

MASTER AGREEMENT FOR PROFESSIONAL AIRPORT ENGINEERING SERVICES BETWEEN OWNER AND ENGINEER

THIS IS AN AGREEMENT made as of _____ between the OWNER, City of Billings Aviation and Transit Department, 1901 Terminal Circle, Room 216, Billings, MT 59105, and the ENGINEER, Morrison-Maierle, Inc., 315 N. 25th Street, Suite 102, Billings, MT 59101.

WHEREAS the OWNER intends to perform several Airport Improvement Projects at the Billings Logan International Airport and MET Transit under their authority during the following 2022-2027 years including, but not limited to, the following:

1. Commercial Apron Concrete Construction
2. Pavement Condition Index Survey
3. North Side Ramp Expansion
4. Taxiway A West Pavement Rehabilitation
5. Taxiway B North Side Pavement Rehabilitation
6. Fuel Farm Service Road Construction
7. Equipment Purchases
8. Airfield Storm Water Improvements
9. Improvements to Runway 7/25
10. Cargo Ramp Expansion
11. MET Administrative and Maintenance Facility Expansion/Remodel
12. Metroplex Electrical Upgrades and Fueling Bays Holding Tank Improvements
13. MET Facilities Upgrades to Security

This AGREEMENT sets forth the general terms and conditions which shall govern the relationships and performance of the **Owner** and **Engineer** for work designated for each project and documented by a **Task Amendment**. Each **Task Amendment** will be prepared and executed by both parties for each project and will set forth specific project requirements, services of the **Engineer**, **Owner's** responsibilities, times for rendering services, deliverables to be provided, basis of compensation, and other appropriate contract terms related to the specific project.

The **Owner** and **Engineer** in consideration of their mutual covenants herein agree in respect to the performance of Professional Engineering Services by **Engineer** and the payment for those services by **Owner** as set forth in issued **Task Amendments**.

The **Engineer** shall provide Professional Airport Planning and Engineering services for **Owner** in all phases of the Project to which this Agreement applies, serve as **Owner's** professional engineering representative for each Project as set forth in the Task Amendments and shall give professional engineering consultation and advice to **Owner** during the performance of services hereunder.

This AGREEMENT (consisting of pages 1 to 35, inclusive), together with any specifically noted attachments, if any, constitute the entire Agreement between **Owner** and **Engineer** and supersede all prior written or oral understandings. This Agreement may only be amended, supplemented, or modified by a written instrument signed by both **Owner** and **Engineer**.

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

OWNER:
CITY OF BILLINGS
AVIATION & TRANSIT DEPARTMENT

Name

ENGINEER:
MORRISON-MAIERLE, INC.

Name

Signature

Signature

Title

Title

Attest

Attest

ADDRESS FOR GIVING NOTICES:
Billings Logan International Airport

1901 Terminal Circle, Room 216

Billings, MT 59105

ADDRESS FOR GIVING NOTICES:
315 N. 25th Street, Suite 102

Billings, MT 59101

MET Transit

1705 Monad Road

Billings, MT 59101

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DEFINITION OF TERMS

Wherever used in this Agreement (including the Exhibits hereto), terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

1. *Addenda* - Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
2. *Additional Services* - The services to be performed for or furnished to **Owner** by **Engineer** in accordance with Section 2.02 of this Agreement or Task Amendment.
3. *Agreement* - This written contract for professional services between **Owner** and **Engineer**, including all exhibits identified in the Index of this Agreement or Task Amendment and any duly executed amendments.
4. *Application for Payment* - The form acceptable to **Engineer** which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services* - The services to be performed for or furnished to **Owner** by **Engineer** in accordance with Section 2.01 of this Agreement or Task Amendment.
6. *Calendar Day* - Every day shown on the calendar.
7. *Change Amendment or Supplemental Agreement* - A document which is signed by Contractor and **Owner** and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract. (The Federal Aviation Administration standard specification for Airport Construction uses the term *Supplemental Agreement*).
8. *Change Proposal* - A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by **Engineer** concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
9. *Constituent of Concern* - Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

10. *Construction Contract* - The entire and integrated written contract between the **Owner** and Contractor concerning the Work.
11. *Construction Contract Documents* - Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.
12. *Construction Contract Price* - The money that **Owner** has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
13. *Construction Contract Times* - The number of Calendar Days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
14. *Construction Cost* - The cost to **Owner** of the construction of those portions of the entire Project designed or specified by or for **Engineer** under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of **Engineer** or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; **Owner's** costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to **Owner**. Construction Cost is one of the items comprising Total Project Costs.
15. *Constructor* - Any person or entity (not including the **Engineer**, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, **Owner's** work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
16. *Construction Safety and Phasing Plan (CSPP)* - The overall plan for safety and phasing of an Airport construction project developed by the **Owner** (airport operator) or developed by the airport operator's **Engineer** and approved by the airport operator and Federal Aviation Administration. It is included in the invitation for bids and becomes part of the project Construction Contract Documents.
17. *Consultants or Subconsultants* - Individuals or entities having a contract with **Engineer** to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
18. *Contractor* - The entity or individual with which **Owner** enters into a Construction Contract.
19. *Documents* - Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by **Engineer** to **Owner** pursuant to this Agreement.
20. *Drawings* - That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
21. *Effective Date* - The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
22. *Engineer* - The individual or entity named as such in this Agreement.

23. *Field Order or Change Order* – A written order issued by **Engineer** and approved by the **Owner** which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times. (The Federal Aviation Administration standard specification for Airport Construction uses the term *Change Order*).
24. *Laws and Regulations; Laws or Regulations* - Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction. The contract clauses required by the Federal Aviation Administration to be included professional service agreements are included in Section 6.14 and Exhibit D.
25. *Owner* - The individual or entity named as such in this Agreement and for which **Engineer's** services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project. For Federal Aviation Administration projects the term Owner may also mean *Sponsor*.
26. *Project* - The total undertaking to be accomplished for **Owner** by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by **Engineer** under this Agreement are a part.
27. *Record Drawings* - Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by **Engineer** and delivered to the **Owner** as part of Project Closeout Services or as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to **Engineer** and annotated by Contractor to show changes made during construction.
28. *Reimbursable Expenses* - The expenses incurred directly by **Engineer** in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
29. *Resident Project Representative* - The authorized representative of **Engineer** assigned to assist **Engineer** at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit B.
30. *Samples* - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
31. *Shop Drawings* - All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
32. *Site or Airport* - Lands or areas to be indicated in the Construction Contract Documents as being furnished by **Owner** upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by **Owner** which are designated for the use of Contractor.
33. *Specifications* - The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the

Work.

34. *Sponsor* - A Sponsor is defined in 49 USC § 47102(24) as a public agency that submits to the FAA for an AIP grant; or a private Owner of a public-use airport that submits to the FAA an application for an AIP grant for the airport.
35. *Subcontractor* - An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
36. *Substantial Completion* - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of **Engineer**, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
37. *Supplier* - A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
38. *Total Project Costs* - The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of **Engineer** or other design professionals and consultants, together with such other Project-related costs that **Owner** furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, **Owner's** costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to **Owner**.
39. *Work* - The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
40. *Work Change Directive* - A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by **Owner** and recommended by **Engineer**, ordering an addition, deletion, or revision in the Work.

MASTER FORM OF AGREEMENT

1. This is a Master Form of Agreement which provides for the performance of services for multiple projects over a specified period of time. Services shall be performed only as authorized by Task Amendments issued under this Agreement.

2. The effective date of this Agreement is as shown on page 1. This Agreement shall be effective and applicable to Task Amendments issued hereunder for Five (5) years from the effective date of the Agreement.

3. This Agreement provides for the general terms and conditions which shall govern the relationships and performance of the **Engineer** and **Owner** for the various projects involved in this Agreement. Each Task Amendment will further describe any distinctive terms or conditions required of the **Engineer** and **Owner** which are specific to the project covered by the Task Amendment.

4. The services to be provided by the **Engineer** will include applicable Basic and Additional Services as set forth herein plus specific services for each project as detailed in a duly executed Task Amendment for that project. The Task Amendment will indicate the specific tasks and functions to be performed, deliverables to be provided, establish beginning and completion dates, and include a method of payment to the **Engineer** for the performance of the services.

5. **Owner** shall have the responsibilities set forth in this Agreement and as further identified in the Task Amendment for each specific project.

6. **Engineer** shall not be obligated to perform any prospective Task Amendment unless and until **Owner** and **Engineer** agree as to the particulars of the specific Project, **Engineer's** services, compensation and all other appropriate matters.

7. Expiration of this Agreement shall not affect Task Amendments issued hereunder during its term, or the validity of any actions taken under or with respect to such Task Amendments, including modifications, whether taken before or after the expiration of the term of this Agreement.

8. The services specified in a Task Amendment issued to the **Engineer** shall be commenced by the **Engineer** promptly and in any event not later than the beginning date specified in the Task Amendment.

Section 1 - ENGINEER'S RESPONSIBILITY

1.01 The **Engineer** shall serve as the **Owner's** professional Engineering representative for those projects or phases of the project to which the Task Amendment and this Agreement applies and will give consultation and advice to the **Owner** during the performance of the services. Services to be provided under a Task Amendment may include the following:

A. Acquisition of Land or Equipment

1. Land Acquisition projects will include scoping meetings, advising the **Owner** during the land acquisition process, preparing and submitting Categorical Exclusion Documentation and Applications for Federal Assistance, preparing and submitting DBE goals (if applicable), preparing certificates as required, requests for reimbursement, a final project report, and updating the ALP and Exhibit "A" - Airport Property Map.

The **Engineer** shall solicit or assist the **Owner** in the selection of appraisers and review appraisers, administer the land acquisition process, conduct legal land surveys and prepare certificates of survey. The Engineer shall assist the **Owner's** Attorney in obtaining the necessary data and documentation required for the Attorney to prepare the Title Opinion required for Project Closeout.

In the event of litigation (Condemnation), the **Engineer** shall provide Expert Testimony and provide technical support to the **Owner's** Attorney in the prosecution of the litigation.

2. Equipment Acquisition - Assist Owner with the acquisition of equipment by providing solicitation of bids or quotes as necessary to meet the requirements of the FAA equipment procurement process.

B. Design and Construction Administration of Airport Improvement Projects

Design and Construction Administration Projects are typically completed in Phases that are described in more detail in **Section 2 - Scope of Services and the Task Amendment**. Phases may include:

- **Phase I - Programming and Pre-Design Activities for the Project** including meetings with the **Owner** to develop a project scope and schedule, preparing a Task Amendment, preparation of Grant Applications, and CATEX or other environmental documentation required to obtain FAA assistance for the project. Selection of subconsultants, negotiation of professional services fees, and preparation of DBE goals is a part of Pre-Design activities.

- **Phase II - Preliminary Design Engineering for the Project** shall include a study of the project layout and possible alternative layouts, preparation of preliminary cost estimates for alternatives, meetings with the **Owner**, FAA to discuss alternatives, obtaining survey data and geotechnical information, studying alternative construction phasing to minimize impacts to airport users, pavement design, life cycle cost analysis, preparation, and submission of a 30% Design Report and 30% plans for approval, and preparation and submission of a Construction Safety and Phasing Plan (CSPP) to the FAA for review.

- **Phase III - Final Design Engineering for the Project** following review of the 30% Preliminary Engineering submission by the **Owner**, FAA, and based on their acceptance, modification and direction, shall include the undertaking of the Final Engineering activities required to prepare final plans and specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractors or Equipment Suppliers. This phase includes meetings and design conferences to obtain information and to coordinate or resolve design matters, collecting additional engineering data and undertaking additional field investigations, surveys, engineering, and environmental studies required to prepare detailed plans, specifications, and cost estimates. Final Design services include refining alternative construction phasing to minimize impacts to airport users, pavement design, and if applicable, pavement life cycle cost analysis and value engineering. Preparation and submission of Final Plans and Specifications, opinions of total project costs, the Final Design Report, and submission of an updated CSPP complete this phase. Intermediate submission of plans and specifications may be required at the 60%, 90%, and 100% stage depending on **Owner** and FAA policies.

- **Phase IV - Assistance in the Bidding Process** includes providing printed or electronic copies of plans, specifications, and bidding documents to Bidders, assisting the **Owner** in advertising and securing bids, negotiating for services, analyzing bid results, furnishing

recommendations on the award of contracts, and preparing or updating Applications for Federal Assistance.

- **Phase V - Construction Phase Services** may include:

1. Design with Construction Phase Services includes basic services rendered after the award of a construction contract including providing consultation and advice to the **Owner** during all phases of construction, on-site construction inspection and management involving the services of a full-time resident engineer, inspector, or manager during the construction or installation phase of a project, and providing appropriate reports to the **Owner**, FAA. Construction phase services also include reviewing and approving shop drawings and equipment cut sheets submitted by contractors for compliance with design concept, as well as reviewing laboratory and mill test reports of materials and equipment. Change orders and supplemental agreements will be prepared for **Owner**, FAA approval, performance tests required by specifications will be observed or reviewed, payment amounts to contractors will be determined and the **Owner** assisted in the preparation of grant reimbursement payment requests. Wage rate reviews will be conducted, along with making final inspections and submitting in the **Project Closeout Phase**, a report of the completed project including Record Drawings to the **Owner**, FAA, and State.

2. Design Without Construction Phase Services: For each design performed or furnished by **Engineer**, if **Owner** does not retain **Engineer**, by Task Amendment or otherwise, for project observation, or review of a Contractor's performance, or any construction phase services, and such services will be provided by **Owner** or others, then (1) **Engineer** shall have no design or shop drawing review obligations during construction; (2) **Owner** assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary construction phase engineering and professional services; and (3) **Owner** waives any claims against the **Engineer** that may be in any way connected thereto. In such a case, **Engineer's** Basic Services under the applicable Task Amendment will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in the Task Amendment.

3. Design With a Portion of the Construction Phase Services Provided by OWNER or Others: For each design performed or furnished by **Engineer** where the **Owner** elects to provide a portion of the construction phase services by **Owner** or others, the Task Amendment shall define the responsibility of each party for project observation, review of a Contractor's performance, and other construction phase services. Generally, when construction phase services are shared, the **Owner** often performs Resident Engineering/Resident Project Representation services and the **Engineer** often provides periodic construction observation and such services as shop drawing review, interpretation of the Contract Documents, contract administration, and **Project Closeout Phase Services**, all as outlined in the Task Amendment.

- **Phase VI Project Closeout Phase Services** include the collection and submittal of the Contractors Completion Documents to the **Owner** and preparation and submittal of a "Final Project Report" in accordance with appropriate FAA Airport District Office Notices or FAA Standard Operating Procedures in effect at the time of the project. The **Engineer** shall furnish the **OWNER** with two (2) hard copy sets of record drawings, specifications, shop drawings, submittals and Operations and Maintenance Manuals based on information furnished to the **Engineer** by the Contractor. The Final Report and Record Drawings shall also be submitted to the **Owner** and FAA in electronic PDF format. The Airport Layout Plan (ALP) shall be updated to show the completed construction. A major update of the ALP beyond showing completed construction is beyond the scope of Construction Phase Services. A major update includes revisions to bring the ALP into compliance with current FAA Standard Operating Procedure

standards for Airport Layout Plan Reviews. Major ALP Updates will be contracted for separately in a separate Task Amendment.

1.02 The **Engineer** shall perform the work in compliance with FAA requirements where applicable and in compliance with the standard of performance required in Section 6.01.

1.03 The **Engineer** shall be responsible for the technical accuracy of its services and documents resulting therefrom, and **Owner** shall not be responsible for discovering deficiencies therein. **Engineer** shall correct such deficiencies without additional compensation except to the extent such deficiencies are attributable to deficiencies in **Owner** furnished information.

1.04 The **Engineer** will attend Airport Advisory Committee or City Council meetings and meetings with the FAA and State as required to update Project progress. The maximum number of meetings with the Airport, FAA and State shall be as specified in the Task Amendment. In general, the **Engineer** will meet with the Airport on an on-call basis between Task Amendments and at all necessary regular or special meetings while work (design or construction) is ongoing.

Section 2 - SCOPE OF SERVICES

Each Task Amendment will clearly identify the engineering services required for each project. The following paragraphs are **brief descriptions** of engineering services typically provided, but may not be limited to those listed below.

2.01 Basic Services

The **Engineer** agrees to provide professional services in connection with the Project, including normal civil Engineering services as set forth below:

A. Acquisition of Land and Equipment

1. Land Acquisition

A. Land Acquisition: The land acquisition described in Exhibit A - Airport Property Map, will include performance of the following functions: securing of appraisals and appraisal reviews, conducting preliminary interviews and estimates, conducting negotiations, closing transactions with tenants and property owners, acquiring title commitments, subordination or acquisition of any property interest which would adversely affect Airport use, preparation and execution of deeds of conveyance, and other such functions required by Federal Aviation Administration. The preparation of a relocation plan, if required by federal regulations, shall be considered an additional service.

The services provided will comply with Federal Aviation Administration requirements in effect on the date of the Task Amendment, as set out in FAR Part 152, FAA Advisory Circular 150/5100-11 (Land Acquisition and Relocation Assistance under the Airport Development Aid Program) and FAA Order 5100.37 (Land Acquisition and Relocation Assistance for Airport Development Projects).

The Task Amendment will identify the size and description of the land acquisition related to the specific project.

The **Engineer** shall perform the following Land Acquisition Project work on behalf of the **Owner**. Depending on the circumstances, tasks such as just compensation offers, purchase, and

relocation negotiations may be done by the **Owner, Owner's Attorney**, or professionals retained by the **Engineer** or **Owner**.

1. Utilize title commitments to show ownership interests and indicate easements, mineral leases, and other interests and encumbrances which affect the safe operation of the Airport.

2. Conduct preliminary interviews with property owners.

3. Conduct a public meeting, if requested by the **Owner**.

4. Prepare a relocation plan, if determined necessary, for FAA approval to acquire and relocate occupants. The cost of the relocation plan shall be paid for as additional services.

5. Secure appraisals and appraisal reviews prepared by adequately qualified persons as to education, experience, and credentials as set forth in the FAA Order 5100.37, Section 3.

6. Prepare offers for just compensation and relocation determinations, if required, upon review and approval of the **Owner**.

7. Conduct purchase and relocation negotiations with the property owner and tenants and prepare memorandums of negotiations on behalf of **Owner**.

8. All proposed offers are to be reviewed and approved by the **Owner** before execution. All administrative settlements are to be reviewed and approved by **Owner** and **FAA** prior to execution.

9. Prepare and submit proper documentation to FAA for payment of offers for just compensation and relocation claims.

10. Prepare and have executed all documents of conveyance, relinquishment, and subordination to provide **Owner** or its designee with a marketable fee simple title for Airport purposes. The **Engineer** shall be responsible for completing the necessary land surveys under the direction of a licensed surveyor required to transfer the title to the **Owner**. The survey shall include the completion of a Certificate of Survey (C.O.S.).

11. Provide transaction closings and all documents to close the purchase of parcels included in the Task Amendment, which shall be reviewed and approved by **Owner's** attorney prior to execution.

12. Record all documents affecting title with the County Clerk and Recorder.

13. Notify the appropriate city, township, and County Treasurer's office of the change from private to public Ownership to allow **Owner** to apply for tax exempt status at the earliest possible date, if applicable.

14. Be available for consultation as needed with **Owner's** Representatives.

15. Prepare and maintain three (3) land parcel files for each land and tenant parcel to be acquired, which include the documentation needed for cost reimbursement. One file will be submitted to the FAA, the second is for the **Owner's** records and the third file will be retained by the **Engineer**.

16. Prepare land acquisition and relocation summaries for the FAA.

17. Transmit the documentation needed for Project closeout and cost reimbursement to the FAA Airport District Office. The closeout package shall include the updating of Exhibit A - Airport Property Map and the ALP to show the newly acquired property. A major update of the ALP beyond showing the newly acquired property is beyond the scope of Land Acquisition Services.

18. Assist the **Owner's** attorney and the **Owner** in preparation of the Certificate of Fee Title (or easement), and Certificate of Compliance required by the FAA for each parcel acquired. This assistance is limited to providing a description of the property being acquired and copies of the FAA forms in draft format for completion by the **Owner's** attorney and **Owner**.

2. **Equipment Acquisition.**

- Research equipment requirements
- Prepare Design Report and justification
- Provide bid documents and specifications for equipment
- Distribute bid documents and specifications or solicit quotes
- Prepare opinion of probable cost
- Attend bid opening
- Prepare Letter of Recommendation of Award
- Prepare Notice of Award
- Prepare Notice to Proceed
- Prepare Requests for Reimbursement and payment documentation
- Conduct inspection of equipment for compliance with specifications.

B. Design and Construction Administration of Airport Improvement Projects

Phase I – Programming and Pre-Design Activities for the Project:

1. Develop Project Scope and prepare a Task Amendment for the professional services, including the development of:

- ✓ Phase II Preliminary Design Engineering for the Project
- ✓ Phase III Final Design Engineering for the Project
- ✓ Phase IV Assistance in the Bidding Process
- ✓ Phase V Construction Phase Services
- ✓ Phase VI Project Closeout

2. Attend Pre-Design Meeting with Airport officials to discuss scope of the project, design and construction bid schedules, projected bid opening dates, and construction period. Provide summary of meeting.

3. Prepare **FAA Grant Application** and **CAT Ex Documentation Submittal** for the project. Develop a project schedule for completion of design elements and project milestones preliminary and final plan completion, review periods, bidding dates and final grant application submission based on bids. Use FAA Checklists to develop a tentative project schedule.

4. Prepare solicitations for subconsultant services required by the project work scope. In general, services for Geotechnical, Environmental, Geographical Information Systems (GIS), Architectural and other specialty consultants will be solicited from qualified DBE and non-DBE firms pre-qualified or certified by State DOTs. (Note: Required Field Surveying services may be performed by the **Engineer** in-house, but are shown under subconsultant services). Any subconsultants selected for the project are subject to the approval of the **Owner**.

a. Subconsultants

Topographic Field Surveys: This effort will include development of ground control for use during construction and topographic field data collection to provide a detailed construction base map that will be used for final design and quantity calculations. The **Engineer** may utilize in-house field surveyors to perform this work. The area surveyed will be identified in the Task Amendment.

Geotechnical Field Investigations: This effort will include a series of field borings and soil sampling for evaluation of existing subgrade soil and if applicable, pavement conditions, in the earthwork and pavement areas in accordance with the latest edition of FAA Advisory Circular 150/5320-6 Pavement Design. Geotechnical investigations for buildings will be conducted in accordance with applicable building codes. In addition, during the construction phase of the project, the Geotechnical consultant may provide the certified laboratory for Materials Acceptance Testing services in accordance with applicable FAA construction specifications including P-209, P-401 and P-501. The geotechnical investigations work scope will be identified in the Task Amendment and solicitation for services.

Architectural, Environmental, GIS and other Specialty Consultants: If required for a specific project, the work scope for any specialty subconsultants will be identified in the scoping meetings and Task Amendment. Services will be solicited in accordance with the **Engineer's** subconsultant procurement plan. Generally, firms experienced in airport projects such as terminals, hangars, wildlife studies, and airport GIS survey projects, etc., will be selected.

5. Prepare for **Owner's** and **Independent Fee Estimator's** use a packet that the fee estimator may use to develop his or her fee estimate and that the **Owner** can use for fee review and negotiations with the **Engineer**. [Note to Engineer: Delete if this isn't provided]

6. Prepare Fiscal Year DBE goals and report on previous Fiscal Year DBE goal achievements. This includes revising, development, and approval of DBE goals in the event that anticipated amount of federal funds is in excess of \$250,000 per year and in accordance with FAA Civil Rights criteria in effect at the time of the Task Amendment, as well as reporting DBE Achievements via the FAA Civil Rights DOORS on-line reporting system.

Phase II – Preliminary Design

1. Perform investigative services and identify and evaluate the alternate solutions available to the OWNER as listed in the Task Amendment. Information from the current *Airport Master Plan, AC 150/5300-13A (Airport Design), AC 150/5320-6E (Airport Pavement Design and Evaluation), AC 150/5325-6 (Airport Design Standards - Effects and Treatment of Jet Blast), AC 150/5340-30H (Design and Installation of Details for Airport Visual Aid), AC 150/5360-9 (Planning and Design of Airport Terminal Facilities at non-Hub Locations), and other applicable FAA Advisory Circulars (ACs)* as of the date of the Task Amendment will be used as the basis for determining alternatives.

2. The investigative services includes the evaluation of the Airport lighting system affected the project, completion of field surveys, geotechnical investigations required for the project and verification of record drawings by the design team.

3. Obtain field surveys of site topography and other field information, as required, to refine cost estimates and to use in the final design process. Utility mapping will be based on information obtained from utility owners, Blue Stake, or Airport records.

4. Obtain soils and geotechnical information required for pavement designs and the design of structures. Soils investigations for pavement design will use the current edition of AC 150/5320-6E Airport Pavement Design which is in effect on the date of the Task Amendment as a basis for determining the scope of the investigation. For structures, appropriate building codes will be used as the basis of the geotechnical investigation.

5. Develop an existing features drawing including contours (as appropriate) from data provided by the field topographic survey for use in refining cost estimates and the preparation of preliminary and final plans. Utility mapping will be based on information obtained from utility owners, Blue Stake, or Airport records.

6. Review existing storm drainage and develop storm drainage plan for the project, if applicable.

7. Prepare schematic development plans for the project, update **Engineer's** opinion of total project costs for alternative layouts or procurement of equipment, i.e. LED vs. Incandescent, for example. Evaluate alternatives for phasing of construction to minimize impacts to airport users and enhance airport safety and operations. Prepare schematic phasing plans and meet with the **Owner** and Airport Users (Stakeholders) to discuss alternate layouts and phasing alternatives.

8. Develop Project construction plans and specifications to approximately 30% completion and update the **Engineer's** opinion of total project costs.

9. Prepare a Design Report in accordance with FAA requirements. Print the Design Report, review plans and specifications and submit to **Owner**, FAA for a 30% design review. Review 30% plans with the Airport and FAA.

10. Develop a Draft Airport Construction Safety and Phasing Plan (CSPP) in accordance with FAA AC 150/5370-2G Operational Safety on Airports During Construction. The construction Contractor is responsible for complying with the CSPP and a contractor prepared Safety Plan Compliance Document (SPCD) describing how they will comply with the requirements of the CSPP and supplying any details that could not be determined before contract award. Preparation of the draft CSPP will be coordinated with the **Owner**, airport users, and other applicable stakeholders. The Draft CSPP will be part of the 30% design submittal.

11. Assist the **Owner** in submitting the Draft Airport Construction Safety and Phasing Plans.

Phase III - Final Design and 100% Design Review for the Project

1. Following the 30% review of the Phase II Preliminary Design by the **Owner**, FAA, and State and based on their acceptance, modification and direction, prepare final plans and specifications indicating the scope, extent and character of the Work to be performed and furnished by the Contractor(s) or Equipment Suppliers.

2. Develop the Project construction plans and specifications to approximately 100% completion and update the **Engineer's** opinion of total project costs. Intermediate submission of plans and specifications may be required depending on **Owner**, FAA and State policies.

3. Include in the Project Manual (Specifications) the approved Construction Safety and Phasing Plan (CSPP) prepared in accordance with FAA AC 150/5370-2G Operational Safety on Airports During Construction and submitted to the FAA for approval. The construction Contractor is responsible for complying with the CSPP and a contractor prepared Safety Plan Compliance Document (SPCD) describing how they will comply with the requirements of the CSPP and supplying any details that could not be determined before contract award. The final draft CSPP will be coordinated with the **Owner**, airport users, and other applicable stakeholders. [Note to Engineer, pick a paragraph 3 that works for the Owner and master agreement]

3. Include in the specification's Special Provisions a CONSTRUCTION SAFETY AND PHASING PLAN to address specific impacts of construction activities on airport operations. The version of AC 150/5370-2G Operational Safety on Airports During Construction which is in effect as of the date of the Task Amendment will be used as a guide in preparing the Construction Safety and Phasing Plan. Coordinate with the FAA Airport District Office, Air Traffic Control Tower, and FAA Facilities, as well as airport management and airport users as required to complete the plan. Generally, the FAA ADO will coordinate with and obtain approval from FAA Flight Standards for any special airport operational issues during construction.

4. Update the **Engineer's** opinion of total project costs. Revise the Design Report submitted for the 30% review as required to identify items of proposed work, levels of federal and state funding requested, and project impacts. Identify items of work which will be bid as alternative bid items. The design report will be completed in accordance with the versions of the appropriate ADO Notices and Checklists which are in effect as of the date of Task Amendment.

5. Print and also provide an electronic copy (PDF) for 100% review plans and specifications (Project Manual), Final Design Report and CSPP to **Owner** for transmittal to FAA for a 100% review.

6. Participate in final review meeting.

7. Following review of the 100% submittal by the **Owner** and FAA and based on their acceptance, modification, and direction prepare final plans and specifications and update the **Engineer's** opinion of total project costs based on the final plans and specifications.

8. Provide final copies of plans and Specifications and bid package to **Owner** and FAA for their files. Four sets are anticipated unless otherwise stated in the Task Amendment.

9. Attend Airport Board meetings and meetings with the FAA as required, to update Project progress. The maximum of meetings with the Airport Board and with the FAA shall be as specified in the Task Amendment.

Phase IV – Provide Assistance in the Bidding Process

Once the Project is authorized by the FAA, State, and the **Owner** to be advertised for construction, Phase IV of this Agreement shall commence and the **Engineer** shall:

1. Prepare and distribute a notice to bidders or a copy of the Invitation to Bid for the upcoming project. Certified DBE firms' capable bidding the project or submitting subcontractor proposals to prime contractors will be included in the bidders list.

2. Provide plans and specifications for the construction of the improvements set forth in the Task Amendment. For bidding, provide the **Owner** with four copies and the FAA one copy of the plans and specifications. Plans and specifications will be offered to bidding Contractors in printed

or electronic format for a non-refundable fee to cover reproduction and postage costs. Plans and specifications for Plan Exchanges will be provided in electronic (PDF) format.

3. Distribute plans and specifications via on-line bidding or paper distribution to contractors, subcontractors, suppliers, and manufacturers for the purpose of bidding.

4. Conduct a Pre-bid Conference to discuss airport operational safety during construction, airport security requirements, project construction schedule, and FAA construction specifications with prospective contractors. This will include providing a meeting attendance list, meeting agenda and meeting minutes.

5. Research and provide answers to Bidders during the advertisement period. Provide and distribute addendums if required.

6. Prepare a final Engineer's opinion of probable cost based on the final plans and specifications for use as a guide in considering bids at the bid opening.

7. Attend the project Bid Opening. Review each bidder's bid submission for completeness and errors, including a review the Bidder's qualifications documentation submitted in accordance with the general provisions of the project specifications. Review the low bidder's packet for compliance and completeness.

8. Prepare Bid Tabulations and provide a letter of recommendation of award to the **Owner** and FAA.

9. Prepare amendments to the FAA Project Applications incorporating actual construction bid amounts into the application request and project budget. Assist the **Owner** in submitting the Amended Project Applications to the FAA if necessary.

Phase V - Construction Phase Services

If the owner elects to provide construction services with someone other than the engineer of record the services, if any, provided by the engineer will be defined in the Task Amendment. The **Owner** and **Engineer** have agreed that the **Owner** shall provide Resident Project Representation (RPR) Services on this project on a Force Account basis as approved by the FAA and the State. The following defines the **Engineer's** duties during construction. The **Owner** responsibilities are defined in **Section 3 - Owner's Responsibility**. [Note to Engineer: Keep highlighted paragraph, or remove.]

Following the Award of Construction Contract(s) and acceptance of the FAA and State Grants by the **Owner**, Construction Phase Services shall commence and the **Engineer** shall:

1. Prepare a notice of award and assist the **Owner** in preparation of the Construction Contract Documents.

2. Print seven sets of full size project drawings and provide 5 sets of construction specifications to the Contractor for construction. One set of full size drawings will be used by the Contractor for field documenting project changes and found conditions. This data will be incorporated into the Record (as-built) Drawings.

3. Executed contract documents will be gathered, bound into a project specification book, and distributed to the **Owner**, FAA, and the Contractor.

4. Schedule and conduct a Pre-construction Meeting with the selected construction contractors and subcontractors and Airport Stakeholders. This will include providing a meeting attendance list, meeting agenda and meeting minutes.

5. Stake the project for construction in accordance with the Project Specifications and as defined in the Task Amendment for the project.

6. Should paving costs as bid exceed \$250,000, the **Engineer** shall prepare a **CONSTRUCTION MANAGEMENT PLAN**. The plan will include the identification of the **Owner's** representative, the testing laboratory, the procedures for testing laboratories, qualifications of testing personnel, and testing requirements, as required by the versions of the ADO Notices which are in effect as of the date of the Task Amendment.

7. The **Engineer** shall provide construction administration and observation services as required for substantial compliance with the Contract Documents. The **Engineer** will keep the **Owner** informed of the progress of the work, endeavor to guard the **Owner** against defects and deficiencies in the work of the Contractor, and shall reject or stop work, as appropriate, failing to conform to the Contract Documents. The **Engineer** or its authorized representative shall keep adequate Project records and field reports of work during construction.

8. Provide the services of a Resident Project Representative (RPR) at the site to assist the **Engineer** and to provide observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit B. The furnishing of such RPR's services will not extend **Engineer's** responsibilities or authority beyond the specified limits set forth elsewhere in this Agreement.

9. Visits to site and construction observation. In connection with observations of Contractor's work in progress while it is in progress:

a. Make visits to the site at intervals appropriate to the various stages of construction, as **Engineer** deems necessary, in order to observe the progress and quality of the Work. Such visits and observations by **Engineer** and **Engineer's** RPR are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspection of Contractor's work in progress, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work. Based on information obtained during such visits and such observations, **Engineer** will determine in general if Contractor's work is proceeding in accordance with the construction Contract documents, and **Engineer** shall keep **Owner** informed of the progress of the work.

b. The purpose of **Engineer's** visits to, and observation by the **Engineer's** Resident Project Representative will be to enable **Engineer** to better carry out the duties and responsibilities assigned to and undertaken by **Engineer** during the construction phase, and, in addition, to provide for **Owner** a greater degree of confidence that the completed Work will conform in general to the Contract Documents. **Engineer** shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall **Engineer** have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure by Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, **Engineer** neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the construction Contract documents.

10. Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspection, tests, and approvals. **Engineer's** review of such certificates will be for the purpose of determining that the results certified indicate compliance with the construction Contract documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the construction Contract documents. **Engineer** shall be entitled to rely on the results of such tests.

11. Monitor Contractor and Subcontractor operations during construction for general adherence to the Construction Safety and Phasing Plan (CSPP). In the event construction activities are not in conformance with the provisions of the CSPP with respect of operations within the Airfield Environment defined in the CSPP, the Contractor and **Owner** will be notified verbally and in writing. Failure of the Contractor to take corrective action will result in a stop work order issued to the Contractor until such time as the Contractor takes corrective action. The stop work order may be issued at the direction of the **Owner**, through the **Engineer**, or by order of the **Engineer**, should circumstances dictate such action.

12. Prepare weekly construction observation reports for review by the **Owner**, the FAA and the State.

13. Based on the on-site observations of the **Engineer's** RPR and review of Contractor(s)' applications for payment and the supplemental data and schedules, the **Engineer** shall approve, in writing, the amounts owed to the Contractor(s), and in accordance with the provisions of the General Conditions of the construction Contract documents shall approve payments to the Contractor(s) in such amounts.

Approvals of payment shall constitute a representation to the **Owner**, based on such observations and review, that the work has progressed to the point indicated and that, to the best of **Engineer's** knowledge, information and belief, the quality of the work is in accordance with the construction Contract documents subject to an evaluation of the work upon substantial completion and subject to the results of subsequent tests, and to any other qualifications stated in the **Engineer's** approval.

By approving applications for payment, the **Engineer** shall not be deemed to have represented that it has made any examination to determine how or for what purpose any Contractor has used the moneys paid on account of the contract price, or that title to any of the Contractor(s)' work, materials or equipment has passed to the **Owner** free and clear of any lien, claims, security interests, or encumbrances.

14. Provide draft FAA and Requests for Reimbursements and assisting in the submittal of the requests. Summaries of Project Cost and Paid Invoices will be prepared for the purpose of tracking grant(s) funding and project budget status. Assist in the preparation of quarterly and annual SF 425 reports for FAA Projects.

15. Make recommendations to the **Owner** on all claims relating to the execution and progress of the construction work.

16. Notify the **Owner** of permanent work that does not conform to the result required in the construction Contract documents, prepare a written report describing any apparent non-conforming permanent work, make recommendations to the **Owner** for its correction, and, at the request of the **Owner**, have these recommendations implemented by the Contractor.

17. Review shop drawings, samples, certifications and other submittals of the Contractor only for general conformance to the design concept of the Project and for general compliance with the construction Contract documents. Such reviews and approvals will not extend to the means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.

18. Prepare incidental Change Orders for the **Owner's** approval. Incidental in this reference would require no additional design or construction management. (Change Orders involving additional design and construction management services shall be considered Additional Services and subject to Section 2.02 of this Agreement).

19. Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with **Owner**, FAA, and Contractor, conduct an inspection to determine if the Work is substantially complete. If, after considering any objections of **Owner**, the FAA, the **Engineer** considers the Work substantially complete; **Engineer** shall then deliver a certificate of substantial completion to **Owner** and Contractor.

20. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that **Engineer** may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, **Engineer** shall also provide a notice in the form attached hereto as Exhibit C (the "Notice of Acceptability of Work") that the Work is acceptable to the best of the **Engineer's** knowledge, information, and belief and based on the extent of the services provided by **Engineer** under this Agreement.

Phase VI - Project Closeout Phase Services

1. *Contractor's Completion Documents.*

a. Receive and review maintenance and operating instructions, schedules, and guarantees.

b. Receive bonds product, certificates, certificates of inspection, tests, and approvals, shop drawings, samples, and other data required by the construction Contract documents and the annotated record documents which are to be assembled by Contractor in accordance with the construction Contract documents to obtain final payment.

c. The **Engineer** in the construction Contract documents shall require the Contractor to prepare as constructed record documents in accordance with FAA requirements which shall show any changes that were made in the plans and specifications during construction. A copy of the as-constructed plans shall be furnished to the **Engineer**. Final payment to Contractor will be made contingent on receipt of the as-constructed plans.

d. **Engineer** shall transmit all of the Contractor's completion documents to **Owner**.

2. The Airport Layout Plan (ALP) shall be updated to show the completed construction. A major update of the ALP beyond showing completed construction is beyond the scope of Construction Phase Services.

3. Upon completion of construction, the **Engineer** shall prepare a "Final Project Report" in accordance with appropriate ADO Notices in affect at the time of the project. The **Engineer** shall furnish the **Owner** with two (2) hard copy sets of record drawings, specifications, shop drawings, submittals and Operation and Maintenance Manuals based on information furnished to the

Engineer by the Contractor. The **Engineer** shall furnish one (1) copy of the Final Project Report to the Owner and the FAA in printed and PDF format.

The construction specifications shall require the Contractor to perform all tests of materials and construction layout surveys and to submit a set of marked up as-constructed plans. The Contractor will be responsible for retaining the services of a certified materials testing firm to perform quality control and acceptance testing in accordance with FAA requirements. The **Engineer** will utilize the above Contractor-furnished layout and testing data to prepare the Final Project Report.

Copies of documents that may be relied upon by **Owner** are limited to the printed copies (also known as hard copies) that are signed or sealed by **Engineer**. Files in electronic media format of text, data, graphics, or of other types that are furnished by **Engineer** to **Owner** are only for convenience of **Owner**. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. **Engineer** shall not be responsible to maintain documents stored in electronic media format after acceptance by **Owner**.

When transferring documents in electronic media format, **Engineer** makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by **Engineer** at the beginning of this Project.

4. *Limitation of Responsibilities.* **Engineer** shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. **Engineer** shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the construction Contract documents.

2.02 Additional Services

If authorized in writing by the **Owner**, the **Engineer** shall provide additional professional services in connection with the Project as set forth below, and the **Owner** shall pay the ENGINEER a fee for these services as provided for in the Task Amendment for the specific project.

A. Services due to changes in the scope of the Project or its design, including but not limited to, changes in size, complexity, schedule or character of construction.

B. Revisions of studies, reports, design documents, drawings, or specifications that have previously been approved by the **Owner**, or when such revisions or change orders are due to causes beyond the control of the **Engineer**.

C. Services required as a result of **Owner** providing incomplete or incorrect project information. The **Engineer** will assist the **Owner** to define the information needed but cannot be held responsible for incomplete or incorrect project information.

D. Design documents for alternate bids or for out-of-sequence work requested by the **Owner**, which are not considered a part of Design and Construction services.

E. Detailed renderings, exhibits or scale models for the Project unless they are included as deliverables in the Task Amendment.

F. Special analysis of the **Owner's** needs such as owning and operating analysis, staffing and training, operating and maintenance manuals, special operating drawings or charts, and any other similar analyses. The bidding documents will require the ENGINEER to provide operating and maintenance manuals for any equipment procured as part of the Project. The Final Project Report will include a brief statement on maintenance.

G. Additional or extended services during construction made necessary by:

- (1) Emergencies or acts of God endangering the work,
- (2) Work damaged by fire or other cause during construction,
- (3) Defective or incomplete work of the Contractor,
- (4) Prolongation of the initial construction Contract Time beyond the contract time,
- (5) Acceleration of the work schedule involving services beyond established office working hours, or
- (6) The Contractor's default under the contract documents due to delinquency or insolvency.

H. Services in connection with Supplemental Agreements and Change Orders to reflect changes requested by **Owner** so as to make the compensation commensurate with the extent of the Additional Services rendered.

I. Services in making revisions to Plans and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.

J. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

K. Assistance in the adjusting or balancing operation of equipment or systems, or training personnel for operation or maintenance of equipment or systems.

L. Services as an expert witness for the **Owner** in connection with litigation or other proceedings involving the Project.

M. Update or preparation of Exhibit "A", Airport Property Map, or update or preparation of Airport Layout Plan drawings if not required in Basic Services.

N. Geotechnical services in excess of those stipulated in the Task Amendment.

O. Survey services in excess of those stipulated in the Task Amendment.

P. Other services not otherwise provided for in this Agreement, including services normally furnished by the **Owner** as described in Section 3 - Owner's Responsibilities.

Section 3 - OWNER'S RESPONSIBILITIES

The **Owner** shall:

3.01 Provide **Engineer** full information as to the requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.

3.02 Give instructions to **Engineer** regarding **Owner's** procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), **Owner's** construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of **Owner's** bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. **Owner** shall have responsibility for the final content of (1) such bidding-related documents, and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and **Owner** shall seek the advice of **Owner's** legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.

3.03 Place at the **Engineer's** disposal all available information pertinent to the Project including previous reports and any other data relative to the Project, including Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent area.

3.04 Guarantee access to and make all provisions for the **Engineer** to enter upon public and private property as required.

3.05 Recognizing and acknowledging that **Engineer's** services and expertise do not include the following services, provide, as required for the Project:

(a). Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.

(b). Legal services with regard to issues pertaining to the Project as **Owner** requires, Contractor raises, or **Engineer** reasonably requests.

(c.) Such auditing services as **Owner** requires to ascertain how or for what purpose Contractor has used the money paid.

3.06 Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the **Engineer**; obtain advice of an attorney, insurance counselor and other consultants as the **Owner** deems appropriate for such examination, and render in writing decisions pertaining thereto within ten calendar days so as not to delay the services of the **Engineer**.

3.07 Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project.

3.08 Designate in writing a person to act as the **Owner's** representative with respect to the **Engineer's** services. Such person shall have complete authority to transmit instructions, receive information, and interpret and define the **Owner's** policies and decisions with respect to materials, equipment, elements and systems pertinent to the **Engineer's** services.

No information or instructions from the **Owner** pertaining to the project shall be transmitted to the **Engineer** or to other concerned persons or agencies except by the **Owner's** designated representative through the **Engineer** or its Resident Project Representative.

3.09 Advise **Engineer** of the identity and scope of services of any independent consultants employed by **Owner** to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, Value Engineering, and constructability review.

3.10 Furnish to **Engineer** data as to **Owner's** anticipated costs for services to be provided by others for **Owner**, so that **Engineer** may make the necessary calculations to develop and periodically adjust **Engineer's** opinion of total project costs.

3.11 Give prompt written notice to the **Engineer** whenever the **Owner** observes or otherwise becomes aware of any development that affects the scope or time of performance of **Engineer's** services, any defect or nonconformance in **Engineer's** services, or any defect in the Project or changed circumstances.

3.12 Furnish or direct the **Engineer** to provide additional services as required.

3.13 Advertise for Proposals from Bidders. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, as well as Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

3.14 **Engineer** and **Owner** agree that, without the prior consent of the other party, neither will offer employment to nor discuss employment with any of the other party's associates or employees until one year after the end date of this Agreement.

3.15 Bear all costs incident to compliance with the requirements of this Section.

Section 4 - TIME OF PERFORMANCE

4.01 The provisions of this Section and the various rates of compensation for the **Engineer's** services provided for in each Task Amendment are agreed to in anticipation of the orderly and continuous progress of the Project. The **Engineer's** obligation to render services under individual Task Amendments shall extend for a period which may reasonably be required to provide the services.

4.02 If the **Engineer's** services for specific Projects as provided by Task Amendments are delayed or suspended in whole or in part by the **Owner** or governmental authorities for more than three months for reasons beyond the **Engineer's** control, the **Engineer** shall on written request to the **Owner** (but without termination of this Agreement) be paid as provided in Section 5 - Payment to **Engineer**. If such delay or suspension extends for more than six months for reasons beyond the **Engineer's** control, the payments and various rates of compensation provided for in **Section 5 - Payment to Engineer** shall be subject to renegotiation.

4.03 The times for performing services or providing deliverables will be stated in each Task Amendment for a specific project.

4.04 The time for a party's performance will be extended to the extent performance was delayed by causes beyond the control and without the fault of the party seeking the extension. The party shall promptly notify the other party in writing when it is being delayed.

4.05 The construction time for completion by the Contractor shall be established in the construction documents. Delays by the Contractor requiring additional time shall allow additional payment to be made to the **Engineer** under **Section 5 - Payment to Engineer**. If the Project is not constructed during the anticipated construction period, the Engineering fees for Phase IV and V shall be subject to renegotiation.

Section 5 - PAYMENT TO ENGINEER

5.01 Based on the scope of the Project as described in Task Amendments for individual projects, the **Owner** shall pay to the **Engineer** the established fees as forth herein and in each Task Amendment.

5.02 Acquisition of Land or Equipment

- A. For Engineering services related to Land Acquisition, the **Owner** shall pay the **Engineer** a negotiated lump sum fee established in future Task Amendments as subsequent projects or stages of development are determined and authorized.
- B. For Engineering services related to Equipment Acquisition, the **Owner** shall pay the **Engineer** a negotiated lump sum fee established in future Task Amendments as subsequent projects or stages of development are determined and authorized.

5.03 Phase I – Programming and Pre-Design Activities for the Project, Phase II – Preliminary Design and Phase III – Final Design and 100% Design Review for the Project.

- A. For Engineering services related to Phase I, Phase II and Phase III Design Services, the **Owner** shall pay the **Engineer** a negotiated lump sum fee established in future Task Amendments as subsequent projects or stages of development are determined and authorized.

5.04 Phase IV – Provide Assistance in the Bidding Process and Phase V - Construction Phase.

- A. For Engineering services related to **Phase IV and Phase V Bidding and Construct Phase Services**, the **Owner** shall pay the **Engineer**, on a cost reimbursable plus fixed fee basis or lump sum fees, as negotiated and established in the Task Amendment.
- B. The Engineering Budget as set forth in Task Amendments for individual projects will set limitations for reimbursement of dollars costs. Without the prior written approval of the **Owner**, the **Engineer** may not exceed the TOTAL ESTIMATED COMPENSATION set forth for **Phases IV and V**.
- C. The costs allowable under **Phases IV and V** of the Agreement shall be limited to reasonable, allocable and necessary costs determined as follows:
 - 1. Direct Labor Costs means salaries and wages paid to employees engaged directly on the project, including payroll-related costs and benefits such as the cost of customary

and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto.

2. Overhead rates shall meet Federal Audit standards, and includes salaries and wages of employees engaged in business operations not directly chargeable to projects, plus non-Project operating costs, including but not limited to, business taxes, legal, rent, utilities, office supplies, insurance, and other operating costs. Overhead shall be computed as a percentage of Direct Labor Costs including payroll costs and shall be included with each Task Amendment.

3. Direct Labor Costs and Overhead applied to Direct Labor Costs will be adjusted annually to reflect equitable changes in the compensation payable to **Engineer**. Overhead rates shall be adjusted based on the **Engineer's** actual cost experience during the contract period in accordance with applicable Federal procurement regulations and overhead rates approved by Federal audit agencies. The approved overhead rate in effect for a specific Project will be established in the Task Amendment.

4. Subsistence rates as set forth in the Task Amendment.

5. Transportation rates as set forth in the Task Amendment.

6. Out-of-Pocket costs for professional consultant services, subcontracts, supplies, equipment, materials, telephone and other expenses chargeable to the contract in accordance with the **Engineer's** usual accounting practices.

7. Fixed fee is the lump sum amount paid to **Engineer** by **Owner** as a margin or profit. This fee will be established for each Task Amendment and will only be adjusted by an amendment to the Task Amendment.

D. Payment of **Fixed Fee for Phases IV and V**. At the time of each payment to the **Engineer**, a portion of the Fixed Fee will be paid in the same ratio as the allowable dollar costs to total costs.

5.05 Phase VI - Project Closeout Phase Services

For Engineering services related to **Phase VI - Project Closeout Phase Services**, the **Owner** shall pay the **Engineer** a negotiated lump sum fee established in the Task Amendment as subsequent projects or stages of development are determined and authorized.

5.06 Additional Services

For additional services as outlined in Section 2.02, the **Owner** shall pay the **Engineer** a lump sum fee or cost reimbursable fee negotiated for the extra services provided.

5.07 Payment Schedule

Payment of compensation shall be made by the **Owner** to the **Engineer** as follows:

A. Payment for all **Lump Sum** projects shall be billed based on a percentage of work completed to date, generally monthly, and shall be due upon receipt of the invoice.

B. Payment for **Cost Reimbursable** projects shall be due as the work progresses based

upon Invoices submitted by the **Engineer**.

- C. **Application to Interest and Principal:** Payment will be credited first to any interest owed to **Engineer** and then to principal.
- D. **Failure to Pay:** If **Owner** fails to make any payment due **Engineer** for services and expenses within 30 days after receipt of **Engineer's** invoice, then:
 - 1. Amounts due **Engineer** will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. **Engineer** may, after giving seven days written notice to **Owner**, suspend services under this Agreement until **Owner** has paid in full all amounts due for services, expenses, and other related charges. **Owner** waives any and all claims against **Engineer** for any such suspension.
- E. **Disputed Invoices:** If **Owner** disputes an invoice, either as to amount or entitlement, then **Owner** shall promptly advise **Engineer** in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraphs 5.0708.A and 5.07.B.
- F. **Sales or Use Taxes:** If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on **Engineer's** services or compensation under this Agreement, then **Engineer** may invoice such additional sales or use taxes for reimbursement by **Owner**. **Owner** shall reimburse **Engineer** for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which **Engineer** is entitled under the terms of this Agreement or Task Amendment.

Section 6 - GENERAL PROVISIONS

6.01 Standards of Performance

The standard of care for all professional Engineering and related services performed or furnished by **Engineer** under this Agreement will be the care and skill ordinarily used by members of **Engineer's** profession practicing under similar circumstances at the same time and in the same area. **Engineer** makes no warranties, express or implied, under this Agreement or otherwise, in connection with **Engineer's** services.

6.02 Betterment

If **Engineer** mistakenly leaves out of the construction documents any component or item required for the Project, **Engineer** shall not be responsible for the cost or expense of constructing or adding the component or item to the extent such item or component would have been required and included in the original construction documents. In no event will the **Engineer** be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

6.03 Certifications, Guarantees and Warranties

- A. The **Engineer** shall not be required to sign any documents, no matter by whom requested, that would result in the **Engineer** having to certify, guarantee or warrant the existence of conditions whose existence the **Engineer** cannot ascertain. The **Owner** also agrees not to make resolution of any dispute with the **Engineer** or payment of any amount due to the

Engineer in any way contingent upon the **Engineer** signing any such certification.

- B. **Engineer** neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- C. **Engineer** shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by **Engineer** or its Consultants.
- D. **Engineer** is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- E. **Engineer's** services do not include providing legal advice or representation.

6.04 Compliance with ADA and other Laws and Regulations

The Americans with Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility for first occupancy later than January 26, 1993, that does not meet the accessibility and usability requirements of the ADA except where an entity can demonstrate that it is structurally impractical to meet such requirements. The **Owner** acknowledges that the requirements of the ADA will be subject to various and possibly contradictory interpretations. The **Engineer**, therefore, will use reasonable professional efforts to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project. The **Engineer**, however, cannot and does not warrant or guarantee that the **Owner's** Project will comply with ADA requirements or requirements of other federal, state, and local laws, rules, codes, ordinances, or regulations as they apply to the Project.

6.05 Contingency Fund

The **Owner** and **Engineer** acknowledge that changes may be required for a variety of reasons and that the costs of the Project may exceed the construction Contract sum. The **Owner** agrees to set aside funds as a contingency reserve to be used, as required, to pay the local share of any such increased Project costs.

6.06 Changes

The **Owner** may, at any time and by written order, make changes within the general scope of the Agreement in the services to be provided. If such changes cause an increase or decrease in **Engineer's** costs of, or time required for, performance of any services, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly. Any claim of **Engineer** for an adjustment must be asserted in writing within 30 days from the date of receipt by **Engineer** of the notification of change unless **Owner** grants a further period of time.

6.07 Reuse of Construction Documents

All documents furnished by **Engineer** pursuant to this Agreement, including Plans, Specifications, and reports, are instruments of its services in respect of the Project. Reproducible copies of drawings and copies of other pertinent data shall be made available to the **Owner** upon request. They are not intended or represented to be suitable for reuse by **Owner** or others on extensions of the Project or on any other project. Any reuse by **Owner** without specific written verification or adaptation by **Engineer** shall be at **Owner's** sole risk and without liability or legal exposure to

Engineer, and **Owner** shall indemnify, defend and hold harmless **Engineer** for all claims, damages, losses and expenses, including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation shall entitle **Engineer** to further compensation at rates to be agreed upon by **Owner** and **Engineer**.

6.08 Reuse of Planning Documents

The purpose of the Airport Layout Plan is to show the existing airport facilities and future development at the Airport. It is intended that the **Owner** will update the ALP as required. The ALP represents conditions at the Airport at the time it is approved. The **Engineer** is not responsible for showing developments following approval of the ALP and project closeout.

6.09 Estimate of Construction Costs and Total Project Costs

Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of **Engineer's** experience, qualifications, and general familiarity with the construction industry. However, because **Engineer** has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, **Engineer** cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by **Engineer**. If **Owner** requires greater assurance as to probable Construction Cost, then **Owner** agrees to obtain an independent cost estimate.

The services, if any, of **Engineer** with respect to Total Project Costs shall be limited to assisting the **Owner** in tabulating the various categories that comprise Total Project Costs. **Engineer** assumes no responsibility for the accuracy of any opinions of Total Project Costs.

6.10 Dispute Resolution

A. **Owner** and **Engineer** agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation by a mutually agreed upon mediator. After a written demand for non-binding mediation, which shall specify the nature of the dispute, and within thirty (30) days from the date of selection of the mediator, the matter shall be submitted to the mediator for consideration. The mediator shall provide an informal opinion and advice, none of which shall be binding upon the parties. The mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter may then be considered by other methods of dispute resolution.

B. The **Owner** and the **Engineer** further agree to include a similar mediation provision in all agreements with independent engineers and consultants retained for the project and to require all independent Engineers and consultants also to include a similar mediation provision in all agreements with independent engineers, subconsultants, suppliers, or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

6.11 Subconsultants

Any **Subconsultants** required by **Engineer** in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for the individual project and identified in the Task Amendment. Any changes in subconsultants shall be subject to the prior approval of **Owner**.

6.12 Electronic Transmittals

Owner and **Engineer** may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

If this Agreement does not establish protocols for electronic or digital transmittals, then **Owner** and **Engineer** shall jointly develop such protocols.

When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.13 Successors and Assigns and Beneficiaries

A. **Owner** and **Engineer** each is hereby bound and the partners, successors, executors, administrators and legal representatives of **Owner** and **Engineer** (and to the extent permitted by paragraph 6.13.B., the assigns of **Owner** and **Engineer**) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither **Owner** nor **Engineer** may assign, sublet or transfer any rights under or interest (including but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by **Engineer** to any **Engineer's** subconsultant, supplier, other individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of **Owner** and **Engineer** and not for the benefit of any other party. The **Owner** agrees that the substance of the provisions of this paragraph 6.13.C. shall appear in the construction Contract documents.

6.14 Compliance with Laws and Federal Regulations

The **Engineer** shall use reasonable efforts to comply with current laws, ordinances and federal regulations in effect as of the date of the Agreement and any subsequent Task Amendments and applicable to the Engineer's performance of this Agreement as provided in Exhibit D – Required Contract Provisions for Airport Improvement Program Obligated.

6.15 Construction Safety and Phasing Plans

If included under Section 2 - Scope of Work, a Construction Safety and Phasing Plan to address specific airport operations and security impacts of construction activities on airport operations will

be prepared for inclusion in the Construction Contract Documents. Contractor violation of the Construction Safety and Phasing Plan requirements shall immediately be verbally noted to the Contractor's Superintendent and **Owner**. Contractor shall take immediate action to correct the violation. Work shall be stopped until the appropriate actions to correct the noted problem(s) have been taken by the Contractor to the satisfaction of the **Engineer** and **Owner**. Written notice of the violation will be given to the Contractor. The **Owner or Engineer** can, at any time, order a work stoppage until such time as the Contractor has demonstrated that he is capable of completing the work without additional violations.

Neither the professional activities of the **Engineer**, nor the presence of the **Engineer** or the **Engineer's** employees and subconsultants at the construction site, shall relieve the Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. **Engineer's** personnel have no authority to exercise any control over any construction Contractor or other entity or their employees in connection with their work or any health or safety precautions. The **Owner** agrees that the Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the **Owner's** agreement with the Contractor. The **Owner** also agrees that the **Owner's** agreement with the Contractor shall require the Contractor to indemnify the **Owner**, the **Engineer** and the **Engineer's** subconsultants from and against all claims arising out of or resulting from the performance of the work and shall also require the Contractor to provide a separate policy containing Owner's Protective Liability coverage, which, in addition to the Contractors' general liability insurance policy, shall name the **Owner**, the **Engineer** and the **Engineer's** subconsultants as insureds and which shall indemnify the **Owner**, **Engineer** and the **Engineer's** subconsultants against claims, demands or liability by any person or entity which may arise from the performance of the Contractor and his or her subcontractors on this project.

6.16 Allocation of Risks - Indemnification

- A. To the fullest extent permitted by law, **Engineer** shall indemnify and hold harmless **Owner** and **Owner's** officers, directors, partners, employees and agents from and against any and all claims, costs, losses, damages and expenses (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by the negligent acts or omissions of **Engineer** or **Engineer's** officers, directors, partners, employees, and agents in the performance and furnishing of **Engineer's** services under this Agreement. The indemnification provisions of the preceding sentence are subject to and limited by paragraph 6.16.D which is set forth below.
- B. To the fullest extent permitted by law, **Owner** shall indemnify and hold harmless **Engineer** and **Engineer's** officers, directors, partners, employees, agents and consultants from and against any and all claims, costs, losses, damages and expenses (including but not limited to all fees and charges of engineer, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by the negligent acts or omissions of **Owner** or **Owner's** officers, directors, partners, employees, and agents with respect to this Agreement or the Project.
- C. In addition to the indemnity provided under paragraph 6.16.B of this Agreement, and to the fullest extent permitted by law, **Owner** shall indemnify and hold harmless **Engineer** and its officers, directors, partners, employees, agents and consultants from and against all claims, costs, losses, damages and expenses (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or

arbitration or other dispute resolution costs) caused by, arising out of or resulting from any hazardous environmental condition, provided that (i) any such claim, cost, loss, damage or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 6.16.C shall obligate **Owner** to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or misconduct.

The following definitions apply to paragraph 6.16.C.

a. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

b. *Hazardous Environmental Condition*--The presence at the Project site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

c. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

d. *PCB's*--Polychlorinated biphenyls.

e. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

f. *Radioactive Materials*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

D. Conditions Beyond the Control of the Engineer

The **Owner** recognizes that in the course of completing the services under this Agreement, the **Engineer** may encounter conditions which are beyond the control of the **Engineer** and which create potential for claims against and additional costs to the **Engineer** which are not covered in fees earned for services provided. This category includes, but is not limited to the following:

1. Unknown underground utilities or other man-made objects not properly located underground.
2. Unavoidable contamination of subsurface areas, aquifers, etc., or the disturbance of natural underground resources during the design and construction of the project.
3. Changed codes or standards during the course of the work.
4. Information provided by others which are not accurate or complete.
5. Conditions that may arise and differ significantly from those existing at the beginning of the project.

Should any such condition occur during the performance of this Agreement, judged to be beyond the control of the **Engineer**, the **Engineer** will promptly notify the **Owner**, and the parties will renegotiate the Agreement. If terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement. The **Owner** agrees to compensate the **Engineer** for any time spent and expenses incurred by the **Engineer** in defense of any such claim with such compensation to be based upon the **Engineer's** prevailing fee schedule and expense reimbursement policy.

6.17 Statutes of Limitations

Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run in any and all events not later than either the date of substantial completion of the project for acts or failures to act occurring prior to substantial completion or the date of final payment for acts or failures to act occurring after substantial completion.

6.18 Insurance

A. **Engineer** shall procure and maintain insurance with limits of liability as follows:

a.	Workers' Compensation: State	Statutory
	Applicable Federal	Statutory
	Employer's Liability	\$1,500,000
b.	Professional Liability: General Aggregate:	\$3,000,000
c.	General Liability: General Aggregate:	\$3,000,000
	Each Occurrence (Bodily Injury and Property Damage):	\$3,000,000
d.	Automobile Liability Combined Single Limit	\$1,500,000

Additional Insured. If required by **Owner**, the following persons or entities are to be listed on **Engineer's** policies of insurance as additional insureds for policies under b, c, and d above:

City of Billings/Billings Logan International Airport

Under Professional Liability Insurance, the **Engineer** is insured for claims arising out of the performance of professional services caused by the negligent acts, errors or omissions of the **Engineer**. Under the terms of the **Engineer's** Professional Liability Insurance, no parties other than the **Engineer** are eligible to be insured. Because of this, no party is allowed to be listed as an "additional insured" on the **Engineer's** Professional Liability Insurance.

B. **Engineer** shall deliver certificates of insurance to the **Owner** evidencing the coverage indicated.

C. **Owner** agrees to include in construction contracts resulting from design services under this Agreement, provisions for satisfactory protection to the **Owner** and **Engineer** during the construction phase of the project. This shall be accomplished by requiring the

following in the construction Contract documents:

1. Contractor's insurance company shall provide a letter to each insured and additional insured that the Contractor has provided the insurance coverage required by the contract documents.

2. Contractor's liability insurance shall include as additional insureds the **Owner, Engineer and Engineer's** consultants, including coverage for the respective directors, officers, employees and agents of all such additional insureds.

3. Contractor shall purchase a separate Owner's Protective Policy insuring the **Owner** and naming the **Engineer** and the **Engineer's** consultants as additional insureds. The minimum amount of this coverage shall be \$1,000,000 each occurrence and \$2,000,000 aggregate.

4. If appropriate, Property (Builders Risk) Insurance shall be purchased by the Contractor, with the Contractor's Subcontractors, **Owner, Engineer and Engineer's** consultants named as insureds or additional insureds.

The Contractor furnished policies shall be primary and not contributing to any other insurance of the **Owner** or **Engineer**.

D. At any time, **Owner** may request that **Engineer**, at **Owner's** sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified herein. If so requested by **Owner**, with the concurrence of **Engineer**, and if commercially available, **Engineer** shall obtain and shall require **Engineer's** subconsultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by **Owner**.

6.19 Controlling Law

This Agreement shall be governed by the law of the state in which the project is located.

6.20 Notices

Any notice required under this Agreement shall be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.21 Survival

All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.22 Severability

Any provision or part of the Agreement held to be void or unenforceable shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon **Owner** and **Engineer**.

6.23 Waiver

Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

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This is **EXHIBIT A**, consisting of Five (5) pages, referred to in and part of the Master **Agreement between Owner and Engineer for Professional Services** dated _____

AMENDMENT NO. X
TO
AGREEMENT FOR ENGINEERING SERVICES
CITY OF BILLINGS AVIATION AND TRANSIT DEPARTMENT

DATED Final Master Agreement DATE

This AMENDMENT, made and entered into on _____ by and between the following:

City of Billings, Montana, a Municipal Corporation, PO Box 1178
Billings, Montana 59103, hereinafter designated the OWNER

and

Morrison-Maierle, Inc., 315 N. 25th Street, Suite 102, Billings, Montana 59101,
a private Montana Corporation, hereinafter designated as the ENGINEER

WITNESSETH:

WHEREAS, the OWNER and the ENGINEER have entered into an Agreement for Professional Engineering service contract dated **Final Master Agreement DATE**, and;

WHEREAS, the OWNER has a need for additional engineering services, and;

WHEREAS, the ENGINEER represents that he/she is qualified to perform such services, is in compliance with the Montana Statutes relating to the registration of professional engineers and is willing to furnish such services to the OWNER;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated herein, the parties hereto agree to amend the **Final Master Agreement DATE** Agreement, corresponding amendments to this Agreement, and all related exhibits as follows:

ARTICLE I – SCOPE OF SERVICES

The following items of work listed below are added and amended by Amendment **NUMBER** for the **PROJECT NAME**.

The general scope of work is **PROJECT DISCRIPTION**.

Section A2 - SERVICES OF ENGINEER

(Note to Engineer – incorporating Master agreement by reference using the following option. Modify as necessary). This would be used if the long form of the Master Agreement was used).

2.01 *The specific services to be provided or furnished by Engineer under this Task Order are the services (and related terms and conditions) set forth in the following sections of the Master Agreement, such sections being hereby incorporated by reference: [Note: If this option is selected, include only those sections below that are part of Basic Services for the specific Task Order, and delete those sections below that do not apply].*

- Acquisition of Land or Equipment Services (Master Agreement Section 2.01 A.)

Design and Construction Administration of Airport Improvement Projects

- Phase I Programming and Pre-Design Activities for the Project (Master Agreement Section 2.01 B.)
- Phase II Preliminary Design Engineering for the Project (Master Agreement Section 2.01 B.)
- Phase III Final Design Engineering for the Project (Master Agreement Section 2.01 B.)
- Phase IV Assistance in the Bidding Process (Master Agreement Section 2.01 B.)
- Phase V Construction Phase Services including Resident Project Representative (Master Agreement Section 2.01 B.)
- Phase VI Project Closeout (Master Agreement Section 2.01 B.)

A2.02 Basic Services

The ENGINEER agrees to provide normal professional engineering and planning services in connection with the Project as set forth below:

INSERT SCOPE OF SERVICES WITH ANY MODIFICATIONS FROM MASTER AGREEMENT

Section A3 – Owner’s Responsibility

The provisions of **Section 3 Owner’s Responsibilities** from the Master Agreement are hereby incorporated by reference.

The following SPONSOR’s responsibilities related directly to this project are added to this Task Amendment:

INSERT MODIFICATIONS OR ADDITIONS AS REQUIRED

Section A4 - Times for Rendering Services

<u>Phase</u>	<u>Completion Date</u>
Phase I – Programming and Pre-Design Activities	
Phase II – Preliminary Design Engineering	
Phase III –Final Design Engineering	
Phase IV – Bidding Assistance	
Phase V - Construction Phase Services	
Phase VI – Project Closeout Services	

ADD OTHER PROVISIONS AND MODIFICATIONS AS REQUIRED

Section A5 - Payments to ENGINEER

A5.01 Effective Rates for this Task Amendment

- The approved federal overhead rate in effect on the date of this Task Amendment is xxx.xx %.
- Per Diem, Subsistence and Transportation rate shall be as set forth in the Federal Travel Regulations.

A5.02. Summary of Total Compensation

The total compensation for services identified under this Task Order is estimated to be \$ _____ based on the following assumed distribution:

Phase	Method of Payment		Compensation
Phase I – Programming & Pre-Design Activities	Lump Sum		\$
Phase II – Preliminary Design Services	Lump Sum		\$
Phase III – Final Design Services	Lump Sum		\$
Phase IV – Assistance in the Bidding Process	Cost Plus Fixed Fee Direct Labor, Payroll & Overhead Reimbursable Expenses Subconsultant Costs Estimated Total Cost Fixed Fee Total Estimated Compensation	\$0.00 \$0.00 <u>\$0.00</u> \$0.00 <u>\$0.00</u> \$0.00	\$
Phase V - Construction Phase Services	Cost Plus Fixed Fee Direct Labor, Payroll & Overhead Reimbursable Expenses Subconsultant Costs Estimated Total Cost Fixed Fee Total Estimated Compensation	\$0.00 \$0.00 <u>\$0.00</u> \$0.00 <u>\$0.00</u> \$0.00	\$
Phase VI – Project Closeout Services	Lump Sum		\$
TOTAL COMPENSATION THIS TASK AMENDMENT			\$

Section A6 - CONSULTANTS:

List Consultants

Section A7- OTHER MODIFICATIONS TO MASTER AGREEMENT:

List or None.

Section A8 - ATTACHMENTS:

- A. Exhibit A – Engineering Budget & Scope of Work
- B. Exhibit B – Total Amendments To Date

Section A9 - DOCUMENTS INCORPORATED BY REFERENCE

- A. Master Agreement Dated _____
- B. Exhibit B – Duties, Responsibilities, and Limitations of Authority of Resident Engineer (RE) or Resident Project Representative (RPR)
- C. Exhibit C – Notice of Acceptability of Work
- D. Exhibit D - Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors
- E. Exhibit E - Required Contract Provisions for Federal Transit Administration and for Obligated Sponsors

Section A10 - APPROVAL AND ACCEPTANCE:

A10.01 Approval and Acceptance of this Task Amendment, including the attachments listed above, shall incorporate this document as part of the Master Agreement. Engineer is authorized to begin performance of Programming and Pre-Design Activities on the Project on (insert date), which date is confirmed upon receipt of a copy of this Task Order signed by **Owner**.

The Effective Date of this Task Amendment is as written in Section A1.01 above.

IN WITNESS WHEREOF, the parties hereto have made and executed the Amendment **NUMBER** on

_____.

CONSULTANT

Morrison-Maierle, Inc.

BY: _____

DATE: _____

OWNER

City of Billings

BY: _____

DATE: _____

ATTEST:

BY: _____
City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

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This is **EXHIBIT B**, consisting of five (5) pages, referred to in and part of the **Master Agreement between OWNER and ENGINEER for Professional Services** dated _____

Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

The following duties, responsibilities, and limitations of authority are hereby incorporated in all Task Orders unless eliminated by Task Order

B1.01 Resident Project Representative

A. **Engineer** shall furnish a Resident Project Representative (“RPR”) to assist **Engineer** in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is **Engineer’s** representative at the Site, will act as directed by and under the supervision of **Engineer**, and will confer with **Engineer** regarding RPR’s actions.

B. Through RPR’s observations of the Work, including field checks of materials and installed equipment, **Engineer** shall endeavor to provide further protection for **Owner** against defects and deficiencies in the Work. However, **Engineer** shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall **Engineer** (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The **Engineer** (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in the Master Agreement, as incorporated, are applicable.

C. The duties and responsibilities of the RPR are as follows:

1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with **Engineer** and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of **Engineer**.
2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with **Engineer** concerning acceptability of such schedules.
3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor’s safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
4. *Safety Compliance:*

- a. Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
 - b. Should the RPR notice what appears to be an unsafe condition that could pose an imminent threat to the safety of those that could be harmed by the condition, the RPR has the authority to immediately contact and identify the issue to the Contractor for the Contractor's immediate correction to a safer condition.
 - c. The RPR will monitor the Contractor's actions for compliance with the Airport's FAA approved project Construction Safety and Phasing Plan (CSPP), which if applicable, are included in the construction Contract Documents. Should the RPR identify an action or procedure that is non-compliant to the CSPP, the RPR should contact the Project Manager to coordinate a response with the Owner.
5. *Liaison*
- a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation - RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.
7. *Shop Drawings and Samples*
- a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify **Engineer** of availability of Samples for examination.
 - c. Advise **Engineer** and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or **Engineer**.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to **Engineer**. Transmit **Engineer's** response (if any) to such suggestions to Contractor.

9. *Review of Work; Defective Work*

- a. Report to **Engineer** whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
- b. Inform **Engineer** of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to **Engineer** for addressing such Work; and
- c. Advise **Engineer** of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups*

- a. Consult with **Engineer** in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to **Engineer** appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to **Engineer**.

11. *Records*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to **Engineer**.

- c. Upon request from Owner to **Engineer**, photograph or video work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Specific Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to **Engineer**.

12. Reports

- a. Furnish to **Engineer** periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to **Engineer** proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to **Engineer** and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform **Engineer** of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to **Engineer**, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to **Engineer** for review and forwarding to Owner prior to payment for that part of the Work.

15. Completion:

- a. Participate in **Engineer's** visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion, submit a punch list of observed items requiring completion or correction.
- b. Participate in **Engineer's** visit to the Site in the company of, **Owner**, and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to **Engineer** concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit C).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of **Engineer's** authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by **Engineer**.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

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This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the Master **Agreement between Owner and Engineer for Professional Services** dated _____ and **Task Amendment No.** _____ dated _____

NOTICE OF ACCEPTABILITY OF WORK

SPECIFIC PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
OWNER

And To: _____
CONTRACTOR

From: _____
ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, _____ and the following terms and conditions of this Notice.

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.

4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

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FEDERAL AVIATION ADMINISTRATION (FAA) PROVISIONS

This is **EXHIBIT D**, consisting of eight (8) pages, referred to in and part of the **Master Agreement between OWNER and ENGINEER for Professional Services** dated _____.

ACCESS TO RECORDS AND REPORTS

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

BREACH OF CONTRACT TERMS

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

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

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

GENERAL CIVIL RIGHTS PROVISIONS

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

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

TITLE VI SOLICITATION NOTICE

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

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

FEDERAL AVIATION ADMINISTRATION (FAA) PROVISIONS

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

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

FEDERAL AVIATION ADMINISTRATION (FAA) PROVISIONS

- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

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

DEBARMENT AND SUSPENSION

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

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

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

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

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

FEDERAL AVIATION ADMINISTRATION (FAA) PROVISIONS

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§ 26.13)

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

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

Prompt Payment (§26.29)

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

DISTRACTED DRIVING

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

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

ENERGY CONSERVATION REQUIREMENTS

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

FEDERAL FAIR LABOR STANDARDS ACT

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

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

FEDERAL AVIATION ADMINISTRATION (FAA) PROVISIONS

FOREIGN TRADE RESTRICTION

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

1. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
2. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
3. has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

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

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

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

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

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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

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

LOBBYING

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency,

FEDERAL AVIATION ADMINISTRATION (FAA) PROVISIONS

a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

OCCUPATIONAL SAFETY AND HEALTH ACT

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

TAX DELINQUENCY AND FELONY CONVICTIONS

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

Certifications

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

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

FEDERAL AVIATION ADMINISTRATION (FAA) PROVISIONS

Term Definitions

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

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

TERMINATION OF CONTRACT

TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)

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

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

Owner agrees to pay Contractor for:

1. completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
2. documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
3. reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
4. reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

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

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

TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)

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

FEDERAL AVIATION ADMINISTRATION (FAA) PROVISIONS

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

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

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

VETERAN'S PREFERENCE

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

FEDERAL TRANSIT ADMINISTRATION (FTA) PROVISIONS

This is **EXHIBIT E**, consisting of fifteen (15) pages, referred to in and part of the **Master Agreement between OWNER and ENGINEER for Professional Services** dated _____.

1. No Federal Government Obligation to Third Parties

The City of Billings, Aviation/Transit Department - MET Transit Division and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Governments in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. Program Fraud and False or Fraudulent Statements and Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. Access to Records

Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.

Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. §200.333. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be

FEDERAL TRANSIT ADMINISTRATION (FTA) PROVISIONS

required. The Contractor also agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

FTA does not require the inclusion of these requirements in subcontracts.

4. Federal Changes

49 CFR Part 18 - The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. Civil Rights Laws and Regulations

1) **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

- a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
- b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2) **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

3) **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4) **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

5) Civil Rights and Equal Opportunity

The City is an Equal Opportunity Employer. As such, the City agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

FEDERAL TRANSIT ADMINISTRATION (FTA) PROVISIONS

1) **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2) **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3) **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4) **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5) **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. Safe Operation of Motor Vehicles

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the City.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by

FEDERAL TRANSIT ADMINISTRATION (FTA) PROVISIONS

an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

7. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

8. Energy Conservation

The Contactor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

9. Disadvantaged Business Enterprises

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 C.F.R. 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 City deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the City makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the City's written consent; and that, unless the City's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

It is the policy of the City and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

10. Prompt Payment

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the City, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City.

FEDERAL TRANSIT ADMINISTRATION (FTA) PROVISIONS

11. Procurement of Recovered Materials

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 42 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

12. ADA Access

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

13. Termination (Contracts > \$10,000)

Termination for Convenience or Default (Architect and Engineering)

The City may terminate this contract in whole or in part, for the City's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. The City has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the City, the City shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the City may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the City.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

Opportunity to Cure

The City at its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 business days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within 30 days after receipt by Contractor of written notice from the City setting forth the nature of said breach or default, the City shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

FEDERAL TRANSIT ADMINISTRATION (FTA) PROVISIONS

Waiver of Remedies for any Breach

In the event that the City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

14. Notification to FTA (Contract > \$25,000)

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the City, which will then notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the City is located. The Contractor is required to include an equivalent provision in its sub-agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. § 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- (3) The City must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the City is located, if the City has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the City and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the City. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the City.

15. Debarment and Suspension (Contract > \$25,000)

This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

16. Violation and Breach of Contract (Applies to all if > \$100,000)

Rights and Remedies of the City

The City shall have the following rights in the event that the City deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as the City for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;

FEDERAL TRANSIT ADMINISTRATION (FTA) PROVISIONS

3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include:

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the City, the Contractor expressly agrees that no default, act or omission of the City shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the City directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the City will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the City takes action contemplated herein, the City will provide the Contractor with sixty (60) days written notice that the City considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by an authorized representative of The City. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City's authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City's authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the City's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by The City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City is located.

Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies

FEDERAL TRANSIT ADMINISTRATION (FTA) PROVISIONS

otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

17. Byrd Anti-Lobbying Amendment (Applies to all if > \$100,000)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City.

18. Clean Air Act & Federal Water Pollution Control Act (Applies to all if > \$150,000)

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

23. Fly America Requirements

a) Definitions. As used in this clause—

- 1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
- 2) "United States" means the 50 States, the City of Columbia, and outlying areas.
- 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

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d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

26. Veterans Hiring Preference

Veterans Employment - Recipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

29. Seismic Safety

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

30. Rights to Inventions Made Under a Contract or Agreement (Prof/A&E – Research & Development) Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the City intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for

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the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

- a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
 3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
 6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

31. Conformance with ITS National Architecture

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

Other Certifications

1. The individual signing certifies that he/she is authorized to contract on behalf of the proposer.
2. The individual signing certifies that the proposer is not involved in any agreement to pay money or other consideration for the execution of this agreement, other than to an employee of the proposer.
3. The individual signing certifies that there has been no attempt by the proposer to discourage any potential proposer from submitting a proposal.

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The proposer, by signing below, agrees to comply with these contract requirements and makes the certifications outlined above.

Signed _____

Date _____

Printed name _____

Title _____

Company _____

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APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned [Contractor] certifies, 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 undersigned, 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 making lobbying contacts to 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official
Name and Title of Contractor's Authorized Official
Date

FEDERAL TRANSIT ADMINISTRATION (FTA) PROVISIONS

DEBARMENT AND SUSPENSION CERTIFICATION (LOWER TIER COVERED TRANSACTION)

The prospective lower tier participant (Bidder/Proposer) certifies by submission of this Offer, that neither it nor its principals, as defined at 2 CFR § 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded (defined at 2 CFR § 180.940) or disqualified as defined at 2 CFR §180.935.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

- 1) It will comply and facilitate compliance with the requirements of 2 CFR § 180, subpart C and 2 CFR § 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- 2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
 - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently: debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified.
 - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
 - i. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
 - ii. Violation of any Federal or State antitrust statute, or
 - iii. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
 - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
 - d. It has not had one or more public transactions (Federal, State or local) terminated for cause or default within a three-year period preceding this Certification,
 - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
 - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 180 if it:
 - i. Equals or exceeds \$25,000
 - ii. Is for audit services, or
 - iii. Requires the consent of a Federal official, and
 - g. It will require that each covered lower tier contractor and subcontractor:
 - i. Comply and facilitate compliance with the Federal requirements of 2 CFR part 180 and 3000, and
 - ii. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - (a) Debarred, suspended, proposed for debarment, declared ineligible to participate, voluntarily excluded from participation or disqualified from participation in its federally funded project, and
- 3) It will provide a written explanation as indicated on a page attached in FTA's TEAM-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

The certification in this clause is a material representation of fact relied upon by the City of Billings, Aviation/Transit Department - MET Transit. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Billings, Aviation/Transit Department - MET Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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Signature of Bidder or Proposer's Authorized Official

**Name and Title of Bidder or Proposer's
Authorized Official**

Date

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SEISMIC SAFETY CERTIFICATION

To be completed by the Contractor.

42 U.S.C. § 7701 et seq. 49

49 CFR § 41

CERTIFICATION OF COMPLIANCE WITH FTA

(Sub-Recipient)

Hereby certifies that it will comply with the requirements of 42 U.S.C § 7701 et seq. 49 and 49 CFR § 41 when constructing new buildings or additions to existing buildings.

Executed this _____ day of _____ 2022,

By: _____ (_____)
(Signature) (Print Name)

(Title) (Organization Name)