

**MASTER SERVICES AGREEMENT
BETWEEN
THE RALEIGH-DURHAM AIRPORT AUTHORITY
AND**

THIS AGREEMENT, made and entered into this ___ day of _____, 2023, by and between the RALEIGH-DURHAM AIRPORT AUTHORITY, a public body chartered by the General Assembly of North Carolina under Chapter 168 of the 1939 Session Public-Local Laws, as amended, whose address is 1000 Trade Drive, Post Office Box 80001, RDU Airport, North Carolina 27623, (the “**Authority**”), and _____, a corporation authorized and existing under the laws of _____, whose address is _____ (the “**Consultant**”).

WITNESSETH:

WHEREAS, from time to time, the Authority seeks assistance with demonstrated experience planning and developing airport concession programs to provide planning services and recommendations to support development of the Authority’s overall concessions program;

WHEREAS, the Authority desires to obtain the services of the Consultant as the Service Provider working collaboratively with Authority’s Concessions Management (the “**Services**”) as further described herein;

WHEREAS, the Authority desires to engage Consultant in a non-exclusive agreement with Consultant governing tasks to be performed by Consultant in connection with the Services;

WHEREAS, the Authority, in its sole discretion, shall assign to Consultant tasks to perform in connection with the Services, and enter into separate task orders with Consultant for each such task; and

WHEREAS, the Consultant has represented to the Authority that it is experienced, qualified, and capable of providing such services in a competent and professional manner.

NOW, THEREFORE, the Authority and the Consultant, for and in consideration of the mutual covenants and agreements hereinafter set forth, do hereby agree as follows:

I. SCOPE OF SERVICES; TERM

(a) Scope. Consultant agrees that it will perform certain Services in the scope of services attached hereto as Exhibit A and incorporated herein by reference (the “**Scope of Services**”) and as further set out in one or more task orders to be issued by the Authority and accepted by Consultant (each, a “**Task Order**”). The Authority shall have sole discretion as to which tasks to assign to Consultant. Each Task Order shall authorize the Consultant to proceed with the specific Services set out in that Task Order. For every Task Order, such Services shall include the creation of electronic and hard-copy file documents to meet the Authority’s standards and requirements. The Consultant shall diligently perform all work assignments in an economical, expeditious, and professional manner.

(b) Term. The term of this Agreement is for three (3) years beginning _____, 2023 through _____, 2026 (the “**Term**”), unless either party terminates the Agreement in accord with the provisions of **Article XI**. The Authority in its sole discretion may extend the Agreement for two (2) additional one-year periods, for a potential maximum term not to exceed five (5) years. The Authority will provide any such renewal notice in writing at least thirty (30) days prior to expiration of the Agreement.

II. COMPENSATION AND PAYMENTS

Subject to the limitations set forth in this Agreement, the Authority shall compensate and make payments to the Consultant as specified and described in each Task

Order. The form of Task Order is identified as **Exhibit B** attached to this Agreement and includes other relevant requirements for the performance of the assigned task services and deliverables. Notwithstanding the above, the Authority will pay Consultant for Services rendered by its personnel for this Agreement, including all Task Orders issued hereunder, and as enumerated in **Exhibit C** attached hereto and by this reference incorporated herein.

(a) Time and Manner of Payment. The Authority shall make payment of fees and expenses to the Consultant in U. S. Dollars based on terms of Net 30 days from the date the invoice is received by RDU's Accounts Payable department of each undisputed properly compiled and correct invoice approved for payment by the Authority. Regardless of how else delivered, Consultant shall e-mail a copy of each invoice to RDUPayables@rdu.com. If payments become past due, the Consultant may, upon ten (10) days written notice to the Authority, suspend and withhold work only as to the specific Task Order for which payment is past due, and only until such time as payment is made. Invoices shall be submitted to the Authority at monthly intervals within ten (10) days following the first day of each calendar month, covering the Services performed for the prior month. Each invoice shall include certified time records detailing all hourly charges and any allowable expenses, and any other documentation that may be requested by the Authority to fully support the invoice. Credit for previous payments on account by the Authority shall be specified in each invoice. The Authority may provide an invoice form to the Consultant for use in the payment process.

(b) Final Payment. On the next regular billing date following completion or other termination of any Task Order assigned to Consultant under this Agreement, Consultant shall submit its itemized invoice as provided in **Article II(a)**. Said itemized invoice shall state that it is the Consultant's final invoice and shall state the total amount which the Consultant claims to be due under the Task Order. The Consultant's acceptance of payment

pursuant to such final invoice shall constitute a full release of the Authority for any and all payments due or claimed to be due to the Consultant under the Task Order.

(c) Disputed Invoices. In the event that the Authority disputes the Consultant's invoice(s) and documentation, or any portion thereof:

- (1) the Authority will identify the disputed items and pay any undisputed items pursuant to **Article II(a)** above;
- (2) the Consultant shall continue to perform the remaining Services set out in all open Task Orders (including the Task Order in connection with the disputed invoice) and to meet the requirements of this Agreement, even in the absence of an agreement regarding the disputed items;
- (3) the parties may reserve all rights related to the disputed items;
- (4) the parties shall negotiate the disputed items in good faith;
- (5) at any time during said negotiations, either of the parties may refer the matter to a mediator certified by the North Carolina Dispute Resolution Commission and agreed upon by the parties; and
- (6) any disputed item that is not resolved during negotiations and/or mediation may be referred by either party to the Wake County Superior Court for resolution, which shall have exclusive jurisdiction.

(d) Recoupment. In addition to any right or set off or recoupment provided by law, the Authority may exercise any and all rights of set off or to recoup from any amounts due to Consultant and its affiliates and subsidiaries from the Authority.

- (e) (1) Payment for invoices submitted by the Consultant shall be rendered electronically through an Automated Clearing House (ACH) unless payment by paper check is expressly requested by the Consultant. Consultant shall execute such forms and/or documents that the Authority

may require. Consultant authorizes payments from the Authority to be deposited to the financial institution and account designated by Consultant.

(2) If any outstanding check from the Authority to the Contractor has not cleared the bank account on which it was drawn and it has been 90 days or more since the issuance of the check, the check will become void due to the Authority's set stale date. If the Contractor contacts the Authority, the Authority will reissue the check.

(3) If the outstanding check has not cleared the bank account on which it was drawn and it has been a year or longer since the issuance of the check, the Authority will submit the funds to the North Carolina Department of State Treasurer pursuant to Article 4 - North Carolina Unclaimed Property Act, N.C.G.S. § 116B-59-1. At this time, the Contractor will need to contact the state for payment.

III. EXPANSION OF SCOPE OF SERVICES

The Consultant shall not be entitled to either compensation or reimbursement of expenses on account of any work or services under this Agreement except the Services that are specifically authorized in accordance with the terms of a Task Order, as specified in the Task Order. All Consultant charges or expenses not meeting the requirements of this Agreement or the relevant Task Order shall be the sole responsibility of Consultant, and shall not be invoiced to or paid by the Authority, unless prior to commencement of any additional Services:

- (1) Consultant shall have submitted to the Authority a written statement of cost with respect to the proposed additional Services in the form required by the Authority;

- (2) Consultant shall provide documentation independent of its own assertions as justification for such cost increases;
- (3) the Authority shall have conducted a reasonable investigation of Consultant's proposal for additional costs. During any such investigation, the Authority shall have the right to audit/review all books and records related to the Agreement. The Authority, through the use of its own personnel or a consultant, shall have access during reasonable business hours to such of Consultant's records as are necessary to verify the accuracy of the request and justification submitted in subsection (1) and (2) and other Contractor costs and expenses incurred in connection with the Agreement;
- (4) the parties negotiate to a mutually agreed upon increase in additional Services or costs permitted and payment(s) due to the Consultant (Note: the Authority may elect to accept none, all, or to change the Scope of Services, or any portion thereof); and
- (5) the Authority has provided written approval and instructions to Consultant to undertake such additional Services or to charge the Authority such proposed cost increases.

In no event shall the Consultant alter the Scope of Services without the Authority's prior written approval.

IV. MAXIMUM PAYMENT AND ADJUSTMENTS TO MAXIMUM PAYMENT

(a) The maximum fee and reimbursable expense payments by the Authority to the Consultant shall be established under each Task Order assigned to Consultant hereunder. The Authority's actual payment to Consultant under each Task Order shall be as specified therein. The total actual payment to the Consultant under each Task Order may be less than the maximum payments specified in said Task Order.

(b) If assignments authorized by the Authority pursuant to a particular Task Order would result in the maximum fee and/or reimbursable expense payments due to the Consultant exceeding the maximum payments specified in that Task Order, the Consultant shall immediately notify the Authority's Contract Administrator and shall curtail additional work or services under that Task Order until such time as the amount of the maximum payment(s) is increased sufficiently by written agreement between the parties in order to complete the task assignments. Alternatively, upon receiving such notice from the Consultant, the Authority may direct the Consultant to forgo completing the task assignments. The termination provisions of **Article XI** will apply with respect to any tasks terminated hereunder.

V. RECORDS REQUIRED FOR GOVERNMENTAL FUNDING

To the extent applicable, records to be furnished by Consultant to assist or enable the Authority to obtain governmental funding for any specific task assigned to Consultant hereunder will be provided to the Authority upon request.

VI. OWNERSHIP AND MANAGEMENT OF WORK PRODUCT

(a) **Definitions.** For the purposes of this Agreement, the following terms shall have the following meanings:

(1) **“Work Product”** means all Information the Consultant or its subcontractors prepare or obtain in performing any Services hereunder, or which relates to such Services, except: (i) Information that was in the public domain prior to the execution of this Agreement; (ii) Information that becomes part of the public domain without any breach of this Agreement; and (iii) Information in Consultant's lawful possession prior to the execution of this Agreement.

(2) “**Authority Information**” means any Information the Authority provides to the Consultant in any form, including in electronic form.

(3) “**Information**” means any information of whatever nature and by whatever means recorded, whether or not claimed to be subject to copyright, including without limitation the following: written memoranda, notes, records, interoffice communications, telegrams, letters, correspondence, reports, minutes, diaries, books, manuscripts, sound recordings, microfilm, computer printouts, drawings or other graphical representations, pictorial reproductions, documents available from electronic data storage equipment, summaries or records of personal conversations, invoices, specifications, spreadsheets, budgets, financial models, forecasts, photocopies, pictures and all other papers and writings, including drafts, originals, and copies.

(4) “**Third Party**” means any person or entity other than the Authority, the Consultant, or the Consultant’s authorized subcontractors and includes without limitation any governmental unit, insurance carrier, private enterprise, or individual.

(b) **Ownership and Management of Authority Information.** All Authority Information is and remains the property of the Authority and is provided to Consultant for the sole purpose of the Consultant providing its Services hereunder. Consultant shall not use Authority Information for any purpose except in providing its Services hereunder. Consultant may format and/or convert the data electronically as necessary in order to perform work assignments at its office. Consultant is responsible for reformatting and/or re-conversion of the data to its original condition as necessary.

(c) **Ownership of Work Product.** All Work Product produced or authored by Consultant in the course of performing its Services hereunder, together with any associated copyrights, are works made for hire and are the exclusive property of the Authority. To the extent that any writings or works of authorship may not, by operation of law, be works made for hire, this Agreement shall constitute an irrevocable assignment by Consultant to

the Authority of the ownership of, and all rights of copyright in, such items, and the Authority shall have the right to obtain and hold in its own name, rights of copyright, copyright registrations, and similar protections that may be available in the works. Consultant shall give the Authority all assistance reasonably required to perfect such rights.

(d) **Confidentiality.** Consultant shall treat all Authority Information and Work Product as confidential information of the Authority and shall not disclose or make the same available to any Third Party without the Authority's prior written consent. If Consultant becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, investigation, demand, order, or similar process or otherwise) to disclose any Authority Information or Work Product to any Third Party, then before such disclosure is made, Consultant shall notify the Authority of the disclosure demand or obligation, consult with the Authority on the advisability of taking steps to resist or narrow such demand or obligation, and cooperate with the Authority in any attempt to obtain a protective order or other appropriate remedy or assurance that the Authority Information or Work Product will be afforded confidential treatment. If such protective order or other appropriate remedy is not obtained, the Consultant shall disclose only that portion of the Authority Information or Work Product that Consultant's legal counsel specifies in writing is actually subject to the disclosure obligation.

(e) **Conclusion of Services.** The Consultant shall return all Authority Information and provide copies of all Work Product associated with any Task Order to the Authority at the conclusion of the Services authorized pursuant to that Task Order. The Consultant shall retain all original Work Product for at least three (3) years after the date this Agreement expires or is terminated. Consultant shall submit all original Work Product to the Authority if the Authority makes a written request to Consultant that Consultant provide the original Work Product. Prior to destroying or disposing of any Work Product, Consultant shall notify the Authority in writing of its intent to do so and shall give the Authority a reasonable

time within which to take custody of said Work Product. Within such reasonable time, Consultant shall furnish those materials to the Authority without charge.

(f) **No Commercial Use.** The Consultant shall not make any commercial use of any Work Product.

(g) **Enforcement.** In addition to any other remedies to which the Authority may be entitled at law or in equity, the Authority may enforce the provisions of this **Article VI** in an action for equitable relief, including without limitation temporary and permanent injunctions (or their functional equivalents) and/or specific performance of this Article.

VII. INSURANCE

The Consultant, and any and all of its subcontractors, shall carry and maintain during the life of this Agreement the following insurance with the minimum limits indicated, unless this requirement is waived by the Authority in writing, signed by the President and CEO:

REQUIRED INSURANCE	MINIMUM LIMITS
Workers' Compensation (State, Federal, and Employer's Liability)	\$1,000,000 / \$1,000,000 / \$1,000,000 bodily injury by accident or disease
Commercial General Liability and Property Damage	\$1 million per occurrence \$2 million aggregate
Commercial Automobile Liability	\$1 million combined single limit
Professional Liability (for protection from claims arising out of performance of professional services caused by negligent error, omission, or act for which the insured is legally liable)	\$2 million per occurrence
Umbrella Excess Liability	Airside Operations - \$5 million Landside Operations - \$1 million
Cyber Liability Insurance	\$1 million per occurrence \$5 million aggregate

The Authority shall be designated as an additional insured on all policies except Professional Liability and Worker's Compensation. Unless the Authority waives this requirement in writing, signed by the President and CEO, prior to commencing any

Services pursuant to this Agreement, Consultant shall provide the Authority with endorsements and certificates of insurance, acceptable to the Authority, evidencing the above coverages. Said insurance policies, endorsements, and certificates shall name and list the Authority as an additional named insured and shall be endorsed with or contain the following cancellation clause: “Should any of the policies described herein be canceled prior to the expiration date thereof, the insurer affording coverage shall mail, 30 days in advance, written notice to the certificate holder named herein.” All policies will contain a waiver of subrogation in favor of the Authority. Liability policies shall be primary and non-contributory. At least sixty days prior to the expiration of any policy as stated on the certificates of insurance provided, Consultant shall provide a certificate indicating that the policy has been renewed or replaced effective no later than the original expiration date thereof. If replaced, the certificate will be accompanied by the required endorsements as well. Upon the Authority’s request, Consultant shall provide complete copies of all insurance policies for the Authority’s review.

Consultant shall keep in place the insurance coverages required under this Agreement for at least three years following the conclusion of Services under this Agreement.

VIII. TAXES

All sales and use taxes applicable to the Consultant's Services for the Authority shall be paid by the Consultant, unless otherwise provided by Task Order or required by applicable law.

IX. MINORITY AND WOMEN-OWNED SMALL BUSINESS PROGRAM

(a) It is the policy of the Authority that minority and women-owned small businesses (“**MWSB**”) have the maximum opportunity to participate in the provision of professional, technical and non-technical services to the Authority and it awards services contracts without regard to race, religion, color, creed, national origin, gender, age or

handicapping condition. The Authority's services contracts are subject to the requirements of North Carolina law and this Contract will be governed in accord therewith.

(b) The Authority has assigned a __ percent (xx%) Minority-owned small business goal, and a ____ percent (xx%) Women-owned small business goal, for each Task Order assigned to the Consultant hereunder, and a _____ percent (xx%) aggregate MWSB participation goal for the entire period covered by the Agreement or any renewals thereof pursuant to **Article I** hereof. Such participation can be included in any portion of the Consultant's scope of Services. MWSB Goals for MWSB participation on this contract represent the total dollars that will be spent with MWSBs as a percentage of the total contract amount, including all Task Orders.

(c) The Consultant has a continuing obligation to meet the MWSB utilization to which it committed at contract award, inclusive of change orders, amendments, and modifications. Prior to the award of each Task Order, the Consultant must present to the Authority certification of MWSB participation in the scope of Services described in each Task Order in a form acceptable to the Authority. If the Consultant informs the Authority that it will be unable to meet the MWSB participation goal on any Task Order, the Authority reserves the right to request the Consultant to document its good faith efforts to meet such participation goal. The Authority reserves the right to decline to award any Task Order to the Consultant if it determines, in its sole discretion, that the Consultant has failed to make a good faith effort to secure MWSB participation for any Task Order at a percentage equal to or greater than the goal stated above.

(d) If the Consultant proposes to terminate or substitute a MWSB after submitting a Task Order, the Consultant must make good faith efforts to find a substitute MWSB for the original MWSB to meet its MWSB commitment. The Consultant must give the MWSB notice in writing, with a copy to the Authority, of its intent to request to terminate and/or

substitute, and the detailed reasons for the request. All substitutions shall be coordinated with and approved by the Airport Authority prior to being made.

(e) After award of a Task Order to the Consultant hereunder, the Consultant must establish and maintain records and submit, with each application for payment, a report, in a form approved by the Authority, which identifies participation by MWSB subcontractors as part of the Services for which the Consultant seeks payment. The report shall include a certification by an appropriate official of the Consultant regarding payment to each MWSB participant for the prior period's work.

X. DISPUTE RESOLUTION

(a) In the event of any dispute between Consultant and the Authority arising out of or related to this Agreement, each agrees to use its best efforts to resolve the dispute informally, and by delivering written notice to the other party containing a summary of the disputed issue. Within five (5) business days of receiving such notice, the receiving party shall deliver to the other party its own written notice containing its own summary of the disputed issue. Each party shall designate a knowledgeable, responsible representative with authority to resolve the dispute to meet and negotiate in good faith. This meeting shall occur at the Authority's office within ten (10) business days after the first written notice of dispute is delivered.

(b) At any time during said negotiations, either of the parties may refer the matter to a mediator certified by the North Carolina Dispute Resolution Commission and agreed upon by the parties. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in a mutually-agreed upon location in Wake County, North Carolina. Any agreement reached in mediation shall be memorialized in writing by the parties and shall be enforceable as a settlement agreement in any court having jurisdiction thereof.

(c) Any disputed item that is not resolved during negotiations and/or mediation may be referred by either party to the Wake County Superior Court for resolution, which shall have exclusive jurisdiction.

(d) These provisions shall be incorporated by reference into Consultant's contracts with any subcontractors. All such parties consent and agree to participate and be bound in this dispute resolution process insofar as claims may be made against them. During mediation or court proceedings, the Consultant shall proceed diligently with the performance of its Services under this Agreement.

(e) The dispute-resolution procedures set forth in this **Article X** shall be the exclusive remedies available to the parties to this Agreement.

XI. TERMINATION

(a) The Authority may terminate this Agreement, or any separate Task Order assigned to Consultant hereunder, at any time for any reason upon written notice to the Consultant, which notice shall be effective upon the later of the date stated therein or the date the notice is received by the Consultant. Consultant shall perform no additional work after receiving the notice. In the event of such termination, the Consultant's charges to the Authority shall be limited to the charges for the Services theretofore satisfactorily rendered and expenses theretofore incurred or committed. Consultant may terminate this Agreement only upon prior written request to and receipt of written permission from the Authority.

(b) For ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement or any Task Order, Consultant shall assist the Authority, upon written request, in extracting and/or transitioning all Work Product in the format determined by the Authority ("**Transition Period**"). During the Transition

Period, unless instructed by the Authority otherwise in writing, Services shall continue to be made available to the Authority as provided in the Agreement and each open Task Order.

(c) In the event of termination of this Agreement, cessation of business by the Consultant or other event preventing Consultant from continuing to provide the Services, Consultant shall not withhold Authority Work Product or refuse for any reason, to promptly return to the Authority any Authority Information (including copies thereof) if requested to do so on such media as reasonably requested by the Authority, even if the Authority is then or is alleged to be in breach of the Agreement. As a part of Consultant's obligation to provide the Authority's Work Product and Information pursuant to this **Article XI**, Consultant will also provide the Authority any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the Authority to use, translate, interpret, extract and convert the Authority's Work Product and Information. Upon the termination or expiration of this Agreement, Consultant shall promptly: (1) return to the Authority all Authority-owned property, equipment, or materials in Consultant's possession or control; (2) remove any Consultant-owned property, equipment, or materials located on Authority premises; and (3) on a pro rata basis, repay all fees and expenses paid in advance for any Services that have not been provided.

(d) When requested by the Authority, the Consultant shall permanently destroy or render inaccessible any portion of the Work Product or Information in Consultant's and/or any of its subcontractor's possession or control following the completion and expiration of all obligations in this section. Within thirty (30) days, Consultant shall issue a written statement to the Authority confirming the destruction or inaccessibility of the Authority's Work Product or Information.

(e) The Authority may purchase additional Transition services as may be agreed upon in writing.

XII. ASSIGNMENT

Neither the rights nor the obligations of either party arising under this Agreement shall be transferred or assigned without the prior written consent of the other party.

XIII. SUCCESSORS AND ASSIGNS

All covenants and agreements in this Agreement by or on behalf of either of the parties hereto shall bind the successors and assigns of such party and shall inure to the benefit of the successors and assigns of the other party.

XIV. CONSTRUCTION OF AGREEMENT

In the event of any conflict between the terms of this Agreement and the terms of any document attached hereto and incorporated herein by reference, this Agreement shall control and the conflicting provision of the attachment shall, to the extent of the conflict, be null and void. In the event of any conflict between the terms of this Agreement and the terms of any Task Order issued hereunder, the terms of this Agreement shall control unless the Task Order specifically states that the terms of the Task Order will control. The headings contained in this Agreement are for reference only and shall not affect the rights or obligations of either of the parties hereunder. The term “**Authority**” shall mean and include the Authority and its Board, officers, employees and agents, and the term “**Consultant**” shall mean and include the Consultant, its employees and authorized agents.

XV. GOVERNING LAW AND VENUE

This Agreement and the duties, responsibilities, obligations and rights of the respective parties hereunder shall be governed by the laws of the State of North Carolina. Venue for any action brought under the terms and conditions of this Agreement will be Wake County, North Carolina. In addition, the Federal Aviation Authority requires the Authority and its vendors, suppliers, contractors and consultants to comply with certain contracting requirements. Those relevant additional provisions are contained in **Exhibit D** which by this reference is hereby incorporated herein.

XVI. INDEPENDENT CONTRACTOR

(a) In the performance of this Agreement, it is agreed by and between the parties hereto that the Consultant shall be acting as an independent contractor and not as an agent or employee of the Authority. Consultant shall have no authority (and shall not hold itself out as having authority) to bind the Authority and shall not make any agreements or representations on the Authority's behalf without the Authority's prior written consent.

(b) The Consultant shall be solely responsible for, and have control over the means, methods, techniques, sequences and procedures for the service to be performed and for coordinating all portions of the Services unless the Authority gives specific instructions concerning these matters. The Consultant is solely responsible for all hiring and management responsibilities for its agents, employees and independent contractors, including but not limited to recruiting, interviewing, selecting, setting the terms and conditions of employment, disciplining and terminating. The Consultant shall enforce strict discipline and good order among its agents, employees and independent contractors, and shall ensure their compliance with all applicable work rules. Neither the Consultant's agents, employees or independent contractors, nor its subcontractors and/or their agents, employees or independent contractors shall, by reason of their assignment to work on the

Services to be performed by the Consultant shall become or be deemed to be employees, agents, or independent contractors of the Authority. The Consultant shall at all times have the right to perform work for other individuals and/or entities as long as it fulfills its obligations to the Authority under the terms of this Agreement, and as long as such services do not conflict with its obligations under this Agreement or create a conflict of interest with the Authority.

(c) The Consultant acknowledges and agrees that it is exclusively responsible and liable for withholding, reporting and forwarding to the appropriate authority all applicable withholdings and payments required by law with respect to any compensation received by its agents, employees or independent contractors, including but not limited to applicable state and federal income taxes, state and federal unemployment taxes, FICA, workers compensation, and any other taxes measured upon the payroll of, or required to be withheld from, its employees, agents or independent contractors, and the Consultant shall indemnify the Authority and its officers, directors, agents and employees and defend and hold them harmless from and against all claims, damages and losses relating to any obligation imposed by law to pay or withhold any such amounts in connection with compensation received by the Consultant or its employees, agents or independent contractors pursuant to this Agreement.

(d) None of the Consultant's agents, employees or independent contractors shall be eligible for or entitled to participate in any of the Authority's employee benefit plans, programs, policies or practices which may now or in the future be in effect, including, without limitation, any pension, retirement, or 401(k) plan; any profit sharing, stock option, bonus or incentive compensation plan; workers compensation benefits; any life or health insurance plan; any vacation or holiday pay plan; or any separation payment plan. The Consultant shall defend, indemnify, and hold harmless the Authority and its officers, directors, agents and employees from and against any and all claims, damages, losses,

penalties, fines, costs and expenses, including attorneys' fees, arising out of or resulting from any claim, proceeding or decision claiming that an agent, employee or independent contractor of the Consultant is eligible for or entitled to any such employee benefit or compensation or payment from the Authority.

(e) Consultant shall identify all of its strategic business partners who will be involved in any Services provided under this Agreement, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with Consultant. Consultant shall require all subcontractors to comply with **Sections III through VII, IX, XI, XV, XVII, and XX** by insertion of these or similar clauses into each respective related subcontract and purchase order relating to the Services. It is specifically understood, however, that the Authority has no contractual relationship with any subcontractor of Consultant and it shall remain the Consultant's financial and contractual responsibility to resolve all issues with its subcontractors.

XVII. COMPLIANCE WITH APPLICABLE LAWS

(a) The Consultant shall comply with all applicable federal, state and local laws, codes and regulations, including the ordinances, rules, policies, bulletins, notices, directives and regulations of the Authority, the Transportation Security Administration, and the U.S. Customs and Border Protection Service as amended from time to time. Nothing in this Agreement shall be construed to conflict with any applicable Federal, state or local law, code or regulation, including the ordinances, rules, policies, bulletins, notices, directives and regulations of the Authority, the Transportation Security Administration, and the U.S. Customs and Border Protection Service as amended from time to time.

(b) **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Consultant warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the Authority for the purpose

of obtaining any contract or award issued by the Authority. Subsequent discovery by the Authority of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements with Consultant and potential debarment of the Consultant as permitted by applicable law.

XVIII. OTHER CONDITIONS

(a) The Authority's Contract Administrator for this Agreement shall be _____, or as otherwise designated in writing by the Authority. All communication with the Authority regarding this Agreement shall be through the Authority's Contract Administrator.

(b) Task Orders to the Consultant from the Authority may be authorized only by the President and Chief Executive Officer of the Authority. The scope of Services associated with each Task Order will be provided in writing from the individual making such request. The Authority shall provide adequate information and data to the Consultant in order that the Consultant can complete the assignment. The parties shall execute a separate Task Order for each assignment given to Consultant hereunder.

(c) _____ shall be the Consultant's representative for Services provided through this Agreement and provide and/or manage all the Services to be provided by the Consultant through this Agreement. Consultant acknowledges that the Services performed pursuant to this Agreement are personal in nature and that performance by the above-named representative serves as part of the legal consideration for this Agreement. Consultant will make all reasonable efforts not to replace or substitute the above-named representative during the term of this Agreement except upon advance written notice to the Authority. Said notice to the Authority shall state the reason(s) for the proposed replacement or substitution and shall specify the

qualifications, including education, training, and experience, of the proposed replacement or substitute.

(d) The Consultant shall not employ any person or firm as a subcontractor during the Term of this Agreement except upon advance written notice to and receipt of approval from the Authority. Said notice to the Authority shall specify the Services to be provided to the Consultant by the proposed subcontractor and the qualifications and experience of the proposed subcontractor and its personnel to be employed in the project. Consultant acknowledges and agrees that all such subcontractors shall be duly licensed, experienced, and qualified for the Services to be provided by the subcontractor.

(e) The Authority shall have the right to audit the Consultant's accounting, operational and business records as necessary to verify compliance with all applicable laws, regulations, orders, ordinances, codes, notices, requirements and standards, and correction of violations of the same. Consultant will permit the Authority-designated representatives to examine, at a reasonable time and during normal business hours, all records, data, information and Work Product, to the extent of a non-confidential and non-proprietary nature, that the Authority may reasonably require in order to confirm that the Services provided by Consultant are (i) being conducted in conformance with this Agreement and the applicable Task Order and (ii) in compliance with applicable laws and regulations. If any audit conducted pursuant to this paragraph reveals that the Consultant has breached its obligations under applicable law, this Agreement, or the applicable Task Order, the Authority may conduct follow-up audits to ensure that any such breach has been cured.

(f) Consultant certifies that, as of the date written above, it, and all subcontractors, are not on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. §143-6A-4. Consultant shall not utilize in the performance of this Agreement any subcontractor that is identified on the Final Divestment List.

XIX. PROFESSIONAL SERVICES AND INDEMNITY

(a) During the Term, Consultant warrants that its Services will be diligently performed in compliance with all applicable financial accounting, audit, or other standards, in compliance with all laws and Authority rules and regulations, in a workmanlike manner, in accordance with the scope of services provided in each Task Order, and consistently with the professional skill and care ordinarily provided by contractors under the same or similar circumstances. Consultant states that it has, and shall maintain in effect, all licenses, professional and financial-industry certificates, permissions, authorizations, consents, and permits it needs to carry out its obligations under this Agreement. All goods, equipment, and similar tangible items provided hereunder will be in full conformity with all specifications and other descriptions provided, fit for their particular purpose, and will be merchantable and of good quality material and workmanship, free from defects. This warranty shall be in addition to any warranties of broader scope and services warranties and guarantees given the Authority by Consultant. Products or Services required to be corrected or replaced shall be subject to this warranty and a new warranty period to the same extent as products and Services originally delivered under this Agreement.

(b) To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the Authority, its officers, directors, agents and employees, from and against all claims, damages, losses, liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting in any way from this Agreement or Consultant's performance hereunder, to the extent such arise out of or result from any breach of the Agreement by Consultant or its subcontractors, employees, or agents, or from any error, omission, negligence, or wrongful act of the Consultant or its subcontractors, employees, or agents. Notwithstanding the foregoing nor any term to the contrary, Consultant's indemnification obligations shall not extend to any action or inaction of Consultant or

Consultant personnel taken at the express direction of the Authority, including its directors, employees, personnel, agents for representatives.

XX. FORCE MAJEURE

(a) A party hereto shall have no liability to the other hereunder due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, natural disaster, regulation or governmental acts, fire, civil disturbance, or extreme weather (a “**Force Majeure Event**”). Notwithstanding anything to the contrary herein, the Authority may terminate this Agreement in its entirety and without penalty if a Force Majeure Event continues for more than ten (10) consecutive days and prevents or delays Consultant from delivering the Scope of Services.

(b) Any and all payments by the Authority are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Authority for the purposes set forth in this Agreement. If this Agreement or any purchase order issued hereunder is funded in whole or in part by federal funds, the Authority’s performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or purchase order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement *is expressly contingent upon* the appropriation, allocation, and availability of funds in each such subsequent fiscal year for the purposes set forth in the Agreement. If funds to effect payment are not available, the Authority will provide written notification to Provider. If the Agreement is terminated under this paragraph, Provider agrees to terminate any Services supplied to the Authority under this Agreement, and relieve the Authority of any further obligation thereof. The Authority shall remit payment for Services performed and accepted on or prior to the date of the aforesaid notice in conformance with the payment terms.

XXI. SURVIVAL

Any right or obligation of either party to this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement. Such rights and obligations include but are not limited to those set forth in **Articles V, VI, VII, X, XII, XIII, XV, XVI, XVII, XVIII and XIX.**

XXII. NOTICES

All notices, requests, consents, claims, demands, waivers and other communications under this Agreement must be in writing and addressed to the other party at its address set forth in the opening paragraph (or to such other address that such party may designate from time to time by giving notice to the other party). Unless otherwise agreed herein, all notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective if (i) actually received by the intended recipient or (ii) if the party giving the notice has complied with the requirements of this **Article XXII.**

FOR THE AUTHORITY:

Michael J. Landguth, President & CEO
P.O. Box 80001
1000 Trade Drive
RDU Airport, NC 27623

With a copy to:

Erin Locklear, General Counsel

FOR THE CONSULTANT:

With a Copy to:

XXIII. WAIVER

No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any right, remedy, power, or privilege.

XXIV. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or PDF signature on this Agreement shall for all purposes be the equivalent to, and shall have the same force and effect as, an original signature.

XXV. ENTIRE AGREEMENT

This Agreement, including the Authority’s Request for Proposals (“RFP”) No. 554-2023-12-DSP, Consultant’s submitted proposal and all addenda thereto; and all attachments hereto and Task Orders issued hereunder, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written, between the parties hereto with respect to such subject matter. This Agreement may be modified or amended by a Task Order assigned the Consultant hereunder or otherwise only by written agreement between the Consultant and the Authority.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

AGREEMENT BETWEEN THE RALEIGH-DURHAM AIRPORT AUTHORITY AND

IN WITNESS WHEREOF, the parties, by and through their authorized agents, have hereunto set their hands as of the day and year first above written.

RALEIGH-DURHAM AIRPORT AUTHORITY

BY: _____

DATE: _____

NAME: MICHAEL J. LANDGUTH, A.A.E.

TITLE: PRESIDENT & CEO

BY: _____

DATE: _____

NAME: _____

TITLE: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Chief Financial Officer

Approved as to form:

General Counsel

**EXHIBIT A
SCOPE OF SERVICES**

Inserted as per submitted Proposal

END OF EXHIBIT A

EXHIBIT B

TASK ORDER NO. XX – _____

_____ agrees to perform and complete the following services, in accordance with the terms and conditions of the Master Services Agreement with the Raleigh-Durham Airport Authority, Raleigh, North Carolina (dated XXXXXX), all of which terms and conditions are incorporated herein by reference:

Project Description: Written description of the project.

Scope of Basic Services: Insert details (See Attachment A - Scope of Work for Basic Services).

Authority Task Manager/Coordinator: Insert Name here

Consultant Project Manager: Insert Name here

Basic Services Compensation: Insert details (See Attachment B – Consultant Basic Services Compensation)

Reimbursable Expense Compensation: Insert details (See Attachment B – Consultant Expenses Compensation)

Other Considerations (if applicable)

RALEIGH-DURHAM AIRPORT AUTHORITY

BY: _____

DATE: _____

NAME: MICHAEL J. LANDGUTH, A.A.E.

TITLE: PRESIDENT & CEO

BY: _____

DATE: _____

NAME: _____

TITLE: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Chief Financial Officer

Approved as to form:

General Counsel

END OF EXHIBIT B

EXHIBIT C
COMPENSATION FOR SERVICES

This Exhibit describes Consultant's Rates for Services as to be set forth in executed Task Orders. Rates shall not be exceeded except by prior written agreement of the Authority pursuant to the terms of the Agreement.

END OF EXHIBIT C

EXHIBIT D

REQUIRED FEDERAL AVIATION AUTHORITY CONTRACT PROVISIONS

A3. BREACH OF CONTRACT

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

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

The duties and obligations imposed by the Agreement 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.

A5. CIVIL RIGHTS - GENERAL

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

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

A6. CIVIL RIGHTS – TITLE VI ASSURANCE

- A6.3 Solicitation Clause

1. NOTE – CONTRACTOR must also include provisions in its subcontracts

Title VI Solicitation Notice:

The Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair

opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

- A6.4.1 Clauses for Compliance with Nondiscrimination Requirements – Must include in: Compliance with Nondiscrimination Requirements:

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

a. Compliance with Regulations: 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 Agreement.

b. Nondiscrimination: Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

c. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by 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 Contractor of the contractor’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

d. Information and Reports: 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 Authority 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, 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.

e. Sanctions for Noncompliance: In the event of a Contractor’s noncompliance with the non- discrimination provisions of this Agreement, the Authority 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 Contractor under the Agreement until Contractor

complies; and/or

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

- f. Incorporation of Provisions: 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. Contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

- A6.4.5 List of Pertinent Nondiscrimination Acts and Authorities –

Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs

or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

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

A7. CLEAN AIR AND WATER POLLUTION CONTROL

CLEAN AIR AND WATER POLLUTION CONTROL

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

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

A8. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

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 \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Authority 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.

A11. DEBARMENT AND SUSPENSION

AWARDED VENDOR REQUIRED PUT INTO ALL 2 CFR PART 180 "COVERED CONTRACTS,"

- “Covered Transactions” mean any AIP-funded contract, regardless of tier, awarded by a contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000. Includes contract with land acquisition projects.

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

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

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

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

DEBARMENT AND SUSPENSION CERTIFICATE

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

A13. DISTRACTED DRIVING

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 Authority encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include

the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

A14. ENERGY CONSERVATION REQUIREMENTS

ENERGY CONSERVATION REQUIREMENTS

Contractor and Subcontractor 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 6201et seq).

A15. DRUG FREE WORKPLACE REQUIREMENTS

A16. EQUAL EMPLOYMENT OPPORTUNITY (EEO) REQUIREMENTS

EQUAL EMPLOYMENT OPPORTUNITY (EEO) REQUIREMENTS

EQUAL OPPORTUNITY CLAUSE

- During the performance of this Agreement, Contractor agrees as follows:
 - (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
 - (3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

A19. PROHIBITION OF SEGREGATED FACILITIES (FLOWS DOWN TO SUBCONTRACTS)

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 Agreement.

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

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

A18. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

CERTIFICATION REGARDING LOBBYING

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

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

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.

A20. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. 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.

A21. PROCUREMENT OF RECOVERED MATERIALS

PROCUREMENT OF RECOVERED MATERIALS

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

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
- 2) 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.

A25. TERMINATION OF CONTRACT

- Termination for Convenience -, Professional Service

TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)

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

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

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

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

- Termination for Default –

TERMINATION FOR DEFAULT (PROFESSIONAL SERVICES)

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

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

a) Termination by Owner: The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:

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

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

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

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause. If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

b) Termination by Consultant: The Consultant may terminate this Agreement in whole or in part, if the Owner:

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

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

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

END OF EXHIBIT D