

**AGREEMENT  
FOR GROUND SPACE LEASE  
BETWEEN CITY OF COLUMBIA AND  
MOBERLY AREA COMMUNITY COLLEGE**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Columbia, Missouri, a municipal corporation d/b/a Columbia Regional Airport (hereinafter “Lessor” or “City”), and Moberly Area Community College., (hereinafter MACC” or “Lessee”) and entered into on the date of the last signatory noted below (the “Effective Date”).

In consideration of the individual and mutual promises of the above parties hereinafter set forth, it is hereby agreed by and between the parties hereto:

**A. PURPOSE/AUTHORITY**

Lessee desires to lease space at the airport for office, classroom, and student lounge with the goal of establishing a FAA certified flight school at the Airport.

Whereas, all flight instruction services to be provided to students shall be pursuant to a separate agreement between Lessee and flight instruction entity.

**B. TERM**

The initial term of this lease begins on January 1, 2024 and ends at midnight on December 31, 2026, subject to earlier termination as herein provided.

Renewal Option - Notwithstanding the above, this agreement may be automatically renewed for additional two (2) one (1) year terms commencing on January 1<sup>st</sup> of each year, subject to the termination provisions of this agreement; provided, however, that no such automatic renewal shall occur in the event of any of the following:

1. Lessee shall notify City in writing of its intent not to renew this agreement following the expiration of each term, and such notice is given at least sixty (60) days prior to January 1.
2. City shall notify Lessee, in writing, of its intent not to renew the agreement following the expiration of its initial term, and such notice is given at least sixty (60) days prior to October 1.
3. An event of default, as defined by this agreement, occurs.
4. Both parties mutually agree to cancellation.

**C. RENTS AND COMMISSIONS**

1. **RENTAL FEE:** Lessee shall pay City, by the fifteenth of each month, rentals for exclusively leased premises, at an annual rate of \$15.00 (Fifteen dollars and no cents) per square foot unless adjusted in accordance with Section C 1.2.

1.1 Lessee agrees to lease approximately one thousand nine hundred (1900) square feet of ground space in the Old Terminal as located on Exhibit A.

1.2 That rate for rent may be increased effective December 1<sup>st</sup> of each year. Notice of the amount of any increase shall be mailed or hand-delivered by the City to Lessee to the address listed in Section M at least 30 days in advance of the increase being effective. The City's failure to provide notice 30 days prior to October 1 shall not prevent the City from increasing rates of rent, fees and charges, but shall cause a delay in the effective date of any increases until the first day of the month following the thirty-day notice period.

1.3 Adjustments shall be equal to the percent increase in the Consumer Price Index (C.P.I.) for All Urban Consumers (all items) for the 12 month period ending on June 30th of each year, not to exceed 5% of the payment for the preceding year.

2. **BUILDOUT COSTS AND RENTAL CREDIT:** Lessee will be responsible for buildout costs of the leased premises, an estimate of these costs are attached hereto as Exhibit B.

2.1 In consideration for the costs borne by Lessee in the initial buildout of the leased premises and the improvements made, City will grant a lease credit in the amount not to exceed one hundred forty two thousand and five hundred dollars (\$142,500.00).

#### D. RIGHTS AND RESPONSIBILITIES OF THE PARTIES

1. Lessee shall have, and City hereby gives and grants to Lessee, the following rights:

1.1 The right to the use of roads and driveways in the conduct, operation and maintenance of Lessee's business.

1.2 The right to reasonable and adequate storage and parking space at location or locations designated by City and reasonably convenient to the terminal buildings at the Airport.

1.3 The right to complete a basic buildout within the leased premises area, to include walls, paint, doors, flooring and electric.

1.4 The responsibility to supply internal furnishings

1.5 The right to use shared space within the old terminal.

1.6 The right to place external public signage advertising subject to the following: Lessee acknowledges the City's desire to maintain a high level of aesthetic at the Airport. Therefore, Lessee covenants and agrees that, in the exercise of its privilege to install and maintain appropriate signs on the Leased Premises, it will submit to the City the size, design, content, and intended location of each sign and every sign it proposes to install on or within the Leased Premises, and that no signs of any type shall be installed on or within the Leased Premises without the specific prior written approval of the City as to the size, design, content, and location

2. City shall provide electric, water, sewage, and trash removal services for the leased premises. City shall provide custodial services in the shared space.

#### E. SERVICE EQUIPMENT, SECURITY, AND PERSONNEL

Lessee hereby promises, covenants and agrees:

1. That personnel performing services hereunder shall be neat, clean and courteous, and Lessee shall not permit its agents, servants or employees to conduct business in a loud, noisy, boisterous, offensive or objectionable manner.
2. That it shall abide by and be subject to all reasonable rules and regulations which are now, or may from time to time be formulated by City concerning management, operation or use of the Airport.
3. That it will meet all expenses in connection with the use of the leased premises hereunder and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees, license fees and assessments lawfully levied or assessed upon the premises or structures and improvements situated thereon, and that it will secure all such permits and licenses.
4. That it will not do or permit anything to be done that may interfere with the effectiveness of utility heating, ventilating or air conditioning systems or portions thereof on or adjoining the Leased Premises, including lines, pipes, wires, conduits, and equipment connected with or appurtenant thereto.
5. City is required to comply with Federal Aviation Administration (FAA) and Transportation Security Administration (TSA) regulations. Lessee agrees to comply with City directives currently in effect or as may be hereafter enacted concerning airport security.
6. Lessee's employees who need access to the Airport's secure area will be required to attend Security Identification Display Area (SIDA) training, submit to criminal history records checks, and be approved by the Airport Manager, in his or her sole discretion, to obtain an airport identification/access badge ("Airport Badge"). All such Personnel will be required to strictly adhere to all applicable security requirements of the FAA, TSA, and the City of Columbia Regional Airport

6.1 Failure to strictly adhere to any applicable security requirement may subject Lessee's employees to temporary or permanent revocation of the Airport Badge, even on first offense. Lessee understands these requirements and agrees to advise its employees of this provision and of all FAA, TSA, and City of Columbia Regional Airport's security rules and regulations. Lessee further understands and agrees that none of its employees, officers, agents, or subcontractors' employees, officers and agents shall be allowed in the Airport's secure area at any time for any purpose, unless a satisfactory background investigation has been completed on such individual. Otherwise, such individual is to be, at all times, either escorted or under the supervision and surveillance of a person whose background has been satisfactorily investigated, provided the person responsible for escort is properly escorting said individual. Additionally, Lessee understands and agrees that the City shall have no liability whatsoever to Lessee or its employees for the denial or revocation of an Airport Badge.

6.2 Upon completion of the employment of any employee or termination of this Agreement, Lessee agrees to use its best efforts to ensure that all security items and Airport Badges are returned to the Airport Manager.

7. Lessee shall use the Premises only for legal purposes. The Premises may be used for aeronautical purposes, which is limited to operating a FAR Part 61 or FAR Part 141 flight school.

F. HOLD HARMLESS AGREEMENT:

To the fullest extent not prohibited by law, Lessee shall indemnify and hold harmless the City of Columbia, the City Council, its officers, agents and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of Lessee, or any subcontractor (meaning anyone, including but not limited to consultants having a contract with Lessee or a subcontractor for part of the services), of anyone directly or indirectly employed by Lessee or by any subcontractor, or of anyone for whose acts the Lessee or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Lessee to indemnify, hold harmless or defend the City of Columbia from its own negligence.

G. COMPREHENSIVE GENERAL LIABILITY INSURANCE:

The Lessee shall take out and maintain during the life of this contract such comprehensive general liability insurance as shall protect them and any subcontractor performing work covered by this contract, from claims for damages for personal injury including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by themselves or by any subcontractor or by anyone directly or indirectly employed by either of them. The amounts of insurance shall be not less than \$2,000,000.00 combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death. If the contract involves any underground/digging operations, the general liability certificate shall include X, C and U (Explosion, Collapse and Underground) coverage.

H. COMPENSATION INSURANCE:

The Lessee shall take out and maintain during the life of this contract, Employers' Liability and Worker's Compensation Insurance for all of their employees employed at the site of the work, and in case any work is sublet, the Lessee shall require the subcontractor similarly to provide Worker's Compensation

Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Lessee. Workers Compensation coverages shall be statutory with minimum limits of \$500,000.00. Employers' Liability minimum limits shall be \$500,000.00 each employee, \$500,000.00 each accident, and \$500,000.00 policy limit. In case any class of employees engaged in hazardous work under this contract at the site of the work is not protected under the Worker's Compensation Statute, the Lessee shall provide and shall cause each subcontractor to provide Employers' Liability Insurance for the protection of their employees not otherwise protected.

I. AUTOMOBILE PUBLIC LIABILITY AND PROPERTY:

The Lessee shall maintain during the life of this contract, automobile public liability insurance in the amount of not less than \$2,000,000.00 combined single limit for any one occurrence and not less than \$150,000.00 per individual, covering both bodily injury, including accidental death, and property damage, to protect themselves from any and all claims arising from the use of the Lessee's own automobiles, teams and trucks; hired automobiles, teams and trucks; and automobiles both on and off the site of the work.

J. PROOF OF CARRIAGE OF INSURANCE:

The Lessee shall furnish the City with Certificate(s) of Insurance which name the City as additional insured in an amount as required in this contract, contain a description of the project or work to be performed, and requiring a thirty (30) day mandatory cancellation notice. In addition, such insurance shall be on occurrence basis and shall remain in effect until such time as the City has made final acceptance of the facility contracted.

K. LESSEE'S DEFAULT/TERMINATION

1. In the event the Lessee shall default in the payment of any sum when due hereunder, or shall default in the performance of any other covenant required to be kept by Lessee hereunder, and such default shall continue for a period of 30 (thirty) days after notice thereof from City, or if Lessee shall make an assignment for the benefit of creditors or be adjudged bankrupt, City shall have the right to immediately terminate this agreement, and in the event of such termination, Lessee shall have no further rights hereunder and shall thereupon remove from said premises and shall have no further rights or claims thereto.

2. In the event that the United States Government or any of its agencies shall occupy the Airport or any substantial part thereof to such an extent as to materially interfere with Lessee's operations, or in the event of destruction by fire or other cause of all or a material

portion of the Airport or Airport facilities, or if Lessee's operations shall for any reason, similar or dissimilar, be materially interfered with for a period in excess of 15 (fifteen) days, then, in any of those events, Lessee shall have the right upon written notice to City to terminate this agreement and Lessee's further obligations hereunder, or at its option, to suspend this agreement for the periods of such disability, in which cases the rental shall not be paid or payable from the effective date of such notice until normal operations shall have been restored and City shall return to Lessee a just proportion of any rental payment which may have been paid in advance for a month or portion thereof which falls within the period of disability.

L. ASSIGNMENT/SUBLETTING

The leased premises may not be sublet, in whole or in part, and Lessee shall not assign this agreement without prior written consent of City, nor permit any transfer by operation of law or Lessee's interest created hereby, other than by merger or consolidation.

M. NOTICE AND PAYMENT

Whenever any notice is required by this Agreement to be made, given or transmitted to the parties hereto, such notice shall be enclosed in an envelope with sufficient postage attached to insure delivery and deposited in the United States Mail, addressed to: .

Notices, consents and approvals to City shall be addressed as follows:

Airport Manager  
Columbia Regional Airport  
11300 S. Airport Dr.  
Columbia, MO 65201

And notices, consents and approvals to Lessee addressed to:

Tim Wetrich  
Director of Plant Operations  
1 S College Ave  
Moberly, MO 65270

or such place as either party shall, by written directive, designate in the manner herein provided.

N. NONDISCRIMINATION

1. The Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise

operated on the said property described in this agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally- Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

2. The Lessee for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject 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 grounds of race, color, or national origin shall be excluded from participation in, denied the benefits or, or otherwise be subject to discrimination, (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

O. CITY'S RIGHTS RESERVED

1. City shall operate and maintain Airport as a public Airport consistent with, and pursuant to, the Sponsor's Assurances given by City to the United States Government under the Federal Aviation Act.

2. City reserves the right (but shall not be obligated to Lessee) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of the Lessee in this regard.

3. City reserves the right further to develop or improve the landing area and all publicly- owned air navigation facilities of the Airport as it sees fit, regardless of the desires or views of Lessee, and without interference or hindrance.

4. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on the Airport which in the opinion of the City would limit the usefulness of the Airport or constitute a hazard to aircraft.

5. During time of war or national emergency, City shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of the agreement with the Lessee shall be suspended.

6. It is understood and agreed that the rights granted by this agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Airport.

7. There is hereby reserved to City, its successors or assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of for flight in the air, using said airspace or landing at, taking off from, or operating on or about the Airport.

8. This agreement shall become subordinate to provisions of any existing or future agreement between the City and the United States of America or any agency thereof relative to the operation, development or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

P. REQUIRED FEDERAL CONTRACT PROVISIONS

The terms attached hereto in Exhibit C are required as provided in the Federal Aviation Administration's Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects, and are therefore incorporated into this Agreement as though fully rewritten herein.

Q. EXHIBITS

1. Exhibit A: Leased Premises
2. Exhibit B: Buildout projected costs
2. Exhibit C: Federal Contract Provisions

IN WITNESS WHEREOF, the parties hereto have been duly authorized to execute this agreement as of the above referenced date.

THE CITY OF COLUMBIA, MISSOURI

BY: \_\_\_\_\_  
De'Carlton Seewood, City Manager

A handwritten signature in black ink, appearing to be 'D. Seewood', is written over a horizontal line. To the right of the signature, the date '12/16/23' is written in a similar cursive style.



ATTEST:

\_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Nancy Thompson, City Counselor/KMM

Moberly Area Community College

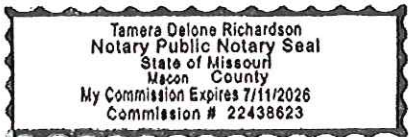
By: Jeffery Lashley

Name: Dr. Jeffery Lashley

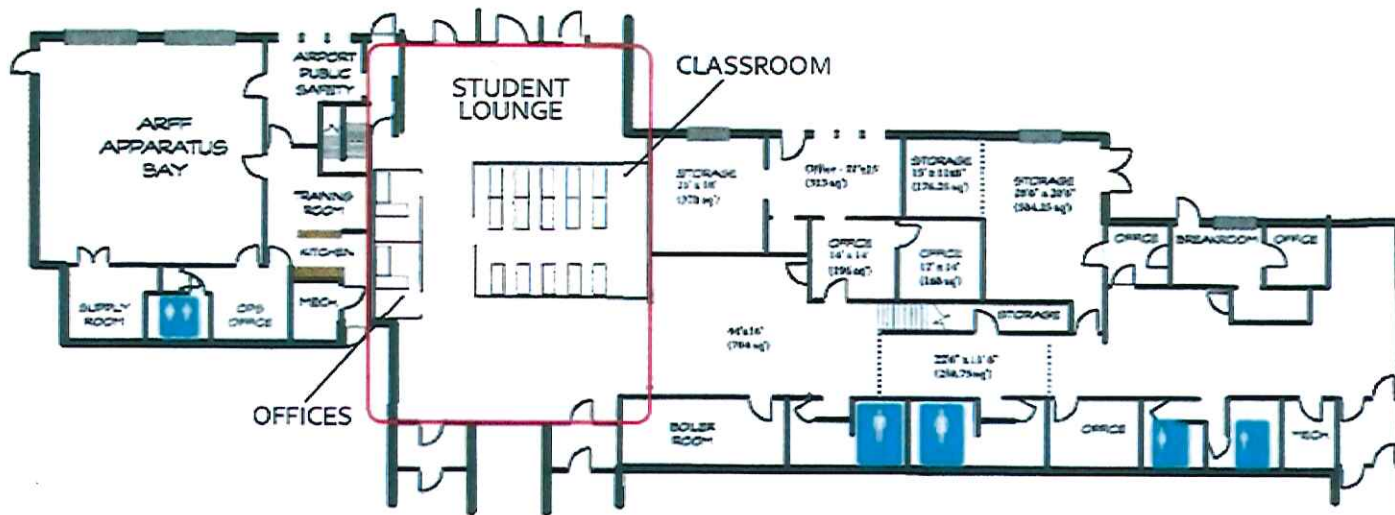
Title: President

ATTEST:

Tamera Delone Richardson



# Exhibit A



**Exhibit B**  
**Airport Terminal Renovations - Columbia**

		Total Estimated Budget
<b>DIVISION 1 GENERAL CONDITIONS</b>		
1370-1040	Supervision-on site	\$ 6,000.00
1370-1054	Temp.Utilities, Const. Facilities & Ofc., dumpster for trash	\$ 3,000.00
1370-1075	Material and Equipment-Misc.	\$ 2,000.00
1370-1080	Misc. Labor	\$ 2,000.00
<b>DIVISION 5 METALS</b>		
1370-5200	Framing	\$ 16,000.00
<b>DIVISION 7 THERMAL AND MOISTURE PROTECTION</b>		
1370-7200	Insulation	\$ 2,400.00
<b>DIVISION 8 DOORS AND WINDOWS</b>		
1370-8100	Swing Doors	\$ 7,000.00
<b>DIVISION 9 FINISHES</b>		
1370-9250	Drywall-Gypsum Board	\$ 60,000.00
1370-9300	Flooring	\$ 10,000.00
1370-9400	Ceiling grid/tile	\$ 11,000.00
1370-9900	Painting	\$ 2,000.00
<b>DIVISION 10 SPECIALTIES</b>		
1371-0518	Classroom Technology	\$ 11,000.00
1371-0519	Office Computers/Equipment	\$ 8,000.00
<b>DIVISION 12 FURNISHINGS</b>		
1371-2000	Classroom Tables	\$ 12,000.00
1371-2001	Classroom Chairs	\$ 8,000.00
1371-2002	Instructor Station	\$ 2,000.00
1371-2003	Instructor Stool	\$ 600.00
1371-2004	Office Desks	\$ 11,000.00
1371-2005	Office Chairs	\$ 1,200.00
1371-2006	Office Reception Chairs	\$ 2,000.00
1371-2007	Storage Cabinets	\$ 2,000.00
1371-2008	Student Lounge Furnishings	\$ 12,000.00
<b>DIVISION 13 SPECIAL CONSTRUCTION</b>		
1371-3000	Special Construction final cleanup	\$ 2,000.00
1371-5000	Exterior Signage	\$ 20,000.00
<b>DIVISION 15 MECHANICAL</b>		
1371-5400	HVAC	\$ 40,000.00
<b>DIVISION 16 ELECTRICAL</b>		
1371-6000	Electrical	\$ 8,000.00
<b>SUB TOTAL of Hard Costs</b>		<b>\$ 261,200.00</b>
<b>DIVISION 17 MISCELLANEOUS</b>		
1371-7000	Builders OH&P (10%)	\$ 26,120.00
<b>TOTAL for Complete Project</b>		<b>\$ 287,320.00</b>

EXHIBIT C

**COLUMBIA REGIONAL AIRPORT (COU)**

**FAA FEDERAL CONTRACT PROVISIONS**

**LEASE AGREEMENT**

These terms and conditions are an exhibit of an agreement between the City of Columbia, Missouri, owners and lessees of the Columbia Regional Airport (hereinafter “Owner”) and Moberly Area Community College, (hereinafter “Contractor”).

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- XVII. Occupational Safety and Health Act
- XVIII. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment
  
- XIX. Tax Delinquency and Felony Conviction
- XX. Veteran’s Preference

## I. ACCESS TO RECORDS AND REPORTS

Contractor must maintain an acceptable cost accounting system. 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.

## II. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor 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 must correct the breach. Owner may proceed with termination of the contract if the Contractor 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.

## III. CIVIL RIGHTS - GENERAL

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

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

## IV. CIVIL RIGHTS – TITLE VI ASSURANCE

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:

**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.

**Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

**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.

**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.

**Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Owner 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.

**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.

## **Transfer of Real Property**

- A. The Contractor 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 that:
  - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this contract 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 Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, Owner will have the right to terminate the contract and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the contract 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 Owner 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 Owner and its assigns.

## **Use/Access to Real Property**

- A. The Contractor 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 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 Contractor will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to a lease, in the event of breach of any of the above nondiscrimination covenants, Contractor will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, Owner will there upon revert to and vest in and become the absolute property of Owner and its assigns.

## **Title VI List of Pertinent Nondiscrimination Acts**

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;
- 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 § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) 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, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).



## V. CIVIL RIGHTS – ADA/504 ASSURANCE

**Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of disability in the performance of its obligations under this Agreement in accordance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (504). 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 49 CFR part 27.

**Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Owner 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.

### **Use/Access to Real Property**

- A. The Contractor 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 that (1) no person on the ground of disability, 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 disability, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Contractor will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to a lease, in the event of breach of any of the above nondiscrimination covenants, Contractor will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, Owner will there upon revert to and vest in and become the absolute property of Owner and its assigns.

## VI. 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 § 740-7671q) 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.

## VII. CONTRACT WORK HOURS AND SAFETY STANDARDS

**1. Overtime Requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

**3. Withholding for Unpaid Wages and Liquidated Damages.** The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

**4. Subcontractors.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

#### VIII. COPELAND ANTI-KICKBACK

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.

#### IX. DAVIS BACON REQUIREMENTS

## 1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, 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 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 that 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 [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm) or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) 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) 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) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates

(expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination 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 Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontra

#### 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.

### X. DEBARMENT AND SUSPENSION

Contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal Department or agency from participation in this transaction.

### XI. DISADVANTAGED BUSINESS ENTERPRISE

**Contract Assurance (§ 26.13)** - The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-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 Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

**Prompt Payment (§26.29)** – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contractor receives from Owner. The prime contractor agrees further to return retainage payments to each subcontractor within fifteen (15) 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 Owner. This clause applies to both DBE and non-DBE subcontractors.

## XII. DISTRACTED 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 \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

## XIII. 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.

## XIV. FEDERAL FAIR LABOR STANDARDS ACT

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

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

## XV. FOREIGN TRADE RESTRICTION

### **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 Section 1001.

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

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

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the 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.

## XVI. LOBBYING FEDERAL EMPLOYEES

### **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.

## XVII. OCCUPATIONAL SAFETY AND HEALTH ACT

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

Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

#### XVIII. 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)].

#### XIX. TAX DELINQUENCY AND FELONY CONVICTION

##### **Certifications**

- 1) The Contractor 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 Contractor represents that it is ( ) is not ( ) 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 U.S.C. § 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.

## XX. 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.