that any instructions involve additional/extra cost, it shall give the Director written notice thereof within forty-eight (48) hours after the receipt of such instructions, and in any event before proceeding to execute the services / work. No such claim shall be valid unless so made. The Contractor shall do such additional/extra services/work upon receipt of an accepted Contract Amendment or other written order of the Director. In the absence of such Contract Amendment or other written order of the Director, the Professional shall not be entitled to payment for such additional/extra services/work. In no case shall services/work be undertaken without written notice from the Director to proceed with the services/work. All Contract Amendments shall be approved by the Director, but Contract Amendments over \$50,000 must also be approved by City Council.

ARTICLE V – CONFLICT OF INTEREST: Pursuant to A.R.S. § 38-511, the City may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the contract on behalf of the City is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the event of the foregoing, the City further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating this contract on behalf of the City from any other party to the contract, arising as a result of this contract.

ARTICLE VI - AMBIGUITY: This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.

ARTICLE VII - NONDISCRIMINATION: The Contractor, with regard to the work performed by it after award and during its performance of this contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, the Americans With Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, and Arizona Governor Executive Orders 99-4, 2000-4 and 2009-09 as amended.

ARTICLE VIII - INDEPENDENT CONTRACTOR STATUS: It is expressly agreed and understood by and between the parties that the Contractor is being retained by the City as an independent contractor, and as such the Contractor shall not become a City employee and is not entitled to payment or compensation from the City or to any fringe benefits to which other City employees are entitled other than that compensation as set forth in Article IV - Compensation above. As an independent contractor, the Contractor further acknowledges that he is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent contractor, the Contractor further agrees that he will conduct himself in a manner consistent with such status, and that he will neither hold himself out nor claim to be an officer or employee of the City by reason thereof, and that he will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the

City, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

ARTICLE IX - CITY FEES: Prior to final payment to the Contractor, the City shall deduct therefrom any and all unpaid privilege, license and other taxes, fees and any and all other unpaid moneys due the City from the Contractor and shall apply to those moneys to the appropriate account. Contractor shall provide to the City any information necessary to determine the total amount(s) due.

ARTICLE X - LIQUIDATED DAMAGES: All time limits stated in the Contract Documents are of the essence and should the Contractor fail to complete the work required to be done on or before the time of completion as set forth in these Contract Documents, including any authorized extension of time, it is mutually agreed and understood by and between the parties that the public will suffer great damages; that such damages, from the nature of the project, will be extremely difficult and impractical to fix; that the parties hereto wish to fix the amount of said damages in advance; and that the sum of \$**\$.00 per day for each and every day's delay in completion and acceptance of the work required to be done by the Contractor subsequent to the time of completion, including any authorized extensions of time, is the nearest and most exact measure of damages for such breach that can be fixed now or could be fixed at or after such breach and that, therefore, the Owner and Contractor agree to fix said sum of \$**\$.00 per day for each and every said day's delay as liquidated damages, and not as a penalty or forfeiture for the breach of the agreement to complete the work required to be done by the Contractor on or before the time of completion and acceptance and, in the case of such breach, the Owner shall deduct said amount from the amount due the Contractor under the contract. In the event the remaining balance due the Contractor is insufficient to cover the full amount of assessed liquidated damages, then the Contractor or the surety on the bonds shall pay the difference due the Owner.

ARTICLE XI - OTHER WORK IN PROJECT AREA: The City, any other contractors, whether under contract with the City, a third party, and/or utilities, may be working within the project area while this Contract is in progress. The Contractor herein acknowledges that delays and disruptions may, and in all likelihood, will occur due to other work. The Contractor's bid shall be deemed to have recognized and included costs arising from and associated with other work in the project area disclosed by the Contract Documents or which would be apparent to an experienced contractor exercising due diligence during inspection of the project documents, the question-and-answer session in the pre-bid process or during site inspection. No payment will be made for any delays or disruptions in the work schedule that are wholly the fault of the Contractor, its agents, employees, or any of the Contractor's subcontractors. In the event the Contractor encounters delay or disruption in the project schedule due to factors not wholly the fault of the Contractor or within the Contractor's control then the Contract may be adjusted pursuant to the Delay's and Extension of Time provisions of this Contract and a timely request submitted for Contract Amendment. Failure to submit a timely request for Contract Amendment shall be deemed a waiver of any entitlement to additional compensation.

ARTICLE XII - BONDS:

- A. On or before the execution of the contract, the Contractor shall obtain in an amount equal to the full contract price a performance bond pursuant to A.R.S. § 34-222, conditioned upon the faithful performance of this contract in accordance with the plans, specifications, and conditions herein. The bonds shall be solely for the protection of the City. A copy of this bond shall be filed with the Prescott City Clerk.

- B. Contractor shall also obtain a payment bond, pursuant to the provisions of A.R.S. § 34-222, in an amount equal to this full contract price herein, said bond to be solely for the protection of claimants supplying labor or materials to the Contractor or his subcontractors in the prosecution of the work provided for in this contract. A copy of this bond shall be filed with the Prescott City Clerk.
- C. All bonds must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. § 20-217, a copy of which certificate is to be attached to the applicable bid bond, payment bond and performance bond. In addition, depending upon the nature of the contract and amount thereof, the City Manager may also require insurance companies and/or bonding companies to have an “A” rating or better with Moody's or A.M. Best Company, and/or to be included on the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (as amended) by the audit staff, Bureau of Accounts, US Treasury Department.

ARTICLE XIII – SUBCONTRACTORS:

- A. During performance of this Agreement, the Contractor may engage such additional subcontractors as may be required for the timely completion of the construction. The addition of any Subcontractors shall be subject to prior written approval by the City. In the event of sub-contracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with the Contractor.
- B. The Contract Amount includes payment for any and all services to be rendered by the Contractor or Subcontractors which the Contractor may employ for this Agreement. It is expressly agreed by and between the parties that the Contractor is solely responsible for all payment to such any other Contractors or Subcontractors retained by the Contractor. The Contractor agrees to indemnify and save harmless the City of Prescott against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure to pay for all labor performance and materials furnished for the performance of said project when completed.

ARTICLE XIV – INDEMNITY: The Contractor shall defend, indemnify and hold harmless the City, its departments, officers, officials, agents, and employees (hereinafter referred to as “Indemnatee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys fees and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Contractor or any of the Contractor’s owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under Worker’s Compensation Law or arising out of failure of such Contractor to conform to any Federal, State, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intentions of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts of Indemnatee, be indemnified by the Contractor from and against any and all claims. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City, its departments, officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the City.

ARTICLE XV – RIGHT TO ASSURANCE: If the City in good faith has reason to believe that the Contractor does not intend to or is unable to perform or continue performing under this Contract, the Airport Director may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the City’s option, be the basis for terminating the Contract.

ARTICLE XVI – TERMINATION FOR CONVENIENCE: The City reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the City without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to the City. In the event of termination under this paragraph, all documents, data, and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the City upon demand. The Contractor shall be entitled to receive just and equitable compensation for work completed, and materials accepted before the effective date of the termination.

ARTICLE XVII - MISCELLANEOUS:

- A. All pay applications need to have these items contract number, pay application number, dates of service and date submitted. They need to be submitted to the project manager for review. Once they review and sign off, they will submit to our accounts payable department for payment processing.
- B. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project, which is the subject of this Agreement.
- C. Final Payment Acknowledgement to be signed by the contractor and sent in with the final pay application. This is to further certify that the project is completed to acceptable standards as defined in the plans and specifications per the Project Contract Agreement. Any changes to the plans have been noted on the Construction As-built Mylar Drawings certified by the Engineer of Record. The revised As-built Drawings have been delivered and approved by the Department. All materials used and workmanship performed are expressly warranted to be free of defects for a period of twenty-four (24) months from the date of final acceptance by the City of Prescott.
- D. Contractor’s Affidavit Regarding Settlement of Claims and Certification of Completion of Warranties is to be signed and returned at the end of the two-year warranty period that is determined per the warranty letter sent out when the project has been completed.
- E. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney fees, either pursuant to the Contract, pursuant to A.R.S. § 12-341.01 (A) and (B), A.R.S. §34-301, §34-302 & §34-321 or pursuant to any other state or federal statute, court rule, case law or common law. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.
- F. In the event of default, neither party shall be liable for incidental, special, or consequential damages.

- G. Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage, at the following addresses:

City of Prescott	***
201 N. Montezuma Street	***
Prescott, AZ 86301	***
contracts@prescott-az.gov	***

- H. This Agreement shall be construed under the laws of the State of Arizona.
- I. This Agreement represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Contractor. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.
- J. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- K. No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver or modification shall be introduced in any proceeding.
- L. Contractor agrees that notwithstanding the existence of any dispute, the Contractor shall continue to perform the obligations required of Contractor during the negotiation and resolution of any such dispute unless specifically enjoined or prohibited by an Arizona Court of competent jurisdiction.
- M. In the event of a discrepancy between this Agreement and other documents incorporated into this Agreement, this Agreement shall control over Exhibit "A".
- N. Non-Availability of Funds: Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.
- O. Compliance with Federal and State Laws: All Services performed by the Contractor shall be performed in compliance with all applicable federal, state, county, or city laws, rules, regulations, and ordinances, including, without limitations, those set forth on the attached Exhibit C, if applicable. The Contractor, at the Contractor's expense, shall be responsible for obtaining all necessary licenses, permits and governmental authorizations required to perform the Services. The Contractor understands and acknowledges the applicability to

it of the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

P. Nondiscrimination and Equal Employment Opportunity: The Contractor and any Subcontractors are required to comply with all applicable provisions of Title VII of the Civil Rights Act, Sections 501 and 505 of the Rehabilitation Act, Section 109 of the Housing and Community Development Act, the Age Discrimination Act, the Americans With Disabilities Act, the Equal Pay Act, the Genetic Information Non-Discrimination Act, the Vietnam Era Veterans Readjustment Act, and all applicable federal regulations or executive orders related to these laws. Additionally, the Contractor and any Subcontractors are required to comply with Arizona law on nondiscrimination and equal employment opportunity, including the Arizona Civil Rights Act and Arizona Governor Executive Orders 99-4, 2000-4 and 2009-09, as amended. The Contractor agrees not to discriminate on the grounds of age, race, color, national origin, religion, sex, disability, pregnancy, veteran, familial status, or any other protected status in the selection and retention of employees and subcontractors, including procurement of materials and leases of equipment.

Q. Employees on Public Works Construction Projects: E-Verify Requirements:

1. The Contractor shall comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, "Residence Requirements for Employees", as amended.
2. Under the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its Subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter referred to as "Contractor Immigration Warranty"). The Contractor further understands and acknowledges that:
 - a. A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - b. The City retains the legal right to inspect the papers of any Contractor or Subcontractors' employee to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in regard to any such inspections.
 - c. The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of the Subcontractors to ensure compliance with the Contractor Immigration Warranty. The Contractor agrees to assist the City in regard to any random verification performed.
 - d. Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).

- e. The provisions of this Article shall be included in any contract the Contractor enters with any and all of its Subcontractors who provide Services under this Agreement. “Services” are defined as furnishing labor, time, or effort in the State of Arizona by a Contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement of real property.
- R. Israel: Contractor certifies that it is not currently engaged in and agrees for the duration of this Agreement that it will not engage in a “boycott”, as that term is defined in A.R.S. § 35-393, of Israel.
- S. Force Labor of Ethnic Uyghurs Certification: Pursuant to A.R.S. § 35- 394, Contractor certifies that the firm does not currently, and agrees for the duration of the contract that it will not, use:
 - 1. The forced labor of ethnic Uyghurs in the People’s Republic of China
 - 2. Any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and
 - 3. Any Contractor / subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

If the Contractor becomes aware during the term of the Contract that the company is not in compliance with the written certification, the Firm shall notify the City of Prescott within five business days after becoming aware of the noncompliance. If the Contractor does not provide City of Prescott with a written certification that the Company has remedied the noncompliance within 180 days after notifying the City of Prescott of the noncompliance, this Contract terminates, except that if the Contract termination date occurs before the end of the remedy period, the Contract terminates on the Contract termination date.

- T. Contracting with small and minority firms, women’s business enterprise and labor surplus area firms:
 - 1. The Company will take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible.
 - 2. Affirmative steps shall include:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists
 - b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources.
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises.
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises.

- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

SAMPLE

DATED: _____ day of _____, 20____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

** (Company Name)

City of Prescott, a municipal corporation:

(Authorized Signature)

Philip R. Goode, Mayor

By: _____
(Printed Name)

Title: _____

Email: _____

ATTEST:

APPROVED AS TO FORM:

Sarah M. Siep, City Clerk

Joseph D. Young, City Attorney

Insurance Requirements

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees, or subcontractors. The Contractor is free to purchase such additional insurance as may be determined necessary.

ADDITIONAL INSURANCE REQUIREMENTS:

The policies shall include, or be endorsed to include the following provisions:

1. On insurance policies where the City of Prescott is named as an additional insured, the City of Prescott shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

**Additional Insured:
City of Prescott
201 N. Montezuma Street
Prescott, AZ 86301**

2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

All certificates required by this Contract shall be emailed directly to coi@prescott-az.gov. The City contract number and project name/description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. Any Renewal of insurance certificates with endorsements will need to be emailed to the above emails at least two weeks prior to expiration.

NOTICE OF CANCELLATION:

With the exception of a ten (10) day notice of cancellation for non-payment of premium, and changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of Prescott. General liability, automobile liability, and worker's compensation insurance is to be placed with an insurer admitted in the state in which operations are taking place.

VERIFICATION OF COVERAGE:

Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project and warranty period as set forth in warranty letter. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

MAG Specifications, Sections 103.1 through 103.8, including: Unless otherwise specifically required by the Special Conditions, the minimum limits of public liability and property damage liability shall be as follows:

1. Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a following form basis.

Commercial General Liability – Occurrence Form –

Policy shall include bodily injury, property damage, broad form, contractual liability and XCU coverage.

- General Aggregate \$ 3,000,000
- Products – Completed Operations Aggregate \$ 3,000,000
- Personal and Advertising Injury \$ 1,000,000
- Each Occurrence \$ 1,000,000
- Fire Legal Liability (Damage to Rented Premises) \$ 100,000 (if applicable)

The policy shall be endorsed to include the following additional insured language:

“The Contractor agrees to endorse the City of Prescott as an Additional Insured on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured coverage, the CG 2010 10 01 Additional Insured - Owners, Lessees, or Contractors, or CG2010 07 04 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement in combination with the additional endorsement of GC2037 10 01 Additional Insured – Owners, Lessees, or Contractors – Completed Operations shall be required to provide back coverage for the contractor’s “your work” as defined in the policy and liability arising out of the products-completed operations hazard.”

Business Automobile Liability: Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$ 1,000,000

The policy shall be endorsed to include the following additional insured language:

“The City of Prescott shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles, owned, leased, hired, or borrowed by the Contractor.”

Worker's Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability	
• Each Accident -	\$1,000,000
• Disease – each employee -	\$1,000,000
• Disease – policy limit -	\$1,000,000

Policy shall contain a waiver of subrogation against the City of Prescott for losses arising from work performed by or on behalf of the Contractor.

Professional Liability (Errors and Omissions Liability) – *if applicable*

• Each Claim	\$ 1,000,000
• Annual Aggregate	\$ 2,000,000

1. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years at the time work under this contract is completed.
2. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

Notice of Cancellation: With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes to material to compliance with this contract in the insurance policies above shall require thirty (30) day written notice.

Such policy shall not exclude coverage for the following:

1. Injury to or destruction of any property arising out of the collapse of/or structural injury to any building or structure due to grading of land, excavation, borrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work.
2. Injury to or destruction of wires, conduits, pipes, mains, sewers, or other similar property or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating, drilling; or injury to or destruction of any property at any time resulting there from.
3. Injury to or destruction of any property arising out of blasting or explosion.
4. Motor vehicle public liability and property damage insurance to cover each automobile, truck, and other vehicle used in the performance of the Contract in an amount of not less than \$1,000,000.00 for one person, and \$1,000,000.00 for more than one person, and property damage in the sum of \$1,000,000.00 resulting from any one accident which may arise from the operations of the Contractor in performing the work provided for herein.

The Contractor shall carry and maintain fire and extended coverage with an endorsement for vandalism and malicious mischief in Contractor's name and also in the name of the City in an amount of at least ONE HUNDRED PERCENT (100%) of the Contract amount (if applicable).

The Contractor shall secure "all risk"-type builder's risk insurance for work to be performed. Unless specifically authorized by the City, the amount of such insurance shall not be less than ONE HUNDRED PERCENT (100%) of the contract price. Such policy shall include coverage for earthquake, landslide, flood, collapse, or loss due to the results of faulty workmanship, during the contract time and until final acceptance of work by the City (if applicable).

SAMPLE



Final Payment Acknowledgement

To the City of Prescott, Arizona:

****Company Name****

****Address**

****City, State, Zip**

****Email**

****Company Name**, has submitted the final pay application for the **** project Contract No. 20**-***** in the consideration of:

\$ _____
(Total Final Project Amount)

as full and complete payment under the terms of the Contract. All materials used and workmanship performed are expressly warranted to be free of defects for a period of twenty-four (24) months from the date of final acceptance by the City of Prescott, as stated in the warranty letter to be provided.

The Undersigned further agrees to indemnify and save harmless the City of Prescott against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performance and materials furnished for the performance of said project within the next 90 days.

Signed and dated this _____ day of _____, 20____.

(Authorized Signature)

By: _____

Title: _____

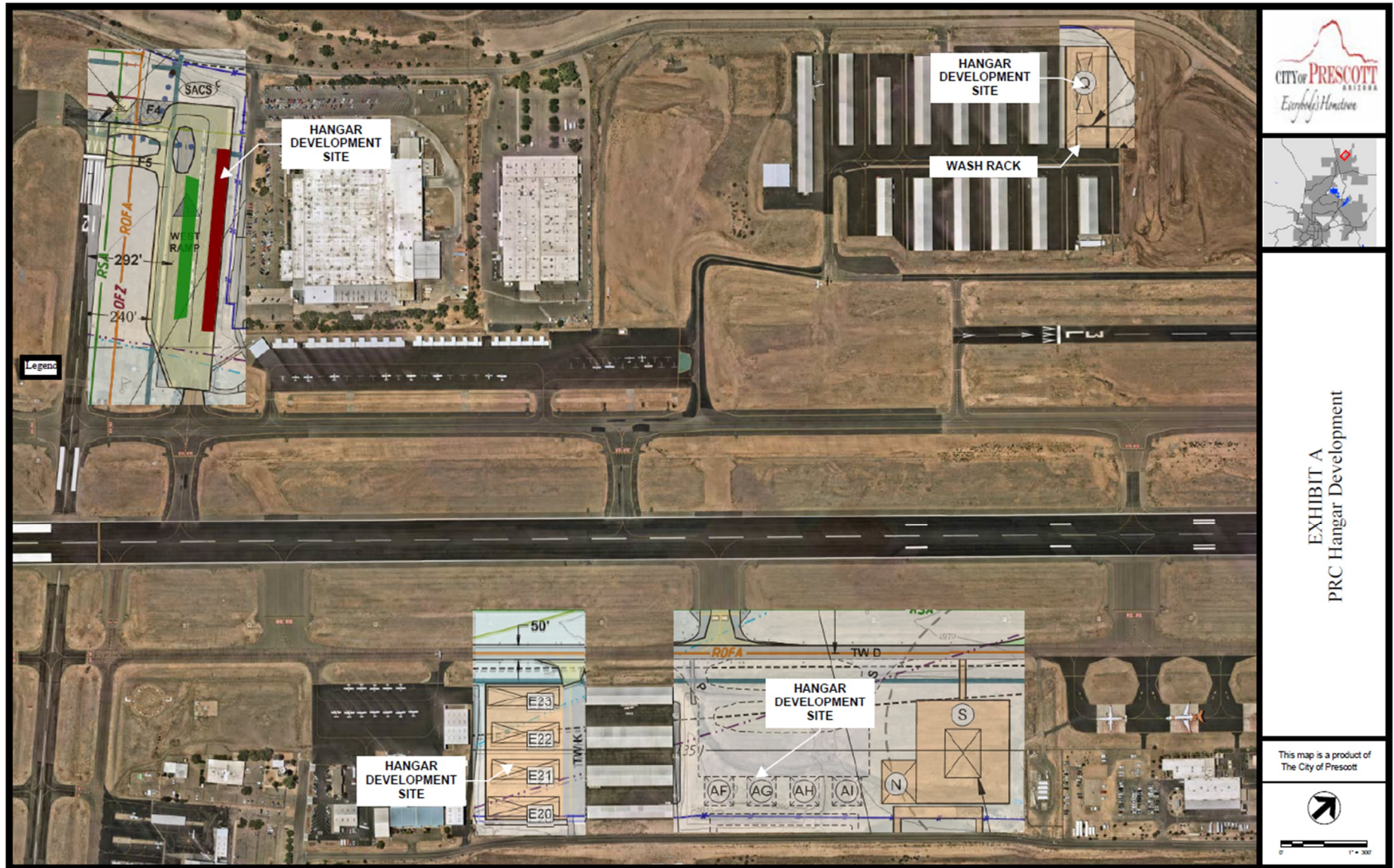
State of _____)
) ss.
County of _____)

SUBSCRIBED AND SWORN to before me by _____
this _____ day of _____, 20 _____.

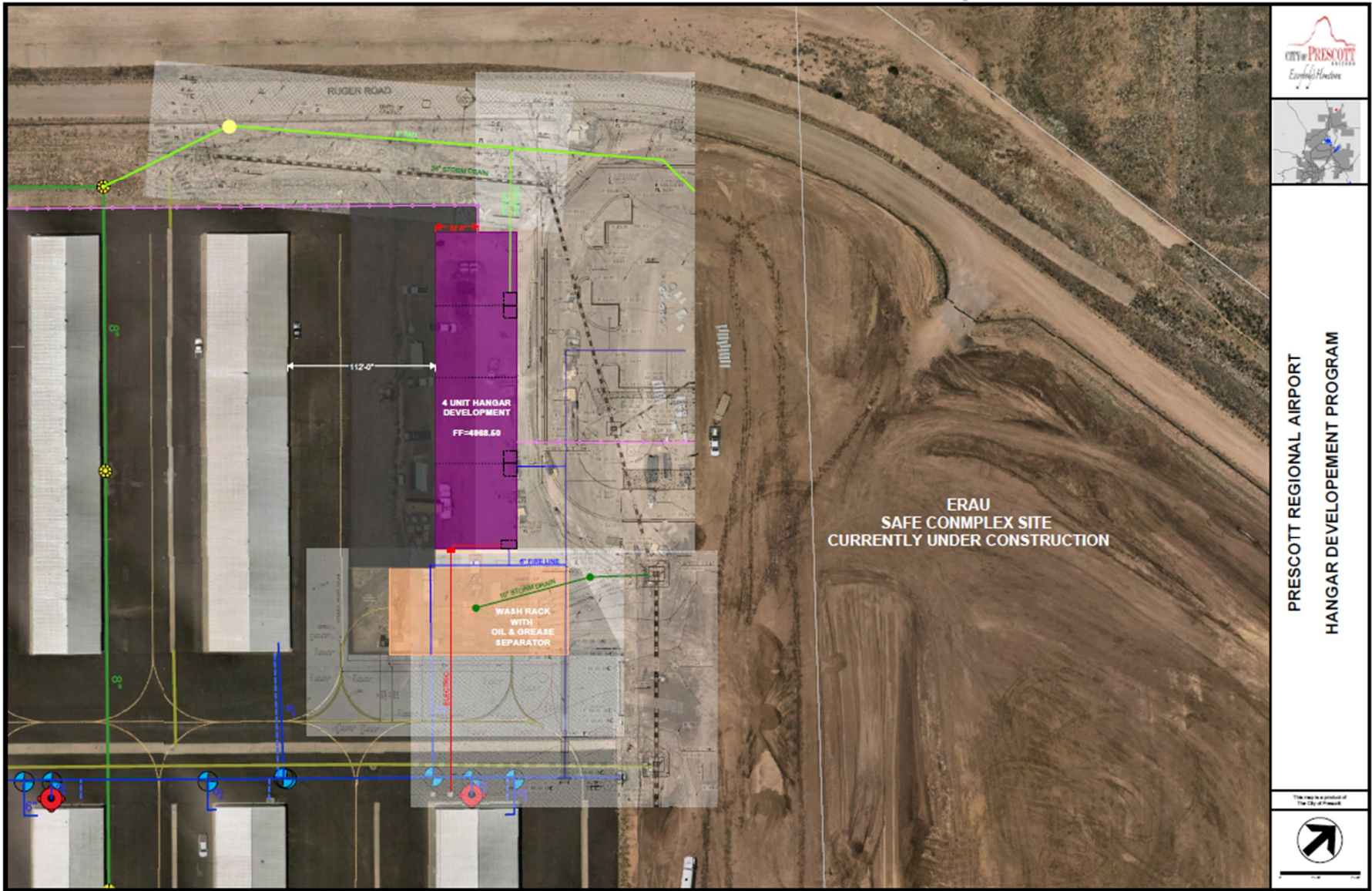
Notary Public

Commission Expires

ATTACHMENT D SITE LOCATIONS



INITIAL SITE PHASE



ATTACHMENT E

DBE REQUIREMENTS / FORMS

A. Applicable Federal Regulations

This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race-and gender-conscious DBE participation goal for the design-phase Contract, the Sponsor must track and report DBE participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving a DBE. For this reason, the Successful Submitter shall provide all relevant information to enable the required reporting.

B. DBE Participation

For the design-phase contract solicitation, the Sponsor has *not* established a race- or gender-*conscious* DBE participation goal. In accordance with the PRC DBE Program, a race and gender-neutral goal may be established for the construction phase contract for this project. The Sponsor extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Sponsor uses race- and gender-*neutral* measures to facilitate participation by DBEs and Small Businesses. The Sponsor *encourages* each Submitter to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Submitter might otherwise perform with its own forces.

C. Small Business Participation

The Sponsor will track the participation of all approved businesses throughout the life of this contract. The Sponsor will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at www.ecfr.gov (49 CFR Part 26.39).

D. DBE Certification

Only firms (1) certified by the Sponsor or another AZUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from RGN measures on this Contract. This DBE determination affects the Sponsor's tracking and reporting obligations to USDOT.

E. Civil Rights Assurances

As a recipient of USDOT funding, the Sponsor has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Sponsor and the Successful Submitter, and each Subcontract signed by the Successful Submitter and a Subcontractor, must include the following assurance *verbatim*:

“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 26 in the award and administration of USDOT-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 City of Prescott deems appropriate.”

Note: For purposes of the required Contract and Subcontract language above, Successful Submitter is the “contractor” awarded the contract.

F. Submittal Requirements

With the response to the Request for Statements of Qualifications, proposer is required to submit evidence of efforts to solicit DBE/SBE participation for the design-phase contract, including:

1. Listing of all proposed DBE/SBE team members, if any.
2. DBE/SBE certifications held by proposed DBE team members, if any.
3. Documentation of DBE/SBE outreach efforts to solicit DBE participation.

This documentation should be submitted as an appendix to the SOQ, labeled: “DBE/SBE Documentation”

The DBE documentation will not count against the page limit of the SOQ.

G. Guidance Concerning Good Faith Efforts

- I. When procuring construction, equipment, services, or any other purpose, the submitting applicant of a RSOQ must, make sufficient good faith efforts to meet the DBE requirements. Their submission can meet this requirement in either of two ways. First, they can meet the requirements, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it does not meet the requirements, the submitter can document adequate good faith efforts. This means that the applicant must show that they took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation the Sponsor (City of Prescott) contract goal requirement, Part 26 requires that good faith efforts are performed. City shall make a fair and reasonable judgment whether an applicant’s submission does not meet the goal made adequate good faith efforts. The city will consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance as outlined.

The efforts employed by the applicant should be those that one could reasonably expect someone to take if there are submitting a RSOQ actively and aggressively trying to obtain DBE participation sufficient to meet the DBE requirements. Mere pro forma efforts are not good faith efforts to meet the DBE RSOQ requirements. The determination concerning the sufficiency of the applicant’s good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

- III. A RSOQ submission does not require the applicate to meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the applicants submission makes an adequate good faith efforts showing. This rule specifically prohibits the city from ignoring bona fide good faith efforts.
- IV. The following is a list of types of actions which the city will consider as part of your good faith efforts to obtain DBE participation. It is not intended to be a checklist, nor

is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A.

1. Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.
2. The applicant should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. Their submission should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D.

1. Negotiating in good faith with interested DBEs. It is the applicant's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.
2. An applicant using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself a sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does

not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E.

1. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph should be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.
2. A prime contractor's inability to find a replacement DBE at the original price is not sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the City of Prescott or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to aid in the recruitment and placement of DBEs.

H. In determining whether an applicant has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, the city will review the performance of other applicants in meeting the contract goal. For example, when the apparent successful applicant fails to meet the contract goal, but others meet it, the city will reasonably raise the question of whether, with additional efforts, the apparent successful applicant could have met the goal. If the apparent successful applicant fails to meet the goal but meets or exceeds the average DBE participation obtained by other applicants, the city may view this, in conjunction with other factors, as evidence of the apparent successful applicant having made good faith efforts. As provided in § 26.53(b)(2)(vi), city will require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the applicant when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

- I. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts except in design-build procurement.

ATTACHMENT E continued:

DEMONSTRATION OF GOOD FAITH EFFORTS OR GOOD FAITH EFFORT PLAN

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a
minimum of

_____ % DBE utilization on this contract and submit documentation demonstrating good faith
efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____

(Signature)

Title

DEMONSTRATION OF GOOD FAITH EFFORTS

FORM 2: LETTER OF INTENT *Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.*

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

Description of Work	NAICS	Dollar Amount / %*	Manufacturer/Regular Dealer/Distributor/Broker**

**Percentage is to be used only in negotiated procurements*

***For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included.*

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

Signature of Bidder/Offeror's Authorized Representative

Date: _____

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above and is properly certified to be counted for DBE participation, therefore.

Signature of DBE's Authorized Representative

Date: _____

If the bidder/offeror does not receive award of the prime contract, all representations in this Letter of Intent shall be null and void.

Submit this page for each DBE subcontractor.

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be invalid. Submit this page for each DBE subcontractor.

FORM 3: DBE Regular Dealer/Distributor Affirmation Form

OMB Approval Pending 04/17/2024



U.S. Department of
Transportation

DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will all items sold or leased be provided from the on-hand inventory at your establishment? ☐ YES ☐ NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?
☐ YES ☐ NO (If "YES," Go to Question 2. If "NO" Continue.)
- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?
☐ YES ☐ NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**

*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

☐ YES ☐ NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)?

☐ YES² ☐ NO³

- a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased?

☐ YES² ☐ NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

ATTACHMENT F FEDERAL REQUIREMENTS

CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDINGS OR AIRPORT FACILITIES FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

SECTION I – CONSTRUCTION PHASE DAVIS BACON COMPLIANCE

The CMAR shall comply with “Federal Davis Bacon and Related Acts” in accordance with 29 CFR Part 3 and 29 CFR Part 5 as applicable for the construction phase contract. Prior to bidding to subcontractors, the CMAR shall obtain the effective federal wage determination to be included in all subcontracts.

SECTION II – FEDERAL REQUIREMENTS

Lobbying and Influencing Federal Employees. No Federal appropriated funds shall be paid, by or on behalf of the CMAR, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant. If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the CMAR shall complete and submit Standard Form-LLL, “Disclosure of Lobby activities,” in accordance with its instructions.

Trade Restriction. The CMAR and subcontractors, by submission of the Statement of Qualifications, certifies that it is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR); has not knowingly entered into any contract or subcontract for this contract with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list; and has not procured any product nor subcontracted for the supply of any product for use on the contract that is produced in a foreign country on said list.

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 a CMAR or subcontractor who is unable to certify to the above. If the CMAR knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the CMAR agrees that, if awarded a contract resulting from this solicitation it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The CMAR may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The CMAR shall provide immediate written notice to the Sponsor if the CMAR learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the CMAR if at any time it learns that its certification was erroneous by reason of changed circumstances.

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 CMAR is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Debarment, Suspension, Ineligibility and Voluntary Exclusion. The CMAR and its subcontractors, by submission of its Statement of Qualifications (SOQ) certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting its SOQ that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the CMAR or any lower tier participant is unable to certify this statement, it shall attach an explanation to its SOQ.

Buy American Preference. The CMAR certifies by submission of its Statement of Qualifications, that it will comply with Buy American preferences established under Title 49.

U.S.C. Section 50101. Unless formally approved by the Federal Aviation Administration, all acquired steel and manufactured products installed must be produced in the United States. Be advised that the North American Free Trade Agreement does not apply to Aviation Improvement projects.

Equal Employment Opportunity. The CMAR agrees that it will undertake affirmative action in conformance with 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment, contracting or leasing activities covered in 14 CFR Part 152, Subpart E. The CMAR assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. The CMAR further agrees that it will require its covered suborganizations to provide assurances to the CMAR that they similarly will undertake affirmative action and that they will require like assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.

If the CMAR is a construction contractor on the Airport, the CMAR shall submit to the City of Prescott the reports required by paragraph (e) of 14 C.F.R. § 152.415, on the same basis as stated in paragraph (e) of 14 C.F.R. § 152.415, and the CMAR shall require each subcontractor to submit the reports required by paragraph (f) of 14 C.F.R. § 152.415 through the CMAR to the City of Prescott, for transmittal by the City of Prescott to the FAA.

Non-Segregated Facilities. The CMAR and its subcontractors, by submission of the Statement of Qualifications certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control where segregated facilities are maintained. The CMAR certifies further that it will not maintain or provide for its employees segregated

facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained.

Federal Affirmative Action Requirements. The CMAR will comply with the federal Affirmative Action requirements as provided by 14 C.F.R. Part 152, subpart E during the term of the contract and the CMAR will require its subcontractors to also comply with the federal Affirmative Action requirements as set out above, and as may be amended. Failure of the CMAR and its subcontractors to maintain compliance during the term of the contract, including renewal options, is a material breach and may result in termination of the contract.

The selected CMAR should expect to comply with the Arizona State Statutes Title 34.



Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects

(Issued on May 24, 2023)

Contents

CURRENT CHANGES	77
CONTRACT GUIDANCE	78
1. PURPOSE OF THIS DOCUMENT.....	78
2. SPONSOR ACTIONS	78
3. TYPICAL PROCUREMENT STEPS.....	79
4. APPLICABILITY MATRIX FOR CONTRACT PROVISIONS.....	80
APPENDIX A – CONTRACT PROVISIONS.....	1
A1 ACCESS TO RECORDS AND REPORTS	1
A2 AFFIRMATIVE ACTION REQUIREMENT	2
A3 BREACH OF CONTRACT TERMS	5
A4 BUY AMERICAN PREFERENCE.....	6
A5 CIVIL RIGHTS - GENERAL	17
A6 CIVIL RIGHTS – TITLE VI ASSURANCE.....	19
A7 CLEAN AIR AND WATER POLLUTION CONTROL.....	29
A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS	30
A9 COPELAND “ANTI-KICKBACK” ACT	32
A10DAVIS-BACON REQUIREMENTS.....	34
A11DEBARMENT AND SUSPENSION	41
A12DISADVANTAGED BUSINESS ENTERPRISE	43
A13DISTRACTED DRIVING.....	47
A14PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO	
SURVEILLANCE SERVICES OR EQUIPMENT.....	48
A15DRUG FREE WORKPLACE REQUIREMENTS	49

A16	EQUAL EMPLOYMENT OPPORTUNITY (EEO).....	50
A17	FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE).....	58
A18	LOBBYING AND INFLUENCING FEDERAL EMPLOYEES	59
A19	PROHIBITION OF SEGREGATED FACILITIES	61
A20	OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970.....	63
A21	PROCUREMENT OF RECOVERED MATERIALS	64
A22	RIGHT TO INVENTIONS.....	66
A23	SEISMIC SAFETY.....	67
A24	TAX DELINQUENCY AND FELONY CONVICTIONS	69
A25	TERMINATION OF CONTRACT.....	71
A26	TRADE RESTRICTION CERTIFICATION.....	75
A27	VETERAN’S PREFERENCE.....	77
A28	DOMESTIC PREFERENCES FOR PROCUREMENTS	78

Current Changes

Item	Change
Editorial update made to the January 23, 2023 version (effective May 24, 2023)	The link on page 35 was updated to reflect changes to the Department of Labor website.
Editorial updates made to the November 17, 2022 version (effective January 23, 2023)	Pages 7, 16, 19, 20, 25, and 42 of Appendix A were edited to correct grammatical mistakes, update internal document links, and correct the name of the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

Contract Guidance

Purpose of this Document

- 1) The purpose of this document is to establish a convenient resource for Sponsors that consolidates federal contract provisions and clauses into one document that includes an applicability matrix. This document itself does not create, revise or delete requirements for participation in the Airport Improvement Program (AIP). The source of requirements addressed within this document are identified within the section for each individual clause.
- 2) **While this document is intended to assist Sponsors with their compliance efforts, it does not alter or modify the terms of any applicable statute or regulation, is not a substitute for reading the regulation and the applicability matrix, and each corresponding document section, nor does it constitute legal advice.**
- 3) Federal laws and regulations require that a Sponsor (a recipient of federal assistance) include specific clauses in certain contracts, solicitations, or specifications regardless of whether or not the project is federally funded.
- 4) For purposes of remaining compliant with its obligations, a Sponsor must incorporate applicable contract provisions in all its procurements and contract documents. Unless otherwise stated, these provisions flow down to subcontracts and sub-tier agreements.
 - 1) Terminology:
 - 5) The term **“Sponsor”** is used in this document to mean either an obligated Sponsor on a project that is not federally funded, or a Sponsor on an AIP funded project. A Sponsor is a “recipient” of federal assistance when receiving AIP or other FAA grant funds.
 - 6) The term **“Owner”** of a public use airport is generally used in the solicitation or contract clauses because of its common use in public contracts. An Owner becomes an obligated Sponsor upon acceptance of the AIP grant assurances associated with current or prior AIP grant funded projects.
 - 7) For purposes of determining requirements for contract provisions, the term **“contract”** includes professional services, and subcontracts and supplier contracts such as purchase orders.
 - 8) The term **“contractor”** is understood to mean a contractor, subcontractor, or consultant; and means one who participates, through a contract or subcontract (at any tier).
 - a. The term **“bid”** is understood to mean a bid, an offer, or a proposal.
 - b. The term **“applicant”** is understood to mean the following in different contexts:
 - 9) For the Equal Employment Opportunity (EEO) clause, the term **“applicant”** means an applicant for employment (whether or not the phrase, *for employment*, follows the word applicant or applicants).
 - i. For all other clauses, the term **“applicant”** means a bidder, offeror, or proposer for a contract.

Sponsor Actions

In general, Sponsor’s actions consistent with obligations:

Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects

- 10) Include in its procurements the provisions that are applicable to its project.
- 11) Not incorporate the entire contract provisions guidelines in its solicitation or contract documents, whether by reference or by inclusion in whole. Incorporation of this entire guidance document creates potential for ambiguous interpretation and may lead to improper application that unnecessarily increases price. A Sponsor that fails to properly incorporate applicable contract clauses may place themselves at risk for audit findings or denial of Federal funding.
- 12) Incorporate applicable contract provisions using mandatory language as required. The subheading entitled *Applicability* advises whether a particular clause or provision has mandatory language that a Sponsor must use.
 - (a) Mandatory Language – Whenever a clause or provision has mandatory text, the Sponsor must incorporate the text of the provision without change, except where specific adaptive input is necessary (e.g., such as the Sponsor’s name).
- 13) No Mandatory Language – For provisions without mandatory language, this guidance provides model language acceptable to the FAA. Some Sponsors may have standard procurement language that is equivalent to those federal provisions. In these cases, Sponsors may use their existing standard procurement provision language provided the text meets the intent and purpose of the Federal law or regulation.
- 14) Require the contractor (including all subcontractors) to insert these contract provisions in each lower tier contract (e.g., subcontract or sub-agreement).
- 15) Require the contractor (including all subcontractors) to incorporate the requirements of these contract provisions by reference for work done under any purchase orders, rental agreements, and other agreements for supplies or services.
- 16) Require that the prime contractor be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor, or service provider.
- 17) Verify that any required local or State provision does not conflict with or alter a Federal law or regulation.

Typical Procurement Steps

The typical procurement steps in a project are:

- 1) Solicitation, Request for Bids, or Request for Proposals – This is also called the Advertisement or Notice to Bidders.
- 2) Bidding or Accepting Proposals – In this stage, the bidders receive a complete set of the procurement documents, also known as the project manual. The project manual will typically include a copy of the solicitation, instructions-to-bidders, bid forms, certifications and representations, general provisions, contract conditions, copy of contract, project drawings, technical specifications, and related project documents.
- 3) Bid/Proposal Evaluation – Period when Sponsor tabulates, reviews, and evaluates all proposals for bid responsiveness and bidder responsibility.
- 4) Award – Point when the Sponsor formally awards the contract to the successful bidder.

Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects

- 5) Execution of Contract – Point at which the Sponsor formally enters into a legally binding agreement with bidder to perform services or provide goods.

Applicability Matrix for Contract Provisions

[Table 1](#) Matrix summarizes the applicability of contract provisions based upon the type of contract or agreement. The dollar threshold represents the value at which, when equal to or exceeded, the Sponsor must incorporate the provision in the contract or agreement.

Supplemental information addressing applicability and use for each provision is located in Appendix A. Appendix A and the Matrix include notes indicating when the Sponsor may incorporate references in the solicitation in lieu of including the entire text.

Sponsors are responsible for reviewing both the Matrix and each corresponding section to determine applicability of specific contract provisions.

Meaning of cell values in table below:

- Info – Sponsor has discretion on whether to include clause in its contracts.
- Limited – Provision with limited applicability depending on circumstances of the procurement.
- n/a – Provision that is not applicable for that procurement type.
- NIS – Provision that does not need to be included or referenced in the solicitation document
- REF – Provision to be incorporated into the solicitation by reference.
- REQD – Provision the Sponsor must incorporate into procurement documents.

Table 1 – Applicability of Provisions

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
Access to Records and Reports	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
Affirmative Action Requirement	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
Breach of Contract	\$250,000	NIS	REQD	REQD	REQD	REQD	n/a
Buy American Preferences	\$ 0	REF	Limited	REQD	REQD	Limited	n/a
(1) Buy American Statement	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(2) Construction	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(3) Equipment/Building Projects	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
Civil Rights – General	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
Civil Rights - Title VI Assurances	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) Notice - Solicitation	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) Clause - Contracts	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) Clause – Transfer of U.S. Property	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) Clause – Transfer of Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) Clause - Construct/Use/Access to Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) List – Pertinent Authorities	\$0	NIS	REQD	REQD	REQD	REQD	REQD
Clean Air/Water Pollution Control	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
Contract Work Hours and Safety Standards	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
Copeland Anti-Kickback	\$ 2,000	NIS	Limited	REQD	Limited	Limited	n/a
Davis Bacon Requirements	\$ 2,000	REF	Limited	REQD	Limited	Limited	n/a
Debarment and Suspension	\$25,000	REF	REQD	REQD	REQD	Limited	n/a
Disadvantaged Business Enterprise	\$ 250,000	REQD	REQD	REQD	REQD	REQD	n/a
Distracted Driving	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
Domestic Preferences for Procurements	\$0	NIS	REQD	REQD	REQD	REQD	Info
Equal Employment Opportunity	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(1) EEO Contract Clause	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(2) EEO Specification	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
Federal Fair Labor Standards Act	\$ 0	REQD	REQD	REQD	REQD	REQD	Info
Foreign Trade Restriction	\$ 0	REQD	REQD	REQD	REQD	REQD	n/a
Lobbying Federal Employees	\$ 100,000	REF	REQD	REQD	REQD	REQD	n/a
Occupational Safety and Health Act	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment	\$0	NIS	REQD	REQD	REQD	REQD	Info
Prohibition of Segregated Facilities	\$0	NIS	Limited	REQD	Limited	Limited	n/a
Recovered Materials	\$10,000	REF	Limited	REQD	REQD	Limited	n/a
Right to Inventions	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
Seismic Safety	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
Tax Delinquency and Felony Conviction	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
Termination of Contract	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
Veteran's Preference	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a

Airport Concessions Disadvantage Business Enterprise (ACDBE) Notes:

1. Language relative to solicitation for ACDBEs does not need to be included in AIP funded solicitations, since in no case are concessions activities funded with federal funds.
2. Airport Sponsors must include the appropriate Civil Rights – Title VI language in their solicitation notices when they seek proposals for concessions.
3. For ACDBE agreements, use the column for *Non-AIP Contracts*.

Appendix A – CONTRACT PROVISIONS

A1 ACCESS TO RECORDS AND REPORTS

A1.1 SOURCE

2 CFR § 200.334

2 CFR § 200.337

FAA Order 5100.38

A1.2 APPLICABILITY

2 CFR § 200.334 requires a Sponsor to retain records pertinent to a Federal award for a period of three years from submission of final closure documents. 2 CFR § 200.337 establishes that Sponsors must provide Federal entities the right to access records pertinent to the Federal award. FAA policy extends these requirements to the Sponsor's contracts and subcontracts of AIP funded projects.

Contract Types – The Sponsor must include this provision in all contracts and subcontracts of AIP funded projects.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA with meeting the intent of this requirement. If the Sponsor prefers to use different language, the Sponsor's language must fully satisfy the requirements of 2 CFR §§ 200.334 and 200.337.

A1.3 MODEL CONTRACT CLAUSE

ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, 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.

A2 AFFIRMATIVE ACTION REQUIREMENT

A2.1 SOURCE

41 CFR Part 60-4

Executive Order 11246

A2.2 APPLICABILITY

Minority Participation. Sponsors are required to set goals for minority participation in AIP funded projects exceeding \$10,000. The goals for minority participation derive from Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA) as established in Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table of all EAs and SMSAs and the associated minority participation goals.

To find the goals for minority participation, a Sponsor must either refer to the Federal Register Notice or to the Department of Labor online document, "[Participation Goals for Minorities and Females](#)". EAs and SMSAs span state boundaries. A Sponsor may have to refer to entries for adjacent states in order to locate the goal for the project location.

Female Participation. Executive Order 11246 has set a goal of 6.9% nationally for female participation for all construction projects. This value remains constant for all counties and states.

Contract Types –

Construction – The Sponsor must incorporate this notice in all solicitations for bids or requests for proposals for AIP funded construction work contracts and subcontracts that exceed \$10,000. Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.

Equipment – The Sponsor must incorporate this notice in any equipment project exceeding \$10,000 that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at a manufacturer's plant (e.g., firefighting and snow removal vehicles).

Professional Services – The Sponsor must incorporate this notice in any professional service agreement if the professional services agreement includes tasks that meet the definition of construction work [as defined by the U.S. Department of Labor (DOL)] and exceeds \$10,000. Examples include installation of monitoring systems (e.g., noise, environmental, etc.).

Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects

Property/Land – The Sponsor must incorporate this notice in any agreement associated with land acquisition if the agreement includes construction work (defined above) that exceeds \$10,000. Examples include demolition of structures or installation of boundary fencing.

Use of Provision – MANDATORY TEXT. The Sponsor must:

- (a) Incorporate the text of this provision in its solicitations without modification.
- (b) Incorporate the applicable minority participation goal and the covered area by geographic name.
- (c) Not simply insert a reference to the 1980 Federal Register Notice.

A2.3 MANDATORY SOLICITATION CLAUSE

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: **[Sponsor must insert established goal]**

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 nonfederally 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

Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects

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 **[Sponsor must insert state, county, and city]**.

A3 BREACH OF CONTRACT TERMS

A3.1 SOURCE

2 CFR Part 200, Appendix II(A)

A3.2 APPLICABILITY

This provision requires Sponsors to incorporate administrative, contractual or legal remedies in the event that a contractor violates or breaches contract terms. The Sponsor must also include appropriate sanctions and penalties.

Contract Types – This provision is required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II (A). This threshold is occasionally adjusted for inflation and is \$250,000.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA as meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 2 CFR Part 200. Select either "contractor" or "consultant" as applicable.

A3.3 MODEL CONTRACT CLAUSE

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the [Contractor / Consultant] 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 the 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.

A4 BUY AMERICAN PREFERENCE

A4.1 SOURCE

Title 49 USC § 50101

Executive Order 14005, *Ensuring the Future is Made in All of America by All of America's Workers*

Bipartisan Infrastructure Law (Pub. L. No. 117-58), Build America, Buy America (BABA)

A4.2 APPLICABILITY

The Buy American Preference incorporates statutory requirements and policies outlined in the in 49 USC § 50101, Executive Order 14005, and BABA.

Section 50101 of 49 USC requires that all steel and manufactured goods used on AIP projects be produced in the United States. This section also gives the FAA the ability to issue a waiver to a Sponsor to use non-domestic material on an AIP funded project subject to meeting certain conditions. A Sponsor may request that the FAA issue a waiver from the Buy American Preference requirements if the FAA finds that:

- 1) Applying the provision is not in the public interest.
- 2) The steel or manufactured goods are not available in sufficient quantity or quality in the United States.
- 3) The cost of components and subcomponents produced in the United States is more than 60 percent of the total components of a facility or equipment, and final assembly has taken place in the United States. Items that have an FAA standard specification item number (such as specific airport lighting equipment) are considered the equipment.
- 4) Applying this provision would increase the cost of the overall project by more than 25 percent.

Executive Order 14005 advances the Administration's priority to use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States. The Order directs, to the extent appropriate and consistent with applicable law, agencies shall partner with the Hollings Manufacturing Extension Partnership (MEP) to conduct supplier scouting in order to identify American companies that are able to produce goods, products, and materials in the United States that meet Federal procurement needs, prior to consideration of using non-domestic products.

The Bipartisan Infrastructure Law, Build America, Buy America (BABA) Act strengthens Made in America Laws and bolsters America's industrial base, protects national security, and supports high-paying jobs. Under BABA, iron, steel and certain construction materials are required to be 100% produced in the United States.

Under the Bipartisan Infrastructure Law (Pub. L. No. 117-58) BABA three waivers are available for iron and steel, manufactured products, and construction materials when a Federal agency finds that –

- 1) Applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”);
- 2) Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
- 3) The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”).

BABA defines construction materials, items that are or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber or drywall.

Items that consist of two or more of the aforementioned materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

The Buy America Preference requirements flow down from the Sponsor to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

Note: The Buy American Preference does not apply to temporary equipment a contractor uses as a tool of its trade and which does not remain as part of the project.

Required Documentation

The FAA Buy American Requests. All applications (requests) for an FAA Buy American Preference Waiver includes, at minimum, a completed Content Percentage Worksheet and Final Assembly Questionnaire. Additional information may be requested from the applicant by the FAA. Airport Sponsors, consultants, construction contractors, or equipment manufacturers are responsible for completing and submitting waiver applications. The FAA is unable to make a determination on waiver requests with incomplete information. Sponsors must confirm with the bidder or offeror to assess the adequacy of the waiver request and associated information prior to forwarding a waiver request to the FAA for action. All FAA waivers forms are available from the FAA Buy American Requirements webpage.

Proprietary Confidentiality. Exemption 4 of the Freedom of Information Act protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential. Proprietary manufacturing and design information submitted to the Federal Aviation Administration for the purposes of receiving a Buy American Waiver shall not be disclosed outside the FAA. The FAA will provide a written notification to the Airport Sponsor, manufacturer(s), contractor(s) or supplier(s) when a waiver determination is complete.

Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects

Timing of Waiver Requests. Sponsors desiring a Type 2 waiver should submit their waiver request, with justification, *before* issuing a solicitation for bids or a request for proposal for a project.

The Sponsor must submit a Type 2, Type 3, or Type 4 waiver request *prior* to executing the contract. The FAA will generally not consider waiver requests after execution of the contract except where extraordinary and extenuating circumstances exist.

The Buy American Notice of Determination (NOD) Process. The FAA Reauthorization Act of 2018 requires that all approved waivers must be posted to the FAA’s website and remain posted for public comment for 10 days, before becoming effective. All FAA waivers must complete the NOD process. Sponsors are encouraged to wait until approved waivers become effective before executing AIP projects.

Buy American Conformance Lists. The FAA Office of Airports maintains listings of projects and products that have received a waiver from the Buy American Preference requirements for project specific and nationwide use. Each of these conformance lists is available online at www.faa.gov/airports/aip/buy_american/. Products listed on the FAA Nationwide Buy American Conformance list do not require additional submittal of domestic content information. Nationwide waivers expire five years from the date issued, unless revoked earlier by the FAA.

Facility Waiver Requests. For construction of a facility, the Sponsor may submit the waiver request after bid opening, but prior to contract execution. Examples of facility construction include terminal buildings, terminal renovation, and snow removal equipment buildings.

Contract Types –

Construction and Equipment – The Sponsor must meet the Buy American Preference requirements of 49 USC § 50101 and BABA for all AIP funded projects that require materials that are or consists primarily of iron, steel or manufactured goods and construction materials.

Professional Services – Professional service agreements (PSAs) do not normally result in a deliverable that meets the definition of a manufactured product. However, the emergence of various project delivery methods has created situations where task deliverables under a PSA may include a manufactured product. If a PSA includes providing a manufactured good as a deliverable under the contract, the Sponsor must include the Buy American Preference provision in the agreement.

Property – Most land transactions do not involve acquiring a manufactured product. However, under certain circumstances, a property acquisition project could result in the installation of a manufactured product. For example, the installation of property fencing, gates, doors and locks, etc. represent manufactured products acquired under an AIP funded land project that must comply with Buy American Preferences.

Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects

Use of Provisions – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully comply with 49 USC § 50101 and BABA.

There are two types of FAA Buy American certifications. The Sponsor must incorporate the appropriate certifications of compliance with FAA Buy American Preference in the solicitation:

- **Construction Projects** involving the replacement, rehabilitation, reconstruction of airfield surfaces such as on runways, taxiways, taxilanes, aprons, roadways, parking lots, etc. – Insert the Certificate of compliance to FAA Buy American Preference based on Construction Projects.
- **Equipment and Buildings Projects** involving and including the acquisition of equipment such as snow removal equipment, navigational aids, wind cones, and the construction of buildings such as hangars, terminal development, lighting vaults, aircraft rescue & firefighting buildings, etc. - Insert the Certificate of Compliance with FAA Buy American Preference Based on Equipment/Building Projects.

A4.3 MODEL SOLICITATION CLAUSES

A4.3.1 Certification of Compliance with FAA Buy American Preference Statement

FAA BUY AMERICAN PREFERENCE

The Contractor certifies that its bid/offer is in compliance with 49 USC § 50101, BABA and other related Made in America Laws,¹ U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration 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.

The bidder or offeror must complete and submit the certification of compliance with FAA’s Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA’s Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including

¹ Per Executive Order 14005 “Made in America Laws” means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to “Buy America” or “Buy American,” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

A4.3.2 Certification of Compliance with FAA Buy American Preference – Construction Projects

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101, BABA and other related Made in America Laws, U.S. statutes, guidance, and FAA policies, 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, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing iron, steel and manufactured products produced in the United States;
 - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
 - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - d) 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:

- a) To provide to the Airport Sponsor or the FAA evidence that documents the source and origin of the iron, steel, and/or manufactured product.
 - b) To faithfully comply with providing U.S. domestic products.
 - c) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
 - d) Certify that all construction materials used in the project are manufactured in the U.S.
- ☐ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for 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:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
 - b) 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.

- c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
- d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
- e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 2 Waiver (Nonavailability) - The iron, steel, manufactured goods or construction materials or manufactured goods are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

Type 3 Waiver – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “facility/project.” The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all manufactured products that are not comprised of 100 percent U.S. 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).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- d) 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 (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) A completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bids and/or offers;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

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

A4.3.3 **Certification of Compliance with FAA Buy American Preference – Equipment/Building Projects**

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, and other Made in America Laws, U.S. statutes, guidance, and FAA policies 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, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing steel and manufactured products produced in the United States;
 - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
 - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - d) 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:

- a) To provide to the Airport Sponsor or FAA evidence that documents the source and origin of the steel and manufactured product.
 - b) To faithfully comply with providing U.S. domestic product.
 - c) To furnish U.S. domestic product for any waiver request that the FAA rejects.
 - d) 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 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
 - b) 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.

- c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
- d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 2 Waiver (Nonavailability) - The iron, steel, manufactured goods or construction materials are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

Type 3 Waiver – The cost of the item components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “item”. The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. 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).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- d) 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 (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials, would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bidders and/or offerors;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

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

A5 CIVIL RIGHTS - GENERAL

A5.1 SOURCE

49 USC § 47123

A5.2 APPLICABILITY

There are two separate civil rights provisions that apply to projects:

1. FAA General Civil Rights Provision and,
2. Title VI provisions, which are addressed in Appendix A6.

Contract Types – The General Civil Rights Provisions found in 49 USC § 47123, derived from the Airport and Airway Improvement Act of 1982, Section 520, apply to all Sponsor contracts *regardless* of funding source.

Use of Provision – MANDATORY TEXT. Each contract must include two civil rights provisions. The first general clause must be included in all contracts, lease agreements, or transfer agreements. An additional specific provision must be included; the applicable text is based on whether the contract is a general contract or whether the contract is a lease or transfer agreement. The Sponsor must incorporate the text of the appropriate general clause and specific clause without modification into the contract, lease, or transfer agreement.

The required clauses for each type of contact are summarized in the table below:

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Clause that is used for all contracts, lease agreements and transfer agreements	Every contract or agreement regardless of funding source.	A5.3.1
Clause that is used for general contract agreements	This applies to all contracts that do not involve property agreements. It applies to all contracts not covered by A5.3.3 regardless of funding source.	A5.3.2
Clause that is used for lease agreements and transfer agreements	This applies to all property agreements such leases of concession space in a terminal and leases where a physical portion of the airport is transferred for use. It applies to all contracts not covered by A5.3.2 regardless of funding source.	A5.3.3

A5.3 MANDATORY CONTRACT CLAUSES

A5.3.1 General Clause that is used for Contracts, Lease Agreements, and Transfer Agreements

GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

A5.3.2 Specific Clause that is used for General Contract Agreements

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

A5.3.3 Specific Clause that is used for Lease Agreements or Transfer Agreements

If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor.

The above provision obligates the Contractor for the period during which the property is owned, used or possessed by the Contractor and the airport remains obligated to the Federal Aviation Administration.

A6 CIVIL RIGHTS – TITLE VI ASSURANCE

A6.1 SOURCE

49 USC § 47123

FAA Order 1400.11

A6.2 APPLICABILITY

Title VI of the Civil Rights Act of 1964, as amended, (Title VI) prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance. Sponsors must include appropriate clauses from the Standard DOT Title VI Assurances in all contracts and solicitations.

The text of each individual clause comes from the U.S. Department of Transportation [Order DOT 1050.2](#), Standard Title VI Assurances and Nondiscrimination Provisions, effective April 24, 2013. These assurances require that the Recipient (the Sponsor) insert the appropriate clauses in the form provided by the DOT. Where the clause refers to the applicable activity, project, or program, it means the AIP project.

The clauses are as follows:

A6.2.1 Applicability of Title VI Solicitation Notice

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Title VI Solicitation Notice – <ul style="list-style-type: none">Assurance 2 of the DOT Standard Title VI Assurances and Nondiscrimination ClausesAssurance 30(d) of the Airport Sponsors Assurances	1) All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; and 2) All Sponsor proposals for negotiated agreements regardless of funding source.	A6.3.1

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
<p>Title VI Clauses for Compliance with Nondiscrimination Requirements</p> <ul style="list-style-type: none"> Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30(e)(1) of the Airport Sponsor Assurances 	<p>Every contract or agreement (unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities, which is a rare occurrence).</p> <p>It has been determined that service contracts with utility companies that are not already subject to substantively identical nondiscrimination requirements must include this clause.</p>	A6.4.2
<p>Title VI Required Clause for Property Interests Transferred from the United States</p> <ul style="list-style-type: none"> Assurance 4 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30e.3 of the Airport Sponsor Assurances 	<p>As a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Sponsor.</p> <p>This is a rare occurrence, and it will be the responsibility of the United States government to include the clause in the contract.</p>	A6.4.3
<p>Title VI Required Clause for Transfer of Real Property Acquired or Improved Under the Activity, Facility or Program –</p> <ul style="list-style-type: none"> Assurance 5 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30(e)(4)(a) of the Airport Sponsor Assurances 	<p>As a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for all transfers of real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases where a physical portion of the airport is transferred for use, for example a fuel farm, apron space, or a parking facility. It applies to agreements not covered by A6.4.4.</p>	A6.4.4

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
<p>Clause for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program</p> <ul style="list-style-type: none"> Assurance 6 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30(e)(4)(b) of the Airport Sponsor Assurances 	<p>In any future (deeds, leases, licenses, permits, or similar instruments) entered into by the Sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases of concession space in a terminal not covered by A6.4.3.</p>	A6.4.5
<p>Title VI List of Pertinent Nondiscrimination Acts and Authorities</p> <ul style="list-style-type: none"> Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30(e)(2) of the Airport Sponsor Assurances 	<p>Insert this list in every contract or agreement, unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities, which is a rare occurrence.</p> <p>This list can only be omitted if the FAA has determined that the contractor or company is already subject to substantively identical nondiscrimination requirements.</p>	<p>A6.4.1</p> <p>List must be included in all applicable contracts.</p>

A6.3 MANDATORY SOLICITATION CLAUSE

The Sponsor must include this clause in:

- 1) All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; and
- 2) All Sponsor proposals for negotiated agreements **regardless of funding source.**

A6.3.1 Title VI Solicitation Notice

Title VI Solicitation Notice:

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

A6.4 MANDATORY CONTRACT CLAUSES

A6.4.1 Title VI List of Pertinent Nondiscrimination Acts and Authorities

Insert this list in every contract or agreement, unless the Sponsor has determined and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities. This list can be omitted if the FAA has determined that the contractor or company is already subject to nondiscrimination requirements, which is a rare occurrence.

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 USC § 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 USC § 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 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (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 (42 USC § 12101, *et seq.*) (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) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 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 (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);

- 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. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

A6.4.2 **Nondiscrimination Requirements/Title VI Clauses for Compliance**

The Sponsor must include this contract clause in:

- 1) Every contract or agreement (unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities); and
- 2) Service contracts with utility companies that are not already subject to substantively identical nondiscrimination requirements.
- 3) Other types of contracts with utility companies involving property covered by A6.4.2, A6.4.3, or A6.4.4.

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. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability 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.

A6.4.3 **Title VI Clauses for Deeds Transferring United States Property**

This is a rare occurrence, and it will be the responsibility of the United States government to include the clause in the contract. It will be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Sponsor.

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 (*Title of Sponsor*) 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 USC §§ 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Sponsor*) 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 (*Title of Sponsor*) 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 (*Title of Sponsor*), its successors and assigns.

The (*Title of Sponsor*), 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 (*Title of Sponsor*) 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 nondiscrimination 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.)

A6.4.4 **Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program**

This applies to agreements such as leases where a physical portion of the airport is transferred for use—for example a fuel farm, apron space, or a parking facility—and will be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for all transfers of real property acquired or improved under the Airport Improvement Program.

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Sponsor 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 Title VI List of Pertinent Nondiscrimination Acts and 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.)

A6.4.5 **Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program**

This applies to agreements such as leases of concession space in a terminal and any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under the Airport Improvement Program.

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 (*Title of Sponsor*) 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 Title VI List of Pertinent Nondiscrimination Acts and Authorities.

- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, **(Title of Sponsor)** 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 Non-discrimination covenants, **(Title of Sponsor)** will there upon revert to and vest in and become the absolute property of **(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.)

A7 CLEAN AIR AND WATER POLLUTION CONTROL

A7.1 SOURCE

2 CFR Part 200, Appendix II(G)

42 USC § 7401, et seq

33 USC § 1251, et seq

A7.2 APPLICABILITY

Contract Types – This provision is required for all contracts and lower tier contracts that exceed \$150,000.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of Appendix II to 2 CFR § 200.

A7.3 MODEL CONTRACT CLAUSE

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 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 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 exceed \$150,000.

A8 **CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

A8.1 **SOURCE**

2 CFR Part 200, Appendix II(E)

2 CFR § 5.5(b)

40 USC § 3702

40 USC § 3704

A8.2 **APPLICABILITY**

Contract Work Hours and Safety Standards Act Requirements (CWHSSA) (40 USC §§ 3702 & 3704) requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts not less than one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. CWHSSA prohibits unsanitary, hazardous, or dangerous working conditions on federally-assisted projects. The Wage and Hour Division (WHD) within the U.S. Department of Labor (DOL) enforces the compensation requirements of this Act, while DOL's Occupational Safety and Health Administration (OSHA) enforces the safety and health requirements.

Contract Types –

Construction – This provision applies to all contracts and lower tier contracts that exceed \$100,000, and employ laborers, mechanics, watchmen, and guards.

Equipment – This provision applies to any equipment project exceeding \$100,000 that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g., ARFF and SRE vehicles).

Professional Services – This provision applies to professional service agreements that exceed \$100,000 and employs laborers, mechanics, watchmen, and guards. This includes members of survey crews and exploratory drilling operations.

Property – While most land transactions do not involve employment of laborers, mechanics, watchmen, and guards, under certain circumstances, a property acquisition project could require such employment. Examples include the installation of property fencing or testing for environmental contamination

Use of Provision – MANDATORY TEXT. Sponsors must incorporate this text without modification.

A8.3 MANDATORY CONTRACT CLAUSE

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 \$29 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.

A9 COPELAND “ANTI-KICKBACK” ACT

A9.1 SOURCE

2 CFR Part 200, Appendix II(D)

29 CFR Parts 3 and 5

A9.2 APPLICABILITY and PURPOSE

The Copeland (Anti-Kickback) Act (18 USC § 874 and 40 USC § 3145) makes it unlawful to induce by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.

Contract Types –

Construction – This provision applies to all construction contracts and subcontracts financed under the AIP that exceed \$2,000.

Equipment – This provision applies to all equipment installation projects (e.g., electrical vault improvements) financed under the AIP that exceed \$2,000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g., SRE and ARFF vehicles).

Professional Services –The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) include tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate the Copeland Anti-kickback provision.

Property –Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the Copeland Anti-Kickback provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The Sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 29 CFR Part 5.

A9.3 MODEL CONTRACT CLAUSE

COPELAND “ANTI-KICKBACK” ACT

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 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.

A10 DAVIS-BACON REQUIREMENTS

A10.1 SOURCE

2 CFR Part 200, Appendix II(D)

29 CFR Part 5

49 USC § 47112(b)

40 USC §§ 3141-3144, 3146, and 3147

A10.2 APPLICABILITY

The Davis-Bacon Act (40 USC §§ 3141-3144, 3146, and 3147) ensures that laborers and mechanics employed under the contract receive pay no less than the locally prevailing wages and fringe benefits as determined by the Department of Labor.

Contract Types –

Construction – Incorporate into all construction contracts and subcontracts that exceed \$2,000 and include funding from the AIP.

Equipment – This provision applies to all equipment installation projects (e.g., electrical vault improvements) financed under the AIP that exceed \$ 2,000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor's plant (e.g., SRE and ARFF vehicles)

Professional Services – The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) includes tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate this clause.

Property – Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The Sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

Fencing Projects – Fencing projects that exceed \$2,000 must include this provision.

Use of Provision – MANDATORY TEXT. 29 CFR part 5 establishes specific language a Sponsor must use. The Sponsor may not make any modification to the standard language. A/E firms that employ

laborers and mechanics on a task that meets the definition of construction, alteration, or repair are acting as a contractor. The Sponsor may not substitute the term “Contractor” for “Consultant” in such instances.

A10.3 MANDATORY CONTRACT CLAUSE

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 § 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;
- (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, U.S. Department of Labor, Washington, DC 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 the 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 that 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 <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification> 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, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, 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 Office of Apprenticeship Training, Employer and Labor Services 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 Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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 that 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 §§ 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 § 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 USC § 1001.

A11 DEBARMENT AND SUSPENSION

A11.1 SOURCE

2 CFR Part 180 (Subpart B)

2 CFR Part 200, Appendix II(H)

2 CFR Part 1200

DOT Order 4200.5

Executive Orders 12549 and 12689

A11.2 APPLICABILITY

The Sponsor must verify that the firm or individual that it is entering into a contract with is not presently suspended, excluded, or debarred by any Federal department or agency from participating in federally-assisted projects. The Sponsor accomplishes this by:

- 1) Checking the System for Award Management (SAM.gov) to verify that the firm or individual is not listed in SAM.gov as being suspended, debarred, or excluded;
- 2) Collecting a certification from the firm or individual that it is not suspended, debarred, or excluded; and
- 3) Incorporating a clause in the contract that requires lower tier contracts to verify that no suspended, debarred, or excluded firm or individual is included in the project.

Contract Types – This requirement applies to *covered transactions*, which are defined in 2 CFR part 180 (Subpart B). AIP funded contracts are non-procurement transactions, as defined by 2 CFR § 180.970. Covered transactions include any AIP-funded contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000. This includes contracts associated with land acquisition projects.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 2 CFR part 180. For professional service agreements, Sponsor may substitute "bidder/offeror" with "consultant."

A11.3 MODEL BID/PROPOSAL CERTIFICATION CLAUSES

A11.3.1 Bidder or Offeror Certification

CERTIFICATION OF OFFEROR/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.

A11.3.2 Lower Tier Contract Certification

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 confirm 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 Certification of Offeror /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration 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.

A12 DISADVANTAGED BUSINESS ENTERPRISE

A12.1 SOURCE

49 CFR Part 26

A12.2 APPLICABILITY

A Sponsor that anticipates awarding \$250,000 or more in AIP funded prime contracts in a federal fiscal year must have an approved Disadvantaged Business Enterprise (DBE) program on file with the FAA Office of Civil Rights (49 CFR § 26.21). The approved DBE program will identify a 3-year overall program goal that the Sponsor bases on the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on the project (49 CFR § 26.45).

Contract Types – Sponsors with a DBE program on file with the FAA must include the following provisions, if applicable:

- 1) Clause in all solicitations for proposals for which a contract goal has been established,
- 2) Clause in each prime contract, and
- 3) Clause in solicitations that are obtaining DBE participation through race/gender neutral means.

Use of Provision –

1. *Solicitations with a DBE Contract Goal* – No mandatory language provided. 49 CFR §26.53 requires a Sponsor's solicitation to address what a contractor must submit on proposed DBE participation. The language of A12.3.1 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor's revised language must fully satisfy these requirements. The Sponsor may require the contractor's submittal on proposed DBE participation either at bid opening as a matter of responsiveness or within five days of bid opening as a matter of responsibility.
2. *Solicitations Relying on Race/Gender Neutral Means* – No mandatory language provided. The language of A12.3.2 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor's revised language must fully satisfy requirements for a Sponsor that is not applying a project specific contract goal but is covered by a DBE program on file with the FAA.
3. *Assurance for Contracts Covered by DBE Program* – **MANDATORY TEXT PROVIDED.** Sponsors must incorporate this language if they have a DBE program on file with the FAA. This includes projects where DBE participation is obtained through race/gender neutral means (i.e., no DBE contract goal). Section 26.13 of 49 CFR establishes mandatory language for contractor assurance. The Sponsor must not modify the language. Part 26 of 49 CFR requires Sponsors ensure this clause also flows down into subcontracts (i.e., must be included verbatim in subcontracts).

4. *Prompt Payment for Contracts Covered by DBE Program* – No mandatory language provided. Section 26.29 of 49 CFR requires Sponsors to include a contract clause requiring prompt payment to subcontractors no later than thirty (30) days after the prime contractor receives payment from the Sponsor. The requirement applies to all subcontractors, not just DBEs. The prompt payment language of A12.3.3 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, such as a specific clause identified in the Sponsor's approved DBE program plan, the Sponsor's revised language must fully satisfy these requirements.
5. *Termination of DBE Subcontractors on Contracts with a DBE Contract Goal* - No mandatory language provided. Section 26.53 of 49 CFR prohibits unauthorized removal or replacement of DBE firms listed in response to a solicitation that had a DBE contract goal and sets forth the specific enforcement mechanism recipients must include in prime contracts. The language of A12.3.3 is acceptable to the FAA in meeting the intent of this requirement.
6. Sponsors that are not required to have a DBE program on file with the FAA are not required to include DBE provisions and clauses.

A12.3 REQUIRED PROVISIONS

A12.3.1 Solicitation Language (Solicitations that include a Contract Goal)

Bid Information Submitted as a matter of **responsiveness**:

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 responsiveness, the Bidder or Offeror must submit the following information with its proposal 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) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) 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 documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

Bid Information submitted as a matter of **responsibility**:

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 responsibility, every Bidder or Offeror must submit the following information on the forms provided herein within five days after bid opening.

- 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) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) 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 documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

A12.3.2 Solicitation Language (Race/Gender Neutral Means)

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the [Insert Name of Owner] 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.

A12.3.3 Prime Contracts (Contracts Covered by a DBE Program)

Contract Assurance (49 CFR § 26.13; mandatory text provided) –

The Contractor, subrecipient 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, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;

Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects

3) Liquidated damages; and/or

4) Disqualifying the Contractor from future bidding as non-responsible.

Prompt Payment (49 CFR § 26.29; acceptable/sample text provided) –

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [specify number of days, not to exceed 30] 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 number of days, not to exceed 30] 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.

Termination of DBE Subcontracts (49 CFR § 26.53(f); acceptable/sample text provided) –

The prime contractor must not terminate a DBE subcontractor listed in response to [include Solicitation paragraph number where paragraph 12.3.1, Solicitation Language appears] (or an approved substitute DBE firm) without prior written consent of [Name of Recipient]. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent [Name of Recipient]. Unless [Name of Recipient] consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

[Name of Recipient] may provide such written consent only if [Name of Recipient] agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

Before transmitting to [Name of Recipient] its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to [Name of Recipient], of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise [Name of Recipient] and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why [Name of Recipient] should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), [Name of Recipient] may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

A13 DISTRACTED DRIVING

A13.1 SOURCE

Executive Order 13513

DOT Order 3902.10

A13.2 APPLICABILITY

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 subgrant.

Contract Types – Sponsors must insert this provision in all AIP funded contracts that exceed the micro-purchase threshold of 2 CFR § 200.320 (currently set at \$10,000).

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor's revised language must fully satisfy these requirements.

A13.3 MODEL CONTRACT CLAUSE

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 Federal Aviation Administration 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 subgrant.

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 \$10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

A14 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

A14.1 SOURCE

2 CFR § 200, Appendix II(K)

2 CFR § 200.216

A14.2 APPLICABILITY

Sponsors and subgrant recipients are prohibited from using AIP grant funds to:

- a) Procure or obtain,
- b) Extend or renew a contract to procure or obtain, or
- c) Enter into a contract to procure or obtain certain covered telecommunications equipment.

These restrictions apply to telecommunication equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system. Covered telecommunications equipment is equipment produced or provided by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of either).

Contract Types – The Sponsor must include this provision in all AIP funded contracts and lower-tier contracts.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully satisfy these requirements. Sponsor may substitute “Contractor and subcontractor” with “Consultant and sub-consultant” for professional service agreements.

A14.3 MODEL CERTIFICATION CLAUSE

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

A15 DRUG FREE WORKPLACE REQUIREMENTS

A15.1 SOURCE

49 CFR Part 32

Drug-Free Workplace Act of 1988 (41 USC § 8101-8106, as amended)

A15.2 APPLICABILITY

The Drug-Free Workplace Act of 1988 requires some Federal contractors and *all* Federal grantees to agree that they will provide drug-free workplaces as a condition of receiving a contract or grant from a Federal agency. The Act does *not* apply to contractors, subcontractors, or subgrantees, although the Federal grantees workplace may be where the contractors, subcontractors, or subgrantees are working.

Contract Types – This provision applies to all AIP funded projects, but not to the contracts between the grantee (the Sponsor) and a contractor, subcontractors, suppliers, or subgrantees.

Use of Provision – No mandatory or recommended text provided because the requirements do not extend beyond the Sponsor level.

A15.3 CONTRACT CLAUSE

None.

A16 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

A16.1 SOURCE

2 CFR Part 200, Appendix II(C)

41 CFR § 60-1.4

41 CFR § 60-4.3

Executive Order 11246

A16.2 APPLICABILITY

The purpose of this provision is to provide equal opportunity for all persons, without regard to race, color, religion, sex, or national origin who are employed or seeking employment with contractors performing under a federally-assisted construction contract. There are two provisions — a construction clause and a specification clause.

The equal opportunity contract clause must be included in any contract or subcontract when the amount exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract or subcontract must include the clause for the remainder of the year, regardless of the amount or the contract.

Contract Types –

Construction – The Sponsor must incorporate contract and specification language in all construction contracts and subcontracts as required above.

Equipment – The Sponsor must incorporate contract and specification language into all equipment contracts as required above that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g., ARFF and SRE vehicles).

Professional Services – The Sponsor must include contract and specification language into all professional service agreements as required above.

Property – The Sponsor must include contract and specification language into all land acquisition projects that include work that qualifies as construction work as defined by 41 CFR part 60 as required above. An example is installation of boundary fencing.

Use of Provision – MANDATORY TEXT. 41 CFR § 60-1.4 provides the mandatory *contract* language. 41 CFR § 60-4.3 provides the mandatory *specification* language. The Sponsor must incorporate these clauses without modification.

Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects

A16.3 MANDATORY CONTRACT CLAUSE

A16.3.1 EEO Contract Clause

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, sexual orientation, gender identity, 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 identity, 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) 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.

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

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such 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 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.

(8) The Contractor will include the provisions of paragraphs (1) through (8) 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 may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

A16.3.2 EEO Specification

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 part 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 must 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 areas 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 nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must 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 therefor, 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 woman 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 work force.
 - 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 nonsegregated 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 group 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, the Contractor may be in violation of the Executive Order if a 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, sexual orientation, gender identity, 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 part 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 numbers, 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).

A17 **FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

A17.1 **SOURCE**

29 USC § 201, et seq

2 CFR § 200.430

A17.2 **APPLICABILITY**

The U.S. Department of Labor (DOL) Wage and Hour Division administers the Fair Labor Standards Act (FLSA). This act prescribes federal standards for basic minimum wage, overtime pay, record keeping, and child labor standards.

Contract Types – Per the Department of Labor, all employees of certain enterprises having workers engaged in interstate commerce; producing goods for interstate commerce; or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by the FLSA.

All consultants, sub-consultants, contractors, and subcontractors employed under this federally assisted project must comply with the FLSA.

Professional Services – 29 CFR § 213 exempts employees in a bona fide executive, administrative or professional capacity. Because professional firms employ individuals that are not covered by this exemption, the Sponsor's agreement with a professional services firm must include the FLSA provision.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 29 USC § 201, et seq. The Sponsor must select *contractor* or *consultant*, as appropriate for the contract.

A17.3 **MODEL SOLICITATION CLAUSE**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, et seq, 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.

A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

A18.1 SOURCE

31 USC § 1352 – Byrd Anti-Lobbying Amendment

2 CFR Part 200, Appendix II(I)

49 CFR Part 20, Appendix A

A18.2 APPLICABILITY

Consultants and contractors that apply or bid for an award of \$100,000 or more must certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or another award covered by 31 USC § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

Contract Types – The Sponsor must incorporate this provision into all contracts exceeding \$100,000.

Use of Provision – **MANDATORY TEXT.** Appendix A to 49 CFR Part 20 prescribes language the Sponsor must use. The Sponsor must incorporate this provision without modification.

A18.3 MANDATORY CERTIFICATION CLAUSE

CERTIFICATION REGARDING LOBBYING

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, subgrants, 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.

A19 PROHIBITION OF SEGREGATED FACILITIES

A19.1 SOURCE

2 CFR Part 200, Appendix II(C)

41 CFR Part 60-1

A19.2 APPLICABILITY

The contractor must comply with the requirements of the EEO clause by ensuring that facilities they provide for employees are free of segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. This clause must be included in all contracts that include the equal opportunity clause, regardless of the amount of the contract.

Contract Types – AIP Sponsors must incorporate the Prohibition of Segregated Facilities clause (41 CFR § 60-1.8) in any contract containing the Equal Employment Opportunity clause of 41 CFR § 60-1.4. This obligation flows down to subcontract and sub-tier purchase orders containing the Equal Employment Opportunity clause.

Construction – Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Equipment – On site installation of equipment such as airfield lighting control equipment meets the definition of construction and thus this provision would apply. This provision does not apply to equipment projects involving manufacture of the item at a vendor's manufacturing plant. An example would be the manufacture of a SRE or ARFF vehicle.

Professional Services – Professional services that include tasks that qualify as construction work as defined by 41 CFR part 60-1. Examples include the installation of noise monitoring equipment.

Property/Land – Land acquisition contracts that include tasks that qualify as construction work as defined by 41 CFR part 60-1. Examples include demolition of structures or installation of boundary fencing.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 41 CFR Part 60-1.

A19.3 MODEL CONTRACT CLAUSE

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 Employment 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, sexual orientation, gender identity, 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 Employment Opportunity clause of this contract.

A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

A20.1 SOURCE

29 CFR Part 1910

A20.2 APPLICABILITY

Contract Types – All contracts and subcontracts must comply with the Occupational Safety and Health Act of 1970 (OSH). The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) oversees the workplace health and safety standards wage provisions from OSH.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 29 CFR Part 1910.

A20.3 MODEL CONTRACT CLAUSE

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. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer 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 (29 CFR Part 1910). The employer 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.

A21 PROCUREMENT OF RECOVERED MATERIALS

A21.1 SOURCE

2 CFR § 200.323

2 CFR Part 200, Appendix II(J)

40 CFR Part 247

42 USC § 6901, et seq (Resource Conservation and Recovery Act (RCRA))

A21.2 APPLICABILITY

Sponsors of AIP funded development and equipment projects must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 emphasizes maximizing energy and resource recovery through use of affirmative procurement actions for recovered materials identified in the Environmental Protection Agency (EPA) guidelines codified at 40 CFR part 247. When acquiring items designated in the guidelines, the Sponsor must procure items that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Contract Types – This provision applies to any contracts that include procurement of products designated in subpart B of 40 CFR part 247 where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000.

Construction and Equipment – Include this provision in all construction and equipment projects.

Professional Services and Property – Include this provision if the agreement includes procurement of a product that exceeds \$10,000.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 2 CFR Part 200.

A21.3 MODEL CONTRACT CLAUSE

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 products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 6) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year;
or
- 7) 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/smm/comprehensive-procurement-guidelines-construction-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.

A22 RIGHT TO INVENTIONS

A22.1 SOURCE

2 CFR Part 200, Appendix II(F)

37 CFR Part 401

A22.2 APPLICABILITY

Contract Types – This provision applies to all contracts and subcontracts with small business firms or nonprofit organizations that include performance of *experimental, developmental, or research work*. This clause is not applicable to construction, equipment, or professional service contracts unless the contract includes *experimental, developmental, or research work*.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR Part 200, Appendix II.

A22.3 MODEL CONTRACT CLAUSE

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 37 CFR § 401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

A23 SEISMIC SAFETY

A23.1 SOURCE

49 CFR Part 41

A23.2 APPLICABILITY

Contract Types – This provision applies to construction of new buildings and additions to existing buildings financed in whole or in part through the Airport Improvement Program.

Professional Services– Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

Construction – Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

Equipment – Sponsor must include the construction provision if the project involves construction or structural addition to a building such as an electrical vault project to accommodate or install equipment.

Land – This provision will not typically apply to a property/land project.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 49 CFR part 41.

A23.3 MODEL CONTRACT CLAUSE

A23.3.1 Professional Service Agreements for Design

SEISMIC SAFETY

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 that 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.

A23.3.2 Construction Contracts

SEISMIC SAFETY

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms 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.

A24 TAX DELINQUENCY AND FELONY CONVICTIONS

A24.1 SOURCE

Section 8113 of the Consolidated Appropriations Act, 2022 (Public Law 117-103) and similar provisions in subsequent appropriations acts.

DOT Order 4200.6 – Appropriations Act Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

A24.2 APPLICABILITY

The Sponsor must ensure that no funding goes to any contractor who:

- Has been convicted of a Federal felony within the last 24 months; or
- Has any outstanding tax liability for which all judicial and administrative remedies have lapsed or been exhausted.

Contract Types – This provision applies to all contracts funded in whole or part with AIP.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of DOT Order 4200.6.

A24.3 MODEL CERTIFICATION CLAUSE

CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- 1) The applicant represents that it is (☐) is not (☐) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is (☐) is not (☐) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the Sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined

that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 USC § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

A25 TERMINATION OF CONTRACT

A25.1 SOURCE

2 CFR Part 200, Appendix II(B)

FAA Advisory Circular 150/5370-10, Section 80-09

A25.2 APPLICABILITY

Contract Types – All contracts and subcontracts in excess of \$10,000 must address *termination for cause* and *termination for convenience* by the Sponsor. The provision must address the manner (i.e., notice, opportunity to cure, and effective date) by which the Sponsor’s contract will be affected and the basis for settlement (e.g., incurred expenses, completed work, profit, etc.).

Use of Provision –

Termination for Convenience – No mandatory text provided. The Sponsor must include a clause for termination for convenience. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR § 200.

Termination for Cause – No mandatory text provided. The Sponsor must include a clause for termination for cause (includes default). The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR Part 200, Appendix II.

Equipment, Professional Services, and Property – No mandatory text provided. The Sponsor may use their established clause language provided that it adequately addresses the intent of 2 CFR Part 200 Appendix II(B), which addresses termination for cause and for convenience.

A25.3 MODEL CONTRACT CLAUSES

A25.3.1 Termination for Convenience

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:

1. Completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
2. 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;
3. Reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
4. 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.

A25.3.2 Termination for Default

TERMINATION FOR CAUSE (CONSTRUCTION)

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

TERMINATION FOR CAUSE (EQUIPMENT)

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

1. Fails to begin 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; or
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 CAUSE (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 for cause 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; or
 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 for cause 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 Consultant 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.

A26 TRADE RESTRICTION CERTIFICATION

A26.1 SOURCE

49 USC § 50104

49 CFR Part 30

A26.2 APPLICABILITY

Unless waived by the Secretary of Transportation, Sponsors may not use AIP funds on a product or service from a foreign country included in the current list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR).

Contract Types – The trade restriction certification and clause apply to all AIP funded projects.

Use of Provision – MANDATORY TEXT. 49 CFR Part 30 prescribes the language for this model clause. The Sponsor must include this certification language in all contracts and subcontracts without modification.

A26.3 MANDATORY SOLICITATION CLAUSE

TRADE RESTRICTION CERTIFICATION

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

- 1) 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 (USTR);
- 2) 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 USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

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 USC § 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 USTR; or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
- 3) who incorporates in the public works project any product of a foreign country on such USTR 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 USTR, 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 (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

A27 VETERAN’S PREFERENCE

A27.1 SOURCE

49 USC § 47112(c)

A27.2 APPLICABILITY

Contract Types – This provision applies to all AIP funded projects that involve labor to carry out the project. This preference, which excludes executive, administrative, and supervisory positions, applies to covered veterans [as defined under § 47112(c)] only when they are readily available and qualified to accomplish the work required by the project.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 49 USC § 47112.

A27.3 MODEL CONTRACT CLAUSE

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 USC § 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.

A28 DOMESTIC PREFERENCES FOR PROCUREMENTS

A28.1 SOURCE

2 CFR § 200.322

2 CFR Part 200, Appendix II(L)

A28.2 APPLICABILITY

To the greatest extent “practicable,” Sponsors must provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the U.S., including, but not limited to iron, aluminum, steel, cement, or other manufactured products.

Contract Types – Must be included in all subawards, including all contracts and purchase orders for work or products under the grant.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR § 200.322.

A28.3 MODEL CERTIFICATION CLAUSE

CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.