

ENGINEERING SERVICES AGREEMENT
FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS

(Updated March 2007)

THIS AGREEMENT is made in Douglas County, Kansas, by and between the City of Lawrence, Kansas, hereinafter called the City, and Airport Development Group, Inc., 1776 S. Jackson Street, Suite 950, Denver, Colorado 80210, hereinafter called the Consultant. The City intends to construct an improvement project (hereinafter called the Project) in Lawrence, Kansas, described in Exhibit A.

The City hereby contracts with the Consultant for professional engineering services in connection with the Project, for such engineering services more particularly described herein in consideration of the mutual covenants herein set forth. By executing this Agreement, the Consultant represents to the City that the Consultant is professionally qualified to provide such and is licensed to practice engineering by all public entities having jurisdiction over the Consultant and the Project.

SECTION I - DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

“Additional Services” means any services requested by the City which are not covered by Exhibit A of this Agreement.

“Agreement” means this contract and includes change orders issued in writing.

“City” means the City of Lawrence, Kansas.

“City Engineer” means the person employed by the City with the title of City Engineer who is licensed to practice engineering in the State of Kansas.

“Consultant” means the company or individual identified on page 1. Consultant shall employ for the services rendered, engineers, architects, landscape architects, and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.

“Contract Documents” means those documents so identified in the Contract for Construction of this Project, including Engineering Documents. All terms defined in said General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.

“Engineering Documents” means all plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit A attached hereto.

“Engineering Services” means the professional services, labor, materials, supplies, testing and other acts or duties required of Consultant under this Agreement together with Additional Services as City may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.

“Project” is as described in Exhibit A.

“Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspections of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

SECTION II - PAYMENT

A. COMPENSATION.

1. Maximum Total Fee and Expense: The City agrees to pay the Consultant a not to exceed fee of \$192,575. This fee is based on the scope of services outlined in Exhibit A of this Agreement and shall be completed on or before December 31, 2017. Payment to Consultant shall not exceed the amounts in each phase as detailed in Exhibit B.
2. Hourly Rate: Any Additional Services which are not set forth in this Agreement will be charged on the basis of the hourly rate schedule attached hereto as Exhibit B and reimbursable expenses not contemplated in this Agreement will be charged at actual cost. No Additional Services or costs shall be incurred without proper written authorization of the City.
3. Reimbursable Expenses: Reimbursable expenses shall be included in the total maximum fee. Reimbursable expenses include expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; expenses of printing and reproductions, postage and facsimile transmissions; expenses of renderings and models requested by the City and other costs as authorized by the City. Reimbursable expenses will not include overhead costs or additional

insurance premiums. Unit rates for reimbursable expenses shall be included in Exhibit B attached.

4. Sales Tax: Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on the amount of compensation, fees or services. Should such taxes be imposed, the City shall reimburse the Consultant in addition to the contractual amounts provided. The City shall provide tax exempt number if required, and if requested by the Consultant.
5. Billing: Consultant shall bill the City monthly for all services and reimbursable expenses. It is understood by the Consultant that monthly pay requests must be received by the 5th day of the month. The bill submitted by Consultant shall itemize the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a Consultant's invoice. The City agrees to pay the Consultant within ten (10) days of approval by the governing body. If the Consultant fails to submit an itemized bill for services and/or reimbursable expenses within sixty (60) days of completion of the services, the City shall have no duty to pay the Consultant for those services.
6. City's Right to Withhold Payment: In the event the City becomes credibly informed that any representations of the Consultant provided in its monthly billing are wholly or partially inaccurate, the City may withhold payment of disputed sums then, or in the future, otherwise due to the Consultant until the inaccuracy and the cause thereof is corrected to the City's reasonable

satisfaction. In the event the City questions some element of an invoice, that fact shall be made known to the Consultant immediately. The Consultant will help effect resolution and transmit a revised invoice if necessary. The City shall pay the undisputed portion of any invoice as provided in Part 5 of this Section II.

7. Progress Reports: A written progress report, as set out in Exhibit C, must be submitted with each monthly pay request indicating which specific design tasks and their percentage have been completed to date, and tasks that will be performed the following month. This report will serve as support for payment to the Consultant.
8. Timing of Services: Consultant will perform the services in a timely manner; however, if during their performance, for reasons beyond the control of the Consultant, protracted delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking into consideration the impact of such delays.
9. Change in Scope: For substantial modifications in authorized Project scope, and/or substantial modifications of drawings and/or specifications previously accepted by the City, when requested by the City and through no fault of the Consultant, the Consultant shall be compensated for time and expense required to incorporate such modifications at Consultant's standard hourly rates per Exhibit B. Provided, however, that any increase in contract price or contract time must be requested by the Consultant and must be approved through a written supplemental agreement prior to performing such services.

Consultant shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Consultant's negligence, error, or omission.

10. Additional Services: The Consultant shall provide, with the City's concurrence, services in addition to those listed in Exhibit A, when such services are requested, in writing, by the City. Prior to entering into any Additional Services, the Consultant must submit a proposal outlining the Additional Services to be provided, estimation of total hours and a maximum fee based upon the hourly fee schedule attached hereto as Exhibit B. Payment to the Consultant, as compensation for these Additional Services, shall be in accordance with the attached hourly rate schedule attached as Exhibit B. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at actual cost. Records of reimbursable expenses and expenses pertaining to Additional Services and services performed on an hourly basis shall be made available to the City if so requested in writing. Production of these documents shall be made at the Consultant's office during normal business hours within a reasonable time at a date and time mutually convenient to both parties.
11. Supplemental Agreement: This Agreement may be amended to provide for additions, deletions and revisions in the services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the City, unless it is the result of an emergency

situation in which case the City Engineer may give verbal and facsimile approval to be followed by a written and approved supplemental agreement. If notice of any change affecting the general scope of the services or provisions of this Agreement, including but not limited to, contract price or time, is a requirement of any insurance policy held by the Consultant as a requirement of this Agreement, the giving of such notice shall be the Consultant's responsibility.

SECTION III - RESPONSIBILITIES OF CONSULTANT

A. SCOPE OF SERVICES: The Consultant shall furnish and perform the various professional duties and services in all phases of the Project to which this Agreement applies, as specifically provided in Exhibit A and which are required for the completion of the Project

B. GENERAL DUTIES AND RESPONSIBILITIES

1. Personnel: The Consultant shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal on this Project, Charles L. Kellerman, P.E. As principal on this Project, this person shall be the primary contact with the City Engineer, or another person so designated, and shall have authority to bind the Consultant. So long as the individual named above remains actively employed or retained by the Consultant, he/she shall perform the function of principal on this Project.

2. Independent Contractor: The Consultant is an independent contractor and as such is not an employee of the City.
3. Special Services: The Consultant may be called on to serve as a Consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. The Consultant shall not be paid extra by the City if the appearance is to defend Consultant's professional Engineering Services. If the Consultant is requested in writing by the City to appear as a witness, the Consultant will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as Exhibit B.
4. Subsurface Borings and Material Testing: If tests additional to those provided in Exhibit A are requested by the City for design, the Consultant shall prepare specifications for the taking of the additional borings. Such Subsurface Borings and Testing, as defined herein, shall be provided by the Consultant through other contractors. Payment to the Consultant will be negotiated in writing.
5. Service by and Payment to Others: Any work authorized in writing by the City and performed by a third party other than the Consultant, or their subconsultants in connection with the proposed Project, shall be contracted for and paid for by the City directly to the third party or parties. Fees for extra work shall be subject to negotiation between the City and the third party. Fees shall be approved by the City prior to the execution of any extra work. Although the Consultant may assist the City in procuring such services of third parties, the Consultant shall in no way be liable to either the City or

such third parties in any manner whatsoever for such services or for payment thereof.

6. Subcontracting of Service: The Consultant shall not subcontract or assign any of the architectural, engineering or consulting services to be performed under this Agreement without first obtaining the written approval of the City regarding the services to be subcontracted or assigned and the firm or person proposed to perform the services. Neither the City nor the Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

7. Endorsement: The Consultant shall sign and seal all final plans, specifications, estimates and engineering data furnished by the Consultant. The Consultant warrants to the best of its knowledge, information and belief that its performance will be done in a professional manner. Any review or approval by the City of any documents prepared by the Consultant, including but not limited to the plans and specifications, shall be solely for the purpose of determining whether such documents are consistent with the City's construction program and intent. No review of such documents shall relieve the Consultant of their responsibility for the accuracy. It is the Consultant's responsibility to verify the existence of any and all rights-of-way and easements, including temporary construction easements, that are necessary

for the Project. Rights-of-way and easements shown on the plans shall have proper legal verification to prove their existence.

8. Professional Responsibility: The Consultant will exercise reasonable skill, care and diligence in the performance of its services as is ordinarily possessed and exercised by a licensed professional performing the same services under similar circumstances.
9. Inspection of Documents: The Consultant shall maintain all Project records for inspection by the City during the contract period and for three (3) years from the date of final payment.

SECTION IV - CITY OF LAWRENCE RESPONSIBILITIES

A. GENERAL DUTIES AND RESPONSIBILITIES

1. Communication: The City shall provide to the Consultant information and criteria regarding the City's requirement for the Project; examine and timely respond to the Consultant's submissions; and give notice to the Consultant, who shall respond promptly, whenever the City observes or otherwise becomes aware of any defect in the services.
2. Access: The City will-provide access agreements for the Consultant to enter public and private property when necessary.
3. Duties: The City shall furnish and perform the various duties and services in all phases of the Project which are outlined and designated in Exhibit A as the City's responsibility.

4. Program and Budget: The City shall provide full information stating the City's objectives, schedule, budget with reasonable contingencies, and necessary design criteria.
5. Other consultants: The City may contract with "specialty" consultants when such services are requested by the Consultant.
6. Testing: Any tests required to supplement the scope of services or tests required by law shall be furnished by the City.
7. Legal, Insurance, Audit: The City shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project. The City shall furnish all bond forms required for the Project.
8. Project Representative: The City Engineer, or the City Engineer's designee, shall represent the City in coordinating this Project with the Consultant, with authority to transmit instructions and define policies and decisions of the City.

SECTION V - GENERAL PROVISIONS

A. TERMINATION

1. Notice: The City reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the Consultant, by providing written notice of such termination to the Consultant. Upon receipt of such notice from City, the Consultant shall, at City's option as contained in the notice: Immediately cease all services and meet with City to determine what services shall be required of the Consultant in order to

bring the Project to a reasonable termination in accordance with the request of the City. The Consultant shall also provide to the City digital and mylar copies of all drawings and documents completed or partially completed at the date of termination. The Consultant is entitled to terminate this agreement by providing thirty (30) days written notice.

2. Compensation for Convenience Termination: If City shall terminate for its convenience, as herein provided, City shall compensate Consultant for all services completed to date prior to receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
3. Compensation for Default Termination: If the City shall terminate for cause or default on the part of the Consultant, the City shall compensate the Consultant for the reasonable cost of services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. The City also retains all its rights and remedies against the Consultant including but not limited to its rights to sue for damages, interest and attorney fees.
4. Incomplete Documents: Neither the Consultant, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the Consultant having been deprived of the opportunity to complete such documents and certify them as ready for construction.

B. DISPUTE RESOLUTION

City and the Consultant agree that disputes relative to the Project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests provided, however, that notwithstanding any such dispute the Consultant shall proceed with the services as per this Agreement as if no dispute existed.

C. OWNERSHIP OF ENGINEERING DOCUMENTS

All Engineering Documents prepared in connection with this Project shall be the property of the Consultant, whether the Project for which they are made is executed or not; however, the Consultant shall provide the City a copy of all Engineering Documents as requested by the City and related to services for which the consultant has been compensated.

Reports, plans, specifications and related documents are the Consultant's copyrighted instruments, and the Consultant, at its option, may so identify them by appropriate markings. Provided that the Consultant is paid in full for its services, then the City may reuse these final documents without any additional compensation. However, such reuse shall be for City use and the Consultant shall have no liability for City alteration to the documents or for any use other than as intended pursuant to the terms hereof.

D. INSURANCE

Unless otherwise specified, the City shall be shown as an additional insured on all applicable insurance policies except professional liability and worker's compensation. All general and automobile liability insurance shall be written on an occurrence basis unless otherwise agreed to in writing by the City. The City shall be given written thirty (30) days notice of any insurance policy cancellation.

1. Professional Liability: The Consultant shall maintain, throughout the duration of this Agreement, Professional Liability Insurance in an amount not less than one million dollars (\$1,000,000), per claim and annual aggregate, and shall provide the City with certification attached to this Agreement.

2. Commercial General Liability

Each Occurrence \$500,000

General Aggregate \$500,000

The policy must also include personal injury; products/completed operations; contractual liability and independent contractors.

3. Worker's Compensation: The Consultant shall retain Worker's Compensation Insurance in the statutory amounts.

4. Employer's Liability:

Bodily Injury by Accident \$100,000 (each accident)

Bodily Injury by Disease \$500,000 (policy limit)

Bodily Injury by Disease \$100,000 (each employee)

5. Automobile Insurance: The Consultant shall maintain a policy in the minimum amounts as required for general liability to protect against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle.

6. Industry Ratings: City will only accept coverage from an insurance carrier which offers proof that it:
 - a) Is licensed to do business in the State of Kansas;
 - b) Carries a Best's Policyholder rating of A or better; and
 - c) Carries at least a Class X financial rating; or is a company mutually agreed upon by the City and Consultant.

7. Subconsultant's Insurance: If a part of this Agreement is to be sublet, the Consultant shall either:
 - a) Cover all subconsultants in its insurance policies; or
 - b) Require each subconsultant not so covered to secure insurance which will protect against all applicable hazards or risks of loss in the amount so designated.

Whichever option is chosen, the Consultant shall indemnify and hold harmless the City as to any and all damages, claims, or losses, including attorney's fees, arising out of the negligent acts or omissions of its subconsultants.

E. INDEMNITY

1. Indemnify and Hold Harmless: For purposes of this Agreement, the Consultant hereby agrees to indemnify and hold harmless the City and its employees and officials from any and all loss to the extent caused or incurred in whole or in part as a result of the negligence or wrongful acts of the Consultant, its officers, subsidiaries, employees and subconsultants/assignees and their respective officers and employees, in the performance of services pursuant to this Agreement.

In the case of any claims against the City or its employees and officials indemnified under this Agreement, by an employee of the Consultant, its officers, subsidiaries, or subconsultant/assignees, the indemnification obligation contained in this Agreement shall be limited to those losses caused by the negligence of the Consultant but shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Consultant, its officers, subsidiaries, or subconsultant/assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts, as allowed by law. The Consultant's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Consultant is not responsible.

F. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This

Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

G. APPLICABLE LAW

This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

H. ASSIGNMENT OF AGREEMENT

This Agreement shall not be assigned or transferred by either the Consultant or the City without the written consent of the other.

I. NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

J. FEDERAL LOBBYING ACTIVITIES (Only applies to projects receiving federal funds via the City): N/A

K. COVENANT AGAINST CONTINGENT FEES

The Consultant warrants that they have not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City may terminate this Agreement without liability or may, in its discretion, deduct from the

contract price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

L. COMPLIANCE WITH LAWS

Consultant shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Engineering Services required by this Agreement are complete. Consultant shall secure all occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

M. TITLES, SUBHEADS AND CAPITALIZATION

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

N. SEVERABILITY CLAUSE

Should any provision of this Agreement be determined to be void, invalid unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

O. HAZARDOUS MATERIALS

The Consultant and the Consultant's subconsultants shall have no responsibility for the discovery, presence, handling, removal, or disposal or exposure of persons to hazardous materials in any form at the Project site.

P. AFFIRMATIVE ACTION

The Consultant agrees to comply with the provisions of K.S.A. 44-1030, in the Kansas Acts Against Discrimination, and Section 10-113 eq seq of the Code of the City of Lawrence, Kansas, Affirmative Action in Public Contracts.

Q. EXECUTION OF CONTRACT

The parties hereto have caused this Agreement to be executed in duplicate this _____ day of _____, 20__.

CONSULTANT

By: Charles L. Kellerman

Charles L. Kellerman

Principal

CITY OF LAWRENCE, KANSAS

By: _____

Thomas M. Markus

City Manager

APPROVED AS TO FORM:

Toni R. Wheeler

City Attorney

Exhibit A

CONSULTANT is to perform professional services as outlined in this agreement for the project known as "Improvements to Lawrence Municipal Airport". Said improvements will include, but are not limited to, the following items:

1. Install Wildlife Mitigation Fence and Gates.

CITY and **CONSULTANT** in consideration of their mutual covenants herein agree in respect of the scope of professional engineering services by **CONSULTANT** and the payment for those services by **CITY** as set forth below.

CONSULTANT shall provide professional engineering services for **CITY** in all phases of the project to which this agreement applies and shall give professional engineering consultation and advice to **CITY** during the performance of services hereunder. All services performed shall be in accordance with applicable rules and regulations of the Federal Aviation Administration (FAA).

SECTION 1 - BASIC SERVICES OF CONSULTANT

1.1 General

1.1.1. **CONSULTANT** shall perform professional design services as hereinafter stated, with the skill and care associated with the standard of the industry, which include customary civil and electrical engineering services and customary services incidental thereto.

1.1.2. **CONSULTANT** shall assist **CITY** in project administration, as required. For this project, such administration includes preparation of three-year Disadvantaged Business Enterprise (DBE) goals.

1.2 Preliminary Design Phase

After authorization to proceed from **CITY** with the preliminary design phase, **CONSULTANT** shall:

1.2.1. In consultation with **CITY**, FAA, and other interested parties, determine the extent of the project, and review all available data.

1.2.2. Prepare preliminary design documents consisting of final design criteria, preliminary drawings, and specifications.

1.2.3. Based on the information contained in the preliminary design documents, submit a revised opinion of probable project costs (cost estimates).

1.2.4. If requested, furnish copies of the above preliminary design documents and present and review them with **CITY**.

1.2.5. Prepare and present to the FAA preliminary grant application documents.

1.3 Final Design Phase

Upon completion of the preliminary design phase, **CONSULTANT** shall:

1.3.1. On the basis of the accepted preliminary design documents and the revised opinion of probable project cost, prepare for incorporation in the contract documents final drawings to show the character and extent of the project (hereinafter called "drawings"), specifications and contract documents in accordance with FAA standards, as applicable.

1.3.2. Furnish to **CITY** such documents and design data as may be required so that **CITY** can obtain approval of the FAA or any such governmental authorities as have jurisdiction over design criteria applicable to the project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities. If required, **CONSULTANT** and/or **CITY** shall certify such documents to the FAA prior to advertising for bids.

1.3.3. Advise **CITY** of any adjustments to the latest opinion of probable project cost caused by changes in extent or design requirements of the project or construction costs and furnish a revised opinion of probable project cost based on the drawings and specifications.

1.3.4. Prepare a design **CONSULTANT's** report, including electrical design, estimates of final quantities and construction costs and identification of deviations from FAA design standards as well as justification for such deviation. This report will be submitted at the time of submittal of final drawings and specifications to the **CITY** and the FAA.

1.3.5. Prepare for review and approval by FAA, **CITY**, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

1.3.6. Furnish sufficient copies of the above documents for review by **CITY** and FAA.

1.4 Opinions of Cost

Since **CONSULTANT** has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable project cost and construction cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional **CONSULTANT**, familiar with the construction industry; but **CONSULTANT** cannot and does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost prepared by him. However, **CONSULTANT** represents that he will use reasonable engineering care and judgment commonly exercised by an **CONSULTANT** in the same or similar circumstances in making and transmitting such cost estimates to the **CITY**.

1.5 Bidding Phase

After authorization from the FAA and **CITY**, to proceed with the bidding phase, **CONSULTANT** shall:

1.5.1. Assist **CITY** in obtaining bids, bid opening, and processing of bid documents, for one prime contract for construction, materials, equipment and services.

1.5.2. Furnish complete sets of approved drawings, specifications and contract documents for the bidding of the project. Note: Contractors will be charged approximately \$40.00 per printed set to defray printing expenses and to avoid frivolous acquisition of sets. Electronic (.pdf) documents will be furnished without charge to credible bidders, suppliers and plan rooms.

1.5.3. Consult with and advise **CITY** as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor (hereinafter called "Contractor") for those portions of the work as to which such acceptability is required by the bidding documents.

1.5.4. Consult with and advise **CITY** and FAA as to the acceptability of substitute materials and equipment proposed by Contractor when substitution prior to the award of contracts is allowed by the bidding documents.

1.5.5. Assist **CITY** in evaluating bids or proposals and in assembling and awarding contracts.

1.5.6. Prepare, or assist in the preparation of, the Application for Federal Funds.

SECTION 2 - SPECIAL SERVICES OF CONSULTANT

2.1 Construction Phase

During the construction phase **CONSULTANT** shall:

2.1.1. Provide observation and inspection of construction work with sufficient qualified inspectors who shall be present full-time or part-time during construction operations to assure that construction is accomplished in accordance with the drawings and specifications. Work items causing runway or airfield closure will require a full-time inspector; other work items will require part-time observation. **CONSULTANT** shall issue such instructions to the Contractor's construction superintendents as are necessary to protect **CITY**'s interest to the same extent as would **CITY** if present and equipped with the requisite knowledge, skill competence, expertise, and engineering judgment.

2.1.2. **CONSULTANT** shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractors or the safety precautions and programs incident to the work of Contractors. **CONSULTANT**'s efforts will be directed toward providing a greater degree of confidence for **CITY** that the completed work of Contractors is in accordance with the contract documents. **CONSULTANT** shall keep **CITY** informed of the progress of the work and shall endeavor to guard **CITY** against defects and deficiencies in such work. **CONSULTANT** may disapprove or reject work failing to conform to the contract documents.

2.1.3. Review and approve (or take other appropriate action in respect of) shop drawings and samples, the results of tests and inspections and other data which each Contractor is required to submit, but only for conformance with the design concept of the project and compliance with the information given in the contract documents (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto); determine the acceptability of substitute materials and equipment proposed by Contractors; and receive and review (for general content) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractors in accordance with the contract documents. **CONSULTANT** shall review Contractor's weekly payrolls and prepare and maintain necessary records of construction progress.

2.1.4. **CONSULTANT** shall require the Contractor to perform quality control as necessary to meet the requirements of the Federal Aviation Administration specifications, in the field and the laboratory, as required, in proper time and in sufficient number to assure construction in accordance with the plans and specifications. Copies of all test reports will be available to **CITY** and FAA.

2.1.5. Issue all instructions of **CITY** to Contractors; issue necessary interpretations and clarifications of the contract documents and in connection therewith prepare change orders or supplemental agreements as required. After acceptance of any modifications, copies of the change order or supplemental agreement will be submitted to **CITY** and the FAA for approval and signature before proceeding with the work. **CONSULTANT** shall have authority, as **CITY**'s representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the contract documents and judge of the acceptability of the work thereunder and shall make recommendations on all claims of **CITY** and Contractors relating to the acceptability of the work or the interpretation of the requirements of the contract documents pertaining to the execution and progress of the work; but **CONSULTANT** shall not be liable for the results of any such interpretations or recommendations rendered by him in good faith and in conformance with good engineering practices. **CITY** shall make decisions based on information and recommendations of the **CONSULTANT**.

2.1.6. **CONSULTANT** will furnish to **CITY** and FAA a weekly construction progress and inspection report.

2.1.7. Based on **CONSULTANT**'s on-site observations and measurements, **CONSULTANT** shall prepare and review periodic pay estimates for payment and the accompanying data and schedules, determine the amounts owing to Contractors and recommend in writing, payments to Contractors in such amounts: such recommendations of

payment will constitute a representation to **CITY**, based on such observation and review, that the work has progressed to the point indicated, that, to the best of **CONSULTANT**'s knowledge, information and belief; such work is in accordance with the contract documents (subject to an evaluation of such work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the contract documents, and to any qualifications stated in his recommendation), and that payment of the amount recommended is due Contractors; but by recommending any payment, **CONSULTANT** will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by **CONSULTANT** to check the acceptability or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incident thereto or that **CONSULTANT** has made an examination to ascertain how or to what purposes any Contractor has used the monies paid on account of the contract price, or that title to any of the work, materials or equipment has passed to **CITY** free and clear of any lien, claims, security interests or encumbrances, or that Contractors have completed their work in accordance with the contract documents. Periodic pay estimates shall be submitted regularly to FAA for their respective participation payments. **CONSULTANT** will assist in preparation of payment requests.

2.1.8. Monitor compliance with the applicable federal and state regulations governing grant procurement, including those dealing with pollution, fair labor standards, equal employment opportunity and minority business hiring.

2.1.9. When the project has been completed and is ready for final acceptance, **CONSULTANT** shall arrange for a final inspection of the finished work by FAA, **CITY**, the Contractor and **CONSULTANT** to determine if the project has been completed in accordance with the contract documents and if each Contractor has fulfilled all of his obligations thereunder so that **CONSULTANT** may recommend, in writing, final payment to each Contractor and may give written notice to **CITY** and the Contractors that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice shall be subject to the limitations expressed in paragraph 2.1.7.

2.1.10. **CONSULTANT** shall not be responsible for the acts or omissions of any Contractor, or subcontractor, or any of the Contractor's or subcontractors' agents or employees and/or any other persons (except **CONSULTANT**'s own employees and/or agents) at the site or otherwise performing any of the Contractor's work; however, nothing contained in paragraphs 2.1.1. through 2.1.10, inclusive, shall be construed to release **CONSULTANT** from liability for failure to properly perform duties undertaken by him in the contract documents.

2.2 Close-out Phase

2.2.1. Upon acceptance of the project, **CONSULTANT** shall prepare close-out documentation within 90 days of final acceptance. The close-out documentation shall consist of record drawings and a final project report, and shall provide **CITY**, and FAA with record drawings and final report in hard copy and electronic format. Using data provided by **CITY** in its construction observation role, the final project report shall include the following:

- a. A brief narrative of project events and milestones
- b. Statement of contract time and liquidated damages (if any)
- c. Statement of substantial compliance with plans, specifications and contract documents based on observations and field/laboratory tests
- d. Explanation of under runs/overruns of contract items and price adjustments (if not already provided with change orders)
- e. **CONSULTANT**'s summary of acceptance test results
- f. Evaluation of the DBE project goal accomplishment.
- g. Photographs of the completed work
- h. A copy of the final inspection report (must identify all participants)

SECTION 3 - FAA REQUIRED CONDITIONS

FAA provisions require that during the performance of this contract, the **CONSULTANT**, for itself, assignees and successors in interest agrees as follows:

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

This provision binds the **CONSULTANT** and subtier contractors through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Civil Rights Act of 1964, Title VI-49 CFR Part 21, Contractual Requirements (Version 1, 1/5/90); Compliance with Nondiscrimination Requirements. During the performance of this contract, the **CONSULTANT**, for itself, its assignees, and successors in interest (hereinafter referred to as the "**CONSULTANT**") agrees as follows:

3.1.1. Compliance with regulations. The **CONSULTANT** 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.

3.1.2. Nondiscrimination. The **CONSULTANT**, 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 **CONSULTANT** 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.

3.1.3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding, or negotiation made by the **CONSULTANT** 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 **CONSULTANT** of the **CONTRACTOR**'s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

3.1.4. Information and Reports. The **CONSULTANT** 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 CITY 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 **CONSULTANT** is in the exclusive possession of another who fails or refuses to furnish the information, the **CONSULTANT** will so certify to the **CITY** or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

3.1.5. Sanctions for Noncompliance: In the event of the **CONSULTANT**'s noncompliance with the nondiscrimination provisions of this contract, the **CITY** shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the **CONSULTANT** under the agreement until the **CONSULTANT** complies, and/or
- (b) cancellation, termination or suspension of the agreement, in whole or in part.

3.1.6. Incorporation of Provisions. The **CONSULTANT** shall include the provisions of paragraphs 3.1.1 through 3.1.5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The **CONSULTANT** shall take such action with respect to any subcontract or procurement as the **CITY** or the FAA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that in the event **CONSULTANT** becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the **CONSULTANT** may request the **CITY** to enter into such litigation to protect the interests of the **CITY** and, in addition, the **CONSULTANT** may request the United States to enter into such litigation to protect the interests of the United States.

3.2 Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;

The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and **CONSULTANT** whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with

Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

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

3.3 Inspection of Records: The **CONSULTANT** must maintain an acceptable cost accounting system. The **CONSULTANT** agrees to provide the **CITY**, 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 **CONSULTANT** which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The **CONSULTANT** 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.

3.4 Rights to Inventions: Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the **CITY** in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within in the 37 CFR §401.14. **CONSULTANT** must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

3.5 Breach of Contract Terms - Sanctions - 49 CFR Part 18 (Version 1, 1/5/90)

Any violation or breach of the terms of this contract on the part of the **CONSULTANT** or subcontractor may result in the suspension or termination of this contract or such other action which may be necessary to enforce the rights of the parties of this agreement.

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

3.6 DBE Contract Clauses (§26.13, 26.29)

Contract Assurance - The **CONSULTANT** and subconsultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The **CONSULTANT** shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the **CONSULTANT** 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 - The **CONSULTANT** agrees to pay each subconsultant under this prime contract for satisfactory performance of its contract no later than 14 days from the receipt of each payment the **CONSULTANT** receives from the **CITY**. The prime **CONSULTANT** agrees further to return retainage payments to each subconsultant within 14 days after the subconsultant'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 **CITY**. This clause applies to both DBE and non-DBE subconsultants.

3.7 Trade Restriction Clause

The **CONSULTANT** by execution of this 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 **CONSULTANT** must provide immediate written notice to the **CITY** if the **CONSULTANT** learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The **CONSULTANT** must require subcontractors provide immediate written notice to the **CONSULTANT** 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 a **CONSULTANT**:

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

The **CONSULTANT** agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The **CONSULTANT** 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 **CONSULTANT** 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 **CONSULTANT** or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the **CITY** cancellation of the contract or subcontract for default at no cost to the **CITY** or the FAA.

3.8 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - 49 CFR Part 29 (Version 1, 1/5/90) (Required on all contracts greater than \$25,000)

The **CONSULTANT** certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the **CONSULTANT** or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this proposal.

3.9 Termination of Contract

3.9.1. Termination for Convenience

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

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

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

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

3.9.2. 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 CITY:** The CITY may terminate this Agreement in whole or in part, for the failure of the **CONSULTANT** to:

1. Perform the services within the time specified in this contract or by CITY approved extension;
2. Make adequate progress so as to endanger satisfactory performance of the Project;
3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the **CONSULTANT** must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the **CONSULTANT** must deliver to the CITY all data,

surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the **CONSULTANT** under this contract, whether complete or partially complete.

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

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

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

b) **Termination by CONSULTANT:** The **CONSULTANT** may terminate this Agreement in whole or in part, if the **CITY**:

1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the **CONSULTANT** in accordance with the terms of this Agreement;
3. Suspends the Project for more than [180] days due to reasons beyond the control of the **CONSULTANT**.

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

In the event of termination due to **CITY** breach, the **CONSULTANT** is entitled to invoice **CITY** and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the **CONSULTANT** through the effective date of termination action. **CITY** agrees to hold **CONSULTANT** harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

3.10 Energy Conservation: **CONSULTANT** and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq*)

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

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

3.12 Occupational Safety and Health Act of 1970: All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. **CONSULTANT** must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The **CONSULTANT** 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). **CONSULTANT** 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.

3.13 Veteran's Preference: In the employment of labor (excluding executive, administrative, and supervisory positions), the **CONSULTANT** 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.

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

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

3.15 Lobbying and Influencing Federal Employees: The **CONSULTANT** certifies by entering this agreement, 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 **CONSULTANT**, 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 **CONSULTANT** shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The **CONSULTANT** 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.

Exhibit B

PAYMENTS TO CONSULTANT.

Methods of payment for services and expenses of **CONSULTANT**.

For Basic Services. **CITY** shall pay **CONSULTANT** for basic services rendered under Section 1 of the project scope as follows:

1. Amounts of payment

A lump sum fee of basic and special services broken out as follows:

Design	\$ 98,475
Project Administration	\$ 8,000
Bidding	<u>\$ 6,800</u>
Total	\$ 113,275

2. Times of payment

Fees shall be invoiced on a monthly basis for the portion of the work complete.

For Special Services. **CITY** shall pay **CONSULTANT** for special services rendered under Section 2 of the project scope on the basis of payroll costs times a factor of 2.89 for services rendered by principals and employees assigned to this project. **CITY** shall pay **CONSULTANT** the actual costs of all reimbursable expenses and subcontract costs incurred. In addition to the above costs, **CITY** shall pay **CONSULTANT** a total fixed fee of \$7,000 for all items

1. Amounts of payment

A not to exceed fee for special services broken out as follows:

Salaries and Other Expenses	\$ 50,800
Subconsultants (survey & testing)	\$ 21,500
Fixed Fee	<u>\$ 7,000</u>
Total Special Services.....	\$ 79,300

The above costs are estimates only. They have been used to determine the grand total special service costs. This grand total amount of \$79,300 shall not be exceeded without prior approval of the **CITY**.

2. Times of payment

CONSULTANT shall submit monthly statements for salaries and other expenses and for reimbursable expenses incurred. The fixed fee shall be due and payable when the final invoice is submitted. The record drawings and final construction report shall be submitted to the **CITY** and FAA not more than 90 calendar days from the final acceptance of all construction on the project.

December 2016

ADG Chargeout and Overhead Rates

<u>Position</u>	<u>Wage</u> <u>Rate</u>	<u>Overhead</u> <u>Multiplier</u>	<u>Profit</u> <u>Multiplier</u>	<u>Calculated</u> <u>Rate</u>	<u>Published</u> <u>Rate</u>
		2.89	1.15		
Principal	45.00			149.56	150.00
Associate Principal	39.50			131.28	131.00
Project CONSULTANT	37.00			122.97	123.00
Project Planner/Environmental	37.00			122.97	123.00
CONSULTANT	32.00			106.35	106.00
Planner	32.00			106.35	106.00
Associate CONSULTANT	30.00			99.71	100.00
Associate Planner	30.00			99.71	100.00
Engineering/Planning Tech.	25.00			83.09	83.00
CADD Technician	22.50			74.78	75.00
Clerical	17.00			56.50	57.00

END OF EXHIBITS