



City Hall, 215 Sycamore St.  
Muscatine, IA 52761-3840  
(563) 262-4141  
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## COMMUNITY DEVELOPMENT

### MEMORANDUM

Planning,  
Zoning,  
Building Safety,  
Construction Inspection Services,  
Public Health,  
Housing Inspections,  
Code Enforcement

**To:** Mayor and City Council Members  
**Cc:** Gregg Mandsager, City Administrator  
Dave Gobin, Community Development Director  
**From:** Adam Thompson, Community Development Coordinator  
**Date:** April 18, 2017  
**Re:** Airport Runway 6/24 Reconstruction Project – Agreement Change Order No. 1 to Task Order No.2 for Engineering Services

**Introduction & Background:** This Change Order is written to cover the costs of additional work to be performed by Anderson Bogert to test concrete, aggregate base, crushed concrete and additional project oversight. When the contract was executed with Anderson Bogert, City staff was planning to perform concrete test and breaks. City staff does not have the testing equipment necessary to meet the FAA testing requirements. Anderson Bogert was asked to take over this testing. Additionally, project observers requested the geotechnical firm to perform more test than originally estimated to insure quality construction.

The total change order requested is \$37,299.55 with 90% of this cost paid by the FAA project grant. This change order is under the amended project total cost

**RECOMMENDATION/RATIONALE:** It is recommended that City Council approve change order #1 related to the Runway 6/24 Reconstruction project for Engineering Services

1. Change Order #1

## A. DESCRIPTION OF CHANGES

## B. *INCREASE* In Contract Price

Concrete testing, additional concrete testing,  
additional recycled concrete aggregate base course  
testing, and additional project oversight by  
geotechnical engineering firm.

\$37,299.55

As you may recall, our original agreement with the City did not include any concrete testing, since at that time, they were planning to take care of it themselves.

Adam's response was that he needs written justification for the extras before he can take the change order to council for approval. He said the only extras that the City approved verbally were the ones related to the extra gradation testing. In addition, he mentioned this is the first time he has heard about any of the other extras.

He specifically mentioned the following items that caught his eye on Braun's Scope Change Request:

1.3, 207 Nuclear Density – for the retesting that was done (when the first test didn't pass), he was wondering if a lower unit rate would be appropriate? I understand what you are saying, but still is time involved for our staff. We used one rate to keep everything uniform.

1.3, 209 Sample pick-up – he questioned the unit rate for this, since Manatts took the samples (and Braun just picked them up) We still had to mobilize to the site and split samples with contractor then get these to the lab for testing. The sample pickup time was increased because of the volume of samples and turnaround times needed. Discussions were had with the group that we would need to use multiple labs to keep up and keep the project moving forward. This was not communicated prior to proposal time and we did not know the contractor schedule. We have specific accreditation that require certain labs to run them for acceptance testing. We used several labs to meet these requirements and to increase turnaround times.

1.4, 261 Concrete Testing – he said this description is too vague. We originally scoped to do the concrete testing for the P501 specification. This was not included in the contract with the city? There were talks about the city doing the onsite testing and casting beams. It was determined per ASTM and FAA standards that an accredited lab needed to perform the flexural strength testing for acceptance. It was also communicated that it would be best for us to perform all testing to keep uniformity and consistency with the concrete pavement. We set up tanks onsite to store and cure samples and then transport to our lab for testing of the flexural strengths. Due to contractor schedules and volume of testing we decided to add a second technician to keep up onsite with concrete paving during larger pours. With phasing and again contractor schedules (more pours than anticipated) we were unable to stay within the early budget set for this. There were a few delays at startup and weather that left us with downtime onsite on occasion. Sample pickup and trips were also increased due to the schedules and pours completed.

And here's a few questions I had:

1.4, 261 Concrete testing – why did this dollar amount double from the original estimate? Contractor schedules (when we estimate projects this is out of our control) and we added a second person for the larger pours to keep up with testing needs. Bill Haag thought this was a good idea as we would need to strip molds and get them in tanks while also testing each day. We wanted to make sure there was nothing on our end holding up the project.

1.4, 278 Concrete cylinder/beam pick-up – why did this dollar amount triple from the original estimate? Lots of special trips to transport beams for flexural strength testing, some weekends to allow contractor to pour in specific areas. Contractor schedules drove this.

1.4, Equipbill – why was this not included on the original estimate? What is it for? This was removed from the change order and tanks were donated to the city after completion of the project. No Charge.

1.5, 1230 – Final Report – I noticed you switched the quantity of this from one to zero. I would like for you to add this back in, if possible. I was planning to use your summary in our overall final report that is required by the FAA for project closeout, so that the City can get reimbursed by the FAA in a timely fashion. I will still provide the summary report for final closeout. Due to the increased project testing costs, we will not bill for this as well.

One more thing I thought of that Adam mentioned.....when you are writing-up your justification for the extras, he suggested including: “per meeting with the City on a specified date”, if you have that information. Don’t have this specific information, but our onsite staff attended weekly meetings on a regular basis. Several separate meetings were done for Recycled materials and meeting prior to concrete paving started. I can go back to the meetings that I attended if the city needs this information. Various meetings were called at times during the project.

That’s all for now.

Let me know if you have any questions.

Thanks.

Jayne DeCoste

**ANDERSON  BOGERT**

4001 River Ridge Drive NE, Cedar Rapids, IA 52402

[jdecoste@anderson-bogert.com](mailto:jdecoste@anderson-bogert.com) | [www.anderson-bogert.com](http://www.anderson-bogert.com)

319.377.4629 Office

319.377.8498 Fax



# Scope Change Request

CO10000524

Additional Testing and Inspections

<b>Client:</b>	<b>Work Site Address:</b>	<b>Service Description:</b>
Anderson Bogert Engineers & Surveyors Jayne Decoste 4001 River Ridge Dr NE Cedar Rapids, IA 52402 319-377-4629	Muscatine Municipal Airport 5701 US-61 Muscatine, IA 52761	Testing and Inspections

Description	Action	Quantity		Sales Price		Sales Amount	
		Orig	New	Orig	New	Orig	New
Project: B1511608 - Reconstruct Runway 6/24 & Associated Taxiways						49,365.00	65,268.55
Phase: 1 -CMT						49,365.00	65,268.55
Activity: 1.1 -P152 Embankments						7,200.00	0.00
207 -Compaction Testing - Nuclear	Update	49.0	0.0	65.00		3,185.00	0.00
209 -Sample pick-up	Update	15.0	0.0	65.00		975.00	0.00
1308 -Nuclear moisture-density meter charge, per hour	Update	49.0	0.0	10.00		490.00	0.00
1861 -CMT Trip Charge	Update	14.0	0.0	75.00		1,050.00	0.00
1318 -Standard Proctor Test(ASTM D 698)	Update	10.0	0.0	150.00		1,500.00	0.00
Activity: 1.2 -P209/P219 Pre Testing						1,395.00	2,265.00
1156 -Atterberg Limits: LL and PL (ASTM D 4318), per sample	No change	2.0		100.00		200.00	
209 -Sample pick-up	Update	4.0	13.0	65.00		260.00	845.00
1166 -200 wash (ASTM C 117), per sample	Add		3.0		70.00		210.00
1162 -Sieve analysis with 200 wash (ASTM C 136 and C 117), per sample	No change	2.0		110.00		220.00	
1698 -Los Angeles Abrasion (ASTM C 131, C 535), per sample	No change	2.0		115.00		230.00	
1861 -CMT Trip Charge	Update	1.0	2.0	75.00		75.00	150.00
1702 -Flat, Elongated, and Flat & Elongated (ASTM D 4791), per sample	No change	2.0		90.00		180.00	
1741 -Sand Equivalent (ASTM D2419), per sample	No change	2.0		115.00		230.00	
Activity: 1.3 -P209/P219 CABC or Recycled						13,820.00	17,182.50
207 -Compaction Testing - Nuclear	Update	45.0	64.5	65.00		2,925.00	4,192.50
106 -Base Course Depth Checks	Update	25.0	0.0	65.00		1,625.00	0.00
1308 -Nuclear moisture-density meter charge, per hour	Update	45.0	65.5	10.00		450.00	655.00
209 -Sample pick-up	Update	32.0	89.0	65.00		2,080.00	5,785.00
1861 -CMT Trip Charge	Update	20.0	18.0	75.00		1,500.00	1,350.00
1318 -Standard Proctor Test(ASTM D 698)	Update	10.0	9.0	150.00		1,500.00	1,350.00
1162 -Sieve analysis with 200 wash (ASTM C 136 and C 117), per sample	Update	34.0	35.0	110.00		3,740.00	3,850.00



The Science You Build On.

## Scope Change Request

CO10000524

### Additional Testing and Inspections

Description	Action	Quantity		Sales Price		Sales Amount	
		Orig	New	Orig	New	Orig	New
Activity: 1.4 -P501 PCC Pavement						21,025.00	34,264.80
261 -Concrete Testing	Update	160.0	321.3	65.00		10,400.00	20,881.25
278 -Concrete Cylinder / Beam Pick up	Update	21.0	63.5	65.00		1,365.00	4,127.50
SUPP1BILL -Supply Billable	Add		1.0		11.05		11.05
106 -Concrete Core Thickness	Update	25.0	7.0	65.00		1,625.00	455.00
1861 -CMT Trip Charge	Update	25.0	38.0	75.00		1,875.00	2,850.00
1367 -Flexural strength of beams (ASTM C 78 and ASTM C 293), per specimen	Update	96.0	99.0	60.00		5,760.00	5,940.00
Activity: 1.5 -Project Oversight / Reports						5,925.00	11,556.25
226 -Project Manager / Meetings	Update	30.0	65.5	120.00		3,600.00	7,860.00
1230 -Final Report	Update	1.0	0.0	650.00		650.00	0.00
238 -Project Assistant	Update	15.0	24.3	65.00		975.00	1,576.25
264 -Project Engineer	Update	5.0	13.0	140.00		700.00	1,820.00
1861 -CMT Trip Charge	Add		4.0		75.00		300.00

Current project estimate:	49,365.00
Scope change total:	15,903.55
New project estimate:	65,268.55

**AGREEMENT CHANGE ORDER NUMBER 1**

To Task Order No. 2  
Master Agreement for Engineering Services  
Muscatine Municipal Airport  
FFY 2014 through FFY 2018

Project Name: Reconstruct Runway 6/24 and Associated Taxiways Construction Observation

City of Muscatine, Iowa  
215 Sycamore Street  
Muscatine, IA 52761

Sponsor

3/2/17

Change Order Date

ANDERSON-BOGERT  
Engineers & Surveyors, Inc.  
4001 River Ridge Drive NE  
Cedar Rapids, IA 52402

Consultant

10/15/15

Date of Agreement

**DESCRIPTION OF CHANGES**

**INCREASE  
In Contract Price**

Add concrete testing, additional concrete testing, additional recycled concrete aggregate base course testing, and additional project oversight by geotechnical engineering firm.  
Reduce P152 Embankments Testing.

**\$37,299.55**

**JUSTIFICATION:**

**Add Concrete Testing (\$21,025) -** The original agreement with the City did not include concrete testing, since the City had planned to use City employees to complete that work. At a later date, it was determined per ASTM and FAA standards that an accredited lab needed to perform the flexural strength testing for acceptance, which the City did not have. It was also communicated that it would be best for Braun Intertec, the project geotechnical engineering firm, to perform all concrete-related testing to keep uniformity and consistency with the concrete pavement.

**Additional Concrete Testing (\$13,610.80) -** Braun Intertec set-up tanks onsite to store and cure samples and then transported the samples to their lab for testing of the flexural strengths. Due to the contractor's aggressive schedule and associated required rate of testing, Braun Intertec decided to add a second technician to keep-up onsite with concrete paving during larger pours. The onsite Contract Administration Project Manager thought this was a good idea, since Braun Intertec would need to strip molds and get the specimens from previous pours in the tanks, while also testing fresh concrete on-grade each day. With the actual phasing and contractor schedule followed (more pours than anticipated with the preliminary estimate), Braun Intertec was unable to stay within the preliminary budget estimate for this work. In addition, there were a few delays at start-up and some weather delays that left their crew with downtime onsite, on occasion. Sample pick-up and trips were also increased from the original estimate, due to the schedules and pours actually completed. Many special trips were made to transport beams for flexural strength testing, including some weekends, to allow the contractor to pour in specific areas. The contractor's schedule dictated these special trips.

**Additional Recycled Concrete Aggregate Base Course Testing (\$4,232.50) -**Increased sample pickup time due to schedule and turnaround time for samples. Multiple labs to run them, due to volume of samples and testing requirements. Retesting time required to pass several areas that were not in compliance that extended beyond time associated with this material at proposal time.

**Additional Project Oversight by Geotechnical Engineering Firm (\$5,631.25) -** Increased time due to volume of additional work needed to meet schedules. Additional meetings with staff and contractors to get everyone on the same page, along with additional trips at various stages of the project. Reporting time increased with volume increases. Specifically related to Concrete Testing and Aggregate testing stages. Final report time.

**Reduce P152 Embankments Testing (-\$7,200) -** Was expected during proposal phase that materials would be disturbed and need testing. Some of this was determined by being onsite for testing of this material that these were native materials not disturbed and wouldn't warrant testing. This is why amounts were reduced substantially in this phase.

The amount of the Agreement will be increased by the sum of: Thirty-seven thousand two hundred ninety nine dollars and fifty-five cents (\$37,299.55).

The agreement total including this and previous Change Orders will be: One hundred sixty-seven thousand eight hundred thirty eight dollars and ten cents (\$167,838.10).

This document will become a supplement to the Agreement and all provisions will apply hereto.

*FOR THE CONSULTANT*

*FOR THE SPONSOR*

ANDERSON-BOGERT  
Engineers & Surveyors, Inc.

CITY OF MUSCATINE

By:

\_\_\_\_\_  
Jayne C. Decoste, PE  
Project Manager

By:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

June 4, 2015

Proposal QTB021703

Jayne Decoste  
Anderson Bogert  
4001 River Ridge Dr. NE  
Cedar Rapids, IA 52402

Re: Proposal for Observation and Testing Services  
Reconstruct Runway 6/24 and Associated Taxiways  
Muscatine Municipal Airport  
Muscatine, Iowa

Dear Jayne:

Braun Intertec Corporation respectfully submits this proposal to provide quality assurance observation and testing services during site grading, utility installation, and concrete paving for the Muscatine Municipal Airport Reconstruction project at the referenced site.

## **Our Understanding of Project**

This project will include installation of pavement subgrade and aggregate base preparation, and concrete placement. The project will take place in the following phases:

- Phase 1 – Work includes Runway 6/24 North of Taxiway A1, South of Taxiway B, and Taxiway A Turnaround area.
- Phase 2 – Includes safety area, along with section of Runway 6/24 between Taxiway B and A1 construction.
- Phase 3 – Taxiway B construction.

## **Available Project Information**

This proposal is based on our review of the documents described below. We will submit a revised scope of services and cost if the project changes.

- Project plans and specifications prepared by Anderson Bogert.

## **Scope of Services**

We will provide technicians or engineers – working under the direction of a Professional Engineer – to perform our observation and testing services. Observation and testing services will be performed on an on-call, as-needed basis as requested and scheduled by you or the project inspector. We have reviewed the available project information and propose to:

AA/EOE

- Measure the in-place dry density, moisture content and relative compaction of the scarified subgrade placement for pavement and utility support for compliance with the project documents – this task includes performing laboratory proctor tests to provide maximum dry densities from which the relative compaction of subgrade can be determined, as well as the use of a nuclear density gauge to measure in-place dry densities and moisture contents per FAA specifications for P152 Subgrade and Embankment materials.
- Sample and test crushed aggregate base materials for compliance with the project documents – this task includes laboratory gradation and proctor testing of aggregate base materials along with field depth checks for base thicknesses per P209/P219 project specifications.
- Sample and test fresh concrete associated with runway pavement for compliance with the project documents, cast test beams for laboratory flexural strength testing. We assume that we will be able to appropriately dispose of excess concrete (and associated wash water) on site at no additional cost to us.
- Measure and report the flexural strength of the concrete test beams and concrete core thicknesses for compliance with the project documents per P501 project specifications.
- Provide project management for the quality assurance observation and testing services described above – this task includes scheduling field personnel, reviewing observation and test reports, and communicating with you, the project contractor(s), other project team members, as needed.

### **Scheduling Assumptions**

Based on our understanding of the project and the available project information, we assume the work for this phase of the project will proceed according to the following schedules:

- General excavation, placement and compaction testing of subgrade P152 and utility backfill materials will be completed in approximately 10 trips.
- Pre Testing of P209/219 materials will be completed prior to placement, further samples as needed.
- Placement and compaction testing of P209/219 crushed aggregate base materials will be completed in approximately 9 trips.
- Sample pickup for gradations and proctor materials, will be as needed.
- Base course depth checks will be performed in 5 trips or as needed.
- Concrete paving will be dependant on contractor schedule but will likely require approximately 16 pours.
- Cast flexural strength beams throughout placement per P501 specifications of 8 per lot.
- Concrete core thicknesses will be completed as cores become available by contractor.

If the pace of construction is different than described above, this proposal should be revised.

## Cost

We will furnish the services described herein for an estimated fee of \$49,365. A tabulation showing hourly and/or unit rates associated with our proposed scope of services is attached.

Our work will extend over several invoicing periods. As such, for work that is performed during the course of each invoicing period, we will submit partial progress invoices.

## General Remarks

We will be happy to meet with you to discuss our proposed scope of services further and clarify the various scope components.

We appreciate the opportunity to present this proposal to you. ***Please sign and return a copy to us in its entirety.***

The proposed fee is based on the scope of services described and the assumptions that our services will be authorized within 30 days and that others will not delay us beyond our proposed schedule.

We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement.

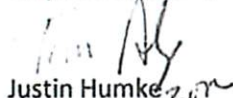
To have questions answered or schedule a time to meet and discuss our approach to this project further, please contact Aaron Tast at 320.980.3504 or Justin Humke at 319.423.0322.

Sincerely,

BRAUN INTERTEC CORPORATION



Aaron M. Tast  
Project Manager / Aviation Services



Justin Humke  
Staff Engineer

Attachments:  
Project Quote  
General Conditions CMT (9-1-13)

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The proposal is accepted, and you are authorized to proceed.

Anderson Bogert

\_\_\_\_\_  
Authorizer's Firm

Jayne C. DeCoste

\_\_\_\_\_  
Authorizer's Signature

Jayne C. DeCoste

\_\_\_\_\_  
Authorizer's Name (please print or type)

Project Manager

\_\_\_\_\_  
Authorizer's Title

3/1/2016

\_\_\_\_\_  
Date

## Project Proposal

QTB021703

Reconstruct Runway 6/24 & Associated Taxiways

**Client:**

Anderson Bogert Engineers & Surveyors  
Jayne Decoste  
4001 River Ridge Dr NE  
Cedar Rapids, IA 52402  
319-377-4629

**Work Site Address:**

Muscatine Municipal Airport  
5701 US-61  
Muscatine, IA 52761

**Service Description:**

Construction Materials Testing  
AIP 3-19-0063-020

**Project Manager:** Aaron Tast

	Description	Quantity	Units	Unit Price	Extension
<b>Phase 1</b>	<b>CMT</b>				
<b>Activity 1.1</b>	<b>P152 Embankments</b>				<b>\$7,200.00</b>
207	Compaction Testing - Nuclear	49.00	Hour	65.00	\$3,185.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	P152 Embankments	9.00	Trips	5.00	45.00
	Utilities 18" Culvert	1.00	Trips	4.00	4.00
1318	Standard Proctor Test(ASTM D 698)	10.00	Each	150.00	\$1,500.00
1308	Nuclear moisture-density meter charge, per hour	49.00	Each	10.00	\$490.00
1861	CMT Trip Charge	14.00	Each	75.00	\$1,050.00
209	Sample pick-up	15.00	Hour	65.00	\$975.00
<b>Activity 1.2</b>	<b>P209/P219 Pre Testing</b>				<b>\$1,395.00</b>
1162	Sieve analysis with 200 wash (ASTM C 136 and C 117), per sam	2.00	Each	110.00	\$220.00
1698	Los Angeles Abrasion (ASTM C 131, C 535), per sample	2.00	Each	115.00	\$230.00
1702	Flat, Elongated, and Flat & Elongated (ASTM D 4791), per sam	2.00	Each	90.00	\$180.00
1156	Atterberg Limits: LL and PL (ASTM D 4318), per sample	2.00	Each	100.00	\$200.00
1741	Sand Equivalent (ASTM D2419), per sample	2.00	Each	115.00	\$230.00
209	Sample pick-up	4.00	Hour	65.00	\$260.00
1861	CMT Trip Charge	1.00	Each	75.00	\$75.00
<b>Activity 1.3</b>	<b>P209/P219 CABC or Recycled</b>				<b>\$13,820.00</b>
207	Compaction Testing - Nuclear	45.00	Hour	65.00	\$2,925.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	CABC / Recycled Base	9.00	Trips	5.00	45.00
1162	Sieve analysis with 200 wash (ASTM C 136 and C 117), per sam	34.00	Each	110.00	\$3,740.00
1318	Standard Proctor Test(ASTM D 698)	10.00	Each	150.00	\$1,500.00
1308	Nuclear moisture-density meter charge, per hour	45.00	Each	10.00	\$450.00
1861	CMT Trip Charge	20.00	Each	75.00	\$1,500.00
209	Sample pick-up	32.00	Hour	65.00	\$2,080.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Proctors and Gradations	8.00	Hr	4.00	32.00
106	Base Course Depth Checks	25.00	Hour	65.00	\$1,625.00
<b>Activity 1.4</b>	<b>P501 PCC Pavement</b>				<b>\$21,025.00</b>
261	Concrete Testing	160.00	Hour	65.00	\$10,400.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	P501 PCC 8"	14.00	Trips	10.00	140.00
	P501 PCC 6"	2.00	Trips	10.00	20.00
278	Concrete Cylinder / Beam Pick up	21.00	Hour	65.00	\$1,365.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Cylinder / Beam Pickup	7.00	Trips	3.00	21.00

**Project Proposal****QTB021703****Reconstruct Runway 6/24 & Associated Taxiways**

1861	CMT Trip Charge	25.00 Each	75.00	\$1,875.00
1367	Flexural strength of beams (ASTM C 78 and ASTM C 293), per s	98.00 Each	60.00	\$5,760.00
106	Concrete Core Thickness	25.00 Hour	65.00	\$1,625.00
Activity 1.5	Project Oversight / Reports			\$5,925.00
226	Project Manager / Meetings	30.00 Hour	120.00	\$3,600.00
238	Project Assistant	15.00 Hour	65.00	\$975.00
1230	Final Report	1.00 Each	650.00	\$650.00
264	Project Engineer	5.00 Hour	140.00	\$700.00

**Phase 1 Total: \$49,365.00****Proposal Total: \$49,365.00**

# General Conditions

## Construction Material Testing and Special Inspections

**BRAUN**  
INTERTEC

### Section 1: Our Agreement

1.1 Our agreement ("Agreement") with you consists of these General Conditions and the accompanying written proposal or authorization. This Agreement is our entire agreement. It supersedes prior agreements. It may be modified only in a writing signed by us, making specific reference to the provision modified.

1.2 The words "you," "we," "us," and "our" include officers, employees, and subcontractors.

1.3 In the event you use a purchase order or other form to authorize our services, any conflicting or additional terms are not part of our Agreement. Directing us to start work prior to execution of this Agreement constitutes your acceptance. If, however, mutually acceptable terms cannot be established, we have the right to withdraw our proposal without liability to you or others, and you will compensate us for services already rendered.

### Section 2: Our Responsibilities

2.1 We will provide the services specifically described in our Agreement with you. You agree that we are not responsible for services that are not fairly included in our specific undertaking. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

2.2 In performing our professional services, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality. If you direct us to deviate from our recommended procedures, you agree to hold us harmless from claims, damages, and expenses arising out of your direction.

2.3 We will reference our field observations and sampling to available reference points, but we will not survey, set, or check the accuracy of those points unless we accept that duty in writing. Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and, further, that site conditions may change over time.

2.4 Our duties do not include supervising your contractors or commenting on, overseeing, or providing the means and methods of their work, unless we accept such duties in writing. We will not be responsible for the failure of your contractors to perform in accordance with their undertakings, and the providing of our services will not relieve others of their responsibilities to you or to others.

2.5 We will provide a health and safety program for our employees, but we will not be responsible for contractor, job, or site health or safety unless we accept that duty in writing.

2.6 You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us. Our employees are authorized by you to refuse to work under conditions that may be unsafe.

2.7 Estimates of our fees or other project costs will be based on information available to us and on our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

### Section 3: Your Responsibilities

3.1 You will provide us with prior geotechnical and other reports, specifications, plans, and information to which you have access about the site. You agree to provide us with all plans, changes in plans, and new information as to site conditions until we have completed our work.

3.2 You will provide access to the site. In the course of our work some site damage is normal even when due care is exercised. We will use reasonable care to minimize damage to the site. We have not included the cost of restoration of normal damage in the estimated charges.

3.3 If we notify you that radiographic or gamma ray equipment or other nuclear testing or measuring device will be used, you will be responsible for the cooperation of your employees and your contractors in observing all radiation safety standards.

3.4 You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials at the work site. If we observe or suspect the presence of contaminants not anticipated in our Agreement, we may terminate our work without liability to you or to others, and we will be paid for the services we have provided.

3.5 The time our field personnel spend on the job site depends upon the scheduling of the work we are observing or testing. You agree that any changes in scheduling may result in additional costs and agree to pay for those services at the rates listed in our cost estimate.

3.6 You agree to include us as an indemnified party in your contracts, if any, for work by others on the project, protecting us to the same degree as you are protected. You agree to list us as an Additional Insured under your liability insurance policies and to require subrogation be waived against us and that we will be added as an Additional Insured on all policies of insurance, including any policies required of your contractors or subcontractors, covering any construction or development activities to be performed on the project site.

### Section 4: Reports and Records

4.1 Unless you request otherwise, we will provide our report(s) in an electronic format.

4.2 Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property but are subject to a license to you for your use in the related project for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval. You agree to indemnify and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use. At your request, we will provide endorsements of our reports or letters of reliance, but only if the recipients agree to be bound by the terms of our Agreement with you and only if we are paid the administrative fee stated in our then current Schedule of Charges.

4.3 Because electronic documents may be modified intentionally or inadvertently, you agree that we will not be liable for damages resulting from change in an electronic document occurring after we transmit it to you.

4.4 If you do not pay for our services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control.

4.5 Electronic data, reports, photographs, samples and other materials provided by you or others may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

## **Section 5: Compensation**

**5.1** You will pay for services as agreed upon or according to our then current Schedule of Charges if there is no other written agreement as to price. An estimated cost is not a firm figure. You agree to pay all sales taxes and other taxes based on your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

**5.2** You will notify us of billing disputes within 15 days. You will pay undisputed portions of invoices on receipt. You agree to pay interest on unpaid balances beginning 30 days after invoice dates at the rate of 1.5% per month, or at the maximum rate allowed by law.

**5.3** If you direct us to invoice another, we will do so, but you agree to be responsible for our compensation unless you provide us with that person's written acceptance of all terms of our Agreement and we agree to extend credit to that person and to release you.

**5.4** Your obligation to pay for our services under this Agreement is not contingent on your ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of lawsuit in which we are not involved, your successful completion of a project, receipt of payment from another, or any other event. No retainage will be withheld.

**5.5** If you do not pay us within 60 days of invoice date, you agree to reimburse our expenses, including but not limited to attorney fees, staff time, and other costs of collection.

**5.6** You agree to compensate us in accordance with our fee schedule if we are asked or required to respond to legal process arising out of a proceeding related to the project and as to which we are not a party.

**5.7** If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work change, or if changed labor union conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice and we will receive an equitable adjustment of our compensation. If you and we do not reach agreement on such compensation within 30 days of our written application, we may terminate without liability to you or others.

**5.8** If you fail to pay us within 60 days following invoice date, we may consider the default a total breach of our Agreement and, at our option, terminate our duties without liability to you or to others.

**5.9** In consideration of our providing insurance to cover claims made by you, you hereby waive any right of offset as to fees otherwise due us.

## **Section 6: Disputes, Damage, and Risk Allocation**

**6.1** Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to, a meeting(s) attended by each party's representative(s) empowered to resolve the dispute. Before either of us commences an action against the other, disputes (except collections) will be submitted to mediation.

**6.2** Neither of us will be liable for special, incidental, consequential, or punitive damages, including but not limited to those arising from delay, loss of use, loss of profits or revenue, loss of financing commitments or fees, or the cost of capital.

**6.3** We will not be liable for damages unless suit is commenced within two years of the date of injury or loss or within two years of the date of substantial completion of our services, whichever is earlier. We will not be liable unless you have notified us of the discovery of the claimed breach of contract, negligent act, or omission within 30 days of the date of discovery and unless you have given us an opportunity to investigate and to recommend ways of mitigating damages. You agree not to make a claim against us unless you have provided us at least 30 days prior to the institution of any legal proceeding against us with a written certificate executed by an appropriately licensed professional specifying and certifying each and every act or omission that you contend constitutes a violation of the standard of care governing our professional services.

**6.4** For you to obtain the benefit of a fee which includes a reasonable allowance for risks, you agree that our aggregate liability for all claims will not exceed the fee paid for our services or \$50,000, whichever is greater. If you are unwilling to accept this allocation of risk, we will increase our aggregate liability to \$100,000 provided that, within 10 days of the date of our Agreement, you provide payment in an amount that will increase our fees by 10%, but not less than \$500, to compensate us for the greater risk undertaken. This increased fee is not the purchase of insurance.

**6.5** You agree to indemnify us from all liability to others in excess of the risk allocation stated above and to insure this obligation.

**6.6** The prevailing party in any action relating to this Agreement shall be entitled to recover

its costs and expenses, including reasonable attorney fees, staff time, and expert witness fees.

**6.7** The law of the state in which our servicing office is located will govern all disputes. Each of us waives trial by jury. No officer or employee acting within the scope of employment shall have individual liability for his or her acts or omissions, and you agree not to make a claim against individual employees.

## **Section 7: General Indemnification**

**7.1** We will indemnify and hold you harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by our negligent acts or omissions or those negligent acts or omissions of persons for whom we are legally responsible. You will indemnify and hold us harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by your negligent acts or omissions or those negligent acts or omissions of persons for whom you are legally responsible.

**7.2** To the extent it may be necessary to indemnify either of us under Section 7.1, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

## **Section 8: Miscellaneous Provisions**

**8.1** We will provide a certificate of insurance to you upon request. Any claim as an Additional Insured shall be limited to losses caused by our sole negligence.

**8.2** You and we, for ourselves and our insurers, waive all claims and rights of subrogation for losses arising out of causes of loss covered by our respective insurance policies.

**8.3** Neither of us will assign nor transfer any interest, any claim, any cause of action, or any right against the other. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

**8.4** Our Agreement may be terminated early only in writing. We will receive an equitable adjustment of our compensation in the event of early termination.

**8.5** If a provision of this Agreement is invalid or illegal, all other provisions shall remain in full force and effect.

## **FEDERAL CONTRACT PROVISIONS ATTACHMENT**

ALL REFERENCES MADE HEREIN TO "CONTRACTOR", "BIDDER", AND "OFFEROR" SHALL PERTAIN TO THE ARCHITECT/ENGINEER (A/E). ALL REFERENCES MADE HEREIN TO "SUBCONTRACTOR" SHALL PERTAIN TO ANY AND ALL SUBCONSULTANTS UNDER CONTRACT WITH THE A/E.

### **ACCESS TO RECORDS AND REPORTS**

(Reference: 2 CFR § 200.326, 2 CFR § 200.333)

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

### **CIVIL RIGHTS – GENERAL**

(Reference: 49 USC § 47123)

The contractor agrees that it will 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 handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

### **CIVIL RIGHTS – TITLE VI ASSURANCES**

- 1) Title VI Solicitation Notice

(Reference: Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

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

## **2) Title VI Clauses for Compliance with Nondiscrimination Requirements**

(Reference: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

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:

- a) **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- b) **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c) **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 Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- d) **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 Acts, Regulations, 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.
- e) **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:
  - i. Withholding payments to the contractor under the contract until the contractor complies; and/or

- ii. Cancelling, terminating, or suspending a contract, in whole or in part.
- f) **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.

### **3) Title VI List of Pertinent Nondiscrimination Authorities**

(Reference: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

#### **DISADVANTAGED BUSINESS ENTERPRISE**

(Reference: 49 CFR part 26)

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

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

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

(Reference: 29 USC § 201, et seq.)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Wage and Hour Division.

#### **LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

(Reference: 49 CFR part 20, Appendix A)

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.

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.

#### **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

(Reference 20 CFR part 1910)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. 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

#### **RIGHT TO INVENTIONS**

(Reference 2 CFR § 200 Appendix II(F))

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

#### **TRADE RESTRICTION CLAUSE**

(Reference: 49 CFR part 30))

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country 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;
- c) has not procured any product nor subcontracted for the supply of any product for use on the project 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 contractor or subcontractor who is unable to certify to the above. If the contractor 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 contractor 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 contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor 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 contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

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

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.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

#### **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), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The contractor must include these policies in each third party subcontract involved on this project.

## **VETERAN'S PREFERENCE**

(Reference: 49 USC § 47112(c))

In the employment of labor (except in executive, administrative, and supervisory positions), preference must be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Title 49 United States Code, Section 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

## **PROVISIONS APPLICABLE TO A/E CONTRACTS EXCEEDING \$10,000**

### **TERMINATION OF CONTRACT**

(Reference 2 CFR § 200 Appendix II(B))

- a) The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- b) If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- c) If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- d) If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.
- e) The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

## **PROVISIONS APPLICABLE TO A/E CONTRACTS EXCEEDING \$25,000**

### **DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**

(Reference: 2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5 DOT Suspension & Debarment Procedures & Ineligibility)

#### **CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)**

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

***CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS)***

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

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

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

**PROVISIONS APPLICABLE TO A/E CONTRACTS EXCEEDING \$100,000**

**BREACH OF CONTRACT TERMS**

(Reference 2 CFR § 200 Appendix II(A))

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. 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.

**CLEAN AIR AND WATER POLLUTION CONTROL**

(Reference: 49 CFR § 18.36(i)(12))

Contractors and subcontractors agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

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

Reference: 2 CFR § 200 Appendix II (E)

### **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) above, 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 above, 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 above.

### **3. Withholding for Unpaid Wages and Liquidated Damages.**

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 any monies 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 above.

### **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 section.

**TASK ORDER NO. 2**  
**MASTER AGREEMENT FOR ENGINEERING SERVICES**  
**MUSCATINE MUNICIPAL AIRPORT**  
**FFY 2014 through FFY 2018**

This Task Order pertains to an AGREEMENT by and between the City of Muscatine (SPONSOR) and Anderson-Bogert Engineers & Surveyors, Inc. (CONSULTANT) dated May 1, 2014. CONSULTANT shall perform Services on the PROJECT described below as provided herein and provided in the original referenced AGREEMENT. This Task Order shall not be binding until it has been properly executed by both parties. Upon execution, this Task Order shall supplement the AGREEMENT, as it pertains to the PROJECT described below.

TASK ORDER NUMBER: 2

PROJECT NAME: RECONSTRUCT RUNWAY 6/24 AND ASSOCIATED TAXIWAYS  
CONSTRUCTION OBSERVATION

PROJECT NUMBER: 3-19-0063-020

**ARTICLE I. SCOPE**

NARRATIVE – For the last six years, the airport has experienced nine pavement blow-ups on the main runway and its parallel taxiway; these blow-ups have required emergency patching. These pavements are approximately twenty years old and were designed with a twenty year design life. According to the September 2014 Iowa DOT pavement inspection, the PCI of 85% of Runway 6/24 was listed as 65. In 2013, the City hired a consultant to perform a petrographic analysis, which concluded that ASR had been causing expansion in the concrete that slowly caused the control and expansion joints in the pavement to close, making the pavement vulnerable to blow-ups in hot weather. The consultant expects these blow-ups to continue. Therefore, the City has decided to pursue an aggressive plan to reconstruct Runway 6/24 and its parallel and connecting taxiways. This task order will include construction observation for the reconstruction of Runway 6/24 and the connecting taxiways to the approximate edge of the runway safety area. The low bid for construction of this project was \$3,985,699.84. This work will be performed and constructed under a Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant to the SPONSOR.

The CONSULTANT will team with the SPONSOR for the completion of construction observation and concrete testing. SPONSOR staff will conduct two days of

construction observation per week, while CONSULTANT staff will conduct construction observation on the remaining days. During paving, SPONSOR staff will conduct concrete testing including slump, air, temperature, casting and breaking of beams, and concrete core measurement. Professional services to be provided by the CONSULTANT shall include civil and geotechnical engineering services required to accomplish the following items:

A. CONSTRUCTION OBSERVATION

1. The on-site construction observer shall check in with SPONSOR staff by phone each day upon arrival at the construction site and each day when leaving the construction site.
2. Prepare a Construction Observation Program (COP) per AIP Sponsor Guide Section 1030. Submit COP to FAA for review and approval.
3. Conduct the pre-construction meeting with the Contractor, SPONSOR, and FAA. The CONSULTANT shall schedule the preconstruction meeting and shall prepare/distribute the meeting agenda and minutes.
4. Prepare and distribute Issued for Construction Plans and Specifications.
5. Review and approve partial and final estimates of work completed, as prepared and submitted by the Contractor. The Contractor will prepare the pay requests; the CONSULTANT will check the pay requests.
6. Provide consultation and advice to the SPONSOR during construction.
7. Coordinate the construction work schedule with the Fixed Base Operator (FBO) to ensure the minimum interruption of Airport operations during the construction period.
8. Provide review and approval of all contractor submittals and shop drawings required for construction. As a part of this process, Buy American requirements will be checked by the CONSULTANT.
9. Provide part time resident construction review and observation. General observation of the construction work shall include consulting and advisory services and necessary activities associated with changed field conditions. Resident construction review will include professional observations of the project, to help assure substantial

compliance with the plans, specifications, and contract documents. Resident services will include helping to ensure that all required inspections and tests are accomplished. SPONSOR will conduct two (2) days of construction observation per week. CONSULTANT construction observation staff will conduct observation on remaining days.

10. If required, prepare change orders, supplemental agreements, and the accompanying FAA required independent cost analyses. Coordinate all change orders and supplemental agreements with the FAA for a determination of AIP eligibility and reasonableness of costs, prior to implementing the change or seeking reimbursement. Submit a copy of the change order or supplemental agreement, along with the engineer's estimate of cost and the record of negotiations, prior to implementing the change or seeking reimbursement. For items of work that do not have an established unit price, prepare an engineer's estimate of cost prior to entering into negotiations with the contractor.
11. Conduct wage rate interviews; review Contractor payroll reports and compare to wage rate interview reports. Per the AIP Sponsor Guide, record wage rate interviews using GSA Standard Form 1445.
12. Prepare and distribute weekly working day reports, along with weekly construction progress and inspection reports (FAA Form 5370-1 or a form with equivalent content).
13. Provide coordination with Nav/Com Sector Field Office, FAA, Cedar Rapids on runway closures. Coordinate directly with Cedar Rapids System Support Center (SSC) Manager, Michael Bendixen at (319) 363-7175 or [michael.bendixen@faa.gov](mailto:michael.bendixen@faa.gov). Submit Strategic Events Coordination Form no less than 45 calendar days prior to the need to turn off FAA-owned NAVAIDs for construction phase.
14. Accompany SPONSOR and Contractor on final inspection; prepare punchlist of remaining items for Contractor to complete. CONSULTANT shall track punch list items to their completion and note the SPONSOR acceptance date of each punch list item. CONSULTANT shall complete the Final Inspection Report (FAA Form 5100-17).
15. Assurance testing of materials and compaction per FAA AC 150/5370-10G, to include P-152 Embankments and P-209/219 Crushed Aggregate Base Course pre-testing and on-site testing. The SPONSOR

shall provide P-501 PCC Pavement Concrete Testing.

B. SPECIAL SERVICES

Additional Services To Be Provided By The CONSULTANT Shall Include:

1. Monitor the Contractor's compliance with DBE Requirements. Verify actual participation by DBE subcontractors, including commercially useful functions.
2. Prepare all required FAA SPONSOR certification forms per Section 800 of the AIP Sponsor Guide.
3. Prepare FAA quarterly performance reports.
4. Provide FAA notification of the staging/storage areas and haul routes by entering OEAAA cases for the four corners of each staging area and at least three points of the haul route into the FAA website. Coordinate with the contractor on the height of the most demanding piece of equipment that will be used on a regular basis.
5. Coordination of project status with airport tenants/stakeholders; coordination efforts may include mailings, e-mails, City website postings, and terminal building postings.
6. After temporary erosion and sediment control measures have been removed and the site has achieved final stabilization, complete and submit to the Iowa Department of Natural Resources a Notice of Discontinuation of Storm Water Discharge covered under Iowa NPDES General Permit No. 2 for Construction Activities.
7. Prepare "Record Drawings" based upon our best recorded knowledge of the completed construction.
8. Prepare required FAA report and forms for closeout of project.

ARTICLE II. COMPENSATION

The SPONSOR agrees to compensate the CONSULTANT for performing engineering services on a **COST-PLUS-FIXED FEE NOT TO EXCEED BASIS** as described below:

A. Construction Observation ..... \$105,643.12

The SPONSOR agrees to compensate the CONSULTANT for performing engineering services on a **FIXED LUMP SUM BASIS** as described below:

B. Special Services..... \$24,895.43

**TOTAL PROJECT COMPENSATION NOT TO EXCEED .....\$130,538.55**

Per the following Cost Summaries and Work Plans.

**Cost Summary - A. Construction Observation Phase**

<b>Direct Salary Costs</b>			
<u>Title</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Cost</u>
Principal	21	\$86.60	\$1,818.65
Project Manager	300	\$46.84	\$14,053.32
Construction Observer	80	\$25.45	\$2,036.10
CAD Technician	0	\$33.14	\$0.00
Word Processing/Acct	18	\$26.62	\$479.07
Survey Department Manager	8	\$35.60	\$284.77
Surveyor	8	\$18.56	\$148.48
<i>Total Direct Salary Costs</i>			\$18,820.41
<b>Labor &amp; General Administrative Overhead</b>			
Percentage of Direct Salary Costs 105%			\$19,761.43
<b>Subtotal Items 1 &amp; 2</b>			<b>\$38,581.83</b>
<b>Fixed Fee @ 15%</b>			<b>\$5,787.28</b>
<b>Direct Non-Salary Expense</b>			
Transportation			\$2,875.27
<b>Total Direct Non-Salary Costs</b>			<b>\$2,875.27</b>
<b>Subconsultant Expenses (Geotechnical)</b>			<b>\$28,340.00</b>
<b>Subconsultant Expenses (Observation)</b>			<b>\$30,058.74</b>
<b>Grand Total (3+4+5+6+7)</b>			<b>\$105,643.12</b>

### Cost Summary - B. Special Services

1	<b>Direct Salary Costs</b>			
	<u>Title</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Cost</u>
	Principal	0	\$86.60	\$0.00
	Project Manager	164	\$46.84	\$7,682.48
	Construction Observer	40	\$25.45	\$1,018.05
	CAD Technician	40	\$33.14	\$1,325.40
	Word Processing/Acct	16	\$26.62	\$425.84
	Survey Department Manager	2	\$35.60	\$71.19
	Surveyor	2	\$18.56	\$37.12
	<i>Total Direct Salary Costs</i>			\$10,560.10
2	<b>Labor &amp; General Administrative Overhead</b>			
	Percentage of Direct Salary Costs	105%		\$11,088.10
3	<b>Subtotal Items 1 &amp; 2</b>			<b>\$21,648.20</b>
4	<b>Fixed Fee @ 15%</b>			<b>\$3,247.23</b>
5	<b>Direct Non-Salary Expense</b>			
	Transportation			\$0.00
	<b>Total Direct Non-Salary Costs</b>			<b>\$0.00</b>
6	<b>Subconsultant Expenses (Geotechnical)</b>			<b>\$0.00</b>
7	<b>Subconsultant Expenses (Observation)</b>			<b>\$0.00</b>
8	<b>Grand Total (3+4+5+6+7)</b>			<b>\$24,895.43</b>

### Work Plan

No.	Task	Principal	Project	Const.	CAD		Survey	
		Hours	Manager	Observer	Tech	Clerical	Manager	Surveyor
			Hours	Hours	Hours	Hours	Hours	Hours
<b>A.</b>	<b>Construction Observation</b>							
1	Coordinate with Sponsor		3					
2	COP		20			3		
3	Pre-construction Meeting	7	20			2		
4	Distribute Plans		2			2		
5	Pay Estimates		40			2		
6	Consultation		3					
7	Coordinate with FBO		8					
8	Shop Drawings		24			1		
9	Construction Observation	7	80	80			8	8
10	Change Orders		24			2		
11	Wage Rates		20			2		
12	Weekly Reports		24			2		
13	Coordination with FAA SSC		12					
14	Final Inspection	7	20			2		
	<b>A. Subtotal</b>	<b>21</b>	<b>300</b>	<b>80</b>	<b>0</b>	<b>18</b>	<b>8</b>	<b>8</b>
<b>B.</b>	<b>Special Services</b>							
1	DBE		8					
2	Sponsor Certification		8			2		
3	Quarterly Reports		4			2		
4	Staging/Storage Area Notification		8				2	2
5	Stakeholder Updates		20			4		
6	NPDES		4			2		
7	Record Drawings		16	40	40			
8	Closeout Documents		56			4		
	<b>B. Subtotal</b>	<b>0</b>	<b>164</b>	<b>40</b>	<b>40</b>	<b>16</b>	<b>2</b>	<b>2</b>

ARTICLE III. TENTATIVE SCHEDULE

Date*	Task/Activity Description
6/25/2015	Receipt of Bids
7/2/2015	Submit Grant Application
8/20/2015	Establish Grant Agreement
9/3/2015	Execute Contractor Agreement
3/1/2016	Hold Pre-Construction Meeting
3/4/2016	Issue Notice to Proceed to Contractor
8/26/2016	Substantial Completion
8/26/2016	Final Inspection
9/30/2016	Final Acceptance
12/30/2016	Submit Grant Closeout Documentation

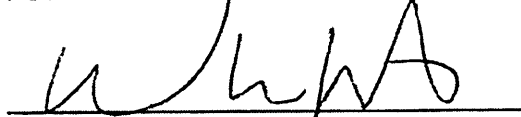
\*Pending approval and timing of federal funding

ARTICLE IV. EXHIBITS

All Exhibits attached hereto are incorporated herein by reference and made a part hereof for all purposes as if fully set forth herein.

IN WITNESS WHEREOF, the SPONSOR and the CONSULTANT have executed this Task Order as of the date first written.

FOR THE CONSULTANT



William W. Bogert, P.E., President

FOR THE SPONSOR  
CITY OF MUSCATINE



Mayor

Attached and Incorporated by Reference:

Exhibit A – Federal Provisions

**EXHIBIT A FEDERAL PROVISIONS**  
**TASK ORDER NO. 2**  
**MASTER AGREEMENT FOR ENGINEERING SERVICES**  
**MUSCATINE MUNICIPAL AIRPORT**  
**FFY 2014 through FFY 2018**

By entering into the Master Agreement for Engineering Services, along with Task Order No. 2, the CONSULTANT agrees to abide by the Federal Provisions included herein.

All references made to "Contract" shall pertain to said Task Order for Engineering Services.

All references made herein to "Contractor" shall pertain to the CONSULTANT.

All references made herein to "Subcontractor" shall pertain to any and all subconsultants under contract with the CONSULTANT.

All references made herein to "Sponsor" shall pertain to City of Muscatine.

**ACCESS TO RECORDS AND REPORTS**

(Reference: 2 CFR § 200.326, 2 CFR § 200.333)

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

**CIVIL RIGHTS – GENERAL**

(Reference: 49 USC § 47123)

The contractor agrees that it will 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 handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

## **CIVIL RIGHTS – TITLE VI ASSURANCES**

### **1) Title VI Solicitation Notice**

(Reference: Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration) The **Sponsor**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

### **2) Title VI Clauses for Compliance with Nondiscrimination Requirements**

(Reference: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

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 Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, 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 Acts and the Regulations relative to Non-discrimination 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 Acts, Regulations, 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.

### **3) Title VI List of Pertinent Nondiscrimination Authorities**

(Reference: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

#### **DISADVANTAGED BUSINESS ENTERPRISE**

(Reference: 49 CFR part 26)

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

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

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

(Reference: 29 USC § 201, et seq.)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a

referenced requirement directly with the U.S. Department of Labor – Wage and Hour Division.

## **LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

(Reference: 49 CFR part 20, Appendix A)

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.

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.

## **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

(Reference 20 CFR part 1910)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. 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

## **RIGHT TO INVENTIONS**

(Reference 2 CFR § 200 Appendix II(F))

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

#### **TRADE RESTRICTION CLAUSE**

(Reference: 49 CFR part 30))

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country 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;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project 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 contractor or subcontractor who is unable to certify to the above. If the contractor 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 contractor 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 contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor 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 contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

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

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.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

### **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), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The contractor must include these policies in each third party subcontract involved on this project.

### **VETERAN'S PREFERENCE**

(Reference: 49 USC § 47112(c))

In the employment of labor (except in executive, administrative, and supervisory positions), preference must be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Title 49 United States Code, Section 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

### **TERMINATION OF CONTRACT**

(Reference 2 CFR § 200 Appendix II(B))

a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.

c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.

d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

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

#### **DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**

(Reference: 2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5 DOT Suspension & Debarment Procedures & Ineligibility)

#### **CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)**

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

#### **CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS)**

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

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

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

## **BREACH OF CONTRACT TERMS**

(Reference 2 CFR § 200 Appendix II(A))

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. 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.

## **CLEAN AIR AND WATER POLLUTION CONTROL**

(Reference: 49 CFR § 18.36(i)(12))

Contractors and subcontractors agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;

3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;

4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

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

Reference: 2 CFR § 200 Appendix II (E)

### **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) above, 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 above, 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 above.

## 3. Withholding for Unpaid Wages and Liquidated Damages.

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 any monies 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 above.

## 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 section.