

NON-EXCLUSIVE LICENSE AGREEMENT TO CONDUCT COMMERCIAL AVIATION  
GROUND HANDLING AND SUPPORT SERVICES  
AT FRESNO YOSEMITE INTERNATIONAL AIRPORT

Issued By

CITY OF FRESNO, CALIFORNIA  
A Municipal Corporation

To

FLIGHT SERVICES AND SYSTEMS, INC.  
An Ohio Corporation

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**THIS NON-EXCLUSIVE LICENSE AGREEMENT** (hereinafter "License Agreement" or "License") granted this 15th day of August, 2016, by the City of Fresno, California, a municipal corporation (hereinafter "City") and Flight Service and Systems, Inc., an Ohio corporation (hereinafter "Licensee").

### **RECITALS**

WHEREAS, City owns and operates Fresno Yosemite International Airport ("FYI"), which is located in the City of Fresno, County of Fresno, State of California (hereinafter "Airport"); and

WHEREAS, Licensee is engaged in the business of providing commercial aviation ground handling and support services to one or more air carriers who are variously engaged in the transportation by air of persons, property, cargo, and mail to and from Airport; and

WHEREAS, Licensee desires to use the Airport to conduct its commercial aviation ground handling and support services in the air operations area of the Airport and to avail itself of certain privileges, uses and rights in connection therewith; and

WHEREAS, Licensee has indicated a willingness and has ability to operate in accordance with the rules, regulations and standards established by City if granted a License authorizing it to conduct its business on the Airport; and

WHEREAS, it is in the best interest of the City and Airport to grant this License Agreement to Licensee upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the Recitals set forth above, the mutual promises herein contained and in accordance with and subject to all the terms, conditions and limitations of Chapter 5, Article 4, of the Fresno Municipal Code, all of which are incorporated herein by reference, the parties hereto agree as follows:

### **ARTICLE I: DEFINITIONS**

#### **1.01 Definitions**

The following words, terms and phrases wherever used in this License Agreement shall have the following meanings:

- A. Aircraft Operations Area. Aircraft Operations Area (AOA) means those portions of the Airport designed and constructed for the landing and takeoff, taxiing, handling, servicing, loading and unloading, and other operations of aircraft, as now exist or hereafter may be developed, extended or improved from time to time.
- B. Airport. Means the Fresno Yosemite International Airport (FYI), as it currently exists or as it may exist during the Term of this License.
- C. Airport Rules for Airlines/Ground Handlers. Means the handbook for rules and regulations at the Airport for all Airlines and Ground Handlers.
- D. Commercial Airline or Airline. Commercial Airline or Airline means a federally certificated air carrier, air charter, commuter, or air taxi engaged in the conduct of

scheduled or nonscheduled commercial air transportation of passengers, air cargo or mail at Airport.

- E. Director. Director means the Director of Aviation for the City of Fresno or the Director's duly authorized representative.
- F. FAA. FAA means the United States Department of Transportation, Federal Aviation Administration, created and established under the Federal Aviation Act of 1958, as codified in the United States Code, Title 49, or its successor(s) in function, if any.
- G. Fuel Flowage. Means the purchase or sale of jet fuel, aviation gasoline, aircraft lubricating oil, and other aircraft petroleum products that the Licensee uses as a part of their Operations.
- H. Gross Revenue. Is the amount upon which the percentage license fees shall be based and means all income billed, derived or received resulting from the use or Operations within, at and from the Airport in any manner, whether by Licensee, its subcontractors or concessionaires, or parties operating through Licensee, its subcontractors, or concessionaires, from whatever source derived, and whether for cash or credit. Gross Revenue includes, but is not limited to, all revenues received from ground handling and support services, including the selling of jet fuel, aviation gasoline, aircraft lubricating oil, and other aircraft petroleum products, any manufacturers or importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof. It shall be immaterial whether or not the amount of such excise tax is stated as a separate charge. Bad debt losses shall not be deducted from the determination of Gross Revenue.
- I. License. License refers to this License Agreement and includes all terms and conditions stated herein together with all exhibits and other attachments hereto and incorporated herein by reference. Any and all other documents required hereunder, made in writing, executed by both parties and filed of record with the City, shall be deemed to be part of this License.
- J. Operations. Operations means the Licensee's conducting of its ground handling and support services.
- K. TSA. TSA means the United States Department of Homeland Security, Transportation Security Administration, and its successor(s) in function, if any.
- L. Term Year. Means a 12-month period beginning on the date of this License, and each year thereafter beginning on the anniversary thereof during the Term, and ending 12 months thereafter.

## **ARTICLE II TERM OF LICENSE**

### **2.01 Term**

- A. Term: The term of this License shall be for five (5) years, commencing August 15, 2016 (the "Effective Date") and ending on August 14, 2021 unless terminated sooner as provided herein.

### **ARTICLE III USES, RIGHTS AND PRIVILEGES**

#### **3.01    Use of Airport**

Subject to the terms, conditions and restrictions of this License, Licensee shall have the right, in common with others so authorized, to use certain common use, public use, and restricted areas of the Airport as designated by the Director, for the sole purpose of conducting its ground handling and support services (hereinafter "Operations") as approved by City and for no other purpose whatsoever.

#### **3.02    Ingress and Egress**

Licensee shall have the lawful right of ingress to and egress from the Airport over the across the public roadways serving the Airport and those designated private roadways on Airport, for Licensee, its agents, employees and contractors; provided, however, that no person shall be authorized to enter a restricted area of the Airport by virtue of such right of ingress and egress.

#### **3.03    Operations and Other Support Space**

Licensee shall arrange, at its sole expense, for adequate space, including offices and other facilities, as Licensee may require at the Airport for its Operations. If space is unavailable for separate License directly from City, Licensee agrees to sublease space or facilities from an airline or other tenant having an agreement with City. Any such separate sublease and Licensee's operations thereunder, shall be subordinate to the terms of this License and shall be subject to such terms and conditions as specified by the Director.

#### **3.04    Access Control**

Any control over access to/from the premises shall be the responsibility of Licensee. City shall have no responsibility whatsoever in this matter.

### **ARTICLE IV LICENSE FEES AND OTHER CHARGES**

#### **4.01    Monthly Fee and Due Date**

Within 5 days of the end of the calendar month commencing with the Effective Date and monthly, on the first day of each month, Licensee agrees to pay to City a Monthly Fee equal to the greater of either two hundred fifty dollars (\$250.00) or the sum of the following:

A. The sum of ten percent (10%) of Licensee's monthly Gross Revenue from all of its Operations as defined herein; plus

B. Fuel Flowage Fees.

1. If Licensee makes a purchase of jet fuel, aviation gasoline, aircraft lubricating oils or other aircraft oils from an off Airport supplier, such purchase is subject to the

sum per month calculated and determined on the basis of the number of gallons times the per gallon rate as established in the Master Fee Schedule.

2. If Licensee purchases jet fuel, aviation gasoline, aircraft lubricating oils or other aircraft oils from an on Airport supplier, such purchase shall be calculated into the monthly gross revenue and is subject to the 10% rate as established in section 4.01(A) above.

#### 4.02 Methods of Calculations

Percentage license fees shall be calculated on a monthly basis on all of Licensee's Operations and activities conducted at, on, within or from Airport.

#### 4.03 Reports

On or before the 20th day of each month, Licensee shall render to City, on a form prescribed by City, as shown in Exhibit "A" attached hereto and incorporated herein, a detailed report of Licensee's Gross Revenue for the immediate prior month. Each monthly report shall be signed by a responsible officer of Licensee under penalty of perjury and shall include the following:

- A. The Gross Revenue for the prior month, itemized as to each service category, customer and client.
- B. A statement of the itemized amounts of percentage license fees computed, as herein provided, and the total thereof.

#### 4.04 Annual Certified Statement of Gross Revenues

Within sixty (60) days of the end of each year, the first year being that commencing on the Effective Date described herein, Licensee shall furnish to City a certified statement by an independent certified public accountant or firm of certified public accountants showing the total of Gross Revenues at the Airport for said year and stating that Gross Revenues have been correctly reported in accordance with the terms of this Agreement.

Within sixty days following the termination of any other prior agreement or permit with the City, Licensee must provide, at its sole cost and expense, an audited statement by an independent certified public accountant or firm of certified public accountants, of monthly gross revenues, as defined in any other agreement or permit with the City for the period beginning at the last audited month and ending at the commencement date of this License.

If any certified statement provided by the Licensee to the City indicates that the aggregate payments made for any year were less than the amount due for that year under the terms of this License, then Licensee shall pay the difference at the same time it provides the certified statement to the City. In the event the underpayment is greater than five percent (5%) of the total amount due for that year Licensee shall pay Late Payment Charge hereinafter described on the amount of such difference.

#### 4.05 Place of Payment

All fees/charges due to be paid to City by Licensee hereunder shall be paid in lawful money of the United States of America, without set off, by check or wire transfer made payable to City and delivered or wired, as applicable, to the following address or account, City by service of written notice upon Licensee, may otherwise direct the payment thereof from time to time during the term hereof.

Via Mail/Express  
City of Fresno  
Fresno Yosemite International Airport  
Attn.: Airport Accounting  
4995 East Clinton Way  
Fresno, CA 93727-1504

Via Wire Transfer  
City of Fresno - Airports  
Bank of America  
ABA #121000358  
Account: 1499610645

#### 4.06 Late Payment Charge

Should any installment of monthly fees accruing to City under the provisions of this License not be received by City within five (5) calendar days after such shall become due, a late payment charge equal to one and one half percent (1.5%) of the overdue amount added thereto and constituting a part thereof shall be imposed by City each and every month until the entire delinquent amount is received by City.

#### 4.07 Employee Parking Facilities

Licensee's employees working at the terminal building shall have the right to the use of vehicular parking facilities in common with other employees. Such facilities shall be located in an area designated by City. City reserves the right to assess a reasonable charge to recover the costs of providing such space to such employees, in common with other Airport/tenant employees, for such parking facilities.

#### 4.08 Security Deposit

Licensee shall provide to City a Security Deposit in an amount equal to three (3) months Fees and Charges. Such deposit shall be in the form of cash, a Surety Bond issued by an insurance company authorized to do business in the State of California and authorized to write such bonds in said State, or a non-revocable Letter of Credit established in favor of City for the account of Licensee by a federally chartered bank acceptable to City, guaranteeing the faithful performance of all of the covenants and conditions herein to be performed by Licensee. Upon the expiration or termination of this License, and the payment of all fees and charges due to the City for the privileges granted in this License, the Security Deposit shall be refunded to Licensee, provided there are no other outstanding claims or charges against Licensee. City shall not be required to pay, and City shall not pay, any interest on this Security Deposit.

#### 4.09 Additional Fees, Charges and Rentals

Licensee shall pay to City additional fees, charges and rentals in the event of any of the following:



- A. City has paid any sum or has incurred any obligation or expense for which the Licensee has agreed to pay or reimburse the City, or for which Licensee is otherwise responsible;
- B. City is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure, neglect or refusal of Licensee to perform or fulfill any of the promises, terms, conditions or covenants required of it hereunder.
- C. Licensee's obligations pursuant to this section shall include all interest, costs, damages, and penalties allowable by law or contract in conjunction with such sums so paid or expense so incurred by the City. If billed by City, Licensee shall pay City within thirty (30) days following the date of such billing.

#### 4.10 Taxes

Licensee agrees to pay, before delinquency, as and when due, any and all lawful taxes, assessments or charges which, during the life hereof, may be levied by the State, County, City, and/or other tax-levying body on any part or all of the personal property of Licensee and/or upon the Possessory Interest, if any, of Licensee granted under this License.<sup>1</sup>

#### 4.11 Records/Books

Licensee shall, at all times during the term of this License, keep or cause to be kept, accurate and complete records and double entry books of account of all financial transactions in the operation of all business activities, or whatever nature, conducted pursuant to the rights granted herein. The records must be supported by source documents of original entry such as sales invoices, or other pertinent supporting documents. Financial statements (a balance sheet and income/expense statement), based upon the double entry books of account, shall be prepared not less than annually.

#### 4.12 Location of Business Records

All Licensee's books of account, records, financial statements, and documentation related to this License or to the business Operations conducted within or from the Airport, shall be kept in a location within Fresno County or at such other location as may be acceptable to City. City shall have the right to any and all reasonable times and with reasonable notice to examine and audit said books, records, financial statements, and documentation, without restriction, for the purpose of determining the accuracy thereof, the accuracy of the monthly statements of Gross Revenue submitted, and the accuracy of the license fees paid to City. In the event that Licensee's business Operations conducted within or from the Airport are part of a larger operation, and not solely for the business operations within or from Airport, then City shall also have the right to examine

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<sup>1</sup> Any interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of any real property (land and/or improvements located therein or thereon) which is owned by the City of Fresno (City) is a taxable possessory interest unless the possessor of interest in such property is exempt from taxation. With regard to any possessory interest to be acquired by Licensee under this License, Licensee, by its signatures hereunto affixed, warrants, stipulates, confirms, acknowledges and agrees that, prior to executing this License, Licensee either took a copy of this License to the office of the Fresno County Tax Assessor or by some other appropriate means independent of City or any employee, agent, or representative of City determined, to Licensee's full and complete satisfaction, how much Licensee will be taxed, if at all.

and audit that part of said books, records, financial statements, and documentation of the larger business operation.

#### 4.13 Failure to Maintain Records

Licensee's failure to keep such books of account, records, financial statements, and documentation and make them available for inspection by City is a breach of this License and cause for termination. The Director shall have the discretion to require the installation of any additional accounting methods or controls deemed necessary, subject to prior written notice. In the event Licensee does not make available the original records and books of account within the limits of City.

### **ARTICLE V OPERATIONS, CONDITIONS AND RESTRICTIONS**

#### 5.01 Description of Licensee's Operations

- A. Using the form provided in "Exhibit B", attached hereto and incorporated herein by reference, Licensee shall file and at all times maintain with City a current and detailed description of all ground service operations Licensee conducts at the Airport. This detailed description must be filed with and approved by City before Licensee commences operations at the Airport. Whenever the ground service operations conducted by Licensee at the Airport change or the airlines serviced by Licensee change, Licensee shall immediately file a revised "Exhibit B" with the City so that, at all times, the "Exhibit B" on file with City accurately and fully describes licensee's current operations at the Airport. Licensee's failure to maintain a current Exhibit B with City, is a breach of this License and cause for termination hereof.
- B. In addition to filing the detailed description of ground service operations Licensee conducts at the Airport, Licensee shall provide copies of each ground handling service agreement that Licensee has with each airline at the Airport. City reserved the right to review and approve such agreement.

#### 5.02 Approved Services That May be Performed by Licensee

- A. Licensee is hereby permitted to use those designated areas of Airport for the sole purpose of conducting its Operations and related activities, as specified herein, and for no other purpose whatsoever. This License shall not be valid unless Licensee demonstrates to the City that it has first entered into a contract to perform the services described hereunder with an Airline or Licensee holding a valid agreement with City. In the event any contract under which Licensee performs services is cancelled or terminated by the aforementioned Airline or Licensee, Licensee shall immediately notify City in writing. Operations hereunder shall be non-exclusive and at Licensee's sole cost, expense and responsibility. Subject to use restrictions, limitations and conditions set forth in this Agreement and as provided by law, Licensee's commercial aviation ground handling service business may only include the following operations, as denoted hereinafter:

1. Ground Handling Ramp Services for Airlines

Guiding aircraft to a parking position for purposes of loading and unloading passengers, baggage, and cargo; furnishing equipment for the safe and efficient loading and unloading of passengers and cargo to and from an aircraft; providing a fire guard equipped with necessary and appropriate firefighting equipment; delivering aircraft cargo packages and mail to appropriate designated locations on the Airport, including, but not limited to Air Cargo buildings and terminal buildings; repairing, maintaining and refueling all required ramp equipment owned by the Licensee or the Airlines contracting with Licensee, provided that: (i) repair and maintenance must be performed at premises other than at the Airline passenger terminal buildings or the ramps adjacent thereto; (ii) such work shall be performed only at areas designated for such purpose by the Director; and (iii) refueling must be performed only in areas designed by the Director for ground service equipment. The services under this subparagraph must be directly provided by the Licensee and not through a subcontracting agreement.

2. Light Maintenance Services for Airlines

Providing light maintenance to Licensee's Airline customers on the aircraft parking aprons located at or near the Airline passenger terminal buildings to such extent as is (a) provided in the rights and uses stated in the applicable agreement between the respective Airline and the City where it permits the Airline to use said areas and other facilities for such purposes, or (b) provided City ordinances, rules, codes and regulations permit said activities at said location at Airport. The term "light maintenance" means normal airline, overnight flight maintenance and inspections.

3. Into-Plane Fuel Services for Airlines

The right to transfer or deliver fuel to Airline aircraft and to pump the fuel into proper compartments or tanks aboard the aircraft in accordance with the terms of the contracts that the Licensee may, from time to time, enter into with an Airline. However, the services under this subsection do not apply to the sale at Airport of jet fuel, aviation gasoline, aircraft lubricating oils or other aircraft oils; said sales and the fees thereon are covered by other provisions of this License.

4. Waste Disposal Services for Airlines

Maintaining and operating waste disposal services and lavatory cleaning services to the Airlines at Airport.

5. Ground Equipment Rental and/or Operation and/or Maintenance for Airlines

Renting, or operating, or maintaining aircraft ground equipment to Airlines, including but not limited to tugs, aircraft starters, aircraft loading stairs and air-conditioning units in accordance with the terms of the contracts that the Licensee may, from time to time, enter into with the Airlines. Such ground equipment shall not include automobiles, trucks, or other vehicles designed for use on public streets, either into or out of the Airport. Maintenance of ground equipment must

be (i) performed at locations other than the Airline's passenger terminal buildings or the ramps adjacent thereto; and (ii) shall be performed only in areas designed for such purpose by the Director.

6. Passenger Services for Airlines.

Providing clearance documents for aircraft passengers, cargo and baggage as may be required by applicable governmental agencies; providing and handling passenger ticketing and baggage check-in; furnishing linguists for the assistance of passengers speaking a foreign language; and arranging for, but not preparing or selling in-flight meals for passengers departing on aircraft.

7. Porter Services for Airlines

Handling and transporting passenger baggage and other articles of personal property through the Airline passenger terminal buildings and terminal areas, including the United States Federal Inspections area.

8. Security Services for Airlines or City's Licensees

Providing security services at the airline passenger terminal buildings and terminal areas as specified by contractual agreements with an Airline or other City Licensees or Tenants.

9. Baggage Delivery Services for Airlines

Handling and transporting of baggage and other articles of Airline passengers and customers for screening, rerouting, or delivery at Airport.

10. Aircraft Cleaning for Airlines

Cleaning aircraft interiors and exteriors. Notwithstanding anything to the contrary set forth herein, Licensee must seek the City's prior written approval prior to conducting any exterior aircraft cleaning.

11. Sale of Aircraft Fuels and Oils

Selling jet fuel, aviation gasoline, aircraft lubricating oil, and other aircraft petroleum products. The revenues from said sales shall be subject to the percentage of Gross Revenue fee stated in this License if purchased from an on Airport vendor, or if purchased from an off Airport vendor for a fee on each gallon of fuel or oil sold at the rates more clearly specified in the fee provisions of this License.

5.03 Rights of Airlines

Licensee understands and agrees that federally certificated Airlines shall have the right at all times to provide any of the above described services for themselves for their own operations. None of the services which Licensee is authorized to perform under this License shall involve the operation of aircraft by Licensee unless it holds a separate air carrier operating agreement from City.

#### 5.04 Conditions, Limitations and Restrictions

Licensee's use of the Airport shall be subject to the following terms, conditions, limitations, covenants and restrictions.

- A. Licensee agrees that it will not permit any act of omission or commission or any type of condition to exist on the Airport which would in any way create a hazard to persons or property or would serve to jeopardize or invalidate any policies of insurance or increase the premium rate(s) charged for any insurance covering Airport property, operations, or the premises or operations of any tenant of City.
- B. Licensee may use the Air Operations Area and other restricted areas of the Airport only as specifically authorized and directed by the Director and in accordance with the directives of the federal government issued by and through the FAA or the TSA. If the TSA imposes a penalty or fine on the City for Licensee's acts or omissions, then Licensee shall reimburse and indemnify the City for the entire amount of the penalty or fine.
- C. Licensee shall not use the Airport in any manner that might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard. In the event this covenant is breached, City reserves the right to cause the abatement of such interference at the expense of Licensee and/or to immediately terminate this License, or to place such restrictions on the operations of Licensee, as City deems necessary in the public interest.
- D. Licensee is limited to conducting its ground handling and support services Operations on a nonexclusive basis.
- E. Licensee shall neither use, suffer, license the use of the premises for any improper, immoral, unlawful (including illegal discrimination), unauthorized, nor objectionable purpose(s).
- F. Licensee shall neither use, suffer, license the use of the premises for any purpose nor allow any activity therein which would create a nuisance, or in any way obstruct or interfere with the rights of others at Airport or injure or annoy them; or do or permit the doing of anything in any way tending to injure or reflect unfavorably upon the reputation of City or the appearance of the Airport.
- G. Licensee shall not construct improvements upon the premises or alter, improve or add to any existing structure on such premises.
- H. No used buildings/structures and no temporary/mobile buildings/structures/trailers may be moved onto the premises, without the advance written consent by the City.

#### 5.05 Handling and Storing Hazardous Articles and Materials

- A. Only Airlines, air freight forwarders and airport tenants with Airport Licenses or permits authorizing them to conduct the receiving, storing or transporting of hazardous articles or materials shall be allowed to engage in such activities. Where permitted, the receiving, storing and handling of all such articles or materials will be the sole

responsibility of these respective companies and shall comply with current applicable airline handling directives, company manuals, and other applicable laws and regulations. Licensee shall not store, use or dispose of hazardous materials on the Airport nor cause, permit or allow any officer, agent, employee, contractor, permittee or invitee of Licensee to store, use or dispose of hazardous materials on the Airport. Licensee shall be solely and fully responsible for notifying the appropriate public agencies of any hazardous material release which occurs on the Airport, or is caused by or results from activities of Licensee, Licensee's officers, agents, employees, contractors, permittees or invitees on Airport. Licensee shall immediately notify the City of any hazardous material releases which occurs on the Airport regardless of whether the release was caused by or results from Licensee's activities or is in a quantity that would otherwise be reportable to a public agency.

- B. Licensee shall, at all times, keep the premises and each and every part thereof in a neat, clean and orderly condition, and shall prevent the accumulation of, and shall maintain said premises free from any refuse or waste materials which might be or constitute a potential health, environmental, or fire hazard or public or private nuisance. Licensee shall neither conduct nor suffer or permit the conducting of any activity on the premises which either directly or indirectly produces objectionable or unlawful amounts or levels of air pollution (gases, particulate matter, odors, fumes, smoke, dust, etc.); water pollution; light, glare, or heat; electronic and/or radio emissions interfering with any navigational or communications facilities/operations associated with the operation of the Airport and/or its use by aircraft; trash or refuse accumulation; or any other activity/operation which is hazardous or dangerous by reason or risk of explosion, fire or harmful emission. Licensee shall not cause or permit to occur any violation of any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions in, on, under or about the premises, or arising from Licensee's use(s) or occupancy(ies) thereof, including, but not limited to, soil and ground water conditions.

#### 5.06 Parking and Equipment Storage

Licensee's vehicles and equipment, including the vehicles and equipment of Licensee's employees, guests, contractors and clients, if permitted to be operated on Airport property, shall be parked only in those areas approved for such parking, unless specifically authorized in writing by the City to be parked temporarily elsewhere. For any vehicle or equipment owned, Licensed or hired by Licensee and found in an unauthorized area or left unattended in a restricted area, Licensee shall be responsible for any fines or citations for breach of airfield security regulations. Licensee agrees such vehicles or equipment may be immediately removed and stored by City at the expense of Licensee.

#### 5.07 Responsibility for Use

Licensee is and shall remain an independent contractor responsible to all parties for its acts and omissions and agrees that City shall in no way be responsible Licensee's acts or omissions. Throughout the term of this License, Licensee shall retain sole responsibility, liability and cost for safeguarding all persons and property affected by its Operations and for the conduct of its activities on the Airport. Licensee shall at all times conduct its Operations in a safe, prudent, professional and lawful manner. Licensee agrees that its Operations hereunder shall not unreasonably interfere with or impede the operations of City, other authorized users and tenants of the Airport, or the general public.

#### 5.08 Licenses, Permits and Certifications

Licensee shall at its sole cost and expense (a) obtain and maintain in effect at all times any and all licenses, certificates and permits required for its occupancy, use of and Operations on Airport property; and (b) obtain any and all licenses, permits and other operating, use or safety certifications required by federal, state and/or local regulatory agencies for its use of, operations on, activities at and associated storage on Airport property. Licensee shall provide City with copies upon request of any and all such licenses, permits, certifications and other documentation evidencing compliance herewith.

#### 5.09 Operating Standards

Licensee covenants and agrees that it shall conduct its Operations and its activities at Airport in a safe, lawful, prudent and professional manner, at all times providing the quality and levels of service necessary to meet the demand for same, in accordance with all applicable regulations currently in effect and as may be amended, and pursuant to directives issued by the Authority in connection therewith. Licensee acknowledges that it has received and agrees to make available to its employees copies of the City's Airport Operations Rules and Regulations, Code, Policy, and other applicable regulatory and procedural information.

#### 5.10 Responsible Manager and Subordinate

Licensee shall at all times retain an active, qualified, competent, experienced and responsive station manager to supervise its Operations and to represent and act for Licensee at Airport. Licensee's manager shall be available during regular business hours and on-call at all other times in the event of an emergency. At all times during the manager's absence a responsible subordinate shall be in charge and available at Airport. Licensee shall provide City and keep current at all times the names of its manager and subordinate, their respective office, cell and emergency home telephone numbers, and their email addresses.

#### 5.11 Personnel, Training, Policies and Procedures

Licensee shall provide for the proper training and for the certification/licensing of all of its employees in all areas of service as duties require. Licensee shall produce copies of employee certification and licensing records upon demand by City. Licensee shall be responsible for the training of all employees in conformity with the Airport Rules for Airlines/Ground Handlers handbook requirements. Licensee shall control the conduct, demeanor and appearance of its employees to ensure the maintenance of a high standard of service at all times.

#### 5.12 Purchase of Supplies and Services

Should Licensee contract with a third party to provide services which might otherwise be performed by Licensee under this License, such third party shall be deemed to be conducting a business at Airport. Prior to said third party engaging in such services, Licensee shall ensure that such third party has secured a valid license agreement from City to operate at Airport. City may impose charges, rentals and fees upon such third parties for facilities used or for services provided. Nothing herein shall be construed as in any way limiting the powers of City to fully exercise its governmental rights, its proprietary functions,

its obligations under any bond covenants, or its rights to enforce any federal, state or local law, rule or regulation

5.13 Safety Procedures and Fire Prevention Procedures

Licensee shall comply with all fire safety rules, regulations and procedures at the Airport. Licensee shall install and maintain, at Licensee's sole expense, such extinguishing devices, signage and fixtures on and in its facilities and equipment and operating areas as may be required by the Aircraft Rescue and Fire Fighting Department (ARFF) or any applicable law or regulation. Combustible and flammable liquid storage shall meet all Uniform Fire Code requirements.

5.14 Security

Licensee shall comply with all rules and regulations of City applicable to the Airport and airfield security. At its sole cost and expense, Licensee shall be responsible for providing its own security (i) for any equipment, vehicles, materials and other personal property brought onto the Airport by or for Licensee, and (ii) for any services or activities provided or conducted by Licensee or by anyone on behalf of Licensee under this License. Licensee agrees to protect the integrity of security of the Airport perimeter and agrees to undertake measures necessary for the prevention of unauthorized access into any restricted area of the Airport. Licensee's responsibilities hereunder expressly include, but shall not be limited to, implementing a security plan to meet the requirements of the TSA and the City.

5.15 No Obligations of City

Licensee acknowledges that City has made no representations or warranties relating to the suitability of the Airport for any particular use. Except as otherwise expressly provided in this License, City shall have no obligation whatsoever to Licensee for the maintenance of the Airport or any improvements, fixtures, furnishings or equipment now or hereafter constructed, installed or used as a part of the Airport. City shall have no liability to Licensee arising out of any defect or deficiency in the Airport.

5.16 City's Right of Inspection

City and its authorized officers, employees, agents, volunteers, contractors, subcontractors and other representatives shall have the right to monitor all activities of Licensee and to inspect Licensee's areas of operation, equipment and conduct of business, including for the following purposes:

- A. To determine Licensee's compliance with the terms and conditions of this License and with City's directives issued in connection herewith; and
- B. To perform maintenance or other remedial work where Licensee is obligated to perform said work, but has failed, to do so, after City's notice of noncompliance, in which case Licensee shall reimburse City for the costs thereof promptly upon demand. and
- C. To gain access to any mechanical, electrical, utility and structural system at the Airport for the purpose of maintaining and repairing said system.



5.17 Exterior Signs and Outside Storage

Installation of exterior signs and /or outside storage of any materials, supplies, products, equipment or other personal property in or about the Airport, unless expressly permitted by this License, is prohibited.

5.18 Alterations/Additions/Modifications/Improvements

Neither City nor Licensee shall be obligated to make, nor shall Licensee shall make any alterations, additions, modifications, or improvements in/on/to any part of the Airport, at any time during the term hereof, for any purpose whatsoever.

5.19 Liability for Damage

Licensee shall be liable for and shall promptly repair any damage to any Airport areas/facilities where such damage shall be attributable to any act or omission on the part of Licensee, Licensee's employees, contractors, subcontractors, agents, representatives, associates, guests, and/or invitees. Should Licensee fail or be unable to promptly affect any such repairs, City shall have the right to make such repairs, and Licensee agrees to reimburse City for all reasonable costs of such repairs, including reasonable administrative costs.

5.20 Disposable Waste

Licensee agrees to keep all areas covered by this License free and clear of rubbish, debris, and litter. Licensee shall use the outdoor receptacles provided by City for the collection and removal of all trash, garbage and other refuse resulting from the operation of the Passenger Terminal Building, including the activities authorized in this License. Licensee, at its own cost and expense, shall provide and use suitable receptacles for the collection, within all other Airport areas, of all trash and other refuse. Piling of boxes, cartons, barrels or other items in an unsafe or unsightly manner in or about Airport or the premises is prohibited.

5.21 Assignment, Sublicenses and Encumbrances

The Licensee shall not transfer, assign, encumber or mortgage this License, or any part hereof, or interest herein, except with the prior written approval of the City and subject to whatever limitations and conditions that may be required by the City. Any other attempted transfer or assignment shall be void and shall not confer rights upon any third person. No assignment shall relieve the Licensee of any obligation under this License unless otherwise agreed by the City. Licensee shall not grant permission to any other person to occupy any portion of the areas covered by this License without the consent of City. Notwithstanding the foregoing, this section shall not be interpreted to preclude the assignment of this License to Licensee's ultimate parent, a wholly owned subsidiary of Licensee, or a successor by merger, if such parent, subsidiary, or successor by merger assumes all rights to the obligations of this License. Written notice of such assumption shall be provided to the City by parent, subsidiary, or successor by merger not less than thirty (30) days prior to the effective date of such assignment.

#### 5.22. Conflict Between "Authorized" and "Unauthorized" Uses

With respect to any use of the Airport which may be contemplated or undertaken under authority of this License, if any such use may, in any way whatsoever, reasonably be deemed to involve a conflict between "authorized" and "unauthorized" uses as set forth herein, the prohibitions, restrictions and limitations set forth within this License, in any and all such cases, prevail, and no "unauthorized" use of the premises, in whole or in part, shall be undertaken by Licensee or Licensee's employees, agents, representatives unless and until such use is limited to the degree/extent necessary to eliminate any element/portion thereof giving rise to any such conflict.

### **ARTICLE VI DEFAULT AND TERMINATION**

#### 6.01 Events of Default

Occurrence of any of the following will be considered a material default:

- A. Non-payment of license fees or any other fees due under this License;
- B. The failure by Licensee to keep, observe, undertake, fulfill, or perform any of the terms, covenants, conditions, warranties, agreements, obligations, and/or provisions of this License to be kept, observed, undertaken, fulfilled, and/or performed by Licensee;
- C. The vacating or abandonment of the premises by Licensee;
- D. The inability of and/or failure by Licensee to obtain, pay for, and maintain in full force and effect at all times during the life of this License, without any lapse in coverage, such insurance and surety as shall be required of Licensee hereunder;

#### 6.02 Termination

In the event this License shall be canceled or terminated pursuant to the provisions of this section, Licensee shall immediately remove all of its personal property from the premises and peacefully vacate and surrender said premises back to City. Upon written request, City may allow additional time for removal of property. Any such allowance may only be given in writing by the Director and said time shall be subject to payment of License fees as herein provided. Termination of this License by City under the provision of this section shall not be construed as a waiver of any claim City may have against Licensee including for default.

- A. Default. In the event of default as described above and said default is not cured within ten (10) days after City's service of written notice of default, this License shall immediately terminate and Licensee shall have no further rights hereunder and shall immediately vacate any and all areas covered by this License; and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of said areas. City further shall have all other rights and remedies as provided by law, including without limitation the right to recover damages from Licensee in the amount necessary to compensate City for all the detriment and injury

proximately caused by Licensee's failure to perform its obligations under this License or which in the ordinary course would be likely to result therefrom.

- B. Bankruptcy. Filing by or against Licensee (i) in any bankruptcy or other insolvency proceeding; (ii) seeking any relief under any state or federal debtor relief law; (iii) for the appointment of a liquidator or receiver for all or substantially all of the Licensee's property or for Licensee's interest in this License; or (iv) for the reorganization or modification of Licensee's capital structure, this License shall at the option of City immediately terminate and all rights of Licensee hereunder shall immediately cease and terminate.
- C. Voluntary Termination Rights. Either may terminate this License at any time by serving written notice of not less than sixty (60) days upon the other party.
- D. Police Powers. In the event the operation of the Airport or any part thereof is taken over by the United State Government or any other public authority by requisition or any other unilateral action due to a national emergency or otherwise, this License shall terminate as of the date of vesting of the interest of said U.S. Government or other public authority.

#### 6.03 Survival of Indemnification:

Nothing contained within this Section affects the right of City to indemnification by Licensee as hereinafter provided.

### **ARTICLE VII INSURANCE, INDEMNIFICATION, AND EXEMPTION OF CITY**

#### 7.01 Insurance Requirements

Throughout the life of this Agreement, Licensee shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager or his/her designee. The following policies of insurance are required:

(i) AVIATION/AIRPORT OR GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include coverage for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, hangarkeepers legal liability, products and completed operations, and contractual liability (including, without limitation, indemnity obligations under this Lease), with limits of liability of not less than \$5,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury, \$5,000,000 aggregate for products and completed operations and \$10,000,000 general aggregate. **Licensee may substitute Airport Liability insurance for this insurance provided the coverage is as broad as required and the limits of liability are not less than required.**

(ii) AIRCRAFT HULL AND LIABILITY insurance shall include

coverage for bodily injury to passengers and non-passengers, property damage and cargo legal liability with combined single limits of liability of not less than \$10,000,000 per occurrence and aggregate for bodily injury, property damage and cargo legal liability for fixed wing aircraft and \$10,000,000 per occurrence and aggregate for bodily injury, property damage and cargo legal liability for rotorcraft.

(iii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$2,000,000 per accident for bodily injury and property damage.

(iv) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(v) POLLUTION LIABILITY insurance with limits of liability of not less than \$2,000,000 per claim/occurrence and \$4,000,000 aggregate.

In the event Licensee purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

- C. Licensee shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Licensee shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Licensee shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.
- D. All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Licensee shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during this Agreement, Licensee shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

- E. The Airport Liability (or General Liability, if applicable), Aircraft Liability, Pollution and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Licensee's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.
- F. Licensee shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement.** Such evidence of insurance shall be provided City at the following address:
- City of Fresno  
Airports Department  
4995 E. Clinton Way  
Fresno, CA 93727
- G. Upon request of City, Licensee shall immediately furnish City with a complete copy of any insurance policy required under this Contract, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.
- H. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Lease. No action taken by City hereunder shall in any way relieve Licensee of its responsibilities under this Lease.
- I. The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and its officers, officials, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Licensee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Licensee.
- J. Licensee and its insurers hereby waive all rights of recovery against City and its officers, officials, employees, agents and volunteers, on account of injury, loss by or damage to the Licensee or its officers, officials, employees, agents, volunteers, invitees, consultants, subconsultants, contractors and subcontractors, or its property or the property of others under its care, custody and control. Licensee shall give notice to its insurers that this waiver of subrogation is contained in this Agreement. This requirement shall survive termination or expiration of this Agreement.

**SUBCONTRACTORS** -If LICENSEE subcontracts any or all of the services to be performed under this Agreement, LICENSEE shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement

with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, LICENSEE shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and LICENSEE shall ensure that CITY, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with LICENSEE, and CITY, prior to commencement of any work by the subcontractor.

## 7.02 Indemnification

- A. Except to any extent expressly provided for in this Agreement, and to the furthest extent allowed by law, Licensee shall indemnify, hold harmless and defend City and its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as "City") from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Licensee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the License Agreement. Licensee's obligations under the preceding sentence shall apply to any negligence of City, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of City,
- B. Licensee acknowledges that any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) arising out of or in any way connected with releases or discharges of a Hazardous Substance, or the exacerbation of a Potential Environmental Hazard, occurring as a result of or in connection with Licensee's activities or the activities of any of Licensee's representatives (including, without limitation, any of Licensee's officers, officials, employees, agents, volunteers, invitees, subtenants, consultants, subconsultants, contractors or subcontractors), and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any Legal Requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.
- C. If Licensee should contract any work on the Premises or subcontract any of its obligations under this Agreement, Licensee shall require each consultant, subconsultant, contractor and subcontractor to indemnify, hold harmless and defend City and its officers, officials, employees, agents and volunteers in accordance with the terms of this Section and meet all the insurance requirements in this Agreement or as determined by the City of Fresno Risk Manager or their designee.
- D. The provisions of this Section shall survive the termination or expiration of this agreement.

### 7.03 Exemption of City

Licensee hereby specifically warrants, covenants and agrees that City shall not be liable for injury to Licensee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property located in, upon or about the Airport under authority hereof, whether belonging to Licensee, or Licensee's employees, customers, agents, contractors, sub-contractors, tenant, sub-Licensee of Licensee, or any other person whomsoever; nor shall City be liable for any injury to the person of Licensee or Licensee's employees, agents, contractors, sub-contractors, tenants, sub-Licensees, customers, or invitees, whether or not said damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the leakage, breakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether or not said damage or injury results from conditions arising in or on any part or all of the Airport or in or on any of the improvements/facilities appurtenant thereto located therein or thereon, or from other sources or places, and regardless of whether or not the cause of such damage or injury or the means of repairing the same is inaccessible to Licensee. Licensee also covenants and agrees that City shall not be liable for any damages arising from any act or neglect on the part of any third parties.

## **ARTICLE VIII GENERAL PROVISIONS**

### 8.01 Non-Transferability

This License is Non-Transferable and shall be valid only for the herein named Licensee for and to whom issued; thus, Licensee may not and shall not at any time sell, transfer, sublicense or assign this License, in whole or in part, and any attempted or purported sale, transfer, sublicense or assignment hereof shall be null and void and shall constitute a breach of this License by Licensee.

### 8.02 Government Requirements

#### A. Permits with the United States Government:

This License is subject and subordinate to the provisions of any agreements heretofore or hereafter made between the City and the United States Government, the execution of which is required to enable or permit transfer of rights or property to City for Airport purposes or expenditure of federal funds for Airport improvement, maintenance or development. Licensee shall abide by requirements of agreements entered into between the City and the United States Government, and shall consent to amendments and modifications of this License if required by such agreements or if required as a condition of City's entry into such agreements, provided however that if any modification to said License with the United States Government has a material or adverse impact on the operations of the Licensee, the Licensee shall have the right to terminate this License upon sixty (60) days written notice.

#### B. This License is subject to provisions required by FAA for all contracts entered into as set forth in Exhibit "E".

C. Nondiscrimination:

Licensee shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. During the entire term and performance of this License, Licensee agrees as follows:

1. Licensee will comply with all laws and regulations, as applicable, including without limitation applicable portions of Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as amended from time to time. Licensee assures that it will undertake an Affirmative Action Program, if required by 14 CFR Part 152, Subpart E, to ensure that no person in the United States shall, on the grounds of race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this License.
2. Licensee will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, and status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. Licensee shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Licensee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
3. Licensee will, in all solicitations or advertisements for employees placed by or on behalf of Licensee, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability.
4. Licensee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Licensee's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.



D. Disadvantaged Business Enterprise:

The Licensee agrees that it shall at all times comply with FAA Regulation 49 CFR Part 23, Subpart F, or as superseded by CFR Part 26 to the extent that such obligation applies to Licensee in accordance with Federal Regulations and the City's DBE Program for Federally Assisted Projects supplied herewith or available from the City.

E. Federal Aviation Act, Section 308:

Nothing herein contained shall be deemed to grant the Licensee any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act or the conduct of any activity on Airport, except that, subject to the terms and provisions hereof, Licensee shall have the right to conduct operations at the Airport under the provisions of this License.

F. Airport Safety/Security:

1. Licensee shall observe all safety/security requirements of Federal Aviation Regulations, Transportation Security Regulations and Airport Security Program, applicable parts, as the same may be from time-to-time amended, which will be furnished to Licensee as approved by the Federal Aviation Administration and/or Transportation Security Administration, and to take such steps as may be necessary or directed by City to ensure that employees, invitees, and guests observe these requirements.
2. If City incurs any fines and/or penalties imposed by the Federal Aviation Administration, Transportation Security Administration, or any other federal, state, or local agency, or any expense in enforcing the regulations of Federal Aviation Regulations, Transportation Security Administration and/or Airport Security Program, as a result of the acts or omissions of Licensee, Licensee agrees to pay and/or reimburse all such costs and expense. Licensee further agrees to rectify any security deficiency as may be determined as such by City or the Federal Aviation Administration or Transportation Security Administration. City reserves the right to take whatever action necessary to rectify any security deficiency, in the event Licensee fails to remedy the security deficiency.

G. Federal Grant Agreement Assurances

Those certain twenty five (25) numbered provisions set forth within Section "B", "Assurances", of Exhibit "C", "Assurances Required by the Federal Aviation Administration" (FAA), attached hereto and made a part hereof, are specific provisions required by the FAA to be appropriately included within all agreements (including, without limitation, Licenses, permits, and contracts) between the City of Fresno, California and any and all entities who use or perform work or conduct activities on City-owned Airport premises for aeronautical or non-aeronautical purposes. Licensee, by its signature(s) hereunto affixed, acknowledges that it has reviewed the aforesaid Exhibit, in its entirety, and fully understands the meaning, purpose, and intent thereof. Licensee hereby expressly agrees that, throughout the term hereof, it shall fully and faithfully comply with, abide by and/or adhere to, as

applicable and appropriate, each and every one of the numbered provisions contained within Section "B", "Assurances", of said Exhibit (as said numbered provisions are reflected therein or as same may be amended, from time to time, during the term hereof, by City, as the FAA's requirements thereon imposed may so dictate), which, pursuant to the guidelines established within paragraphs 2 through 4 of Section "A" of said Exhibit, shall either be applicable to Licensee on the start date of the term hereof or which, as a result of changing facts and/or circumstances, shall subsequently become applicable to Licensee, hereunder, during the term hereof.

#### 8.03 Liens And Claims

Licensee shall not suffer or permit to be enforced against City's title to the Airport, or any part thereof, any lien, claim or demand arising from any work of construction, repair, restoration, maintenance or removal as herein provided, or otherwise arising (except liens, claims or demands suffered by or arising from the actions of City), and Licensee shall pay all such liens, claims and demands before any action is brought to enforce same against Airport; and Licensee agrees to hold City and said Airport free and harmless from all liability for any and all such liens, claims or demands, together with all costs and expenses in connection therewith. City shall have the right at any time to post and maintain on said Airport such notices as may be necessary to protect City against liability for all such liens, claims and demands. This paragraph shall survive expiration or termination of this License.

#### 8.04 Independent Contractor

Licensee is and throughout this License shall be an independent contractor and not an employee, partner or agent of the City. Neither party shall have any right to control, supervise or direct the manner or method or choice by which the other party or its contractors shall perform its or their work or function. However, each party shall retain the right to verify that the other is performing its respective obligations in accordance with the terms hereof.

- A. Neither the Licensee, nor any of its officers, associates, agents or employees shall be deemed an employee of the City for any purpose. Licensee shall not be entitled to nor shall it receive any benefit normally provided to employees of the City such as, but not limited to, vacation payment, retirement, health care or sick pay. The City shall not be responsible for withholding income or other taxes from the payments made to Licensee. Licensee shall be solely responsible for filing all returns and paying any income, social security or other tax levied upon or determined with respect to the payments made to Licensee pursuant to this License.

#### 8.05 Inability Of City To Perform

This License and the obligations of Licensee hereunder shall not be affected or impaired because City is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of City.

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#### 8.06 Partnership/Joint Venture

This License does not evidence a partnership or joint venture between Licensee and City. Except to the extent expressly provided for in this License, (i) the City does not grant, convey, or delegate to Licensee any tangible or intangible property interest or express or implied agency, license, right or authority, (ii) Licensee shall have no authority to bind the City absent its express written consent, (iii) either Party shall be free from obligations or liabilities under contracts entered by the other, and (iv) each Party shall bear its own costs/expenses in pursuit hereof.

#### 8.07 Holding Over

If the Licensee holds over after expiration of the Term, thereafter the Licensee shall be deemed a month-to-month License. The License Fees that the Licensee shall pay the City shall be calculated on a daily basis as follows: (i) the most recent annual fee, (ii) plus all other fees due under this License as of the last year of the Term, (iii) divided by three hundred sixty-five (365) and (iv) multiplied by one and one-half (1.5). The additional rent per day shall remain in effect until any new agreement is negotiated with the City, approved by City Council, and fully executed by the Licensee and City. Otherwise, excepting holdover rent, the Company shall be bound by the terms and conditions of this License. Nothing herein shall be construed to give the Licensee the right to hold over at any time, and the City may exercise any remedy at law or in equity to recover possession of premises, as well as any damages incurred by the City.

#### 8.08 Peaceable Surrender

Upon the termination, expiration or cancellation of this License, Licensee shall peaceably surrender and return the areas covered by this License to City in as good condition as at the commencement of this License, subject to normal and ordinary wear and tear resulting from the use of such areas as herein provided.

#### 8.09 Warranties and Guarantees

City makes no warranty, guarantee or covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever, concerning the condition of the areas covered by this License, including the physical condition thereof, or any condition which may affect the areas covered by this Licensee. Licensee agrees that City shall not be responsible for any loss or damage or costs which may be incurred by Licensee by reason of any such condition or conditions.

#### 8.10 Review/Examination of License

Submission of this instrument by City for review, examination and/or execution by or on behalf of Licensee does not constitute a reservation of or option to obtain a License and this instrument is not effective as a License or otherwise, unless and until executed and delivered by both City and Licensee.

#### 8.11 Interpretation of Provisions

Nothing herein contained shall be construed or interpreted, in any manner whatsoever, as limiting, relinquishing or waiving any of the rights of ownership enjoyed by City in and

to Airport property, or in any manner waiving or limiting City's control over the operation, maintenance, etc., of Airport property or in derogation of such governmental rights as City possesses, except as is specifically set forth herein.

#### 8.12 Invalid Provisions

In the event any term, covenant, condition or provision of this License, or the application thereof to any person, entity, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this License, or the application thereof to any person, entity, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or unenforceability of such covenant, condition or provision does not materially prejudice either party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this License.

#### 8.13 Captions and Paragraph Numbers

The captions, paragraph and sub-paragraph numbers and/or alphabetical identifiers appearing in this License are inserted solely for the purpose of convenience in reference and in no way define, limit, construe, or describe the scope or intent of such sections, paragraphs or subparagraphs of this License nor in any way whatsoever affect this License.

#### 8.14 Notices

Any notice required or intended to be given to either party under the terms of this License shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, by registered or certified mail, return receipt requested with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this License or at such other address as the parties may from time to time designate by written notice.

A. Personal service, as aforesaid, shall be deemed served and effective upon delivery thereof. Service by mail, as aforesaid, shall be deemed to be sufficiently served and effective as of 12:00:01 A.M., on the fourth (4th) calendar day following the date of deposit in the United States mail of such registered or certified mail, properly addressed and postage prepaid.

#### 8.15 Laws, Rules and Regulations

Licensee shall observe and obey and require its officers, employees, agents and invitees to obey and observe the duly enacted and lawful rules and regulations now in existence or hereafter promulgated by City, by the Federal Aviation Administration, or by any other local, state, or federal agency of competent jurisdiction. Licensee shall comply with all federal, state and municipal laws, regulations and ordinances, including all promulgated which may apply to the operations of business at the Airport.

#### 8.16 Amendment

This License may not be changed, amended, or otherwise modified in any way whatsoever, except in writing, signed by both City and Licensee.

#### 8.17 Acknowledgment by Licensee

By its signature(s) hereunto affixed, Licensee expressly acknowledges that Licensee clearly understands that neither this License, itself, nor the issuance of this License by City to Licensee nor acceptance of this License by Licensee constitutes, in any way whatsoever, any agreement by or on behalf of City to enter into any further/other agreement, License, or other arrangement of any type whatsoever, beyond the term of or in addition to this License.

#### 8.18 Interpretation

The parties acknowledge that this License in its final form is the result of the combined efforts of the parties and that, should any provision of this License be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this License in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

#### 8.18 Attorney's Fees

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this License, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses in addition to any other relief to which such party may be entitled.

#### 8.19 Exhibits

Each exhibit and attachment referenced in this License is, by the reference, incorporated into and made a part of this License.

#### 8.20 Precedence of Documents

In the event of any conflict between the body of this License and any Exhibit or Attachment hereto, the terms and conditions of the body of this License shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this License, shall be null and void.

#### 8.21 Cumulative Remedies

Each right and remedy of City provided for in this License or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude City from exercising any other rights or from pursuing any other remedies provided for in this License or now or hereafter available to City under the laws or judicial decisions of the State of California.

#### 8.22 Non-Solicitation

Licensee represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, to solicit or procure this License or any rights/benefits hereunder.

#### 8.23 Waiver

- A. The waiver by either party of a breach by the other of any provision of this License shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this License.
- B. No provisions of this License may be waived unless in writing and signed by all parties to this License.

#### 8.24 Assigns/Successors

Subject to this License and section 9.01 hereof, all rights, benefits, duties, liabilities and obligations hereunder shall inure to the benefit of, and be binding upon the parties, signatories, and their respective principals, successors, transferees, agents, servants, representatives and assigns.

#### 8.25 Governing Law and Venue

This License shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any case, controversy or proceeding regarding the enforcement or interpretation of this License and any rights and duties hereunder shall be Fresno County, California.

#### 8.26 Final Agreement

Each party acknowledges that they have read and fully understand the contents of this License. This License and any documents, instruments and materials referenced and incorporated herein represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral, including that certain Temporary Use Permit above referenced, entered by and between the parties. . This License may be modified only by written instrument duly authorized and executed by both City and Licensee.

#### 8.27 Counterparts

This License may be executed in any number of counterparts and any party may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts taken together will be deemed to be but one and the same instrument. The execution of this License by any party hereto will not become effective until counterparts hereof have been executed by all parties hereto.

**ARTICLE IX  
SIGNATURE**

**IN WITNESS WHEREOF**, City has caused this License to be executed and issued by its Director of Aviation, and Licensee, by the signature(s) of its duly authorized officer(s) hereunto below affixed, has accepted this License and acknowledged and/or agreed to all of the terms, covenants, conditions, warranties, agreements, and provisions herein contained, as of the day and year first above written.

**CITY OF FRESNO, CALIFORNIA**  
A Municipal Corporation

By: \_\_\_\_\_  
Kevin R. Meikle,  
Director of Aviation

Address for Notice:  
City of Fresno  
Airports Department  
4995 E. Clinton Way  
Fresno, CA 93727

**ATTEST:**  
Yvonne Spence, CMC  
City Clerk

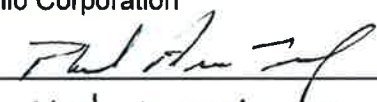
By: \_\_\_\_\_  
Deputy

**APPROVED AS TO FORM:**

Douglas T. Sloan  
City Attorney

By:   
Amanda B. Freeman, Deputy      Date 9/19/16

**FLIGHT SERVICE AND SYSTEMS, INC.**  
An Ohio Corporation

By:   
Phil Armstrong  
(Printed Name)

Title: President  
(if corporation or LLC, Board  
Chair, Pres. or Vice Pres.)

By:   
Dia Ray  
(Printed Name)

Title: Controller  
(if corporation or LLC, CFO,  
Treasurer, Secretary or Assistant  
Secretary)

Address for Notice:

Flight Services and Systems, Inc.  
Attn.: Phil Armstrong, President and CEO  
5005 Rockside Woods Blvd, Ste. 940  
Cleveland, Ohio 44131

Phone: (216) 328-0090

**5 Attachments -**

- Exhibit "A": Monthly Report
- Exhibit "B": Listing of Airlines Serviced and Services Provided at Airport
- Exhibit "C": Assurances Required by The Federal Aviation Administration
- Exhibit "D": Conflict of Interest Form
- Exhibit "E": Federal Provision Applicable to All Agreements

**EXHIBIT “A”**



# MONTHLY OPERATIONS REPORT

GROUND HANDLER – FRESNO YOSEMITE INTERNATIONAL AIRPORT

(SUBMIT THIS REPORT BY THE 20TH DAY OF EACH MONTH FOR THE PRECEDING MONTH)

TO: **CITY OF FRESNO – AIRPORTS ADMINISTRATION**  
**4995 E. CLINTON WAY, FRESNO, CA 93727 PHONE (559) 621-4500; FAX (559) 251-4825**

**ATTN.: SHIRLEY TSUTSUI**

SUBMITTED BY: \_\_\_\_\_ FOR PERIOD: \_\_\_\_\_  
(Name of Operator) (Month and Year)

## PART I: GROSS REVENUE – GROUND HANDLING SERVICES

AIRLINE	SERVICE PROVIDED	GROSS REVENUE

Total Gross Revenue		Rate		Total Amount Due
	x	10%	=	

## PART II: AVIATION FUEL FLOWAGE\*

### AVAIATION FUEL DELIVERY RECORD

DATE FUEL DELIVERED	TYPE OF FUEL/OIL DELIVERED	NAME OF FUEL SUPPLIER MAKING DELIVERY	LOCATION OF TANK(S) TO WHICH DELIVERY MADE	NUMBER OF GALLONS DELIVERED

TOTAL GALLONS DELIVERED THIS MONTH:

Total Fuel Deliveries		Rate p/gallon		Total Amount Due
	x	\$0.10	=	

\* If Fuel and Oils are purchased by Ground Handler from an on airport supplier, the total amount sold to Airline shall be added into the Gross Revenue in Part I and is subject to the 10% fee.

\*\* If Fuel and Oils are purchased by Ground Handler from an off airport supplier, the rate is per gallon per the Master Fee Schedule.

# MONTHLY OPERATIONS REPORT

GROUND HANDLER – FRESNO YOSEMITE INTERNATIONAL AIRPORT

## PART III: PAYMENT RECAP

\*TOTAL GROSS REVENUE .....  
(Includes Fuel Sales)

\*\*TOTAL GROSS REVENUE.....  
(Does not include Fuel Sales)

TOTAL FUEL FLOWAGE FEES DUE  
(TOTAL FEE GALLONS MULTIPLIED BY \$0.10) .....

## REMARKS

OTHER REMARKS:

REPORT PREPARED BY: \_\_\_\_\_  
(SIGNATURE)

TYPED/PRINTED NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

Encl: Check (Fuel Flowage Fee Payment for the Month Covered by this Report)

**EXHIBIT “B”**

**EXHIBIT "B"**  
**TO**  
**NON-EXCLUSIVE LICENSE AGREEMENT TO CONDUCT COMMERCIAL**  
**AVIATION GROUND HANDLING AND SUPPORT SERVICES AT**  
**FRESNO YOSEMITE INTERNATIONAL AIRPORT (FYIA)**

**1. CONTACT INFORMATION**

FULL NAME OF LICENSEE: \_\_\_\_\_  
CURRENT AS OF THIS DATE: \_\_\_\_\_  
LICENSEE CONTACT INFORMATION:  
NAME: \_\_\_\_\_ E-mail ADDRESS: \_\_\_\_\_  
EMERGENCY PHONE: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_  
WORK PHONE: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_  
MAIL ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

**2. SCHEDULE OF ALL VEHICLES AND MOBILE EQUIPMENT OPERATED ON,  
PLACED AT, OR BROUGHT ONTO SIDA BY LICENSEE.**

1. VEHICLE DESCRIPTION: \_\_\_\_\_  
a. LOCATION ON SIDA: \_\_\_\_\_
2. VEHICLE DESCRIPTION: \_\_\_\_\_  
a. LOCATION ON SIDA: \_\_\_\_\_
3. VEHICLE DESCRIPTION: \_\_\_\_\_  
a. LOCATION ON SIDA: \_\_\_\_\_
4. VEHICLE DESCRIPTION: \_\_\_\_\_  
a. LOCATION ON SIDA: \_\_\_\_\_
5. VEHICLE DESCRIPTION: \_\_\_\_\_  
a. LOCATION ON SIDA: \_\_\_\_\_
6. VEHICLE DESCRIPTION: \_\_\_\_\_  
a. LOCATION ON SIDA: \_\_\_\_\_
7. VEHICLE DESCRIPTION: \_\_\_\_\_  
a. LOCATION ON SIDA: \_\_\_\_\_
8. VEHICLE DESCRIPTION: \_\_\_\_\_  
a. LOCATION ON SIDA: \_\_\_\_\_
9. VEHICLE DESCRIPTION: \_\_\_\_\_  
a. LOCATION ON SIDA: \_\_\_\_\_

\_\_\_\_\_ **CHECK IF LISTING CONTINUED ON SEPARATE PAGE**

### 3. LISTING OF AIRLINES SERVICED AND SERVICES PROVIDED

NAME OF AIRLINE SERVICED: Volaris

A. CONTRACT: COMMENCEMENT DATE: 7/6/14  
TERMINATION DATE: \_\_\_\_\_  
DATE A COPY PROVIDED TO CITY: \_\_\_\_\_

B. SERVICES PROVIDED (check each that applies to the above airline):

- ☒ GROUND HANDLING RAMP SERVICE
- ☐ LIGHT MAINTENANCE SERVICE
- ☐ INTO-PLANE FUEL SERVICE
- ☐ WASTE DISPOSAL SERVICE
- ☐ GROUND EQUIPMENT RENTAL
- ☒ PASSENGER SERVICES
- ☐ PORTER SERVICES
- ☐ SECURITY SERVICES
- ☐ BAGGAGE DELIVERY SERVICES
- ☐ AIRCRAFT CLEANING
- ☐ SALE OF AIRCRAFT FUELS AND OILS

NAME OF AIRLINE SERVICED: Aeromexico

A. CONTRACT: COMMENCEMENT DATE: 8/15/16  
TERMINATION DATE: \_\_\_\_\_  
DATE A COPY PROVIDED TO CITY: \_\_\_\_\_

B. SERVICES PROVIDED (check each that applies to the above airline):

- ☒ GROUND HANDLING RAMP SERVICE
- ☐ LIGHT MAINTENANCE SERVICE
- ☐ INTO-PLANE FUEL SERVICE
- ☐ WASTE DISPOSAL SERVICE
- ☐ GROUND EQUIPMENT RENTAL
- ☒ PASSENGER SERVICES
- ☐ PORTER SERVICES
- ☒ SECURITY SERVICES
- ☐ BAGGAGE DELIVERY SERVICES
- ☐ AIRCRAFT CLEANING
- ☐ SALE OF AIRCRAFT FUELS AND OILS

PAGE NO. \_\_\_\_

NAME OF AIRLINE SERVICED: \_\_\_\_\_

A. CONTRACT: COMMENCEMENT DATE: \_\_\_\_\_  
TERMINATION DATE: \_\_\_\_\_  
DATE A COPY PROVIDED TO CITY: \_\_\_\_\_

B. SERVICES PROVIDED (check each that applies to the above airline):

- \_\_\_ GROUND HANDLING RAMP SERVICE
- \_\_\_ LIGHT MAINTENANCE SERVICE
- \_\_\_ INTO-PLANE FUEL SERVICE
- \_\_\_ WASTE DISPOSAL SERVICE
- \_\_\_ GROUND EQUIPMENT RENTAL
- \_\_\_ PASSENGER SERVICES
- \_\_\_ PORTER SERVICES
- \_\_\_ SECURITY SERVICES
- \_\_\_ BAGGAGE DELIVERY SERVICES
- \_\_\_ AIRCRAFT CLEANING
- \_\_\_ SALE OF AIRCRAFT FUELS AND OILS

NAME OF AIRLINE SERVICED: \_\_\_\_\_

A. CONTRACT: COMMENCEMENT DATE: \_\_\_\_\_  
TERMINATION DATE: \_\_\_\_\_  
DATE A COPY PROVIDED TO CITY: \_\_\_\_\_

B. SERVICES PROVIDED (check each that applies to the above airline):

- \_\_\_ GROUND HANDLING RAMP SERVICE
- \_\_\_ LIGHT MAINTENANCE SERVICE
- \_\_\_ INTO-PLANE FUEL SERVICE
- \_\_\_ WASTE DISPOSAL SERVICE
- \_\_\_ GROUND EQUIPMENT RENTAL
- \_\_\_ PASSENGER SERVICES
- \_\_\_ PORTER SERVICES
- \_\_\_ SECURITY SERVICES
- \_\_\_ BAGGAGE DELIVERY SERVICES
- \_\_\_ AIRCRAFT CLEANING
- \_\_\_ SALE OF AIRCRAFT FUELS AND OILS

**EXHIBIT “C”**



## **ASSURANCES**

### **Airport Sponsors**

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#### **A. General.**

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

#### **B. Duration and Applicability.**

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.



### 3. Airport Planning Undertaken by a Sponsor.

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

## C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

### 1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

#### **Federal Legislation**

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- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.<sup>2</sup>
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.<sup>1 2</sup>
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.<sup>1</sup>
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.<sup>1</sup>
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.<sup>1</sup>
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.<sup>1</sup>
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.<sup>1</sup>
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.<sup>2</sup>
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

### **Executive Orders**

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- a. Executive Order 11246 - Equal Employment Opportunity<sup>1</sup>
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>
- f. Executive Order 12898 - Environmental Justice

### **Federal Regulations**

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- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].<sup>4, 5, 6</sup>
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.<sup>1</sup>
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.<sup>1</sup>
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).<sup>1</sup>
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.<sup>3</sup>
- m. 49 CFR Part 20 - New restrictions on lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.<sup>1 2</sup>
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.<sup>1</sup>
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

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### **Specific Assurances**

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

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### **Footnotes to Assurance C.1.**

<sup>1</sup> These laws do not apply to airport planning sponsors.

<sup>2</sup> These laws do not apply to private sponsors.

<sup>3</sup> 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

<sup>4</sup> On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

<sup>5</sup> Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

<sup>6</sup> Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

**2. Responsibility and Authority of the Sponsor.**

**a. Public Agency Sponsor:**

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

**b. Private Sponsor:**

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

**3. Sponsor Fund Availability.**

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

**4. Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

**5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

**6. Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

**7. Consideration of Local Interest.**

It has given fair consideration to the interest of communities in or near where the project may be located.

**8. Consultation with Users.**

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

**9. Public Hearings.**

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

**10. Metropolitan Planning Organization.**

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

**11. Pavement Preventive Maintenance.**

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

**12. Terminal Development Prerequisites.**

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

**13. Accounting System, Audit, and Record Keeping Requirements.**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

**14. Minimum Wage Rates.**

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

**15. Veteran's Preference.**

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

**16. Conformity to Plans and Specifications.**

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans,

specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

**17. Construction Inspection and Approval.**

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

**18. Planning Projects.**

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

**19. Operation and Maintenance.**

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal,



state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
  - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
  - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

#### **20. Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

#### **21. Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

#### **22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
  - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
  - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
  - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
  - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
  - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
  - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

### **23. Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

### **24. Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

### **25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
  - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or

operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
  - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
  - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

## **26. Reports and Inspections.**

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
  - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

**27. Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

**28. Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

**29. Airport Layout Plan.**

- a. It will keep up to date at all times an airport layout plan of the airport showing
  - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
  - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and

roads), including all proposed extensions and reductions of existing airport facilities;

- 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and
  - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

### **30. Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
  - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
  - 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and 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.”

e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

- a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

### **31. Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another



eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

### **32. Engineering and Design Services.**

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

### **33. Foreign Market Restrictions.**

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

### **34. Policies, Standards, and Specifications.**

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated \_\_\_\_\_ (the latest approved version as of this grant offer) and included in this grant, and in accordance

with applicable state policies, standards, and specifications approved by the Secretary.

**35. Relocation and Real Property Acquisition.**

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

**36. Access By Intercity Buses.**

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

**37. Disadvantaged Business Enterprises.**

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

**38. Hangar Construction.**

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

### **39. Competitive Access.**

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
  - 1) Describes the requests;
  - 2) Provides an explanation as to why the requests could not be accommodated; and
  - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

**EXHIBIT “D”**

**Exhibit "D"**  
**DISCLOSURE OF CONFLICT OF INTEREST**

Non-Exclusive License Agreement to Conduct Commercial

Aviation Ground Handling and Support Services between City of Fresno ("Fresno")  
Flight Services & Systems, Inc. ("FS&S")

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

\* If the answer to any question is yes, please explain in full below.

Explanation: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

☐ Additional page(s) attached.

Manning  
Signature

9/9/2016  
Date

Dia Ray  
(name)

Flight Services & Systems, Inc  
(company)

5005 Rockside Rd, Ste 940  
(address)

Cleveland, OH 44131  
(city state zip)

# EXHIBIT “E”

## **I. PROVISIONS APPLICABLE TO ALL LEASES**

### **A. ACCESS TO RECORDS AND REPORTS**

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

### **B. BUY AMERICAN CERTIFICATION**

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

A bidder or offeror must submit the appropriate Buy America Certification (below) with all bids or offers on Airport Improvement Program ("AIP")-funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

#### **Type of Certification is based on Type of Project:**

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

See Attachments A and B: Buy American Certifications

### **C. GENERAL CIVIL RIGHTS PROVISIONS**

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

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

### **D. CIVIL RIGHTS ACT OF 1964, TITLE VI**

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

- 1. Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
- 4. Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or



b. Cancelling, terminating, or suspending a contract, in whole or in part.

**6. Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

**7. Use or Access to Real Property Acquired Under the Activity, Facility or Program:**

- A. The contractor for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to leases and permits, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the lease or permit and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease or permit had never been made or issued.

## 8. 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:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- b. 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);
- c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- f. 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);
- g. 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);
- h. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- i. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-

discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- k. 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);
- l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

#### **E. DISADVANTAGED BUSINESS ENTERPRISES**

In the event that the Sponsor has established a Disadvantaged Business Enterprises (DBE) participation goal for the Project which is the subject of this contract, contractor shall comply with all applicable DBE requirements of 49 CFR Part 26. The DBE participation may be composed of any combination of firms certified as DBEs in accordance with 49 CFR Part 26. The contractor shall comply with Sponsor's DBE Program and subcontract with those firms as previously submitted to Sponsor (on form provided by Sponsor) on the contractor's list of disadvantaged businesses to meet the DBE participation goal for this Project. If the contractor intends to subcontract a portion of the services to be performed hereunder, the contractor shall affirmatively seek out DBEs that are potential subcontractors, suppliers, or consultants, and actively solicit their interest, capability and prices. Any questions concerning DBE issues shall be addressed to DBE Program staff at Telephone No. (559) 498-4071 or Fax No. (559) 621-1182.

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

**Prompt Payment (§26.29)** – The contractor agrees to pay each subcontractor under this contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the contractor receives from Sponsor. The contractor agrees further to return any retainage payments to each subcontractor within 10 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 Sponsor. This clause applies to both DBE and non-DBE subcontractors.

#### **F. ENERGY CONSERVATION REQUIREMENTS**

Contractor and any subcontractors agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan

issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq*).

**G. FEDERAL FAIR LABOR STANDARDS ACT (MINIMUM WAGE)**

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

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

**H. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

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

**I. TRADE RESTRICTION CLAUSE**

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

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

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

The contractor must provide immediate written notice to the Sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or

has become erroneous by reason of changed circumstances. The 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 Sponsor or subcontractor:

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

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

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

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

## **J. VETERAN'S PREFERENCE**

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

**K. SEISMIC SAFETY (applicable to agreements involving design)**

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

## **II. PROVISIONS APPLICABLE TO LEASES VALUED AT \$2,000 AND GREATER**

### **A. COPELAND “ANTI-KICKBACK” ACT** (applicable if contract includes construction, alteration, repair, as defined in 29 CFR Part 5)

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Sponsor a weekly statement on the wages paid to each employee performing on covered work during the prior week. Sponsor must report any violations of the Act to the Federal Aviation Administration.

### **B. DAVIS-BACON REQUIREMENTS** (applicable if contract includes construction, alteration, repair, as defined in 29 CFR Part 5)

#### **1. Minimum Wages**

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

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

(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.



(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding.**

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records.**

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is

enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

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

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

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

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

#### **4. Apprentices and Trainees.**

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

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess

of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### **5. Compliance with Copeland Act Requirements.**

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

#### **6. Subcontracts.**

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

#### **7. Contract Termination: Debarment.**

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

#### **8. Compliance With Davis-Bacon and Related Act Requirements.**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

#### **9. Disputes Concerning Labor Standards.**

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **10. Certification of Eligibility.**

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

**III. PROVISION APPLICABLE TO LEASES  
\$3,000 AND GREATER**

**A. BAN ON TEXTING AND DRIVING**

The contractor shall adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government. The contractor further agrees to conduct workplace safety initiatives commensurate with the size of its business, such as establishing rules or programs that prohibit text messaging while driving and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

## **IV. PROVISIONS APPLICABLE TO LEASES \$10,000 AND GREATER**

**A. AFFIRMATIVE ACTION REQUIREMENT** (applicable to contracts and subcontracts exceeding \$10,000 and including AIP-funded construction work. "Construction work" means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.)

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

### **Timetables**

Goals for minority participation for each trade: 26.1%

Goals for female participation in each trade: 6.9%

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

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

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work



under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is the State of California, County of Fresno, City of Fresno.

**B. EQUAL EMPLOYMENT OPPORTUNITY (E.E.O)** (applicable to construction contracts, as defined in the Affirmative Action provision, over \$10,000)

**1. EQUAL OPPORTUNITY CLAUSE**

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

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

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

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

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

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and

accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **2. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS**

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
  - (1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

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

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

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

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

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

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

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

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

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

- d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to

the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

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

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

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

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

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

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

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

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

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

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of

requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**C. PROHIBITION of SEGREGATED FACILITIES** (applicable to contracts and subcontracts exceeding \$10,000 and including AIP-funded construction work. "Construction work" means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.)

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

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

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

**D. PROCUREMENT OF RECOVERED MATERIALS** (applicable if an agreement includes procurement of a product that exceeds \$10,000)

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

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



The list of EPA-designated items is available at [www.epa.gov/epawaste/conserve/tools/cpg/products/](http://www.epa.gov/epawaste/conserve/tools/cpg/products/). Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

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

## **E. TERMINATION OF CONTRACT**

### **1. TERMINATION FOR CONVENIENCE**

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

Upon termination of the Agreement, the Contractor must deliver to the Sponsor 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.

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

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

### **2. TERMINATION FOR DEFAULT**

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

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

- a) **Termination by Sponsor:** The Sponsor may terminate this Agreement in whole or in part, for the failure of the Contractor to:

- i) Perform the services within the time specified in this contract or by Sponsor approved extension;
- ii) Make adequate progress so as to endanger satisfactory performance of the Project;
- iii) Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Contractor must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Contractor must deliver to the Sponsor 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.

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

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

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

- b) **Termination by Contractor:** The Contractor may terminate this Agreement in whole or in part, if the Sponsor:
  - i) Defaults on its obligations under this Agreement;
  - ii) Fails to make payment to the Contractor in accordance with the terms of this Agreement;
  - iii) Suspends the Project for more than [180] days due to reasons beyond the control of the Contractor.

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

In the event of termination due to Sponsor breach, the Engineer is entitled to invoice Sponsor and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Contractor through the effective date of termination action. Sponsor agrees

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

**V. PROVISION APPLICABLE TO LEASES  
\$25,000 AND GREATER**

**A. CERTIFICATIONS REGARDING DEBARMENT AND SUSPENSION**

**1. CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)**

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

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

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

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

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

**V. PROVISIONS APPLICABLE TO LEASES  
\$100,000 AND GREATER**

**A. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT REQUIREMENTS** (applicable to contracts employing laborers, mechanics, watchmen and guards, or installing equipment onsite)

**1. Overtime Requirements.**

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

**2. Violation; Liability for Unpaid Wages; Liquidated Damages.**

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

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

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

#### 4. Subcontractors.

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

#### **B. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

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

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

**VI. PROVISIONS APPLICABLE TO LEASES  
\$150,000 AND GREATER**

**A. BREACH OF CONTRACT TERMS**

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

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

**B. CLEAN AIR AND WATER POLLUTION CONTROL**

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

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**Attachment A: CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR  
TOTAL FACILITY**

(Buildings such as Terminal, SRE, ARFF, etc.)

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

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

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

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



### **Required Documentation**

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

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

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

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

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

8/9/2016  
Date

M. R. R. R.  
Signature

Flight Services & Systems, Inc  
Company Name

Controller  
Title

**Attachment B: CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR  
MANUFACTURED PRODUCTS**

(Non-building construction projects, equipment acquisition projects)

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

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

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

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
  2. To faithfully comply with providing US domestic product
  3. To furnish US domestic product for any waiver request that the FAA rejects
  4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- ☐ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.

1. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
2. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

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

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

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

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

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

9/9/2016  
Date

Mallory  
Signature

Flight Services & Systems, Inc  
Company Name

Controller  
Title