

**JOINT USE AGREEMENT  
AT  
SAN ANTONIO INTERNATIONAL AIRPORT**

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## **Article 1. PERTINENT INFORMATION**

**City:** City of San Antonio

**City's Address:** 9800 Airport Boulevard (Attention: Director, Aviation Department), San Antonio, Texas 78216

**Joint User:** City Public Service Board of San Antonio ("CPS Energy")

**Joint User's Address:** 500 McCullough, San Antonio TX, 78205

**Term:** This Agreement shall commence upon execution by both parties and continue for a term of thirty (30) years subject to rights of termination set out in this agreement.

**Premises:** Said Premises being more particularly described and shown by **Exhibit A** attached hereto and incorporated herein.

**Scope of Permission:** The joint use and benefit of the Premises, including limited and coordinated ingress and egress over adjacent land controlled by the Aviation Department for the purpose of installation, construction, reconstruction, inspection, maintenance, repair and replacement of underground electrical lines, facilities, and appurtenances directly related thereto ("Electric Facilities and Appurtenances"). The aforementioned Electrical Facilities and Appurtenances are intended to accommodate a major airport expansion at San Antonio International Airport and shall increase the total load capacity to 40 MW with 40 MW redundant capacity with the ability to expand in the future. This Scope of Permissions for Phase 2 of the work to accommodate the airport expansion is limited to the work ("Work Package") set out in **Exhibit B**.

## Article 2. PERMISSION

2.1 City acknowledges that Joint User's activities, if within the Scope of Permission and conforming to the terms and conditions of this Joint Use Agreement ("Agreement"), do not currently unreasonably interfere with the operations of San Antonio International Airport ("SAT") which remains the dominant use of the Premises ("Permission"). The Permission is non-exclusive and limited to the stated Term. This instrument does not create an easement, but only a license defined by the terms of this instrument.

2.2 Joint User shall place the Electric Facilities and Appurtenances in the locations set out in **Exhibit A, Premises**.

2.3 This Permission does not exempt Joint User from rules of general applicability that govern activities within the Scope of Permission or from getting permits required generally for activities Joint User will be conducting within the Scope of Permission.

## Article 3. RESTRICTIONS ON USE

3.1. This Permission does not grant Joint User authority to use any area beyond the Premises.

3.2. Joint User acknowledges and agrees that SAT's operations are primary to any uses and licenses created pursuant to this Agreement. In the event that SAT requires the removal or relocation of the Electrical Facilities and Appurtenances for its operations, expansion or reconfiguration, Joint User agrees, at its sole cost, to remove, replace and or relocate the Electric Facilities and Appurtenances within 6 months of receipt of a written request from the Aviation Director.

3.3. This Permission grants only a privilege to use the Premises. City conveys no real property interest. City may enter and use the Premises at any time for any purpose not unreasonably interfering with the permitted use.

3.4. Upon completion of the work comprising the Work Package set out in **Exhibit B**, which is the subject of the Agreement, Joint User will submit copies of the "as-built" drawings of the Electric Facilities and Appurtenances installed within the Premises which shall be attached hereto as **Exhibit C**.

## Article 4. CONSTRUCTION, MAINTENANCE, AND OPERATIONS

4.1. Costs. Joint User shall provide services to procure the engineering firm and construction contractor, as well as, all necessary equipment, required to perform all work set out in **Exhibit B** at Joint Users expense. City shall reimburse Joint User for all actual costs incurred by Joint User, without markup of any kind, for the construction, installation, equipment, and engineering required to fully complete the scope of work set out in **Exhibit B**, up to the not to exceed amount of **two million five hundred thousand and 00/100 U.S. dollars (\$2,500,000.00)**. Any costs in excess of the aforementioned sum shall be the sole responsibility of Joint User unless otherwise agreed to by the Parties in writing. Upon completion of the construction, Joint User shall be responsible for the operation and maintenance of the property placed by Joint User in the Premises (hereafter "Joint User's Responsibilities"), at Joint User's sole cost.

4.2. No Liability. City assumes no liability or expense under this instrument. City is not liable to Joint User or otherwise for damage to the Premises or any property placed within the Premises arising from or related to activities of City in the vicinity.

4.3. Installation and Maintenance. All Electric Facilities and Appurtenances must be installed in the location set out in **Exhibit A**. As the location for the Electric Facilities and Appurtenances to be constructed pursuant to a particular Work Package set out in **Exhibit B** are established, **Exhibit A** may be amended to include those Premises, without further City Council action. Joint User must maintain all improvements constructed or installed by Joint User. In so doing, Joint User must adhere to all applicable safety standards and must adhere to all federal, state, or local laws, rules, or regulations. Without limiting the foregoing, Joint User must assure that nothing it does causes the Premises to fail to comply with any aspect of the Unified Development Code or to negatively impact SAT operations or any activities and uses related thereto.

4.4. Joint User must coordinate with the Aviation Department and receive written approval from the Aviation Director or designee for any and all work to be performed within the Premises excepting emergency maintenance and repairs. Joint User shall inform the Aviation Director or designee of any emergency maintenance and repair performed within two business days of such work having been initiated.

4.5. No Power to Bind. Joint User cannot bind or permit another to bind City for payment of money or for any other obligation.

4.6. Contractors and Subcontractors. Joint User must promptly pay anyone who could file a mechanics' or materialmen's lien on the Premises. If any such lien is filed, City may treat it as an event of default and terminate this Permission by delivering 10 days prior written notice to Joint User. Joint User remains obligated to clear the lien without cost to City even after termination.

4.7. Restoration. Upon completion of any work within the Premises, Joint User shall promptly restore the Premises and any improvements located within the Premises or impacted by Joint User's work to their original or better condition, as determined solely by the Aviation Director. The foregoing duty to restore includes, but is not limited to, irrigation systems, pavements, fencing and structures. Additionally, Joint User shall restore the original contours and vegetation disturbed by the burial of any Electrical Facilities and Appurtenances to a condition substantially equivalent to their pre-existing condition, substantial equivalence to be determined by City. If an area has a natural appearance, Joint User must restore that natural appearance unless City otherwise agrees in writing. City's determination of natural appearance controls.

4.8. City Capital Improvements/Projects. In the event that any City planned capital improvement or operations project at SAT conflict or interfere with Joint User's Electric Facilities and Appurtenances, City shall provide Joint User written notice of such conflict or interference at least sixty (60) days prior to commencing such capital improvement or operations project. If reasonably feasible, as determined solely by City, City may provide Joint User with an alternate location to install its Electric Facilities and Appurtenances. The Parties will administratively amend this Agreement to reflect such new Premises and Joint User may then relocate its Electric Facilities and Appurtenances at Joint User's sole cost. If City determines that no reasonable alternate

location for placement of the Electric Facilities and Appurtenances is available, the City may terminate this Agreement in accordance with **Article 7**.

4.9. **Traffic Control.** For all construction Joint User preforms on Premises, Joint User shall be responsible for traffic control at Joint User's sole cost. Prior to commencing any construction on Premises that will impact traffic, Joint User shall submit and obtain City's written approval of a traffic control plan.

## **Article 5. INSURANCE**

To the extent permitted by law, Joint User shall maintain and provide evidence of its current insurance program that provides a fully funded self-insured and self-administered Auto Liability program with its General Liability and Workers' Compensation Program being a funded self-insured and self-administered program with Board approved excess coverage.

## **Article 6. INDEMNITY**

6.1. For so long as Joint User is part of the City, **Joint User and the Owner acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, et. seq, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. Joint User and Owner shall each promptly notify the other in writing of any claims or demands that become known against them in relation to or arising out of activities under this Contract.**

6.2. If Joint User ceases to be part of the City or if this agreement is assigned to another, Joint User or its assignee must indemnify as provided in this article.

6.3. These definitions apply to the indemnity provisions of this Contract:

6.3.1. "Indemnified Claims" mean all loss, cost, liability, or expense, including attorneys' fees and court costs, directly or indirectly arising out of the acts or omissions of any person other than Indemnitees. Indemnified Claims include those arising from property damage and from personal or bodily injury, including death.

6.3.2. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

6.3.3. "Indemnitor" means Joint User.

6.4. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims

6.5. If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor

must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.

6.6. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.

6.7. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

6.8. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

6.9. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

6.10. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

6.11. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

## **Article 7. TERMINATION**

7.1. In the event that City, in its sole discretion, determines that Joint User's Permissive Use conflicts or interferes with City's use of the Premises as an airport or Aviation Department project, the initiation of an Aviation Department capital or operations project, or a Federal Aviation Administration requirement or directive, City may terminate this Permission at any time before expiration by giving Joint User 60 days prior written notice.

7.2. Joint User may terminate this License at any time by abandoning its use of the Premises and delivering notice to City.

7.3. Upon expiration or termination, all rights and privileges cease, and Joint User must promptly cease use of the Premises. Joint User shall be responsible for all costs of (A) removing existing facilities permitted by this agreement, (B) acquiring a new location for the facilities (C) installing replacement facilities in the new location, and (D) restoring the Premises in accordance with **Article 4.7**.

7.4. Improvements or appurtenances not removed within 90 days after termination of the Permission, whether by expiration or otherwise, become the property of City. City may, without liability to Joint User, dispose of such property at a public or private sale, without notice to Joint User.

#### **Article 8. ASSIGNMENT**

This Permission cannot be assigned by Joint User except to a certificated utility provider succeeding to Joint User's electrical utilities in the area in which the Premises are located. Such assignment shall require prior written approval by the Aviation Director.

#### **Article 9. SUBORDINATION OF RIGHTS**

This Agreement shall be subject and subordinate to the provisions and requirements of any existing or future agreement between the City and the United States government, applicable and relating to the development, operation, or maintenance of the Airport or the financing thereof, to include the assurances made by Airport by the acceptance of federal funds (Grant Assurances). In the event that this Agreement, either on its own terms or by any other reason, conflicts with or violates such Grant Assurances, the City has the right to amend, alter, or otherwise modify the terms of this Agreement solely as required to resolve such conflict or violation.

#### **Article 10. TAXES**

City is a governmental entity and does not expect to pay taxes. Joint User is responsible for any taxes arising from its use of the Premises under this agreement. In no case will City ever be responsible for any taxes, local, state, or federal assessed against Joint User.

#### **Article 11. DISPUTE RESOLUTION**

11.1. As a condition precedent to bringing any action arising out of or relating to this agreement or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

11.2. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.



11.3. Mediation must be conducted in San Antonio, Bexar County, Texas.

11.4. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

11.5. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

11.6. Mediator fees shall be borne equally.

11.7. The parties need not mediate before going to court to seek emergency injunctive relief.

## **Article 12. AIRPORT SECURITY.**

12.1. Joint User must adhere to, and require its Subcontractors to abide by, all present and future applicable safety and security standards and must adhere to all federal, state or local laws, rules or regulations to include policies and regulations set by the Airport, City, Transportation Security Administration ("TSA") and Federal Aviation Administration ("FAA").

To the extent Joint User will be responsible for work which necessitates entrance to the Air Operations Area or other secure area of the Airport, this Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("Airport Security Act"), the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations promulgated under it.

12.2. All Joint User personnel, to include any subcontractors of Joint User, performing work in the Security Identification Display Areas (SIDA), Secured Areas, Sterile Areas or the Airport Operations Area must have a valid San Antonio International Airport identification badge ("SAT ID Badge") or be under an airport approved escort by a person having a SAT ID Badge with the white "E" (escort endorsement) on the badge. If the person is disqualified from receiving a SAT ID Badge during the badge application process, or becomes disqualified after receiving a SAT ID Badge, the individual can no longer be present anywhere within the SIDA, Secured Area, Sterile area and/or the project areas.

12.3. If driving is involved, the person must have a valid SAT ID Badge and the appropriate airfield driver's license to operate a vehicle in the SIDA and/or the project site. If a vehicle escort is required, each SAT ID Badge holder with the white "E" on his badge (and the appropriate airfield driver's license) may escort up to two (2) vehicles if there is only one unbadged person in each vehicle being escorted.

12.4. All vehicles operating in the SIDA or the project area must have the appropriate airport approved company signage on the vehicle. The signage must meet the following requirements: Company name must be in at least six inch (6") tall lettering and/or the company logo must be at least twelve inches (12") tall. The signage must be placed on both vertical sides of any self propelled, motorized vehicle at all times while within the SIDA or the project site.

12.5. Joint User may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Joint User acknowledges that all such knowledge and information is of a highly confidential nature and will use its best efforts in protecting such information from disclosure. Joint User acknowledges and agrees that Joint User shall be solely responsible for and shall reimburse City for any fines, costs and/or expenses incurred by City resulting directly or indirectly from the breach of Joint User's covenants and agreements as set forth in this article.

### **Article 13. MISCELLANEOUS PROVISIONS**

13.1. Relationship Limited. This instrument creates only the relationship of City and Joint User. The parties are not principal and agent, partners, joint venturers, or participants in any common enterprise.

13.2. Governing Law. This Agreement shall be governed by Texas law and shall be construed, endorsed, and strictly subject to any existing applicable municipal ordinances, City Code, City Charter, and any existing applicable federal or state laws, county ordinances, and regulations, to include FAA and TSA regulations. Joint User agrees to comply with said existing federal and state laws, and City and county ordinances, and regulations, prior to the exercise of such rights or activities herein transferred.

13.3. Venue. This Agreement is performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

13.4. Nondiscrimination. Joint User 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, 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.

13.5. Consent/Approval of City. As to any matter hereunder in which City's consent is required, the consent may be granted by the Aviation Director, City of San Antonio, as designee of the City Manager, without council action, unless the City Charter requires City Council action.

13.6. Severability. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

13.7. Successors. This Permission inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

13.8. Integration. This written permission represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no oral agreements between the parties.

13.9. Modification. This Permission may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or

implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

13.10. Third Party Beneficiaries. This Permission is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

13.11. Notices. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

13.12. Captions. Paragraph captions in this Permission are for ease of reference only and do not affect the interpretation hereof.

13.13. Counterparts. This Permission may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Permission, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

13.14. Further Assurances. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. But no such additional document(s) may alter the rights or obligations of the parties as contained in this Permission.

#### **Article 14. PUBLIC INFORMATION**

Joint User acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

*Signatures to follow*

In Witness Whereof, the parties have caused their representatives to set their hands.

**City:**

**City of San Antonio**, a Texas municipal corporation

By: \_\_\_\_\_  
Jesus H. Saenz, Jr., IAP  
Director of Airports

**Joint User:**

**City Public Service Board of San Antonio**

By: **Bissell, Jacob S.** \_\_\_\_\_  
Jacob Bissell  
Sr. Director Customer Design & Delivery

Digitally signed by  
Bissell, Jacob S.  
Date: 2024.10.30  
19:03:45 -05'00'

Date: \_\_\_\_\_

Date: Oct 30, 2024 \_\_\_\_\_

**Approved As To Form:**

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**PREMISES**

*Exhibit forthcoming.*

*To be inserted upon mutual agreement of Premises by both parties.*

**EXHIBIT B**  
**ELECTRICAL FACILITIES AND APPURTENANCES**  
**INSTALLATION AND CONSTRUCTION WORK PACKAGE**

[illegible]

**EXHIBIT C**  
**“AS-BUILT” DRAWINGS OF ELECTRIC FACILITIES AND APPURTENANCES**



## **EXHIBIT D**

### **FEDERALLY REQUIRED CONTRACT PROVISION**

*These Required Federal Contract 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/](https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/). If there is a conflict between this exhibit and the FAA Provisions, the FAA Provisions control.*

As used in this Exhibit, the term “contractor” or “Contractor” shall refer to Joint User entering into this Agreement with the City. Joint User shall include the provisions set out in this exhibit in every subcontract, including procurements of materials and leases of equipment, entered into pursuant to this Agreement, unless exempt by Federal regulations and directives issued pursuant thereto.

#### **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.

#### **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.*).

### **Nondiscrimination Requirements/Title VI Clauses for Compliance**

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.

### **Prohibition of Segregated Facilities**

1. 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.

2. "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.
3. The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.