

JOB ORDER CONTRACTING AGREEMENT

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

This Job Order Contract Agreement (hereafter referred to as “the Agreement”, “the Contract”, “this Agreement” and/or “this Contract”) is made and entered into in San Antonio, Bexar County, Texas between the City of San Antonio, a Municipal Corporation in the State of Texas (hereafter referred to as “City”) and

Name
Address
City, State, Zip Code

a Job Order Contractor (“hereafter referred to as “JOC”) (City and JOC hereafter individually referred to as “a Party” and collectively referred to as “the Parties”), said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by JOC for Job Order Contracting, as set forth herein.

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ARTICLE I. Definitions

JOC acknowledges and accepts the definitions set forth in the City's General Conditions for City of San Antonio Construction Contracts, attached as **Exhibit A**, and additionally agrees to the following definitions of this **Article I**.

1.01. "Agreement" and/or "Contract" shall mean this Agreement and all documents and references incorporated herein. Agreement and Contract also shall include Job Orders issued to JOC, pursuant to this Agreement, and all elements incorporated into an issued Job Order.

1.02. "City" shall mean the City of San Antonio and its designated representative(s). Each issued Job Order shall state City's designated representative for the issued Job Order. Under this Agreement, when JOC is required to report or transmit information to City, JOC shall report or transmit the required information to City's designated representative for the issued Job Order.

1.03. "Effective Date" of this Agreement shall mean the effective date of the Authorizing Ordinance passed by the San Antonio City Council.

1.04. "Job Order" or "Task Order" shall mean the written agreement between City and JOC for Work to be performed under this Agreement signed by both parties.

1.05. "Liquidated Damages" shall mean the reimbursement by JOC to City to compensate City for the monetary damages suffered by City when JOC fails to meet its date for Substantial Completion, said date for Liquidated Damages defined in each issued Job Order.

1.06. "Non-Pre-Priced Items" shall mean Work items not listed in the then most current R.S. Means Facilities Construction Cost Data Book.

1.07. "Pre-Priced Items" shall mean the items listed in the then most current R.S. Means Facilities Construction Cost Data Book.

1.08. "Unifier" shall mean City's internet-based project management system. City shall administer the necessary software, provide training to JOC for JOC's use of Unifier and City shall make the Unifier software accessible via the Internet to JOC.

1.09. "Substantial Completion" shall mean the date on which the Work, or an agreed upon portion of it, sufficiently has been completed and City may occupy and use the Work (or a portion thereof) for its intended purposes.

1.10. "Work" shall mean all tasks required of JOC under an issued Job Order.

1.11. "Work Schedule" shall mean the scheduled number of calendar days afforded JOC to complete each task, pursuant to an issued Job Order. The Work Schedule for an assigned Job Order shall be submitted by JOC to City for City's approval, prior to beginning any Work by JOC.

ARTICLE II. Initiation of Work

2.01. **City Initiation of Work.** Pursuant to this Agreement, City shall initiate Work by issuing a request for a quote to JOC through Unifier. To reject the responsibilities to perform, pursuant to an issued request for a quote, JOC, within two (2) working days of its receipt of the issued request for a quote, shall notify City through Unifier of its acceptance or rejection of the issued request for a quote. Requests for quotes not timely accepted (within two (2) days of issuance) through Unifier by JOC shall be deemed by City as rejected by JOC. Upon JOC's acceptance of the issued request for a quote in Unifier and notification to City, JOC shall begin pricing the Scope of Work of the request for a quote issued. JOC shall, except as this Agreement or the issued Job Order otherwise expressly provides, furnish all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, bonds, insurance, subcontracts, supervision, management, reports, incidentals and quality control necessary to complete all issued Job Orders. If City concludes JOC's pricing of an issued request for a quote and any subsequent negotiation are not progressing at a satisfactory rate, City may terminate the issued request for a quote to JOC and select another JOC for the subject Job Order.

2.02. **Multiple Solicitations.** City reserves the right and JOC hereby acknowledges City may solicit price proposals on prospective Job Orders from one or more JOCs, to determine the best value proposal, on behalf of City. JOC further acknowledges if JOC prepares a pricing proposal for an issued Job Order, JOC shall not be entitled to compensation for its efforts preparing a price proposal, whether or not a Job Order is awarded to JOC.

2.03. **Project Requirements.** Each Job Order solicitation shall define, to City's best knowledge, the specific project requirements. Job Orders may be used for any project authorized under Texas law.

2.04. **Conformance of Work.** Work performed by JOC shall conform to the Job Order's requirements. Job Orders shall set forth the following, in coordination with City's Aviation Department Task Order Form:

- 2.04.1. The Contract number, along with JOC's name;
- 2.04.2. The Job Order number and date;
- 2.04.3. The Scope of Work and the applicable technical specifications and drawings;
- 2.04.4. The period of time for performance, including the Job Order's start date, date of Substantial Completion, Liquidated Damages, and, if required and/or requested by City, a Work Schedule;
- 2.04.5. The location of the Work's performance;
- 2.04.6. The agreed total cost to be paid JOC for the Work to be performed;

- 2.04.7. Submittal requirements;
 - 2.04.8. The identity of City's authorized representative who will accept JOC's completed Work;
 - 2.04.9. Name of JOC's representative for the issued Job Order;
 - 2.04.10. Signatures, on behalf of the Parties, signifying the agreement reached, along with the specific terms of the Job Order; and
 - 2.04.11. Such other information as may be necessary for JOC to perform the Work.
- 2.05. **Beginning Work.** JOC shall begin Work on the effective date specified in the Job Order's Notice to Proceed, issued by City. Any costs incurred by JOC for preliminary Work or for materials ordered or purchased by JOC or its Sub-Consultants or Subcontractors, prior to receipt of City's Notice to Proceed for a Job Order, shall be at JOC's risk and expense.
- 2.06. **Amending Issued Job Orders.** Once issued, Job Orders only may be amended by the written agreement of both Parties through the Unifier system.
- 2.07. **Job Order Minimum Value.** The minimum value for an issued Job Order shall be One Thousand Dollars and no cents (\$1,000.00), unless the minimum value requirement is waived in writing by both City and JOC.
- 2.08. **Mutual Agreement on Job Orders.** Nothing in this Agreement requires City to issue a Job Order, or requires JOC to accept same. It is understood that both Parties mutually shall agree to any issued Job Order.
- 2.09. **Diligent Prosecution of Work.** JOC diligently shall prosecute all Work to completion within the time required by, listed on and agreed to on the accepted Job Order or JOC shall be subject to Liquidated Damages. The period of performance shall include allowances for mobilization, holidays, weekend days, usual inclement weather and cleanup. Claims for delay by JOC, based on such elements listed herein, shall not be accepted.

ARTICLE III. Specification and Drawings

- 3.01. JOC acknowledges and accepts the requirements regarding Specifications and Drawings set forth in the City's General Conditions for City of San Antonio Construction Contracts, and additionally agrees to the following terms and conditions of this **Article III**.
- 3.02. **Preparation of Designs and Drawings.** When necessary, City or a Design Consultant selected by City shall prepare all designs and drawings to be used by JOC in performing the Work.

- 3.02.01. City shall be responsible for the cost of design work, apart from any money due JOC under an issued Job Order.
- 3.02.02. JOC shall keep a copy of the drawings and specifications at the Work site at all times and shall give City access thereto. Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications is of like effect, as if shown or mentioned in both/either. JOC shall not alter or amend the drawings and/or the provided drawings or specifications. Any alteration by JOC to the drawings and/or specifications without City's written approval shall be at JOC's own risk and expense. If City provides drawings and specifications, City shall, from time to time, furnish such detail drawings and other information as reasonably is necessary.

3.03. **City Direction.** In the City-provided drawings or specifications, when the words "directed", "required", "ordered", "designated", "prescribed" or words of like importance are used, JOC acknowledges and understands that the "direction", "requirement", "order", "designation" or "prescription" of City is intended. Similarly, JOC acknowledges and understands when the words "approved", "acceptable", "satisfactory" or words of like importance are used, those words shall mean "approved by", "acceptable to" or "satisfactory to" City, unless otherwise expressly stated in writing by City to JOC.

3.04. **Drawings and Specification Direction.** Where "as shown", "as indicated", "as detailed" or words of similar importance are used, JOC acknowledges and understands that the reference is made to the drawings and specifications which accompany the Job Order, unless otherwise stated in writing. The word "provided", as used herein, shall mean "provide complete in place". The word "furnished", as used herein, shall mean "furnished and installed."

3.05. **Shop Drawings.** Shop Drawings shall mean the drawings submitted to City and/or the Design Consultant by JOC showing, in detail:

- 3.04.1. The proposed fabrication and assembly of structural elements; and
- 3.04.2. The installation (i.e., form, fit and attachment details) of materials or equipment; and
- 3.04.3. The construction and the detailing of elements of the Work.

3.06. **Detailed Shop Drawings.** Shop drawings shall include sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data and similar materials furnished by JOC to explain – in detail – specific portions of the Work. City may duplicate, use and disclose, in any manner and for any purpose, shop drawings delivered under a Job Order and this Agreement.

3.07. **JOC Coordination of Shop Drawings.** JOC shall coordinate all shop drawings and review them for accuracy, completeness and compliance with the issued Job Order and all Contract requirements and JOC shall indicate its approval thereon. Shop drawings submitted to City without evidence of JOC's approval may be returned to JOC for resubmission. City shall indicate its written approval or disapproval of the JOC-submitted shop drawings and, if not approved as submitted, shall indicate to JOC City's reasons for its disapproval. Any Work conducted by JOC prior to receipt of City's approval of Shop Drawings shall be at JOC's sole risk. Receipt of City's written approval does not relieve JOC from responsibility for any errors or omissions in shop drawings, nor from responsibility for complying with the requirements of the Job Order and this Agreement, except as otherwise specifically provided in this Agreement.

3.08. **Shop Drawing Variations.** If shop drawings vary from the defined Job Order requirements, JOC shall describe the variations in writing to City promptly after the variation is realized. If City approves a variation, City and JOC shall modify the Job Order in writing, unless the variation is minor and does not involve a change in price or time of performance, in which case a modification is unnecessary.

3.09. **Submittal of Shop Drawings.** Upon City's request, JOC shall submit to City hard copies of shop drawings for City's written approval and one (1) digital copy of JOC's shop drawings for City's use.

3.10. **Omitted or Erroneous Drawings and Specifications.** Omissions from City-provided drawings or specifications or an erroneous description of details of the Work that manifestly are necessary for JOC to carry out the intent of the drawings and specifications or customarily are performed does not excuse JOC from performing the omitted or erroneously described details. JOC acknowledges and accepts it is JOC's responsibility to find omissions and inconsistencies in provided drawings and specifications and seek clarification from City.

3.10. **JOC Discovered Discrepancies.** JOC shall review and verify all City-furnished drawings immediately upon receipt and promptly shall notify City of any discrepancies found. JOC acknowledges that figures marked on drawings govern in preference to scale measurements. JOC further acknowledges large scale drawings govern small scale drawings.

3.11. **Property of City.** JOC acknowledges all drawings (including as-built drawings), sketches, designs, design data, specifications, notebooks and technical and scientific data provided to or developed by JOC under a Job Order, pursuant to this Agreement, as well as all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, are the property of City. All may be used by City without any claim by JOC for additional compensation, except for material developed by JOC prior to the issuance of or resulting from an issued Job Order.

ARTICLE IV. Permits

In addition to the requirements set forth in the City's General Conditions for City of San Antonio Construction Contracts, City or, if City elects to use a Design Consultant, its Design Consultant

shall prepare the construction documents for any required licenses and/or permits for performance of the Work, pursuant to an issued Job Order. JOC shall submit the construction documents for licensing/permitting, if necessary and required. JOC acknowledges it shall obtain all required permits applicable to its Work performance under any issued Job Order. JOC further acknowledges it shall comply with all federal, state, and local laws, rules, and regulations applicable to performance of the Work. JOC shall include and incorporate the pass-through cost(s) of any necessary permits to perform the Work, with no percentage markup applied to said permit cost(s), in JOC's submitted price proposal for an issued Job Order.

ARTICLE V. Operations, Materials and Workmanship

5.01. **New Materials.** All equipment, material and articles incorporated in the Work, pursuant to an issued Job Order and this Agreement, shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in writing by City in the issued Job Order. References in the specifications to equipment, materials, articles or patented process by trade name, make or catalog number generally establish a standard of quality and do not limit competition. If JOC intends to request a substitution of something designated by trade name, make, or catalog number, JOC shall prepare a written request to City and seek City's written approval for the requested substitution, fully describing the requested substitution and stating JOC's reason(s) for its request to City. City, at its sole discretion, shall approve or reject JOC's request for a substitution.

5.02. **City Approval of Machinery and Equipment.** JOC shall obtain City's written approval of the machinery, mechanical and other equipment to be incorporated into the Work. JOC shall furnish City the name of the manufacturer, the model number and other information concerning the performance, capacity, nature and rating of the machinery, mechanical and other equipment to be incorporated. When required by the Job Order or by City, JOC also shall obtain City's written approval of the material or articles that JOC contemplates incorporating into the Work. When requesting City's written approval, JOC shall provide full information concerning the material or articles to be utilized. When directed to do so by City, JOC shall submit samples of materials and/or articles for City's approval. Machinery, equipment, material and articles that do not have the required City approvals will be installed at JOC's sole risk of rejection.

5.03. **JOC General Manager.** JOC's General Manager assigned to this Agreement shall be knowledgeable in multiple construction disciplines, including structural framing, electrical, mechanical, HVAC, paving, landscaping, painting, roofing and plumbing.

5.04. **Work Performance.** All Work, pursuant to an issued Job Order and under this Agreement, shall be performed in a skillful and workmanlike manner. JOC shall perform the Work in a timely manner and JOC's performance of the Work shall be subject to Liquidated Damages. Further, JOC shall ensure that its purchase, delivery and storage of materials and equipment do not interfere with City operations and personnel.

5.05. **Material Testing.** Unless otherwise specified in an issued Job Order, JOC accepts and acknowledges it shall be responsible for any and all required testing of materials and for all

inspections of JOC's Work, prior to materials being incorporated into the Work. Any Special Inspections, if required and as defined in IBC 2021 Section 1704 Special Inspections, shall be the responsibility of and conducted by City.

5.06. **Layout of Work.** JOC shall lay out its Work in accordance with the Job Order plans and specifications and JOC is responsible for all measurements in connection therewith. JOC shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout the Work. JOC also is responsible for maintaining and preserving all control points which may be established by City.

5.07. **Superintendent Work.** At all times during performance of an issued Job Order and until the Work is completed and accepted by City, JOC directly shall provide a competent superintendent satisfactory to City who will be on site at all times and who has authority to act on behalf of JOC. If, in City's sole opinion and upon request by JOC, an issued Job Order would not require JOC to have a competent superintendent on site at all time, City may waive this requirement and, if so determined, shall do so in writing to JOC.

5.08. **Removal and Replacement of Furniture and Equipment.** If applicable, JOC shall remove all furniture and movable office equipment from an immediate Work area that may be affected by JOC's Work. If sufficient space and/or conditions are not available at the work site, JOC shall store all furniture and movable office equipment in an off-site facility with conditions sufficient to reasonably assure it is not damaged. Upon completion of Work, JOC shall return the removed furniture and moveable office equipment to their original and proper place. If any of the removed items cannot be placed back in their original locations, City shall designate alternate location(s) for the items' placement.

5.09. **No Damage of Property.** JOC shall take all necessary precautions to ensure that no damage to private or public property results from its Work or its Work-related operations. JOC shall repair or replace all items it damages at no additional cost to City. JOC also shall provide all necessary traffic control, including street blockages, traffic cones, flagmen and the like, as required for each issued Job Order. JOC's proposed traffic control methods shall be submitted in writing to City for City's written approval, prior to JOC beginning Work.

ARTICLE VI. Site Investigation and Conditions Affecting Work

6.01. **Nature and Location of Work.** JOC shall be responsible for ascertaining the nature and location of the Work, as well as the general and local conditions that might affect the Work, unless such different conditions could not, in the exercise of diligent search by JOC, have been discovered. Failure to properly ascertain discoverable items shall be at JOC's risk sole and expense. Items for which JOC is responsible to assess include, but are not limited to:

6.01.1. Conditions bearing upon transportation, disposal, handling, and storage of materials;

6.01.2. The availability of labor, water, electric power, and roads;

- 6.01.3. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- 6.01.4. The conformation and conditions of the ground; and
- 6.01.5. The character of equipment and facilities needed both preliminary to and during Work performance.

6.02. **Surface/Subsurface Materials.** JOC further is responsible for ascertaining the character, quality and quantity of surface and subsurface materials and/or obstacles that might be encountered on the Work site, unless such surface and subsurface materials or obstacles could not, in the exercise of diligent search, have been discovered. Failure properly to ascertain discoverable conditions shall be at JOC's sole risk and expense.

6.03. JOC promptly shall, before the site conditions are disturbed, give written notice to City upon JOC's discovery of:

- 6.03.1. Subsurface or latent physical conditions at the site differing materially from those indicated (or the site's physical conditions not addressed) in the issued Job Order; or
- 6.03.2. Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

6.04. **City Investigation.** City shall conduct an investigation, upon receiving written notice from JOC regarding differing or unknown physical conditions at the Work site. If City finds that the conditions materially do differ and cause an increase or decrease in JOC's cost of or the time required for performing any part of the Work, City shall make an equitable adjustment in the price to be paid to JOC and the issued Job Order shall be modified in writing to reflect said equitable adjustment.

6.05. **JOC Timely Notice.** JOC shall not be entitled to an equitable adjustment in the price of an issued Job Order unless JOC promptly has given the requisite written notice to City on the physical conditions found. JOC never shall be entitled to an equitable adjustment to its price paid for an issued Job Order after final payment under the Job Order has been paid by City.

ARTICLE VII. Term

7.01. **Contract Term.** This Agreement shall be for two (2) years (hereafter referred to as the "Base Term"), with the Base Term beginning on the date of City's execution of this Agreement. City shall have the right to extend this Agreement through three (3), one-year options (hereafter referred to as an "Option Year"), each City-exercised option year to begin at the expiration of the Base Term or the expiration of an exercised Option Year.

7.02. **Exercise of Option Term.** If City elects to exercise its option(s) to extend this Agreement, City shall notify JOC in writing of City's intention to exercise its option, prior to the expiration of the then-current term. City may terminate this agreement at any time, pursuant to **Article XIV** and/or **Article XV** herein, and/or City may elect, at City's sole discretion, not to exercise any available Option Year renewal with a JOC.

7.03. **Extension of Term Period.** Following the Expiration of the Base Term or the expiration of any City-exercised Option Year, the terms and conditions of this Agreement shall remain in place during the performance of Job Orders issued prior to the expiration of the Base Term or the expiration of an Option Year.

ARTICLE VIII. Compensation, Invoicing, Payment and Liquidated Damages

8.01. **Compensation:** The Compensation for all services included in this Agreement is the aggregate total of approved and executed Task Orders for amounts not to exceed the program spending authority approved by Ordinance No. _____. Subsequent projects will be subject to budget and task order proposal approvals.

The term of the contract is **two (2) years** for the initial term, with **three (3) 1-year options** for renewal.

Quantities included in the contract, as well as the contract amount are not guaranteed. The unit prices established shall remain valid throughout the duration of the contract.

As full consideration for JOC's satisfactory performance under an issued Job Order, City shall compensate JOC as follows:

8.01.1. **Pre-Priced Items.** To arrive at the maximum amount that shall be paid by City to JOC for Pre-Priced Items under an issued Job Order, JOC shall consult the amount shown in the then most current R.S. Means Facilities Construction Cost Data Book for the required Pre-Priced Items, multiply the amount shown by the applicable coefficient for Pre-Priced Items, with consideration as to whether the Work is required to be performed during or outside City's normal working hours. JOC accepts and agrees that the R.S. Means amount shall be the maximum amount paid by City for Pre-Priced Items and City may negotiate any and all pricing submitted by JOC for Work to be performed. JOC acknowledges its submitted pricing to City for Pre-Priced Items shall remain valid for sixty (60) days from the date JOC submits its pricing to City. This sixty (60) day time period may be extended by written mutual agreement between City and JOC.

8.01.2. **Non-Pre-Priced Items.** For JOC to secure Work, JOC shall reach an agreement with City with regard to the reasonable and necessary cost of labor and materials to perform the Work. The agreed upon combined cost of

labor and materials shall be increased by a maximum no greater than twelve percent (12%) to cover JOC's overhead and profit. Then, to arrive at the maximum amount to be paid by City to JOC for Non-Pre-Priced items under an issued Job Order, JOC shall price out the Non-Pre-Priced items of the Work and submit its pricing, along with all supporting documentation, reflecting JOC's truthful and anticipated costs for the Non-Pre-Priced Items of the Work. Upon receipt of JOC's pricing and supporting documentation, City shall review JOC's submitted pricing and, if City so elects, negotiate JOC's submitted pricing, request additional supporting documentation regarding JOC's pricing or accept JOC's pricing for the Non-Pre-Priced Items of the Work. JOC acknowledges its submitted pricing to City for Non-Pre-Priced Items shall remain valid for sixty (60) days from the date JOC submits its pricing to City. This sixty (60) day time may be extended by written mutual agreement between City and JOC.

8.02. Submittal of Pay Application. At minimum, JOC shall submit a request for pay application every thirty (30) days, throughout the duration of JOC's Work. JOC may submit a request for pay application more frequently than every thirty (30) days, with City's written approval.

8.03. Monthly Progress Payments. City shall make progress payments, at minimum, monthly, as the Work proceeds or at more frequent intervals as determined by City, upon receipt of mathematically correct certified pay applications submitted by JOC and approved by City and, if requested by City, approved by Design Consultant, if any. For submission of its mathematically correct pay application, JOC shall use a format deemed acceptable to City and said monthly pay application shall include supporting documents reflecting a breakdown showing how JOC's Work done to the date of the submitted pay application compares to the total project scope, broken out by category of Work. A submitted pay application shall contain as much detail as City so requests, so City may determine the progress payment due and owing to JOC. In addition to payment to JOC for Work completed, City, at City's option, may authorize payment to JOC for material(s) delivered to the site and any preparatory Work performed by JOC, if JOC furnishes satisfactory evidence that it has acquired title to the material, the material shall be used to perform the Work ordered and any preparatory Work performed was in furtherance of the Work ordered. Releases of liens from JOC and each of JOC's Subcontractors and suppliers utilized to perform the Work are required as back up for the pay application certificate.

8.04. Liquidated Damages. The City reserves the discretion to include liquidated damages (LDs) with each Job Order issued. In the event the JOC fails to achieve Substantial Completion and/or Final Completion of the Project by the dates established for Substantial Completion and/or Final Completion, JOC will be assessed LDs for each calendar day of unexcused delay in achieving Substantial Completion and/or Final Completion beyond the Scheduled Completion/Final Completion dates. The daily assessed LD rates for delay in Substantial Completion and/or Final Completion shall be determined for each Job Order at time of issuance. Any sums due and payable to the JOC by the City shall be payable, not as a penalty, but as LDs representing an estimate of delay damages sustained by City, estimated at the time of

executing the job order. Such LDs shall apply regardless of whether JOC has been terminated by the City prior to Substantial Completion, so long as Contractor's actions or inactions contributed to the delay. Such LDs shall be in addition to and not in preclusion of any recovery of actual damages resulting from other defects in JOC's performance hereunder, for matters other than delays in Substantial Completion/Final Completion. When the City reasonably believes that Substantial Completion/Final Completion will be inexcusably delayed, City shall be entitled, but not required, to withhold from any amounts otherwise due to JOC an amount then believed by the City to be adequate to recover LDs applicable to such delays. If and when JOC overcomes the delay in achieving Substantial Completion and/or Final Completion or any part thereof, for which the City has withheld payment, the City shall promptly release to Contractor those funds withheld but no longer applicable as LDs..

8.05. **Property of City.** All material and Work covered by a progress payment, at the time of payment by City to JOC, become the sole property of City. By accepting this condition, JOC acknowledges this provision does not:

- 8.05.1. relieve JOC from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work;
or
- 8.05.2. waive City's right to require fulfillment of all Contract terms.

8.06. **Mathematically Correct Payment Requests.** Mathematically correct estimates of completion percentages shall be approved and certified for payment by City and shall be paid within thirty (30) days. If City finds JOC's submitted estimates to be incorrect, City shall notify JOC, through Unifier, as to the inconsistencies discovered and explain, with reasonable particularity, the reasons for the finding. Progress payments to JOC shall be paid after the estimate of the Work is accepted, certified and approved by City. JOC's estimates of completed Work shall be submitted electronically through Unifier.

8.07. **Substantial Completion Notification.** When JOC considers the Work to be complete and ready for its intended use (Substantially Complete), JOC shall notify City's Project Representative of JOC's conclusion. City then shall inspect the Work to determine the status of completion. If City finds that the Work has been reached Substantial Completion, City shall issue a Certificate of Substantial Completion. The Certificate shall itemize remaining items to be completed or corrected before final payment of the Job Order. Upon receipt of the itemized list of remaining work (hereafter referred to as the "Punch List") JOC shall promptly proceed to complete or correct items listed on the Punch List.

8.08. City shall pay JOC all unpaid amounts due under an issued and accepted Job Order, within sixty (60) days following:

- 8.08.1. City's issuance of a Certificate of Final Completion upon JOC's completion and/or correction of all remaining portions of the Work, inclusive of all Punch List items; and

- 8.08.2. JOC's presentation of a properly executed and mathematically correct final pay application; and
- 8.08.3. JOC's presentation of an executed Release of any and all claims JOC may have against City, arising by virtue of the issued Job Order and/or this Agreement. If JOC has assigned its right to a claim to any amount payable under an issued Job Order and/or this Agreement, a Release also may be required of JOC's assignee. JOC and/or JOC's assignee shall complete the required Release form(s) deemed acceptable to City; and
- 8.08.4. City's receipt of a consent from JOC's surety, if any.

8.09. **Requirement to Use Unifier.** All correspondences related to an issued Job Order shall be submitted by JOC to City and by City to JOC through Unifier, including, but not limited to, the Job Order schedule, Requests for Information, requests for Substantial Completion, requests for Final Completion, all pay applications and Release forms.

8.10. **Work Schedule.** JOC shall, upon JOC's submission of its signed Job Order, submit for approval from City a Work Schedule showing the sequence in which JOC proposes to perform the Work and the dates JOC plans on starting and finishing the stages of Work (including acquiring all required materials and equipment). JOC's submitted Work Schedule to City may be a formal computerized schedule or a progress chart in a format suitable to City, indicating the percentage of Work to be completed by specific dates. The submitted Work Schedule shall, at a minimum:

- 8.10.1. list the different types of Work activities or Work elements;
- 8.10.2. show the logical interconnections controlling what Work shall be accomplished before other Work shall begin;
- 8.10.3. show proposed start and finish dates or duration of each Work activity or Work Element; and
- 8.10.4. calculate the "weighting" or relative worth each Work activity or Work element to the total project, either as a percent or as a dollar amount.

8.11. **Failure to Submit Work Schedule.** If JOC fails to submit a Work Schedule with its acceptance of a Job Order, City may withhold its issuance of a Notice to Proceed with Work, as well as withholding the approval of any progress payments, until JOC submits the required Work Schedule. Further, City may issue a Notice to Proceed with Work, to begin the running of the calendar days allowed for completion of JOC's Work, and immediately issue JOC a Stop Work Order, which shall keep the Job Order clock running yet prevent JOC from working on the Job Order, said Stop Work Order remaining in place until JOC furnishes City with JOC's Work Schedule.

8.12. **Work Schedule Progress Report.** Throughout the progress of the Work, JOC shall submit a Work Schedule Progress Report every thirty (30) days or more frequently, if so directed by City. The Work Schedule Progress Report shall compare the progress of the realized Work to JOC's original Work Schedule, as required and submitted pursuant to **Section 8.11** herein. If JOC falls behind its submitted City-accepted Work Schedule, absent clear and accepted reasons for falling behind its Work Schedule (to include severe weather, unforeseen conditions, emergency Work, etc.), the burden to comply with its City-approved Work Schedule solely falls on JOC to accelerate its Work progress at JOC's time and sole cost. City may require specific steps to accelerate JOC's Work progress, with which JOC shall comply without any additional cost to City. Among the specific steps City may require of JOC include, but are not limited to, requiring JOC to increase the number of shifts, increase its overtime operations, increase the number of days of Work and/or increase the amount of equipment being employed.

8.13. **Emergency Work.** If City emergency work arises, JOC accepts and agrees it shall give top priority to issued Job Orders to perform City-designated emergency work and shall allocate resources reasonably necessary to accomplish City's emergency work, according to City's schedule requirements. If JOC incurs additional costs, expenses or schedule delays on another issued Job Order as a result of performing City emergency work, City equitably shall adjust the non-emergency issued Job Order(s) to compensate JOC for its efforts in performing said City-designated emergency work.

8.14. **Work Schedule Progress.** JOC acknowledges that its failure to comply with the requirements under this **Article VIII** shall be grounds for City's determination that JOC is not prosecuting the Work with sufficient diligence to ensure timely completion of the accepted issued Job Order. Upon making such a determination, City may terminate JOC's right to proceed with the accepted issued Job Order Work or any portion thereof, according to the terms of this Agreement.

ARTICLE IX. Inspection and Acceptance

9.01. JOC acknowledges and accepts the requirements regarding Inspection and Acceptance set forth in the City's General Conditions for City of San Antonio Construction Contracts, and additionally agrees to the following terms and conditions of this **Article IX**.

9.02. **JOC Inspection of Work.** JOC shall maintain adequate inspection of the performed Work and utilize other quality control systems, to assure proper performance of the Work. JOC shall maintain complete inspection records and immediately make those records available to City upon City's request. JOC acknowledges all Work is conducted under the general direction of City and is subject to inspection and testing by City or its designee(s) at all places and at all reasonable times before acceptance.

9.03. **City Inspection of Work.** City's inspection and testing of JOC's Work solely are for the sole benefit of City, are conducted solely for quality assurance purposes and do not:

9.03.1. relieve JOC of responsibility for providing adequate quality control measures;

- 9.03.2. relieve JOC of responsibility for damage to or loss of the material, prior to City's acceptance of the Work performed;
- 9.03.3. constitute or imply acceptance; and
- 9.03.4. affect the continuing rights of City after acceptance of the completed Work through an accepted and/or completed Job Order or this Agreement.

9.04. **No Release.** The presence or absence of a City inspector on JOC's Work site does not relieve JOC from any duties imposed by an issued Job Order or this Agreement. JOC acknowledges that no City inspector may change a Job Order Work requirement, change a Contract requirement or waive City's rights without a formal, written Amendment to an issued Job Order or this Agreement signed by the Parties.

9.05. **City Incurred Costs for Inspection of JOC Work.** JOC promptly shall furnish, without additional charge to City, any and all facilities, labor and material reasonably necessary to accommodate City performing safe and convenient inspections on and tests of JOC's Work. City may charge JOC for additional costs – to be deducted from any of JOC's submitted monthly pay applications – incurred by City in City's inspection or testing of JOC's Work attributed to:

- 9.05.1. Work not completed in a timely manner, as indicated on JOC's approved Work schedule; or
- 9.05.2. the inspection, re-inspection, testing and/or retesting of JOC Work that failed previous inspection or test.

9.06. **City Inspection and Testing.** City shall make an effort to minimize disruption or delay of JOC's Work incident to City's inspection and testing. Special, full size and/or performance tests shall be the responsibility of and performed by JOC, as described in the issued Job Order.

9.07. **JOC Non-Conforming Work.** JOC shall, without charge to City, replace or correct Work found by City or its representative(s) not to conform to the issued Job Order requirements, unless City consents in writing to accept the Work if accompanied by an appropriate reduction in the Job Order price to be paid by City to JOC. If City rejects JOC's Work and/or materials used by JOC in performance of the Work, JOC promptly shall segregate and remove all City-rejected material(s) from the Work premises and correct any rejected Work.

9.08. **JOC Correcting Non-Conforming Work.** If JOC fails to promptly replace or correct rejected Work by City, City may:

- 9.08.1. replace or correct the Work and charge all costs incurred by City to JOC; and/or
- 9.08.2. terminate for default JOC's right to proceed with Work under the issued Job Order.

9.09. **Expenses Incurred Examining Non-Conforming Work.** If, before final acceptance of any Work performed, City decides to examine JOC's already completed Work by removing it or tearing it out, JOC, upon request, hereby acknowledges and agrees it promptly shall furnish all necessary facilities, labor and material to perform City's request to examine. If the Work is found to be defective or nonconforming in any material respect, JOC shall bear the full expense of City's examination and JOC's satisfactory reconstruction of the Work to bring it in to conformity. Conversely, if the examination of JOC's Work is found to be in conformance with the issued Job Order, City shall make an equitable adjustment for the cost to JOC for the additional services involved in the examination and reconstruction including, if completion was thereby delayed, extending time for JOC's performance.

9.10. **Prompt Acceptance of Work.** Unless otherwise specified in the Job Order, City shall accept Work reasonably promptly after satisfactory completion and inspection. Acceptance by City is final and conclusive, with an exception for latent defects, fraud, gross mistakes amounting to fraud and City's rights under any warranty or guarantee.

ARTICLE X. Additional Requirements

10.01. **Confinement of Operations.** JOC shall confine its operations (including storage of materials) to areas authorized or approved by City.

10.02. **Erection of Temporary Buildings.** Temporary buildings (e.g., storage sheds, shops, offices) and any associated utilities only may be erected by JOC with the written approval of City and shall be built only with labor and materials furnished by JOC without expense to City. Erected temporary buildings and utilities shall remain the property and responsibility of JOC and shall be removed by JOC at its own expense upon completion of the issued Job Order. If City consents and gives its prior written approval to JOC, said erected temporary buildings and associated utilities may be abandoned in place, not be removed by JOC and JOC shall transfer ownership of said temporary buildings to City.

10.03. **Work Site Egress/Ingress.** JOC shall use only established roadways for ingress and egress to the Work site, unless City authorizes specific temporary roadways to be built by JOC. JOC acknowledges it shall comply with all federal, state and local laws and regulations when transporting materials, in connection with an issued Job Order.

10.04. **Maintaining Clean Work Site.** JOC shall, at all times, keep the Work site (to include any utilized storage areas) free from accumulations of waste materials and of overgrown vegetation. Before completing its Work, JOC shall remove from the Work site all rubbish, tools, scaffolding, equipment, and materials that are not the property of City, and shall mow or cut back all overgrown vegetation. Upon completing its Work, JOC shall leave the site in a clean and orderly condition satisfactory to City. Final cleanup is included as part of the Work and JOC acknowledges it is responsible for all construction refuse disposal containers and their removal from the Work site.

10.05. **Hazardous Materials.** If hazardous materials are not addressed in the scope of a Job Order and subsequently are found on a Work site, JOC shall cease work and notify City's authorized

representative of JOC's findings. City then will assess the situation and determine whether the removal and disposal of the hazardous materials may be performed by JOC or performed by a specialty contractor. City shall coordinate the removal and disposal of said hazardous materials at City's expense. In the event JOC has the appropriate training and certifications to handle hazardous materials, City, at its sole discretion, may elect to have JOC remove and dispose of hazardous materials. If City, at its sole option, requires JOC to remove and/or dispose of discovered hazardous materials, City shall make an equitable adjustment in the agreed upon issued Job Order price, to reimburse JOC for its additional requirement to dispose of the discovered hazardous materials.

10.06. Preservation and Protection of Structures, Equipment and Vegetation. JOC shall preserve and protect all structures, equipment and landscape vegetation (such as trees, shrubs and/or grass) on or adjacent to the Work site that are not to be removed and that do not unreasonably interfere with JOC's Work. JOC only shall remove trees when specifically authorized in writing by City to do so. JOC acknowledges it financially shall be responsible to City to purchase and replace any and all trees – of a similar size – removed from a Work site that were not previously authorized in writing by City for removal. If tree limbs are broken by JOC during performance of the Work, JOC shall trim those broken limbs and branches with a clean cut and paint the cut with a tree pruning compound, as directed by City.

10.07. Preservation and Protection of Improvements and Utilities. JOC shall protect from damage all existing improvements and utilities at or near JOC's Work site and on adjacent property, the locations of existing improvements and utilities made known to or should be known by JOC. JOC promptly shall repair any and all damage to those existing improvements and utilities, including those that are or on the property of third parties, resulting from JOC's failure to comply with the requirements of the issued Job Order or JOC's failure to exercise reasonable care in performing JOC's Work. If JOC fails or refuses to repair damage it caused to existing improvements and/or utilities, JOC acknowledges City may perform the repair(s) for any and all damage caused and withhold payment to JOC – from any of JOC's submitted pay request – for reimbursement of any costs incurred by City in performing said repair(s).

10.08. Training City Staff. Upon award of a contract for Job Order Contracting, JOC, jointly with any other JOCs concurrently awarded similar contracts, shall conduct, at minimum, two training classes with City staff to address, but not be limited to, JOC's understanding of the Job Order Contracting process, JOC's understanding and intended use of the R.S. Means Facilities Construction Cost Data Catalog, the Cost Index and JOC's intended use of the Unit Price Book, to calculate the maximum pricing allowable by City for Work to be performed. JOC's conducting and participation in said two training classes shall be at no additional cost to City.

10.09 Professional Appearance. JOC and/or subcontractors' shall present a professional appearance and be readily identifiable to City staff when performing work under this contract. JOC shall provide the following:

- a. Contractor Vehicle(s) Logo
- b. Contractor Uniforms or Company Logo Apparel

ARTICLE XI. Warranty of Work

11.01. JOC acknowledges and accepts the requirements regarding Warranties of Work set forth in the City's General Conditions for City of San Antonio Construction Contracts, and additionally agrees to the following terms and conditions of this **Article XI**.

11.02. **JOC Warranty.** In addition to any other warranty, JOC expressly shall warrant that all Work performed by JOC conforms to the issued Job Order requirements and shall be free of any defect in equipment, material and workmanship and shall be in compliance with City's specifications.

11.03. **Warranty Term.** This warranty from JOC shall run runs for one (1) year from the date of Final Acceptance of the Work on an issued Job Order. If City takes possession of any part of the Work before Final Acceptance of the whole of the Work, the warranty for the part taken prior to Final Acceptance of the whole shall run from the date of possession of the Work taken.

11.04. **Warranty Work.** JOC shall, without any additional charge to City, remedy any breach of the expressed warranty of JOC's Work. JOC further shall, also without additional charge to City, repair any damage to City's real or personal property, when that damage is the result of either JOC's failure to conform to the issued Job Order requirements or any defect of equipment, material, or workmanship furnished by or through JOC.

11.05. **Warranty Extension.** JOC shall, without any additional charge to City, restore Work damaged in fulfilling the terms and conditions of this **Article XI**. JOC's warranty, with respect to all Work repaired or replaced, shall run for one (1) year from the date of JOC's repair or replacement of Work.

11.06. **Notification of Warranty Breach.** City shall notify JOC, in writing, of any breach of JOC's warranty within a reasonable time after City's discovery of any breach of warranty.

11.07. **City's Remedy for JOC's Warranty Breach.** If JOC fails or refuses to remedy a breach of warranty within a reasonable time after receipt of written notice from City, JOC acknowledges City has the right to replace, repair or otherwise remedy the cited breach and JOC fully shall reimburse City and City shall deduct from any of JOC's submitted payment application any and all expenses incurred by City in replacing, repairing or otherwise remedying said warranty breach.

11.08. **Manufacturers/Suppliers Warranties.** With regard to warranties (both expressed and implied) from JOC's Subcontractors, manufacturers or suppliers for Work performed, pursuant to a Job Order, JOC shall:

- 11.08.1. Obtain all warranties required by a Job Order and supply City with copies of all warranties in place for Work performed;
- 11.08.2. Require all warranties for Work performed to be executed, in writing, to the benefit of City; and

11.08.3. Enforce all warranties for Work performed, to the benefit of City.

11.08 City Enforcement of Warranties. City may, but need not as a condition of enforcing JOC's warranty, seek to enforce warranties directly for its own benefit, with regard to any of the above warranties associated with JOC's Work.

11.09. Pre-Existing Conditions. City acknowledges JOC is not responsible for and does not warranty any pre-existing work, conditions or facilities that may be assigned to JOC, except as modified by the Job Order.

ARTICLE XII. Changes in Work and Price

12.01. Changes in Work. JOC may, at any time and without notice to any sureties, in writing and signed by both City and JOC, agree to changes in the Work within the general scope of the issued Job Order, including changes:

12.01.1. in the specifications (including drawings and designs);

12.01.2. in City-furnished facilities, equipment, materials, services or site; and/or

12.01.3. in the schedule for performance of the Work.

12.02. Change Order Processing. A City-requested change, via an issued Task Order, for additional work falling outside the general scope of work of the originally issued Job Order, shall be treated as an additional Job Order. If JOC concludes a City-request change in scope shall result in an additional Job Order, it shall give City prompt written notice, through Unifier, stating the date, circumstances and full description for the requested additional Job Order scope. In no event may JOC's written notice to City of an additional Job Order come later than thirty (30) calendar days after JOC receives City's request for a change for additional work. If any City-requested change(s) in the original scope of work causes an increase or decrease in JOC's required overhead, materials, labor cost or time required for and allotted to the performance of Work, City shall make an equitable adjustment and modify the issued original Job Order through Unifier.

12.03. Change Order Pricing. Pricing for an additional Job Order shall be determined in the same way as pricing used for the originally issued Job Order.

12.04. JOC Time Extension Proposal. With an additionally issued Job Order, JOC shall furnish City a detailed written proposal for any requested extension in the time period given JOC for the performance of the Work. The detailed proposal shall be submitted through Unifier and shall, along with a price breakdown, furnish JOC's justification for an extension of time, if any.

12.05. **Disallowed Adjustment Requests.** No written proposal submitted by JOC for an equitable (price and/or time) adjustment shall be allowed if asserted after City issues final payment to JOC under an issued Job Order. JOC acknowledges this **Article XII** provides the exclusive mechanism by which JOC may claim an additionally issued Job Order under this Job Order Contract Agreement.

ARTICLE XIII. Suspension of Work

City may, in writing, issue an order to JOC to suspend, delay or interrupt all or any part of the Work issued through a Job Order. If City does so issue such an order, or if City's fails to act timely on an issue, thereby directly resulting in a suspension, delay or interruption in JOC's scheduled Work, City equitably shall compensate JOC for increased costs due JOC for any directly-related increase in JOC's cost of performing the Work caused by City's issued order. If compensation is due from City, JOC only may recover costs under this **Article XIII** for costs incurred by JOC within the first thirty (30) calendar days following City's issued order to suspend, delay or interrupt all or a part of JOC's Work or for costs incurred by JOC within the first thirty (30) calendar days of City failing timely to act after JOC gives City written notice of the basis for the claim.

ARTICLE XIV. Termination for Convenience of City

14.01. By delivering written notice of termination to JOC, City may terminate performance under a Job Order, in whole or in part, if City, in its sole determination, determines that terminating JOC's performance is in City's best interest. Upon receiving a notice of termination, JOC immediately shall:

- 14.01.1. stop all Work associated with the issued Job Order;
- 14.01.2. let no further subcontracts or orders for materials, services or facilities, except as necessary to complete any Work not terminated by City;
- 14.01.3. assign to City, as directed by City, all right, title and interest of JOC under the subcontracts, to the extent they relate to the Work terminated. City may settle JOC's Subcontractor claims and pay the amounts called for by said settlements. All settlements with JOC's Subcontractor's shall release JOC only from claims arising out of City's termination of JOC's performance, but not other claims;
- 14.01.4. transfer title to City of all Work performed and transfer title to all materials and supplies purchased by JOC and paid for by City; and

- 14.01.5 deliver to City, as directed by City:
 - 14.01.5.1. any and all fabricated or off-the-shelf parts, Work in process, completed Work, supplies and other material produced or acquired for the Work terminated; and
 - 14.01.5.2. completed or partially completed plans, drawings, information and other property that, if the Job Order had been completed by JOC, would be required to be furnished to City;
- 14.01.6. complete performance of the Work not terminated by City;
- 14.01.7. take any action necessary, or any action that City may direct, for the protection and preservation of the property related to this Agreement that is in the possession of JOC and which City has or may acquire an interest; and
- 14.01.8. use its best efforts to sell, if authorized by City, any property acquired for the Work but not yet incorporated into it, except JOC need not extend credit to any purchaser and JOC itself may purchase the property on terms agreed to by the City.

14.02. After the termination of a Job Order by City, JOC promptly shall submit a final termination settlement proposal to City in the form and with the certification prescribed by City. City need not consider and is not liable to JOC for payment for any such proposal submitted longer than ninety (90) calendar days after a Job Order termination.

14.03. If JOC and City fail to agree on the amount to be paid JOC, as a result of City's termination of a Job Order for convenience, City shall pay JOC an amount determined as follows:

- 14.03.1. For Work performed prior to the effective date of termination, the total (without duplication) of:
 - 14.03.1.1. JOC's cost of the Work;
 - 14.03.1.2. JOC's cost of settling and paying termination settlement proposals under terminated subcontracts that properly are chargeable to the terminated portion of the Contract if not included in subdivision (a) above and if not paid by City; and

14.03.1.3. A markup, including overhead and profit, pursuant to this **Article XIV**, as has been agreed upon by City and JOC for Change Orders.

14.03.2. A reasonable costs of settlement of the Work terminated, including:

14.03.2.1. accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

14.03.2.2. the termination and settlement of subcontracts (excluding the amounts of such settlements); and

14.03.2.3. Storage, transportation, and other costs actually incurred by JOC and reasonably necessary for the preservation, protection or disposition of the termination inventory.

14.04. **Spoilage.** Except for normal spoilage, except to the extent that City expressly assumed the risk of loss, JOC cannot recover from City the value, as determined by City, of property that is destroyed, lost, stolen or damaged so as to become undeliverable to City or to a subsequent purchaser.

14.05. **Partial Termination of Job Order.** If a termination of a Job Order is partial, JOC may file a proposal with City requesting an equitable adjustment of the price(s) of the non-terminated portion of the Job Order. If granted by City, City shall issue a new Task Order reflecting the new scope of work for the non-terminated portion of the Job Order reflecting the new price to be paid for the newly defined scope of work. Any proposal filed with City by JOC for an equitable adjustment of the price(s) shall be requested by JOC within ninety (90) calendar days from the effective date of partial termination, unless extended in writing by City. City may, under the terms and conditions it prescribes and at City's sole option, make partial payments to JOC and may make payments against costs incurred by JOC of the terminated portion of the Job Order, if City believes the total of these partial payments will not exceed the amount to which JOC would have been entitled. If the total payments made by City to JOC exceed the amount finally determined to be due, JOC shall repay the excess payment made to JOC by City to City upon demand.

14.06. **Record Maintenance.** Unless otherwise provided in this Agreement or by statute, JOC shall retain and maintain all records and documents relating to both the completed and the terminated portion of a Job Order for a period of four (4) years after the settlement of an issued Job Order. This requirement on JOC includes retaining and maintaining all books and other evidence bearing on JOC's costs and expenses under an issued Job Order. JOC shall make these retained and maintained reports and documents available to City, at JOC's office, at all reasonable times and without cost to City. If approved in writing by City, photographs, microphotographs or other authentic reproductions may be retained and maintained by JOC instead of original records and documents.

ARTICLE XV. Default

15.01. It shall be deemed an event of default under an issued Job Order if JOC:

15.01.1. fails or refuses to prosecute Work, or any separable part of it, with the diligence that will ensure the Work's timely completion, after ten (10) calendar days written notice and JOC has been afforded the opportunity to cure; or

15.01.2. fails or refuses to comply with any material term of the Contract, after thirty (30) calendar days written notice JOC has been afforded the opportunity to cure.

15.02. **Uncured Default.** On an uncured default by JOC, City may terminate an issued Job Order or, at City's discretion, may terminate this entire Agreement with JOC. City may complete the Work itself or procure its completion by a substitute Contractor and City shall retain all rights and remedies available to it arising from JOC's default, as may be afforded by law or by equity.

15.03. **Time Extension.** JOC's delay may be excused if said delay arises out of unforeseeable causes beyond JOC's control and without JOC's fault or negligence, such as acts of God or the public enemy, fires, flood, strikes or quarantine. To be excused for delay in such an event, JOC shall, within thirty (30) calendar days from the date of the beginning of delay, notify City in writing thereof. If, in the sole judgment of City, JOC's situation warrants an extension, City shall extend JOC's time for performance under an issued Job Order. City's findings are final and conclusive.

15.04. The rights and remedies of City in this **Article XV** are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE XVI. Safety

16.01. JOC acknowledges and accepts the requirements regarding Safety set forth in the City's General Conditions for City of San Antonio Construction Contracts, and additionally agrees to the following terms and conditions of this **Article XVI**.

16.02. **Safety Plan.** Within fifteen (15) calendar days after award of this Agreement and before beginning any Work, JOC shall submit a safety plan to City for its approval. The safety plan shall address all aspects of JOC's safety policies and procedures, including responsibility for OSHA compliance, drug testing, compliance with City's heat illness prevention ordinance requirements, trend analysis, corrective action and JOC's interface with City inspectors, establishing the safety rules and regulations to be utilized on the issued Job Order Work. This submitted safety plan by JOC shall remain in place for the duration of this Contract and any extension periods hereto and if

JOC make any modifications to its safety plan submitted to City, JOC promptly shall notify City of those modifications.

16.03. **OSHA Compliance.** JOC shall be responsible for complying with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (hereafter referred to as “OSHA”), as well as all applicable state and local laws, ordinances and regulations during the performance of JOC’s Work. JOC shall maintain a set of OSHA articles at the Job Order jobsite, as they apply to the Work being performed. Copies of said OSHA articles shall be provided by JOC to City upon request.

16.04. **Protective Equipment.** JOC shall furnish and enforce the use of individual protective equipment, as is needed to complete JOC’s Work, including hard hats, rain gear, protective foot wear, protective clothing, gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards and high visibility reflective safety vests.

16.05. **Safety Training.** JOC shall provide its employees, along with its Sub-Consultant and Subcontractor employees, safety training at minimum every six (6) months throughout the duration of Work, to include any necessary special training, prior to working with hazardous materials or operations, and provide proof of such employee safety training to City. JOC shall provide warning signs, barricades and verbal warnings on the Work site, as required. JOC shall inform its and its Sub-Consultant and Subcontractor employees of emergency procedures to be adhered to, in case of a fire, medical emergency or any other life-threatening situations.

16.06. **Accident Reporting.** JOC promptly shall notify City of any Work site accident involving any Job Order personnel and/or damage to any material and/or equipment. Copies of any injury reports or accident investigation reports generated by JOC or its Sub-Consultants and/or Subcontractors shall be provided to City.

16.07. **Safety Representative.** JOC shall assign, during performance of the Work, a designated safety representative to develop and monitor JOC’s project Work site safety program. The name, company address and telephone number of the designated assigned individual shall be submitted to City’s designated JOC Representative by JOC, along with JOC’s safety policies and program procedures, within fourteen (14) calendar days of JOC receiving an issued Job Order.

16.08. **First Aid Kit.** JOC shall provide and maintain on the jobsite, at all times, at minimum one (1) completely stocked first aid kit, which shall contain all standard emergency medical supplies. JOC shall make the first aid kit available to all of JOC’s employees and all employees of JOC’s Subcontractors, while they are performing Work on the site, as well as making available emergency medical treatment either at the Job Order Work site or at a nearby medical facility.

16.09. **City's Approval of JOC Safety Policies.** City reserves the right to approve and monitor JOC's safety policies and program procedures, as they are applied during performance of the Work. Failure to comply with the safety policies and program procedures, once submitted to and approved by City, shall be deemed a breach of this Agreement and shall be cause for the termination of an issued Job Order and/or this Agreement.

16.10. **City's Limited Safety Personnel.** JOC acknowledges that City has limited personnel assigned to administer this Agreement and be in a position to police all of the safety requirements of this **Article XVI**, as well as acknowledging that those assigned City personnel are not fully trained in safety matters. To that end, City's imposition of these safety requirements on JOC is not an assumption by City of a duty on City to assure safety. JOC shall indemnify City for all losses, costs, liabilities and/or expenses arising out of or relating to JOC's violations of this **Article XVI**.

ARTICLE XVII. City's Use and Possession Prior to Completion

17.01. **Partial Possession.** City has the right to take possession of or to use any completed or partially completed part of the Work under an issued Job Order. Prior to taking possession of or using any part of JOC's Work, City shall furnish JOC a list of items of Work remaining to be performed or corrected on those portions of the Work which City intends to take immediate possession of or use. JOC acknowledges City's failure to list remaining Work does not relieve JOC from performing that Work. City's possession or use of any completed or partially completed part of the Work shall not be deemed City's acceptance of Work related to City's possession or use of the partially completed part of the Work.

17.02. **City's Assumption of Risk for Partial Possession.** If City takes such possession or use of any completed or partially completed part of the Work, JOC shall be relieved of the responsibility for the loss of or any damage to the Work resulting from City's possession or use. If early possession or use by City clearly delays JOC's progress or causes additional expenses to be incurred by JOC, City shall make an equitable adjustment in the issued Job Order price or JOC's time period for performance and the Job Order shall be modified in writing accordingly.

ARTICLE XVIII. Non-Exclusivity and Cooperation

JOC acknowledges this Agreement is not exclusive. City may award multiple Job Order Contract Agreements and this Agreement is not a promise of receiving issued Job Orders or of an equal share of all Job Orders issued by City. JOC shall cooperate with other JOCs awarded contracts by City and with City employees and carefully shall adapt its scheduling and Work performance to accommodate the work of other awarded JOCs. JOC shall not commit or shall not permit any act to be committed that might interfere with the performance of work by any other JOC or JOC Sub-Consultants and/or Subcontractor(s) or by any City employees.

ARTICLE XIX. Workers' Compensation

19.01. The following terms are defined as follows:

- 19.01.1. Certificate of Coverage (hereafter referred to as "Certificate") is defined as a copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the Duration of the Project.
- 19.01.2. Duration of the Work is defined as the time, from the beginning of Work on an issued Job Order through the time the Job Order has been completed and accepted by City, during which JOC and JOC's personnel are working on an issued Job Order.
- 19.01.3. Persons are defined as and shall include all persons or entities performing all or part of the Work JOC has undertaken to perform on an issued Job Order, regardless of whether that person contracted directly with JOC or whether that person has employees. Persons further shall include, without limitation, Independent Contractors, Subcontractors, leasing companies, motor carriers, owner-operators, as well as all employees of such entities or employees of any entities which furnishes persons to provide Services on an issued Job Order.
- 19.01.4. Services are defined as and shall include, without limitation, those Persons providing, hauling or delivering equipment or materials and/or providing labor, transportation or other Service related to and for the Duration of an issued Job Order. Services, as defined herein, shall not include activities unrelated to an issued Job Order, such as food/beverage vendors, office supply deliveries or delivery of portable toilets.

19.02. JOC shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Chapter 401 for all employees and Persons of JOC providing Services on an issued Job Order for the Duration of the Work. JOC shall comply with the statutory requirements and shall supply a Worker's Compensation Statutory, with a Waiver of subrogation in favor of City.

19.03. JOC shall provide the required Certificate of Workers' Compensation Coverage to City, prior to being awarded a Job Order.

19.04. If the coverage period shown on JOC's current Certificate of Coverage ends during the duration of an issued Job Order, JOC shall, prior to the end of its coverage period, file a new Certificate of Coverage with City showing that its Workers' Compensation coverage has been extended/renewed.

19.05. JOC shall obtain and provide to City, from and for each person providing Services on an issued Job Order:

- 19.05.1. a Certificate of Coverage, prior to that person beginning work on an issued Job Order, so City will have on file Certificates of Coverage showing coverage for all persons providing Services on the issued Job Order; and
- 19.05.2. no later than seven (7) calendar days after receipt by JOC, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage obtained by JOC ends during the duration of the issued Job Order.

19.06. JOC shall retain all required Certificates of Coverage for the duration of an issued Job Order and for one year thereafter City's acceptance of the Work.

19.07. JOC shall notify City in writing by certified mail or personal delivery, within ten (10) calendar days after JOC knew or should have known, of any change that materially may affect the provision of coverage of any person providing Services on an issued Job Order.

19.08. JOC shall post on each Work site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all Persons providing Services on an issued Job Order that the workers are required to be covered by Workers' Compensation, stating how a Person may verify said Workers' Compensation coverage and how a Person may report a lack of Workers' Compensation coverage.

19.09. JOC contractually shall require each Person with whom it contracts to provide Services on an issued Job Order to:

- 19.09.1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Chapter 401 for all of its employees and all Persons providing Services on an issued Job Order, for the Duration of the Work;

- 19.09.2. provide to JOC, prior to that Person beginning Work on an issued Job Order, a Certificate of Coverage showing that coverage is being provided for all employees of the Person providing Services on the issued Job Order, for the Duration of the Work;
- 19.09.3. provide JOC, prior to the end of the coverage period, a new Certificate of Coverage showing an extension or renewal of coverage, if the coverage period shown on the current Certificate of Coverage ends during the Duration of the Work;
- 19.09.4. obtain from every other Person with whom each Person contracts and provide to JOC:
 - 19.09.4.1. a Certificate of Coverage, prior to the other Person beginning work on the issued Job Order; and
 - 19.09.4.2. a new Certificate of Coverage showing an extension/renewal of coverage, prior to the end of the coverage period, if the coverage period shown on the current Certificate of Coverage ends during the duration of the issued Job Order;
- 19.09.5. retain all required Certificates of Coverage on file for the duration of the issued Job Order and Work for one (1) year thereafter;
- 19.09.6. notify City in writing by certified mail or personal delivery, within ten (10) calendar days after the Person knew or should have known of any change that materially may affect the provision of coverage of any person providing Services on the issued Job Order; and
- 19.09.7. contractually require each Person with whom JOC contracts to perform Work, as required by **Sections 19.09.1 through 19.09.6** herein, with the Certificates of Coverage to be provided to the Person for whom they are providing Services.

19.10. By signing this Agreement and/or providing or causing to be provided a Certificate of Coverage, JOC is representing to City that all employees of JOC who will provide Services on an issued Job Order shall be covered by Workers' Compensation Coverage for the Duration of the Work, the provided Workers' Compensation Coverage shall be based on proper reporting of classification codes and payroll amounts and all coverage agreements shall be filed with the appropriate insurance carrier or, in the case of a self-insured JOC, with the Commission's Division of Self-Insurance Regulation in Texas. JOC hereby acknowledges the providing false or

misleading insurance coverage information may subject JOC to administrative penalties, criminal penalties, civil penalties or other civil or criminal actions.

19.11. JOC acknowledges its failure to comply with any of these provisions in this **Article XIX** shall be deemed a Breach of Contract by JOC and shall entitle City to terminate any issued Job Orders to JOC and declare this Agreement void if JOC fails to remedy the Breach of Contract within ten (10) calendar days after receipt of notice of a Breach of Contract from City.

ARTICLE XX. Prevailing Wages

JOC shall pay and shall require all of its Sub-Consultants and Subcontractors to pay prevailing wages, as defined and required by Chapter 2258 of the Texas Government Code, as well as required by the Wage and Labor Standard Provisions as amended in City Ordinance 2008-11-20-1045, said prevailing wages reflected on the then current Buildings Wage Determination in effect at the time this JOC Agreement is executed, for all Work performed under issued Job Orders, unless a particular issued Job Order provides, with City's written concurrence, that prevailing wages are not required to be paid under that particular issued Job Order. JOC acknowledges it shall utilize the Buildings Wage Determination when determining prevailing wages for all issued Job Orders. If JOC is required to pay the prevailing wage for a job classification not found on the cited Buildings Wage Determination, JOC shall utilize the Building Wage Determination in effect at the time this JOC Agreement is executed, with concurrence of that use of the Building Wage Determination job classification from City.

ARTICLE XXI. Performance Bond

21.01. Subject to the Job Order value exceptions listed below, upon City Council approval of contract award, the JOC shall furnish City with a performance bond executed on a form or template approved by City, in accordance with the provisions of Chapter 2269 of the Texas Government Code, based on the amount of any task order.

21.02. **Job Order Less Than \$100,000.00.** For issued Job Orders less than \$100,000.00, JOC shall not be required to post a Performance Bond.

21.03. **Job Orders Greater Than \$100,000.00.** For issued Job Orders with a dollar value equal to or greater than \$100,000.00, JOC shall be required to post the City-required Performance Bond, which shall be written utilizing and submitted on City's Bond Form.

21.04. **Performance Bond Requirements.** City's Performance Bond requirements are as follows:

- 21.04.1. For all required Performance Bonds, JOC shall provide Bonds made payable to City, executed by a corporate surety acceptable to City that is licensed pursuant to the Texas Insurance Code to issue Performance Bonds in the full amount of the issued Job Order;
- 21.04.2. The Performance Bonds shall provide that the Surety indemnify the City (as the Bond's obligee) for all damages or losses resulting from JOC's (the Bond's principal) default. The Bond(s) shall guarantee JOC's performance of all performance terms and obligations under the issued Job Order;
- 21.04.3. The Bonds shall have attached thereto a Power of Attorney, as evidence of the authority of the entity executing the Bond to bind the issuing surety; and
- 21.04.4. The Bonds shall be furnished in compliance with the statutory requirements of the Texas Government Code, Chapter 2253, and shall be executed and delivered to City before beginning any Work on an issued Job Order.
- 21.04.5. JOC acknowledges and understands that the Performance Bond must always be in the full amount of the contract.

21.05. **Performance Bond for Entire Agreement.** JOC hereby may elect to not have to post a Performance Bond for each Job Order when issued and instead provide to City, under the same requirements for Bonds outlined in this **Article XXI**, a Performance Bond for the total dollar amount of the anticipated Work JOC might be issued under this Agreement. If JOC elects to provide both a Performance Bond for the total dollar amount of anticipated work JOC might be issued under this Agreement, JOC shall coordinate the value of the provided Performance Bond with City.

ARTICLE XXII. Payment Bond

22.01. Subject to the Job Order value exceptions listed below, upon City Council approval of contract award, the JOC shall furnish City with a payment bond executed on a form or template approved by City, in accordance with the provisions of Chapter 2269 of the Texas Government Code, based on the amount of any task order.

22.02. **Job Orders Under \$50,000.00.** For all issued Job Orders of \$50,000.00 or less, JOC shall not be required to post a Payment Bond.

22.03. **Job Orders Over \$50,000.00.** For all issued Job Orders with a dollar value equal to or greater than \$50,000.00, JOC shall be required to post the City-required Payment Bonds, written utilizing and submitted on City's Bond Form.

22.04. City's Payment Bond requirements are as follows:

22.04.1. For all required Payment Bonds, JOC shall provide Bonds made payable to City, executed by a corporate surety acceptable to City that is licensed pursuant to the Texas Insurance Code in the full amount of the issued Job Order.

22.04.2. The Payment Bonds shall provide that the Surety indemnify the City (as the Bond's obligee) for all damages or losses resulting from JOC's (the Bond's principal) non-payment(s) for Work performed under the issued Job Order. The Bonds further shall guarantee JOC's payment to all entities performing for Work for JOC, pursuant to an issued Job Order.

22.04.3. The Bonds shall have attached thereto a Power of Attorney, as evidence of the authority of the entity executing the Bonds to bind the issuing surety.

22.04.4. The Bonds shall be furnished in compliance with the statutory requirements of the Texas Government Code Chapter 2253 and Texas Property Code, Chapter 53, Subchapter I and shall be executed and delivered to City before beginning any Work on an issued Job Order.

22.04.5. JOC acknowledges and understands that the Payment Bond must always be in the full amount of the contract.

22.05. **Payment Bond for Entire Agreement.** JOC hereby may elect to not have to post a Payment Bond for each Job Order when issued and instead provide to City, under the same requirements for Payment Bonds outlined in this **Article XXII**, a Payment Bond for the total dollar amount of the anticipated Work JOC might be issued under this Agreement. If JOC elects to provide a Payment Bond for the total dollar amount of anticipated work JOC might be issued under this Agreement, JOC shall coordinate the value of the provided Payment Bond with City.

ARTICLE XXIII. Insurance

23.01. Prior to the commencement of any work under this Agreement, JOC shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled with the Project Name in the Description of Operations

block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

23.02. The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

23.03. A JOC's financial integrity is of interest to the City. Therefore, subject to JOC's right to maintain reasonable deductibles in such amounts as are approved by the City, and in addition to other insurance requirements of this Agreement, JOC shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at JOC's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A-(VII), in the types and for an amount not less than the amount listed in the table attached as **Exhibit D**.

23.03.1. JOC's Liability Insurance: Without limiting any of the other obligations or liabilities of JOC under the Contract Documents, JOC shall purchase and maintain, during the term of this Agreement and at JOC's own expense, the minimum liability insurance coverage described below with insurance companies duly authorized or approved to do business in the State of Texas and otherwise satisfactory to City. JOC also shall require each Subcontractor performing work under an issued Job Order, at Subcontractor's own expense, to maintain levels of insurance necessary and appropriate for the Work performed during the term of the issued Job Order, said levels of insurance comply with all applicable laws. Subcontractor's liability insurance shall name JOC, City and, if applicable, the Design Consultant as additional insureds by using endorsement CG 20 26 or broader. Certificates of insurance complying with the requirements prescribed in this **Article XXIII** shall show the existence of each policy, together with copies of all policy endorsements showing City and the Design Consultant as an additional insured, and shall be delivered to

City before any Work on an issued Job Order is started. JOC promptly shall furnish, upon the request of and without expense to City, a copy of each policy required, including all endorsements.

- 23.03.2. If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of an issued Job Order and acceptance of Work by City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this Agreement.
- 23.03.3. City shall be named as additional insured by using endorsement CG 20 26 or broader. The Commercial General Liability policy shall include coverage extended to apply to completed operations and XCU hazards. The Products and Completed Operations coverage shall be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with City. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the issued Job Order in question.
- 23.03.4. Business Automobile Liability Insurance covering owned, hired and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. (\$5,000,000 if access to Airfield Operations Area [AOA] is required. Such insurance shall include coverage for loading and unloading hazards.
- 23.03.5. Broad-Form Property Damage, to include Fire Legal Liability coverage for replacement cost of JOC's Work and improvements.
- 23.03.6. Five (5) calendar days prior to a suspension, cancellation or non-renewal of any required line of insurance coverage, JOC shall provide City a replacement certificate of insurance with all applicable endorsements included. City shall have the option to suspend JOC and its performance under an issued Job Order and this Agreement if JOC fails to provide said replacement certificate of insurance.
- 23.03.7. If any insurance company providing insurance coverage(s) required under the JOC Contract becomes insolvent or becomes the subject of any rehabilitation, conservatorship, liquidation or similar proceeding, JOC immediately shall procure, upon first notice to JOC or City of such occurrence and without cost to City, replacement insurance coverage before continuing the performance of

the Work on an issued Job Order. Any failure of JOC to provide such replacement insurance coverage shall constitute a material breach of this Agreement.

23.04. In addition to the insurance described in **Section 23.01.1** et seq. herein, JOC shall obtain, at its expense and maintained throughout the duration of this Agreement, All-Risk Builder's Risk Insurance, if an issued Task Order involves the complete construction of a new building, or an All-Risk Installation Floater policy, if an issued Job Order involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk and include, but not be limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the issued Job Order for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the issued Task Order for the Builder's Risk policy. If an Installation Floater policy is provided, City shall be shown as a Joint Named Insured with respect to the issued Task Order. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the issued Job Order. This policy shall be in the name of JOC and naming City, Design Consultant (if applicable) and JOC's Subcontractors, as well as any JOC Sub- Subcontractors, as additional insureds as their interests may appear. The policy shall have endorsements as follows:

- 23.02.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- 23.02.2. Loss, if any, shall be adjusted with and made payable to JOC or to City and JOC as trustee for the insureds as their interests may appear.

23.05. Boiler and Machinery Insurance. If applicable, City shall purchase and maintain Boiler and Machinery Insurance required by the Contract Documents or by law, which specifically shall cover such insured objects during installation and until final acceptance by City. This insurance shall include the interests of City, JOC, JOC's Subcontractors and Sub-Subcontractors in the Work, and City and JOC shall be named insureds.

23.06. Loss of Use Insurance. City, at City's option, may purchase and maintain Loss of Use Insurance, insuring City against loss of use of City's property due to fire or other hazards, however caused.

23.07. JOC agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of JOC herein, and provide a certificate of insurance and endorsement that names the JOC and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of JOC. JOC shall provide the CITY with said certificate and endorsement prior to the

commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

23.08. As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. JOC shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. JOC shall pay any costs incurred resulting from provision of said documents.

**City of San Antonio
Attn: Aviation Department
Contract Services Division
9800 Airport Blvd.
Mezzanine Level
San Antonio, Texas 78216**

23.09. JOC agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

23.10. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, JOC shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend JOC's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

23.11. In addition to any other remedies the City may have upon JOC's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order JOC to stop work hereunder, and/or withhold any payment(s) which become due to JOC hereunder until JOC demonstrates compliance with the requirements hereof.

23.12. Nothing herein contained shall be construed as limiting in any way the extent to which JOC may be held responsible for payments of damages to persons or property resulting from JOC's or its subcontractors' performance of the work covered under this Agreement.

23.13. It is agreed that JOC's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

23.14. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

23.15. JOC and any Subcontractors are responsible for all damage to their own equipment and/or property.

23.16. Partial occupancy or use in accordance with **Article XXIII** herein shall not commence until the insurance company/companies providing property insurance for both City and JOC have consented to such partial occupancy or use by endorsement or otherwise. City and JOC shall take reasonable steps to obtain consent of the insurance company/companies and shall take no action without mutual written consent, with respect to partial occupancy or use, that would cause cancellation, lapse or reduction of any insurance coverages.

ARTICLE XXIV. Release of Claims/Subrogation

The insurance requirements of this Agreement are a bargained-for allocation of risk of loss. City and JOC release each other from claims arising from injury or loss to either of them or to third parties to/for which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Agreement to maintain, whether or not the party actually has the insurance (hereafter referred to as "Covered Claims"). This Release is additional to and does not limit any other release contained in this Agreement. City and JOC, to the maximum extent allowable without causing cancellation of a required policy, waive Subrogation against each other for Covered Claims.

ARTICLE XXV. Disadvantaged Business Enterprise Requirements

25.01. It is the policy of the City of San Antonio that disadvantaged business enterprises (DBEs), as defined under 49 CFR Part 26, shall have “equality of opportunity” to participate in the awarding of federally-assisted Aviation Department contracts and related subcontracts, to include sub-tier subcontracts. This policy supports the position of the U.S. Department of Transportation (DOT) and the FAA in creating a level playing field and removing barriers by ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with federal funds under this contract. Therefore, on all Department of Transportation or FAA-assisted projects the DBE program requirements of 49 CFR Part 26 apply to the contract.

25.02. The Contractor agrees to employ good-faith efforts (as defined in the Aviation Department’s DBE Program) to carry out this policy through award of subcontractor contracts to disadvantaged business enterprises to the fullest extent participation is consistent with the performance of the Contract, and/or the utilization of DBE suppliers where feasible. Contractor is expected to solicit bids from available DBE’s on contracts which offer subcontracting opportunities.

25.03. Contractor specifically agrees to comply with all applicable provisions of the Aviation Department’s DBE Program. The DBE Program may be obtained through the airport’s DBE Liaison Officer at (210) 207-3592 or by contacting the City’s Aviation Department.

25.04. DBE contract specific goal has been established on this RFQ. The applicable DBE goal for Program Management/Construction Management for the Terminal Development Program is ??% of the total amount of the contract.

25.05. The Contractor shall appoint a high-level official to administer and coordinate the Contractor’s efforts to carry out the DBE/ Policy and Program requisites The Contractor’s official should coordinate and ensure approval of the required “Good-Faith Effort Plan” (DBE Form 1)

25.06. Contractor shall either achieve the specific DBE goals for this Project with certified DBEs or shall make good-faith efforts (as defined and approved by the City through the Aviation Department in its DBE Program) to achieve such goals. If Contractor fails to achieve the DBE goals for this Project or fails to maintain the specific DBE goal percentage involvement initially achieved, Contractor must provide documentation demonstrating that Contractor made good-faith efforts in attempting to do so through the submittal of an Aviation Department approved “DBE Good-Faith Effort Plan”.

25.07. The Contractor, sub recipient 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 City deems appropriate, which may include, but is not limited to:

- 25.07.1. Withholding monthly progress payments;
- 25.07.2. Assessing sanctions;
- 25.07.3. Liquidated damages; and/or
- 25.07.4. Disqualifying Contractor from future bidding as non-responsible.

Contractor agrees to include this clause in each subcontractor contract the Contractor signs with a subcontractor.

25.08. Additionally, Contractor agrees to the following prompt payment clause for all services performed pursuant to this Contract and the retainage payment clause for construction services in the event Contractor performs such work. Contractor further confirms and agrees that Contractor will not withhold any portion of payments due to any subcontractor for work performed pursuant to this contract, unless Contractor and Subcontractor are in a bona fide dispute regarding the payment being withheld.

25.09. The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the Contractor receives from the City. In the event Contractor performs any construction work pursuant to this agreement and hires subcontractors to perform such construction work for which Contractor retains any funds as retainage, Contractor agrees to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City. When the City has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

From the total of the amount determined to be payable on a partial payment for construction work, depending on contract value, not to exceed 10 percent of such total amount will be deducted and retained by the City until the final payment is made, except as may be provided (at the Contractor's option) in the subsection 90-08 of the FAA Advisory Circular 150/5370-10 titled PAYMENT OF WITHHELD FUNDS. The balance of the amount payable, less all previous payments, shall be certified for payment. Should the Contractor exercise his or her option, as provided in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section, no such percent retainage shall be deducted.

When at least 95% of the construction work has been completed, the Engineer shall, at the City's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

For construction work, the City may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the construction work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

25.10. Contractor will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the City. This includes, but is not limited to, instances in which Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE.

25.11. The Contractor shall utilize the specific DBEs listed to perform the work and supplies for which each is listed) unless Contractor obtains written consent by the City. Unless the City consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed by the listed DBE.

25.12. The Contractor will be required to obtain the City's DBE Liaison Officer's (DBELO) prior approval through the submittal of Change of Subcontractors/Suppliers DBE Form 3 (Exhibit B) hereto) is to be completed and submitted by the Contractor to BELO for prior approval when adding, changing, or deleting subcontractors that were submitted with the bid and approved by the City's Aviation Department. In cases where Contractor is seeking to terminate a previously identified DBE or reduce the scope of such a DBE, the Contractor will be required to make good faith efforts to find another DBE subcontractor to perform at least the same amount of work under the contract as the DBE that was terminated or whose scope of Work was reduced, to the extent needed to meet the contract goal the City has established for this Contract.

25.13. Such written consent will be provided only if the City agrees, for reasons stated in the concurrence document, that the Contractor has good cause to terminate or reduce the scope of Work of the DBE firm. For purposes of this paragraph, good cause includes circumstances listed in 49 CFR § 26

25.14. Before transmitting to the City a request to terminate and/or substitute a DBE subcontractor or reduce the DBE's scope of Work, Contractor must give notice in writing to the DBE subcontractor, with a copy to the City's Aviation Department of its intent to request to terminate and/or substitute the DBE or reduce its scope of Work, and the reason(s) for the request.

25.15. The Contractor must give the DBE five (5) business days to respond to the Contractor's notice and advise the City and the Contractor of the reasons, if any, why the DBE objects to the proposed termination or scope reduction of its subcontract and why the Contractor's action should

not be approved. If required in a particular case as a matter of public necessity (e.g., safety), a response period shorter than five days may be provided.

25.16. In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

25.17. Notwithstanding Sections 24.9 through 24.16, in an emergency Contractor may reassign Work from one Subcontractor to another Subcontractor or perform such Work with its own forces or those of an affiliate without prior written approval from City. For purposes of this section, “emergency” means:

- 25.17.1. The safety of workers and the public is at risk;
- 25.17.2. The work in progress is subject to a significant loss (i.e., lose a concrete pour); or
- 25.17.3. The traveling public will be seriously impacted, and excessive travel delays incurred.

In the event of an emergency as defined in this section, Contractor must call in a report to the DBELO outlining the circumstances and the Work reassigned and submit a written notice to City within twenty-four (24) hours of the emergency. To the extent possible, Contractor must seek to reassign Work assigned to a DBE to another DBE. City will maintain a SUBCONTRACTOR EMERGENCY REASSIGNMENT – CALL IN LOG. Contractor must assess and report the value of the reassigned Work in its reporting to City.

25.18. During the term of this Contract, the Contractor must report the actual payments made to all subcontractors to the City in a time interval and a format determined by the City. The City reserves the right, at any time during the term of this Contract, to request additional information, documentation or verification of payments made to subcontractors in connection with this Contract. Verification of amounts being reported may take the form of requesting copies of cancelled checks paid to participating DBEs and/or confirmation inquiries directly with participating DBEs. Proof of payment such as copies of cancelled checks must properly identify the project name or project number to substantiate payment.

25.19. Contractor shall report DBE Subcontractor/Supplier activity and expenditures through the City of San Antonio online monitoring system. The reporting shall be done on a monthly basis and in the format required by the City’s online monitoring system. Reporting shall include all awards and payments to subcontractors/suppliers for goods and services provided under the agreement during the previous month. This report may be used by the City to verify utilization of and payment to DBEs.

25.20. The Contractor shall maintain records, as specified in the audit and records section of the contract, showing: (i) all subcontract/supplier awards to subcontractors, including specifically awards to DBE firms; (ii) specific efforts to identify and award such contracts to DBEs; and (iii) submit when requested, copies of executed contracts to establish actual DBE participation.

25.21. Contractor agrees to submit periodic reports of subcontract and/or supplier awards to DBE and non-DBE firms in such form and manner and at such times as the Aviation Department shall prescribe and shall provide access to books, records, and accounts to authorized officials of the City, Aviation Department, state, and/or federal agencies for the purpose of verifying DBE participation and good-faith efforts to carry out the City's DBE policy and DBE Program. All Aviation Department contractors are, at City's election, subject to a post-contract DBE audit. Audit determination(s) may be considered and have a bearing in the evaluation of a contractor's good-faith efforts on future airport contracts.

25.22. The Contractor shall comply with the DBE Compliance and Enforcement Policy attached hereto as Exhibit B.

25.23. Failure or refusal by Contractor to comply with the DBE and subcontracting provisions herein or any applicable provisions of the DBE Program, either during the proposal process or at any time during the term of the Contract, may constitute a material breach of Contract, whereupon the Contract, at the option of the Aviation Department, may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be debarred from further contracts with the City of San Antonio.

25.24. The goals on this Contract shall also apply to amendments that require work beyond the scope of services originally required or contemplated to accomplish the project. The Contractor is asked to make "good faith efforts" to obtain DBE/ participation for additional scope(s) of services. Amendments that do not alter the type of service originally required to accomplish the project may be undertaken using the subcontractor and suppliers already under contract to the Contractor. Any amendment affecting the scope of service or value of the contract should be documented on a form acceptable to the City

25.25. The City requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of four (4) years after final completion. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

ARTICLE XXVI. Precedence in Case of Conflict

In case of conflict between the elements of this Agreement, the elements have the following Precedence, for the purpose of construction:

- A. Modifications and/or Amendments to this Agreement, if any;
- B. This Agreement, including Attachments;
- C. The Request for Sealed Proposals, including Attachments and addenda (if any);
- D. JOC's submitted Proposal;
- E. Issued Job Orders;
- F. Drawings; and
- G. City's Specifications.

ARTICLE XXVII. Waivers

27.01. **Non-Waiver of City's Rights.** Neither City's review, approval or acceptance of or payment for Work required under this Agreement, pursuant to an issued Job Order, waives City's rights under this Agreement or waives City's rights under any cause of action arising out of the performance of this Agreement.

27.02. **City Waiver and Subsequent JOC Breach.** City's waiver of any breach of any term, covenant, condition or agreement herein contained does not waive any subsequent breach of the same or any other term, covenant, condition or agreement.

ARTICLE XXVIII. Indemnification

28.01 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, contractor or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence**

of CITY, it's officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. In addition, CONTRACTOR agrees to indemnify, defend, and hold City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.**

28.02 If such infringement claim or action has occurred or, in JOC's judgment, is likely to occur, City shall allow JOC, at JOC's option and expense, (unless such infringement results directly from JOC's compliance with City's written standards or specifications or by reason of City's or Design Consultants' design of articles or their use in combination with other materials or in the operation of any process for which the City shall be liable) to elect to:

- a. procure for City the right to continue using said deliverable and/or materials;
- b. modify such deliverable and/or materials to become non-infringing (provided that such modification does not adversely affect City's intended use of the deliverable and/or materials as contemplated hereunder);
- c. replace said deliverable and/or materials with an equally suitable, compatible and functionally equivalent non-infringing deliverable and/or materials at no additional charge to City; or
- d. if none of the foregoing alternatives is reasonably available to JOC, upon written request, City shall return the deliverable and/or materials in question to JOC and JOC shall refund all monies paid by City, with respect to such deliverable and/or materials, and accept return of same. If any such cure provided for in this **Article XXVIII** shall fail to satisfy the third-party claimant, these actions shall not relieve JOC from its defense and indemnity obligations set forth in this **Article XXVIII**.

28.03 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within twenty-four (24) hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR'S cost. The CITY shall have the right, at its

option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

28.04 Contractor's indemnity obligations under **Article XXVIII** herein shall not be limited in any way by the limits of any insurance coverage or by any limitation on the amount or type of damages, compensation, or benefits payable by, for, or to Contractor, any Subcontractor, supplier, or any other person or entity under any insurance policy, workers' compensation acts, disability benefit acts, or other employee benefits acts.

ARTICLE XXIX. Audit of Records

29.01 JOC acknowledges and accepts the requirements regarding Audit of Records set forth in the City's General Conditions for City of San Antonio Construction Contracts, and additionally agrees to the following terms and conditions of this **Article XXIX**.

29.02 JOC shall retain, maintain and contractually shall require each Sub-Consultant and Subcontractor of JOC to retain and maintain all data, books and other records (hereafter collectively referred to as "records") relating to an issued Job Order and this Agreement for a period of four (4) years after completion of an issued Job Order. JOC acknowledges City may inspect and audit all JOC records at reasonable times and, upon request, JOC shall produce all original records. If approved by City in writing, photographs, microphotographs or other authentic reproductions may be retained and maintained by JOC, its Sub-Consultants and Subcontractors instead of original records and documents. City may withhold any payment to JOC and may deduct from any money owed to JOC, if City finds the retained and maintained documentation on any issued and performed Job Order to be incomplete or erroneous.

ARTICLE XXX. Third-Party Antitrust Violations

JOC hereby assigns to City any claim for overcharges resulting from antitrust violations, to the extent that such violations concern materials or services supplied by third parties to JOC toward fulfillment of the requirements of an issued Job Order and this Agreement.

ARTICLE XXXI. Appropriations

All obligations of City under this Agreement are subject to the appropriation of funds by the San Antonio City Council each fiscal year. If the San Antonio City Council fails to appropriate money for this Agreement in an annual City of San Antonio Budget, City may terminate this Agreement without penalties of any sort.

ARTICLE XXXII. Claims and Disputes

32.08. As used herein, a Claim is a demand or assertion by one of the Parties to this Agreement seeking as a matter of right adjustment or interpretation of the Agreement's terms, payment of money, extension of time, or other relief with respect to the terms of the Agreement. The term "Claim" may also include other disputes and matters in question between City and JOC arising out of or relating to this Agreement. Claims shall be initiated by notice to the other Party electronically through an Internet-Based Project Management System (hereafter referred to as "Unifier"). A Claim of JOC, whether for additional compensation, additional time, or other relief, shall be sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind JOC by his signature) of JOC, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the Party making the Claim.

32.09. A Claim either by JOC or by City shall be initiated electronically through Unifier and sent to the other Party within twenty-one (21) days after the occurrence of the event giving rise to such Claim.

32.10. Pending final resolution of a Claim, except as otherwise agreed upon in writing, JOC shall proceed diligently with performance of a Job Order and this Agreement and City shall continue to make payments to JOC in accordance with this Agreement.

32.11. If JOC wishes to make a Claim for an increase in the time for performance, notice to City through Unifier, as stated in this **Article XXXII** herein, shall be given. JOC's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

32.12. Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards shall apply to claims by both JOC and City:

32.12.3. No consequential damages shall be allowed.

32.12.4. Damages are limited to any extra costs specifically shown to have been directly caused by a proven wrong for which the other Party is claimed to be responsible.

32.13. No profit will be allowed on any damage claim.

32.14. Nothing in this **Article XXXII** shall be construed to waive City's Governmental Immunity from a lawsuit. Such Governmental Immunity is expressly retained to the extent it is not clearly and unambiguously waived by State law

32.15. **Alternative Dispute Resolution.**

32.15.3. Each Party to this Agreement is required to continue to perform its obligations under this Agreement pending a final resolution of any dispute arising out of or relating to this Agreement unless performance would be impossible or impracticable under the circumstances.

32.15.4. Before invoking mediation or any other alternative dispute resolution process set forth herein, the Parties to this Agreement agree they shall first try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the Parties' senior management representatives cannot resolve the dispute within thirty (30) days after a Party delivers a written notice of such dispute to the other Party, then the Parties shall proceed with mediation or any other alternative dispute resolution process set forth herein. All negotiations pursuant to this **Article XXXII** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

32.15.5. **Mediation.** In the event that City or JOC contend that the other has committed a material breach of this Agreement, or the parties cannot reach an agreement, the Party alleging such a resolution of a claim or dispute pursuant to **Article XXXII.15.4** as a condition precedent to filing any lawsuit, either party shall request mediation of the dispute with the following requirements:

- a. A request for mediation shall be in writing and request that the mediation commence not fewer than thirty (30) or more than ninety (90) days following the date of the request except upon the written agreement of both Parties.
- b. In the event City and JOC are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) days following the date of the request for mediation, all conditions precedent in this **Article XXXII** shall be deemed to have occurred.
- c. The Parties shall share equally the mediator's fee and any filing fees. Venue for any mediation or lawsuit arising under this Agreement shall be in San Antonio, Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement shall be deemed a consent to suit.

32.15.6. In the event of litigation, JOC and City expressly agree that both Parties waive rights to payment of attorneys' fees that might otherwise be recoverable pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code Section 271.153, the Prompt Payment Act, common law, or any other provision for payment of attorneys' fees. In the event of litigation, JOC and City expressly agree that both Parties waive rights to payment of attorneys' fees that might otherwise be recoverable pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code Section 271.153, the Prompt Payment Act, common law, or any other provision for payment of attorneys' fees.

ARTICLE XXXIII. Prohibited Interests in Contracts

33.01. **Prohibited Financial Interests.** The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency, such as city owned utilities. A City officer or employee has a "prohibited financial interest" in a contract with City or in the sale to the City of land, materials, supplies or service if any of the following individual(s) or entities is a party to the contract or sale:

- 33.01.1. a City officer or City employee; or
- 33.01.2. a City officer's or City employee's spouse, sibling, parent, or other family member within the first degree of consanguinity or affinity; or
- 33.01.3. an entity in which a City officer or a City employee, or his/her parent, child or spouse directly or indirectly owns:
 - 33.01.3.1. ten percent (10%) or more of the voting stock or shares of the entity;
or
 - 33.01.3.2. ten percent (10%) or more of the fair market value of the entity; or
- 33.01.4. an entity in which any individual or entity listed above is:
 - 33.01.4.1. a JOC Subcontractor or Sub-Consultant on a City contract; or
 - 33.01.4.2. a partner; or
 - 33.01.4.3. a parent or subsidiary business entity.

33.02. JOC warrants and certifies:

33.02.1. JOC, its officers, employees and agents are neither officers nor employees of City.

33.02.2. JOC has tendered to the City a Discretionary Contracts Disclosure Statement, in compliance with City's Ethics Code.

33.03. To enter into this Agreement, City relies on Consultant's warranties and certifications in **Article XXXIII.02.**

ARTICLE XXXIV. Non-Discrimination

34.1 As a party to this Agreement with City, JOC understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, JOC shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. JOC represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Contract award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, JOC shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Subcontractors, Sub-Consultants, vendors, suppliers or commercial customers, nor shall JOC retaliate against any person for reporting instances of such discrimination. JOC shall provide equal opportunity for Subcontractors, Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector subcontracting, sub-consulting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. JOC shall incorporate this clause into each of its Subcontractor, Sub-Consultant and supplier agreements entered into, pursuant to issued City Job Order agreements/contracts.

34.2 JOC's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, hereby is incorporated into the material terms of this Agreement. JOC acknowledges that it understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in the termination of an issued Job Order and/or this Agreement, the disqualification of JOC from participating in future City contracts or other sanctions. This **Article XXXIV** is not enforceable by or for the benefit of, nor creates any obligation to, any third party.

34.3 **JOC Outreach and Diversity Plan.** JOC acknowledges and commits, upon its execution of this Agreement, JOC shall provide City a detailed outreach and diversity plan for approval by City, to include a list of all of JOC’s Subcontractors and Sub-Consultants it expects to utilize in performing issued Job Orders and JOC shall require all of its utilized Subcontractors and Sub-Consultants to register in City’s Centralized Vendor Registry (hereafter referred to as “CVR”) through Unifier. JOC commits that it shall obtain approval in writing from City prior to adding, substituting or deleting any approved Subcontractors and/or Sub-Consultant from an issued Job Order.

ARTICLE XXXV. Notice

Except as may be provided elsewhere herein, all notices, communications, and reports required or permitted under this Agreement shall personally be delivered or mailed to the respective Party by depositing the same with the United States Postal Service and addressed to the applicable address shown below unless and until either Party is otherwise notified in writing by the other Party of a change in such address. Mailed notices shall be deemed communicated as of five (5) days of mailing.

If intended for City, then to:

Aviation Department
Attention: Planning and Development
9800 Airport Blvd
San Antonio, Texas 78216

If intended for JOC, then to:

JOC NAME
CONTACT NAME
JOC ADDRESS
CITY, STATE ZIP CODE

Notices pertaining to a Job Order shall be addressed to the parties at their respective addresses set forth above and also to the addresses specified in the Job Order. A Party’s address for notice shall be changed only by giving written notice to the other Party.

ARTICLE XXXVI. Compliance with Law

36.01. JOC shall comply with the most current version of all applicable federal, state, and local laws, ordinances, rules, orders, directives, regulations, statutes, regulations, FAA Orders, certification requirements and FAA Advisory Circulars, building codes and local regulations. rules, regulations, orders in connection with the work and services performed under this Agreement. Without limiting the foregoing, JOC shall specifically observe and comply and cause its employees, officers, agents, subtenants, contractors, invitees, and licensees to observe and comply with all Rules and Regulations, which include without limitation the rules and regulations adopted in the City’s Code of Ordinances, Chapter 3, Airports, the San Antonio Airport System Sustainable Airport Manual, the Airport Soil Management Plan, SAT Contractor Safety Plan Requirement, SAT Construction Security Plan, and SAT Crane Procedures.

36.02. JOC agrees to comply with the applicable restrictions from Texas Government Code Chapters 2252, 2270, and 2271 prohibiting City from contracting with a company that engages in business with Iran, Sudan, or a designated Foreign Terrorist Organization; boycotts Israel; boycotts firearm entities or firearm trade associations; or boycotts energy companies. By signing this Agreement with the City of San Antonio, JOC hereby verifies they have reviewed the applicable state law restrictions, and warranties compliance with the certification requirements from Texas Government Code §2270.002 and §2274.002, if applicable. City hereby relies on JOC's verification. If found to be false, City may terminate the contract for material breach.

ARTICLE XXXVII. Public Information

37.01. JOC acknowledges that this Agreement, all contract documents, and associated job order proposals, are public information within the meaning of Chapter 552 of the Texas Government Code and, accordingly, may be disclosed to the public.

37.02. JOC shall notify City, immediately, in the event JOC receives any requests for information from a third party, which pertain to the documentation and records referenced herein. JOC understands and agrees that City will process and handle all such requests.

ARTICLE XXXVIII. Miscellaneous

38.01. **Written Amendments.** This Agreement only may be amended by a written agreement, signed by both Parties.

38.02. **Venue and Choice of Law.** THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS AND COURT DECISIONS OF THE STATE OF TEXAS, WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS AND, IF LEGAL ACTION BECOMES NECESSARY, EXCLUSIVE VENUE SHALL LIE IN BEXAR COUNTY, TEXAS. The federal and state courts in Bexar County shall have exclusive jurisdiction to adjudicate any dispute relating to this Agreement and, in the event of any such dispute, the parties waive all rights to interpose any objections to personal jurisdiction or venue in those courts.

38.03. **Invalid, Illegal or Unenforceable Clauses.** If for any reason any one or more paragraphs of this Agreement are held to be invalid or unenforceable, then such invalidity or unenforceability shall not affect, impair, or invalidate the remaining paragraphs of this Agreement but shall be confined in its effect to the specific section, sentences, clauses, or parts of this Agreement held to be invalid or unenforceable. The invalidity or unenforceability of any section, sentence, clause, or

parts of this Agreement in any one or more instances shall not affect or prejudice in any way the validity of this Agreement in any other instance.

38.04. **Inure and Assignments.** This Agreement inures to the benefit of and binds the heirs, representatives, executors, administrators, successors and permitted assigns of the Parties hereto. This clause does not authorize any assignment not otherwise authorized.

38.05. **Full and Final Agreement.** This Agreement, together with all other contract documents, approved job orders and any other documents incorporated herein by reference, represents the full and final agreement between the Parties and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

38.06. **No Third Party Beneficiaries.** This Agreement only benefits the Parties, their successors and permitted assigns. This Agreement has no third party beneficiaries, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

38.07. **Interpretation.** Where herein used, plural constructions include the singular and singular constructions include the plural. Whether a pronoun is masculine, feminine or neutral does not affect meaning or application of the relevant term. The words "herein," "hereof" and other similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

38.08. **Captions and Titles.** The captions for the individual provisions of this Agreement are for informational purposes only and shall not be construed to effect or modify the substance of the terms and conditions of this Agreement to which any caption relates.

38.09. **Executed Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. In making proof of this Agreement, it is not necessary to produce or account for more counterparts than necessary to show execution by or on behalf of all Parties.

38.10. **Additional Documents and Instruments.** The Parties shall execute and deliver such additional documents and instruments as may be necessary fully to effect the provisions hereof. But no such additional documents may alter the rights or obligations of the Parties stated in this Agreement.

38.11. **Director Authority.** The Director of Aviation Department, without further San Antonio City Council action, may agree to, sign and deliver, on behalf of City, all consents, certificates, memoranda, estoppels and modifications of nonmaterial rights and obligations arising under this

Agreement and also may declare defaults and pursue remedies for such defaults, including termination.

-----*Signature page follows*-----

IN WITNESS WHEREOF, the parties have caused their representatives to set their hands and execute this Agreement on the dates reflected below. This Agreement shall become effective on the date of the last signature hereto.

CITY OF SAN ANTONIO

NAME OF COMPANY

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to form:

Assistant City Attorney

EXHIBIT A – AVIATION GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS

EXHIBIT B –DBE COMPLIANCE AND ENFORCEMENT AND DBE CHANGE OR ADDITION OF SUBCONTRACTOR/SUPPLIER FORM

DBE Compliance and Enforcement

DBE Subcontracting Obligation - Upon approval of the required DBE utilization documentation, Consultant/Contractor shall enter into a subcontract with each approved DBE subcontractor listed in its response submitted to City during the solicitation process (“Submittal”). The subcontract shall be for the scope of work and amount stated in the submittal documents. DBE subcontracts shall not be terminated, nor shall the scope of work or the amount to be paid to the DBE be altered by Consultant/Contractor without the written approval of the Aviation Department’s DBE Liaison Officer (DBELO).

Subcontractor Substitutions, Addition or Deletions - Consultant/Contractor must notify the DBELO in writing of the necessity to substitute, add or delete a DBE in order to fulfill the DBE requirements. A change shall not be made before the DBELO’s approval is given as to the acceptability of the change. The request shall be made utilizing DBE Form 3 (Change of Subcontractor/Supplier) attached hereto.

Failure to Meet DBE Contract Requirements – Failure to utilize DBEs as stated in Consultant’s/Contractor’s Submittal assurances shall constitute a breach of contract and may lead to the termination of the Contract.

Relief from DBE Requirements – After the effective date of the Contract, no relief of the DBE requirements will be granted except in exceptional circumstances. Requests for complete or partial wavier of the DBE requirements of this Contract must be submitted in writing the DBELO. The request for relief must contain details of the request, the circumstances that make the request necessary, and any additional relevant information. The request must be accompanied by a record of all efforts taken by Consultant/Contractor to contract with the DBEs listed in the Submittal or to locate and contract with replacement or substitute DBE subcontractor.

Penalties for Noncompliance - Failure to comply with any portion of the DBE Program, which failure continues for a period of 30 calendar days, or such longer period as the City may in its sole discretion agree to in writing, after Consultant/Contractor receives written notice from City of such noncompliance, may be subject to any or all of the following penalties:

- a. Withholding all or a portion of future payments until Consultant/Contractor is in compliance, as determined by DBELO.
- b. Termination of the Contract.
- c. Debarment from future City contracts or sub-contracts for a minimum of one year and a maximum of three years.

In the event a penalty is imposed, Consultant/Contractor shall continue to make any and all payments due and owing its subcontracts, laborer, suppliers, etc.in full and in a timely manner, without withholding or setoff of any amounts.

The City will actively implement the enforcement actions detailed above.



**SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)
CHANGE OR ADDITION OF SUBCONTRACTORS/SUPPLIERS ON FEDERALLY FUNDED CONTRACTS
(DBE Form 3)**

NAME OF PROJECT: _____

Name of Bidder/Proposer: _____

The above named firm requests approval of the following addition(s) and/or deletion(s) of the Subcontractor/Supplier firm(s) to the approved DBE *Good Faith Effort Plan* for Federally Funded Contracts (**DBE Form 1**) and *Letter of Intent* (**DBE Form 2**) as originally submitted as part of the above referenced project. **No additional and/or substitute subcontractor/supplier shall begin work on the project until contractor receives written approval by the City.**

Delete	Name of Firm	Is firm a Subcontractor or Supplier	Description of Work to be Performed by Firm	Is firm DBE Certified Yes or No?	Total Dollars of Work to be Performed by Firm

REASON(S) FOR REMOVING EACH SUBCONTRACTOR(S)/SUPPLIER(S) LISTED ABOVE: _____

Please indicate the name of the firm(s) you wish to add or substitute. **A Letter of Intent (DBE Form 2) for any additional/substitute subcontractor(s)/supplier(s) must be submitted to the City for approval with this form. No additional and/or substitute subcontractor/supplier shall begin work on the project until contractor receives written approval by the City.**

Add	Name of Firm	Is firm a Subcontractor or Supplier	Description of Work to be Performed by Firm	Is firm DBE Certified Yes or No?	Estimated Dollars of Work to be Performed by Firm

1. If a DBE Subcontractor/Supplier was deleted/terminated/replaced, was it replaced with another DBE Subcontractor/Supplier? Yes _____ No _____ If not, why not: _____
2. If another DBE Subcontractor/Supplier did not replace the DBE Subcontractor/Supplier, please submit for our review the good faith efforts used to find another DBE to perform at least the same amount of work under the contract as the DBE that was deleted/terminated/replaced.
3. If a Subcontractor/Supplier is added at any time during this project, Contractor shall submit for our review and approval the good faith efforts used to find a DBE to perform such work.

AFFIRMATION

THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF, I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Name & Title of Authorized Official: _____

Signature: _____

Approved: _____
 AVIATION DEPARTMENT DBE LIAISON OFFICER

EXHIBIT C - APPLICABLE BUILDING WAGE DETERMINATION

General Decision Number: TX20240231 04/05/2024

Superseded General Decision Number: TX20230231

State: Texas

Construction Type: Building

County: Bexar County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024
1	01/12/2024
2	04/05/2024

ASBE0087-014 06/04/2023

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation)....	\$ 28.95	8.39

BOIL0074-003 07/01/2023

	Rates	Fringes
BOILERMAKER.....	\$ 37.00	24.64

* ELEC0060-003 01/01/2024

	Rates	Fringes
ELECTRICIAN (Communication Technician Only).....	\$ 33.50	18%+5.45

* ELEC0060-004 01/01/2024

	Rates	Fringes
ELECTRICIAN (Excludes Low Voltage Wiring).....	\$ 33.50	18%+5.45

ELEV0081-001 01/01/2023

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 46.83	37.335+a+b

FOOTNOTES:

a. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

b. Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; and Veterans Day.

ENGI0450-002 04/01/2014

	Rates	Fringes
POWER EQUIPMENT OPERATOR Cranes.....	\$ 34.85	9.85

IRON0066-013 06/01/2023

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 26.00	7.53

IRON0084-011 06/01/2023

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 27.51	8.13

PLUM0142-009 07/01/2023

	Rates	Fringes
HVAC MECHANIC (Electrical Temperature Control Installation & Unit Installation Only).....	\$ 35.95	11.25
PIPEFITTER (Including HVAC Pipe Installation).....	\$ 35.95	11.25
Including HVAC Pipe Installation		
PLUMBER.....	\$ 35.95	11.25
Excludes HVAC Pipe Installation		

* SFTX0669-002 04/01/2024

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 36.15	23.88

SHEE0067-004 07/03/2023

	Rates	Fringes
Sheet metal worker Excludes HVAC Duct Installation.....	\$ 30.24	15.89
HVAC Duct Installation Only.	\$ 30.24	15.89

** SUCOSA 1/5/2024

	Rates	Fringes
GLAZIER.....	\$ 12.59	0.87

* SUTX2014-006 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 22.15	0.00
CARPENTER (Acoustical Ceiling Installation Only).....	\$ 17.83	0.00
CARPENTER (Form Work Only).....	\$ 13.63 **	0.00
CARPENTER, Excludes Acoustical Ceiling Installation, Drywall Hanging, Form Work, and Metal Stud Installation.....	\$ 16.86 **	4.17
CAULKER.....	\$ 15.00 **	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 22.27	5.30
DRYWALL FINISHER/TAPER.....	\$ 13.81 **	0.00
DRYWALL HANGER AND METAL STUD INSTALLER.....	\$ 15.18 **	0.00
ELECTRICIAN (Low Voltage Wiring Only).....	\$ 20.39	3.04
IRONWORKER, REINFORCING.....	\$ 12.27 **	0.00
LABORER: Common or General.....	\$ 10.75 **	0.00
LABORER: Mason Tender - Brick...	\$ 11.88 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 12.00 **	0.00
LABORER: Pipelayer.....	\$ 11.00 **	0.00
LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
LABORER: Landscape and Irrigation.....	\$ 8.00 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 15.98 **	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 14.00 **	0.00
OPERATOR: Bulldozer.....	\$ 14.00 **	0.00
OPERATOR: Drill.....	\$ 14.50 **	0.00

OPERATOR: Forklift.....	\$ 12.50 **	0.00
OPERATOR: Grader/Blade.....	\$ 23.00	5.07
OPERATOR: Loader.....	\$ 12.79 **	0.00
OPERATOR: Mechanic.....	\$ 18.75	5.12
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03 **	0.00
OPERATOR: Roller.....	\$ 12.00 **	0.00
PAINTER (Brush, Roller and Spray), Excludes Drywall Finishing/Taping.....		
	\$ 13.07 **	0.00
ROOFER.....	\$ 12.00 **	0.00
TILE FINISHER.....	\$ 11.32 **	0.00
TILE SETTER.....	\$ 14.94 **	0.00
TRUCK DRIVER: Dump Truck.....	\$ 12.39 **	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00 **	4.11

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.
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** Workers in this classification may be entitled to a higher
minimum wage under Executive Order 14026 (\$17.20) or 13658
(\$12.90). Please see the Note at the top of the wage
determination for more information. Please also note that the
minimum wage requirements of Executive Order 14026 are not
currently being enforced as to any contract or subcontract to
which the states of Texas, Louisiana, or Mississippi, including
their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave
for Federal Contractors applies to all contracts subject to the
Davis-Bacon Act for which the contract is awarded (and any
solicitation was issued) on or after January 1, 2017. If this
contract is covered by the EO, the contractor must provide
employees with 1 hour of paid sick leave for every 30 hours
they work, up to 56 hours of paid sick leave each year.
Employees must be permitted to use paid sick leave for their
own illness, injury or other health-related needs, including

preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates.

LA indicates, the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

EXHIBIT D – INSURANCE REQUIREMENTS

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Aviation Insurance to include coverage for the following: a) Premises Operations b) Products/Completed Operations c) Personal/Advertising Injury d) Contractual Liability e) Independent Contractors f) Damage to property rented to you* g) Explosion, Collapse, Underground Property Hazard Liability	For Bodily Injury and Property Damage \$2,000,000 per occurrence; \$4,000,000 general aggregate, or its equivalent in Umbrella Liability Coverage. f.) \$500,000*
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence. With AOA access \$5,000,000 CSL.
5. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
6. Environmental Insurance- (Contractor's Pollution Legal Liability For transporting or handling hazardous materials or regulated substances)	\$1,000,000 per occurrence, \$2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation.
7. *Umbrella Liability Coverage	\$20,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage.
*If Applicable *Umbrella Liability Coverage may be reduced on the awarded contract with approved submitted waiver	

EXHIBIT E – FEDERAL CONTRACT PROVISIONS

These Required Federal Contract Provisions for Construction Contracts provisions comply with the FAA's required Contract Provisions for Airport Improvement Program and for Obligated Sponsors, which may be found at https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/. If there is a conflict between this Exhibit N (Required Federal Contract Provisions) and the FAA Provisions, the FAA Provisions control. As used in this Exhibit N (Required Federal Contract Provisions), "this contract" refers to this Contract and "Sponsor" refers to City.

1. ACCESS TO RECORDS AND REPORTS

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

2. BUY AMERICAN PREFERENCE

The Contractor agrees to comply with 49 USC § 50101, BABA and other related Made in America Laws,¹ U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration 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.

3. GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

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

The above provision binds the Contractor and subcontractors from the bid solicitation period through the

¹ Per Executive Order 14005 "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

completion of the contract.

4. COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

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

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability 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.

5. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (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) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority

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

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

6. COPELAND “ANTI-KICKBACK” ACT

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

7. DAVIS-BACON REQUIREMENTS

1. Minimum Wages.

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

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

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

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act

have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding.

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

3. Payrolls and Basic Records.

- (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and 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 <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification> 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, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, 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 Office of Apprenticeship Training, Employer and Labor Services 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 Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

5. Compliance with Copeland Act Requirements.

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

6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR §§ 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 § 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 USC § 1001.

8. DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (49 CFR § 26.13) –

The Contractor, subrecipient 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, which may include, but is not limited to:

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

Prompt Payment (49 CFR § 26.29) – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from City. The prime contractor agrees further to return retainage payments to each subcontractor within ten (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 City. This clause applies to both DBE and non-DBE subcontractors.

9. ENERGY CONSERVATION REQUIREMENTS

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

10. 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, sexual orientation, gender identity, 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 identity, 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor 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 to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) 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.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such 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 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.

(8) The Contractor will include the provisions of paragraphs (1) through (8) 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 may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

11. 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 part 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 must 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 nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must 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 therefor, 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 woman 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 work force.

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 group 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, the Contractor may be in violation of the Executive Order if a 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, sexual orientation, gender identity, 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 part 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 numbers, 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).

12. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

This contract and any resulting subcontracts hereby incorporate by reference the provisions of 29 CFR part 201, et seq., 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.

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

13. PROHIBITION OF SEGREGATED FACILITIES

(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 Employment 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, sexual orientation, gender identity, 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

Employment Opportunity clause of this contract.

14. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

This contract and any resulting subcontracts hereby 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. 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 (29 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.

15. PROCUREMENT OF RECOVERED MATERIALS

Contractor agrees to, and shall require all subcontractors to 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, Contractor and subcontractors shall use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or

- a) 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/smm/comprehensive-procurement-guidelines-construction-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.

16. CERTIFICATION REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

By entering into this Agreement Contractor certifies and represents that

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

- a) Contractor is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Contractor must ensure that no funding goes to any subcontractor who:

- Has been convicted of a Federal felony within the last 24 months; or
- Has any outstanding tax liability for which all judicial and administrative remedies have lapsed or been exhausted.

Contractor shall require each subcontractor to complete the two certificate statements below and include this requirement to complete the two certificate statements in all lower tier subcontracts. Subcontractor must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response.

Certifications:

The applicant represents that it is () is not () a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

The applicant represents that it is () is not () is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

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

Term Definitions

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

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

17. TERMINATION FOR DEFAULT (CONSTRUCTION)

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights, and remedies associated

with Owner termination of this contract due to default of the Contractor.

18. TRADE RESTRICTION CERTIFICATION

Entering into this contract, Contractor certifies that with respect to this contract, Contractor –

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

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

Contractor must provide immediate written notice to the Owner 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. 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 a contractor or subcontractor:

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

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

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

This certification is a material representation of fact upon which reliance was placed when awarding this

contract. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

19. VETERAN’S PREFERENCE

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

20. TEXTING WHEN DRIVING

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

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

21. AFFIRMATIVE ACTION

1. Contractor’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:	47.8%
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 nonfederally 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 contract, the "covered area" is the State of Texas, County of Bexar and City of San Antonio.

22. TERMINATION FOR CONVENIENCE

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

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

Owner agrees to pay Contractor for:

- a) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;

- b) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
- c) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- d) reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

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

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

23. CERTIFICATION REGARDING DEBARMENT

By entering into this contract, Contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

24. CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

Contractor shall verify that each lower tier subcontract that exceeds \$25,000 under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. Contractor shall accomplish this by:

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

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

25. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

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 \$29 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.

26. CERTIFICATION REGARDING LOBBYING

By entering into this contract, Contractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of 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 undersigned shall require that the language of this certification be included in the award documents

for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

27. BREACH OF CONTRACT TERMS

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

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

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

28. CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

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

29. CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS

Contractor, to the greatest extent practicable, will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

30. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE

SERVICES OR EQUIPMENT

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

EXHIBIT F – FAA ADVISORY CIRCULARS-AIR OPERATIONS AREA (AOA)



U.S. Department
of Transportation

Federal Aviation
Administration

Advisory Circular

Subject: Painting, Marking, and Lighting of
Vehicles Used on an Airport

Date: April 1, 2010

AC No: AC 150/5210-5D

Initiated by: AAS-100

Change:

1. **PURPOSE.** This advisory circular (AC) provides guidance, specifications, and standards for painting, marking, and lighting of vehicles operating in the airport air operations area (AOA). The approved lights, colors, and markings herein assure the conspicuity of vehicles operating in the AOA from both the ground and the air.

2. **CANCELLATION.** This AC cancels AC 150/5210-5C, Painting, Marking, and Lighting of Vehicles Used on an Airport, dated August 31, 2007.

3. **APPLICATION.** The Federal Aviation Administration (FAA) recommends the guidelines and standards in this Advisory Circular for vehicles operating in the airport AOA. In general, use of this AC is not mandatory. *However*, use of this AC is mandatory for vehicles funded with federal grant monies through the Airport Improvement Program (AIP) and/or with revenue from the Passenger Facility Charges (PFC) Program. See Grant Assurance No. 34, "Policies, Standards, and Specifications," and PFC Assurance No. 9, "Standard and Specifications."

Vehicles covered by this AC that do not meet this standard may be used until the vehicle is repainted or replaced, but no later than **December 31, 2010**.

4. **PRINCIPAL CHANGES.** This AC contains new specifications and recommendations for the painting, marking, and lighting of Towbarless Tow Vehicles (TLTVs).

5. **METRIC UNITS.** To promote an orderly transition to metric units, this AC includes both English and metric dimensions. The metric conversions may not be exact equivalents, and until there is an official changeover to the metric system, the English dimensions will govern.

6. **COMMENTS OR SUGGESTIONS** for improvements to this AC should be sent to:

Manager, Airport Engineering Division
Federal Aviation Administration
ATTN: AAS-100
800 Independence Avenue, S.W.
Washington, DC 20591

Michael J. O'Donnell
Director of Airport Safety and Standards

PAINTING, MARKING, AND LIGHTING OF VEHICLES USED ON AN AIRPORT**1. SOURCES OF APPLICABLE DOCUMENTS.**

- a. American National Standards Institute, Inc. (ANSI), 25 West 43rd St. 4th Floor, New York, NY 10036. Website: www.ansi.org
- b. American Society for Testing & Materials (ASTM), ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959. Website: www.astm.org
- c. The National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02169-7471. Website: www.nfpa.org
- d. The U. S. General Services Administration (GSA), Centralized Mailing List Services, 501 West Felix Street, Whse 9, South End P.O. Box 6477, Fort Worth, Texas 76115-6477. Website: www.gsa.gov
- e. The Superintendent of Documents, U.S. Government Printing Office, 732 North Capitol St. NW, Washington, DC 20401.
- f. Society of Automotive Engineers, Inc. (SAE), 400 Commonwealth Drive, Warrendale, PA 15096-0001. Website: www.sae.org
- g. FAA Advisory Circulars: U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Ave., Landover, MD 20785. Website: www.faa.gov
- h. FAA Engineering Briefs: www.faa.gov/airports/engineering/engineering_briefs/

2. DEFINITIONS. The following definitions apply in this AC:

- a. **Vehicle** – All conveyances, except aircraft, used on the ground to transport persons, cargo, equipment or those required to perform maintenance, construction, service, and security duties.
- b. **Air Operations Area (AOA)** – The portion of airport that encompasses the landing, take off, taxiing, and parking areas for aircraft.
- c. **Airport Emergency Vehicles** – Vehicles that are authorized in the AOA for emergency purposes (e.g., ambulances, aircraft rescue and fire fighting (ARFF) vehicles and emergency response vehicles) as authorized by the airport traffic control tower (ATCT) or an authorized on-site accident/incident commander.
- d. **Airport Operations Vehicles** – Vehicles routinely used by airport operations personnel for airport inspection and duties associated with airfield operations (such as airfield condition reporting and Incident Command) on the AOA and Movement Area.
- e. **Airport Security Vehicles** – Vehicles that are authorized in the AOA for security purposes, as needed (e.g. police cars).

- f. **Airfield Service Vehicles** – Vehicles that are routinely used in the AOA for airfield service, maintenance, or construction (e.g. snow blowers, snowplows, maintenance trucks, and tractors).
- g. **Aircraft Support Vehicles** – Vehicles that are routinely used in the AOA to support aircraft operations (e.g. aircraft pushback tractors, baggage/cargo tractors or trucks, air conditioning and aviation fuel trucks). These vehicles are typically owned by airlines, vendors, or contractors and are not eligible for Federal funding.
- h. **Reduced Visibility** – Prevailing visibility is less than one statute mile (1609 meters) and/or the runway visual range (RVR) is less than 6,000 feet (1830 meters).
- i. **Movement Area** – The runways, taxiways, and other areas of an airport/heliport that are used for taxiing/hover taxiing, air taxiing, takeoff, and landing of aircraft, exclusive of loading ramps and parking areas. At those airports/heliports with an operating airport traffic control tower (ATCT), specific approval for entry onto the movement area must be obtained from air traffic control (ATC).
- j. **Other Vehicles** – Vehicles that are not routinely authorized in the AOA (e.g. construction vehicles). These vehicles are typically owned by airlines, vendors, or contractors and are not eligible for Federal funding.
- k. **Peak Intensity** – Peak intensity, for purposes of this document, means the maximum magnitude of luminescence as measured in candela.
- l. **Towbarless Tow Vehicle (TLTV)** – a type of aircraft support vehicle whose main purpose is to tow aircraft in the AOA by way of nose gear capture.

3. VEHICLE PAINTING.

NOTE: *Airport vehicle paint and markings are a safety of flight requirement. The approved colors/markings herein assure conspicuity of vehicles operating in the AOA from both the ground and air.*

- a. **Airport Emergency Vehicles.**
 - (1) **Ambulances.** Ambulance vehicles are painted per the most current version of Federal Specification KKK-A-1822, *Federal Specification for the Star-of-Life Ambulance*. Ambulances are not considered vehicles routinely operating on the AOA.
 - (2) **Aircraft Rescue and Fire Fighting (ARFF) Vehicles.** Yellowish-green is the vehicle color standard. Color specifications are per Appendix A.

NOTE: *A yellowish-green color provides optimum visibility during all light levels encountered during a 24-hour day and under variations of light that result from weather and seasonal changes.*

- b. **Airport Operations Vehicles.** Airport operations vehicles may be painted in colors designated by the airport operator. The characteristics must be coordinated with the respective ATCT and identified in the tower letter of agreement.
- c. **Airport Security Vehicles.** Comply with specific state or local requirements.

d. **Airfield Service Vehicles.** Chrome yellow is the vehicle color standard. Color specifications are per Appendix A. When vehicles are equipped with bumper bars 8 inches (200 mm) or more in depth, the bars must be painted in alternate stripes 4 inches (100 mm) in width of chrome yellow and black inclined 45° to the vertical.

e. **Aircraft Support Vehicles.**

(1) Any color or combination of colors other than yellowish-green or chrome yellow. The bumper bar paint scheme in paragraph 3.d (of alternating chrome yellow and black stripe) is recommended.

(2) TLTVs. International orange is the vehicle color standard. Retroreflective tape covering more than 25 percent of the vehicle's vertical surfaces may be used as a temporary measure to meet this standard prior to scheduled vehicle painting.

f. **Other Vehicles.** Any color or combination of colors other than solid black or white.

4. VEHICLE MARKING.

a. **Airport Emergency Vehicles.**

(1) **Ambulances.** Ambulances are marked per the most current version of Federal Specification KKK-A-1822.

(2) **ARFF Vehicles.** Emergency rescue and fire fighting vehicles are marked with the letters "ARFF," "Fire," or "Rescue" and in accordance with 4.c.(1)-(5) of this AC.

b. **Airport Operations Vehicles.** Airport operations vehicles may be marked as designated by the airport operator. Marking must be coordinated with the respective ATCT and identified in the tower letter of agreement.

c. **Airfield Service Vehicles and Aircraft Support Vehicles.**

(1) Airport operator owned vehicles must display an identification number on each side and on the roof (the hood should be used if the vehicle has no roof).

(2) Side numbers will be a minimum of 16 inches (410 mm) in height and conspicuously located.

(3) Roof numbers will be a minimum of 24 inches (610 mm) in height and affixed with their bases toward the front of the vehicle. The identification numbers should provide sharp color contrast to the vehicle color.

(4) In addition to the identification numbers, airport operator-owned vehicles must display either the name of the airport and/or the airport insignia.

(5) To further improve night-time recognition of vehicles, a minimum 8 inch (200 mm) wide horizontal band of high gloss white paint or white reflective tape (Retroreflective, ASTM-D 4956-09, *Standard Specification for Retroreflective Sheeting for Traffic Control*, Type III & above) must be used around the vehicle's surface. Figures 1, 2, and 3 show suggested locations for the horizontal reflective band.

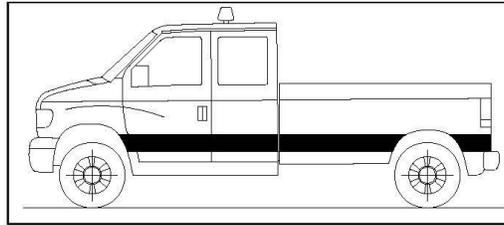


Figure 1: Suggested location for the horizontal reflective band, Option 1

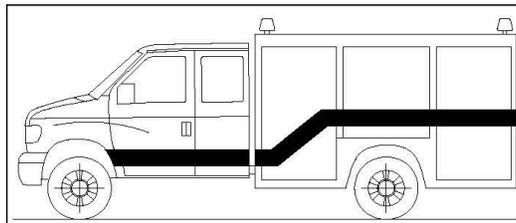


Figure 2: Suggested location for the horizontal reflective band, Option 2

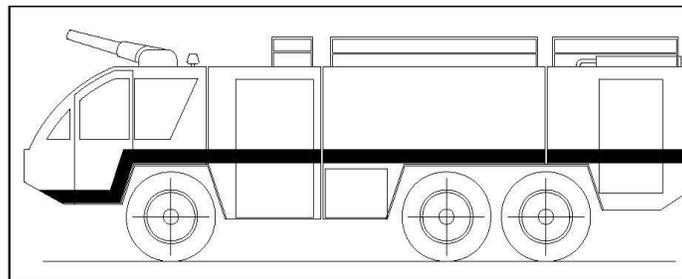


Figure 3: Suggested location for the horizontal reflective band, Option 3

(6) TLTVs. Retroreflective tape is used to outline the shape of a TLTV. If the vertical edge of the vehicle is rounded, the tape should be placed on the rounded portion to reflect light in both the horizontal and vertical planes. Where the placement of the tape may interfere with, or may be worn down by, maintenance or operational activities, tape is not required. Suggested locations for the retroreflective bands are shown in Figure 4.

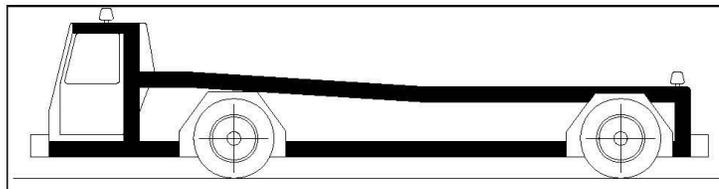


Figure 4: Suggested placement of retroreflective tape on a TLTV

d. Airport Security and Other Vehicles.

(1) Vehicles other than those that routinely traverse any portion of the AOA under the control of ATC, which are not escorted by a vehicle in constant two-way radio communication with ATC and properly equipped and authorized to operate in the AOA, must be provided with a flag on a staff attached to the vehicle so that the flag will be readily visible.

(2) At airports without air traffic control facilities, flags must be provided on all vehicles.

(3) The flag must be at least a 3-foot by 3-foot (0.9 meter by 0.9 meter) square having a checkered pattern of international orange and white squares at least 1 foot (300 mm) on each side (see Appendix A for the fabric color specification).

5. VEHICLE LIGHTING.

a. Airfield Service, Aircraft Support, and Airport Operations Vehicles.

(1) The standard for identification lighting is a yellow flashing light that is mounted on the uppermost part of the vehicle structure. A steady yellow light designates vehicles limited to non-movement areas.

(2) The light must be visible from any direction, day and night, including from the air.

(3) Color specifications for vehicle identification lights are per Appendix B.

(4) TLTVs. An LED light bar placed above the operator's cab may be used in place of the rotating yellow flashing light. In addition, a yellow flashing light (of any type) must be installed on the upper left-rear and right-rear corners of the TLTV, and must be activated when an aircraft is in tow. The size of the rear flashing lights must be large enough to meet the requirements of Section 5.c, but not so large as to interfere with the normal or towing operations of the TLTV.

b. Airport Emergency, Security, and Other Vehicles, which are not escorted by a properly lighted vehicle, must be identified during periods of low visibility by a light.

c. Characteristics of Flashing Lights:

(1) Ambulance lights must meet the specifications in the most current version of Federal Specification KKK-A-1822, and ARFF vehicles must meet NFPA, state, and local requirements.

(2) Lights must have peak intensity within the range of 40 to 400 candelas (effective) from 0° (horizontal) up to 10° above the horizontal and for 360° horizontally. The upper limit of 400 candelas (effective) is necessary to avoid damage to night vision.

(3) From 10° to 15° above the horizontal plane, the light output must be 1/10th of peak intensity or between 4 and 40 candelas (effective).

- (4) Lights must flash at 75 ± 15 flashes per minute.

NOTES:

1. *The effective intensity of a flashing light is equal to the intensity of a steady-burning (fixed) light of the same color that produces the same visual range under identical conditions of observation.*
2. *If xenon flashtubes are used, refer to AC 150/5345-43, Specification for Obstruction Lighting Equipment, for guidance concerning methods of calculating effective intensity.*

d. Light Colors.

- (1) **Airport Emergency Vehicles.**
 - (a) **Ambulances.** Per the most current version of Federal Specification KKK-A-1822.
 - (b) **ARFF Vehicles.** Red or a combination of red-and-white flashing lights per the chromaticity requirements in Appendix B.
- (2) **Airport Security Vehicles.** Signal blue or a combination of red and signal blue flashing light per the chromaticity requirements in Appendix B.
- (3) **Airfield Service, Aircraft Support, Airport Operations, and Other Vehicles.** Yellow flashing light per the chromaticity requirements in Appendix B.

APPENDIX A. COLOR SPECIFICATIONS

A-1. SPECIFICATIONS. Colors specified in Table A-1 are per the Commission Internationale de l'Eclairage (CIE) L*a*b* system of color specification. For a description of this system, refer to American Society for Testing & Materials (ASTM) D 2244, *Standard Practice for Calculation of Color Tolerances and Color Differences from Instrumentally Measured Color Coordinates*.

Table A-1. Specification for vehicle and flag colors

Standard Illuminant D65 Usage	Chrome Yellow			Yellowish-Green			International Orange		
	Vehicle Paint			Vehicle Paint			Vehicle Paint / Flag Fabric		
CIELAB DATA	L*	a*	b*	L*	a*	b*	L*	a*	b*
Centroid Color	72.8	24.4	77.6	78.3	-10.2	80.4	45.0	53.5	52.0
Point 1	72.8	31.8	82.9	78.3	-9.0	92.0	45.0	61.4	47.8
Point 2	72.8	25.5	66.7	78.3	-7.6	73.2	45.0	53.9	41.4
Point 3	72.8	18.0	69.3	78.3	-11.0	69.3	45.0	53.5	53.4
Point 4	72.8	22.4	86.0	78.3	-13.4	86.2	45.0	49.7	60.4
Light Limit	77.8			83.3			49.9		
Dark Limit	67.8			73.3			41.6		
Max ΔE	11.1			11.7			10.7		

A-2. COLOR TESTS. Acceptable colors are those that meet the gloss rating test and either a visual or an instrumental color test as follows:

NOTE: *Flag fabric colors must meet either the instrumental tests in Table A-1 or the visual method described in paragraph A-2b(1).*

a. **Gloss Rating Test.** This test is performed per ASTM D 523, *Standard Test Method for Specular Gloss*, on a paint sample of the color to be applied on the vehicle. An acceptable color sample is high gloss with a minimum gloss rating of 70 units, for 60° geometry.

b. **Color Test Methods:**

(1) **Visual.** Prepare a master specimen of the color (per Table A-1) and gloss (per paragraph A-2a). This specimen will be the master color and be used as the basis of comparison per ASTM D 5531-05, *Standard Guide for the Preparation, Maintenance, and Distribution of Physical Product Standards for Color and Geometric Appearance of Coatings*. To verify the paint color of a vehicle visually, vehicle paint samples must be

prepared and viewed per ASTM D 1729-96 (Reapproved 2009), *Standard Practice for Visual Appraisal of Colors and Color Differences of Diffusely-Illuminated Opaque Materials*.

(2) Instrumental. This test requires a test specimen sample and reference to Table A-1. All test specimen measurements should be conducted per ASTM E 1164-09a *Standard Practice for Obtaining Spectrometric Data for Object-Color Evaluation*. Test specimen tolerances must be per Table A-1 per the following:

(a) Plot the centroid color using the a* and b* CIELAB coordinate data from Table A-1 on graph paper or by entry of the coordinate data into a computer program. Plot and connect points 1 through 4 from the same table to form a quadrilateral; noting that the centroid color is within this figure. See Figure A-1 for plots of all three color specifications in Table A-1.

(b) Perform color sample measurements per ASTM E 1164-09a. If necessary, convert measurements to CIELAB L*, a*, and b* color space. See ASTM E 308-08, *Standard Practice for Computing the Colors of Objects by Using the CIE System*, for color space conversion formulae.

(c) An acceptable color is one that meets:

(i) the chromaticity requirements of the color samples a* and b* CIELAB coordinate data by falling within the quadrilateral;

(ii) the L* data lightness requirement by falling within the range defined by the light and dark data of Table A-1;

(iii) the total color difference (ΔE) by not exceeding the limits in Table A-1 when the CIELAB data are computed in the following formula:

$$\Delta E = (\Delta L^{*2} + \Delta a^{*2} + \Delta b^{*2})^{\frac{1}{2}}$$

where ΔL^* , Δa^* , and Δb^* values are the differences between those values for the centroid color in Table A-1 and those of the color sample measurements.

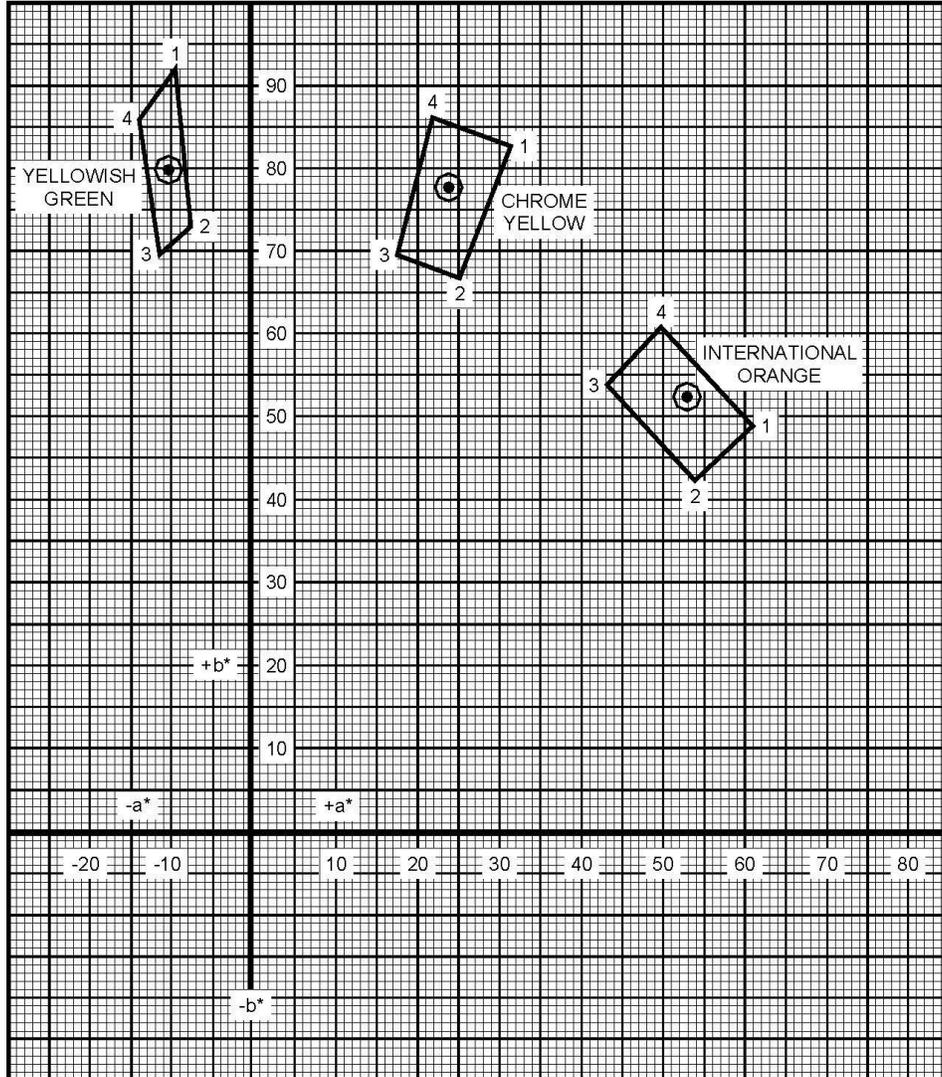


Figure A-1. Plot of selected color paint specifications

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APPENDIX B. COLOR SPECIFICATIONS FOR VEHICLE IDENTIFICATION LIGHTS

B-1. SPECIFICATIONS. The Society of Automotive Engineers (SAE) Standard J578 Revised December 2006, *Color Specification*, defines the acceptable color boundary limits and measurement of emitted red, white, signal blue, and yellow light for vehicle lights. This standard applies to the overall emitted color of light from the device in lieu of emitted light from any small area of the lens. The color of emitted light must fall within the color boundaries per SAE J578 Revised December 2006 (color boundary equations are in the standard) using color measurement methods detailed in the standard. See FAA Engineering Brief #67, *Light Sources Other Than Incandescent and Xenon for Airport and Obstruction Lighting Fixtures*, for additional information and *Alternative Lighting Devices*.

EXHIBIT G – FAA ADVISORY CIRCULARS-OPERATIONAL SAFETY ON AIRPORTS DURING CONSTRUCTION

NUMBER	TITLE
150/5370-2G	Operational Safety on Airports During Construction

**EXHIBIT H –FAA ADVISORY CIRCULARS REQUIRED FOR USE IN AIP
FUNDED, BIL FUNDED, AND PFC APPROVED PROJECTS**



**FAA
Airports**

Current FAA Advisory Circulars Required for Use in AIP Funded, BIL Funded, and PFC Approved Projects

Updated: 11/17/2022

View current and previous versions of these ACs and any associated changes at:
http://www.faa.gov/airports/resources/advisory_circulars and
http://www.faa.gov/regulations_policies/advisory_circulars/.¹

NUMBER	TITLE
70/7460-1M	Obstruction Marking and Lighting
150/5000-9B	Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations
150/5000-17	Critical Aircraft and Regular Use Determination
150/5020-1	Noise Control and Compatibility Planning for Airports
150/5070-6B, Changes 1 - 2	Airport Master Plans
150/5070-7 Change 1	The Airport System Planning Process
150/5100-13C	Development of State Aviation Standards for Airport Pavement Construction
150/5200-28G	Notices to Airmen (NOTAMs) for Airport Operators
150/5200-30D, Changes 1 - 2	Airport Field Condition Assessments and Winter Operations Safety
150/5200-31C, Changes 1 - 2	Airport Emergency Plan
150/5200-33C	Hazardous Wildlife Attractants on or near Airports

¹ All grant recipients are responsible for reviewing errata sheets and addendums pertaining to these Advisory Circulars.

NUMBER	TITLE
150/5200-34A	Construction or Establishment of Landfills Near Public Airports
150/5200-38	Protocol for the Conduct and Review of Wildlife Hazard Site Visits, Wildlife Hazard Assessments, and Wildlife Hazard Management Plans
150/5210-5D	Painting, Marking, and Lighting of Vehicles Used on an Airport
150/5210-7D	Aircraft Rescue and Fire Fighting Communications
150/5210-13C	Airport Water Rescue Plans and Equipment
150/5210-14B	Aircraft Rescue Fire Fighting Equipment, Tools and Clothing
150/5210-15A	Aircraft Rescue and Firefighting Station Building Design
150/5210-18A	Systems for Interactive Training of Airport Personnel
150/5210-19A	Driver's Enhanced Vision System (DEVs)
150/5220-10E	Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles
150/5220-16E, Change 1	Automated Weather Observing Systems (AWOS) for Non-Federal Applications
150/5220-17B	Aircraft Rescue and Fire Fighting (ARFF) Training Facilities
150/5220-18A	Buildings for Storage and Maintenance of Airport Snow and Ice Control Equipment and Materials
150/5220-20A	Airport Snow and Ice Control Equipment
150/5220-21C	Aircraft Boarding Equipment
150/5220-22B	Engineered Materials Arresting Systems (EMAS) for Aircraft Overruns
150/5220-23A	Frangible Connections
150/5220-24	Airport Foreign Object Debris (FOD) Detection Equipment
150/5220-25	Airport Avian Radar Systems
150/5220-26, Changes 1 - 2	Airport Ground Vehicle Automatic Dependent Surveillance - Broadcast (ADS-B) Out Squitter Equipment
150/5230-4C	Aircraft Fuel Storage, Handling, Training, and Dispensing on Airports
150/5300-13B	Airport Design
150/5300-14D	Design of Aircraft Deicing Facilities
150/5300-15A	Use of Value Engineering for Engineering and Design of Airport Grant Projects

NUMBER	TITLE
150/5300-16B	General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey
150/5300-17C, Change 1	Standards for Using Remote Sensing Technologies in Airport Surveys
150/5300-18B, Change 1	General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards
150/5300-19	Airport Data and Information Program
150/5320-5D	Airport Drainage Design
150/5320-6G	Airport Pavement Design and Evaluation
150/5320-12C, Changes 1 - 8	Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces
150/5320-15A	Management of Airport Industrial Waste
150/5320-17A	Airfield Pavement Surface Evaluation and Rating Manuals
150/5325-4B	Runway Length Requirements for Airport Design
150/5335-5D	Standardized Method of Reporting Airport Pavement Strength - PCR
150/5340-1M, Change 1	Standards for Airport Markings
150/5340-5D	Segmented Circle Airport Marker System
150/5340-18G, Change 1	Standards for Airport Sign Systems
150/5340-26C	Maintenance of Airport Visual Aid Facilities
150/5340-30J	Design and Installation Details for Airport Visual Aids
150/5345-3G	Specification for L-821, Panels for the Control of Airport Lighting
150/5345-5B	Specifications for Airport Lighting Circuit Selector Switch
150/5345-7F	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits
150/5345-10H	Specification for Constant Current Regulators and Regulator Monitors
150/5345-12F	Specification for Airport and Heliport Beacons

NUMBER	TITLE
150/5345-13B	Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits
150/5345-26E	FAA Specification For L-823 Plug and Receptacle, Cable Connectors
150/5345-27F	FAA Specification for Wind Cone Assemblies
150/5345-28H	Precision Approach Path Indicator (PAPI) Systems
150/5345-39E	Specification for L-853, Runway and Taxiway Retroreflective Markers
150/5345-42J	Specification for Airport Light Bases, Transformer Housings, Junction Boxes, and Accessories
150/5345-43J	Specification for Obstruction Lighting Equipment
150/5345-44K	Specification for Runway and Taxiway Signs
150/5345-45C	Low-Impact Resistant (LIR) Structures
150/5345-46E	Specification for Runway and Taxiway Light Fixtures
150/5345-47C	Specification for Series to Series Isolation Transformers for Airport Lighting Systems
150/5345-49D	Specification L-854, Radio Control Equipment
150/5345-50B	Specification for Portable Runway and Taxiway Lights
150/5345-51B	Specification for Discharge-Type Flashing Light Equipment
150/5345-52A	Generic Visual Glideslope Indicators (GVGI)
150/5345-53D	Airport Lighting Equipment Certification Program
150/5345-54B	Specification for L-884, Power and Control Unit for Land and Hold Short Lighting Systems
150/5345-55A	Specification for L-893, Lighted Visual Aid to Indicate Temporary Runway Closure
150/5345-56B	Specification for L-890 Airport Lighting Control and Monitoring System (ALCMS)
150/5360-12F	Airport Signing and Graphics
150/5360-13A	Airport Terminal Planning
150/5360-14A	Access to Airports By Individuals With Disabilities
150/5370-2G	Operational Safety on Airports During Construction

NUMBER	TITLE
150/5370-10H	Standard Specifications for Construction of Airports
150/5370-11B	Use of Nondestructive Testing in the Evaluation of Airport Pavements
150/5370-13A	Off-Peak Construction of Airport Pavements Using Hot-Mix Asphalt
150/5370-15B	Airside Applications for Artificial Turf
150/5370-16	Rapid Construction of Rigid (Portland Cement Concrete) Airfield Pavements
150/5370-17	Airside Use of Heated Pavement Systems
150/5380-6C	Guidelines and Procedures for Maintenance of Airport Pavements
150/5380-7B	Airport Pavement Management Program
150/5380-9	Guidelines and Procedures for Measuring Airfield Pavement Roughness
150/5390-2C	Heliport Design
150/5395-1B	Seaplane Bases

THE FOLLOWING ADDITIONAL ADVISORY CIRCULARS APPLY TO AIP AND BIL PROJECTS ONLY

NUMBER	TITLE
150/5100-14E, Change 1	Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects
150/5100-17, Changes 1 - 7	Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects
150/5100-21	State Block Grant Program
150/5370-12B	Quality Management for Federally Funded Airport Construction Projects