

(a) The Authority will pay the Seller for the Equipment in the maximum amount of _____ Dollars (\$ _____), and as further described in **Exhibit B** attached hereto and by this reference incorporated herein.

(b) The Authority may provide an invoice form to the Seller for use in the payment process. Each invoice shall detail each fee, subject to the limitations described herein. Any applicable duties and sales, use, excise, value-added, and/or similar taxes will be separately identified. Each invoice shall be accompanied by such documentation as may be requested by the Authority to fully support the claims for payment made. If applicable, each invoice shall include a record of payments to Minority and Women-Owned Small Businesses (“MWSB”), as applicable. Credit for previous payments on account by the Authority shall be recognized on the invoice. Unless freight or other charges are itemized, the Authority may take any offered discount on the full amount of the invoice. Any items that are disputed by the Authority will be so identified by the Authority. The Authority shall pay the undisputed amount certified by the Seller based on terms of Net 30 days from the date of invoice receipt by the Authority’s Accounts Payable department (please e-mail a copy of the invoice to RDUPayables@rdu.com).

(c) In the event that the Authority disputes the Seller’s invoice(s) and documentation, or any portion thereof:

- (1) the Authority will identify the disputed items and pay any undisputed items pursuant to **Section II(b)**;
- (2) the Seller shall continue to perform 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) The Seller's final invoice shall be so identified, shall state the total amount which the Seller claims to be due, and shall reflect that the Seller will have received full compensation for all Equipment pursuant to this Agreement upon payment of such invoice by the Authority. Said final invoice shall be submitted by the Seller to the Authority within thirty (30) days after the date the Equipment is provided by Seller to the Authority. The Seller's acceptance of payment pursuant to such final invoice shall constitute a full release of the Authority for any and all claims and payments due or claimed to be due by the Seller under this Agreement. The maximum payment and/or the maximum fees detailed in **Section II(a)** are subject to adjustment under **Section IV** for any expansions or reductions in the scope of work authorized by the Authority pursuant to **Section III**. Under no circumstances will the Authority provide any payments to the Seller in excess of the maximum payment as detailed herein except as provided in **Section II**.

(e) Seller certifies that the prices herein are not higher than the regular market price or prices being charged to other government organizations purchasing identical goods on any similar or smaller quantities at this particular time and do not discriminate against the Authority.

(f) Buyer will not be liable for any charges for transportation, delivery, packing, boxing, crating, or storage, unless specifically agreed to herein.

(g) 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 Seller and its affiliates and subsidiaries from the Authority.

(h) (1) If any outstanding check from the Authority to the Seller 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 Seller contacts the Authority, the Authority will reissue the check.

(2) 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 Seller will need to contact the state for payment.

III. CHANGES

(a) The Authority may, at any time, change the Equipment specifications, methods of delivery, place or time of delivery, quantities, or other aspects of the order to meet its needs. In the event that such a change would reduce or increase the payment(s) due the Seller as detailed in **Section II**, the Authority shall notify the Seller in writing and request that the Seller submit to the Authority within ten (10) business days of receipt of said notice a written statement setting forth the amount of the reduction or increase in cost the Seller believes is associated with such change, supported by such documentation related thereto as may be requested by the Authority. The Authority shall notify the Seller in writing of its approval or rejection of such statement, or any part thereof, within ten (10) business days following receipt of said statement. In the event that the Authority rejects the Seller's statement of cost, the parties may negotiate the resulting reduction or increase in the payment(s) due to the Seller in good faith.

(b) In no event shall Seller increase quoted prices or change Equipment specifications or other details of the order other than as set forth in **Exhibit A** without the Authority's written consent. Prior to any consent:

- (1) Seller shall have submit a written statement of cost with respect to the proposed additions or changes in the form required by the Authority;
- (2) Seller shall provide documentation independent of its own assertions as justification for such cost increases;
- (3) the Authority shall have conducted a reasonable investigation of Seller'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; and
- (4) the parties shall negotiate to a mutually agreed upon additions or changes or costs permitted and payment(s) due to the Seller (Note: the Authority may elect to accept none, all, or to change the request, or any portion thereof).

IV. RESERVED

V. OWNERSHIP AND MANAGEMENT OF WORK PRODUCT

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

(1) **“Information”** means any writing or other source of recorded 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, correspondence, reports, drawings or other graphical representations, pictorial reproductions, documents available from electronic data storage equipment, invoices, specifications, spreadsheets, budgets, financial models, forecasts, photocopies, pictures and all other papers and writings, including drafts, originals, and copies.

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

(3) **“Work Product”** means all Information the Seller prepares or obtains in connection with the Equipment hereunder, 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 Seller’s lawful possession prior to the execution of this Agreement.

(b) **Ownership and Management of Authority Information.** All Authority Information is and remains the property of the Authority and is provided to Seller for the sole purpose of the Seller providing the Equipment hereunder. Seller shall not use Authority Information for any purpose except in providing the Equipment hereunder.

(c) **Ownership of Work Product.** All Work Product produced or authored by Seller in the course of assembling the Equipment 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 Seller 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.

(d) The Seller shall treat all Work Product and Authority Information as confidential information and shall not disclose or make same available to any third party without the Authority's prior written consent. If the Seller 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, Seller shall notify the Authority of the disclosure demand or obligation, consult with the Authority on the advisability of taking steps to 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 shall be afforded confidential treatment. If such protective order or other appropriate remedy is not obtained, the Seller shall disclose only that portion of the Authority Information or Work Product which Seller's legal counsel specifies in writing actually is subject to the disclosure obligation.

(e) The Seller shall return any Authority Information or Work Product to the Authority if the Authority makes a written request to the Seller.

(f) Prior to destroying or disposing of any Authority Information or Work Product upon the termination of the three (3) year period referenced in **Section V(e)**, the Seller shall notify the Authority of its intent to do so and shall give the Authority a reasonable time within which to take custody of said Authority Information or Work Product. Within such reasonable time, the Seller shall furnish those materials to the Authority without charge except for the reasonable cost of transporting and delivering the materials.

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

VI. WARRANTIES; DELIVERY; INSPECTION; LIENS

(a) Seller warrants that any work shall be performed with promptness and diligence.

For a period of twelve (12) months after the delivery and acceptance of the Equipment,
Equipment Purchase Agreement Page 6 of 24
between RDU Airport Authority and (insert company name) (01/2023 version)

Seller warrants that 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. The Authority shall be entitled to all rights and remedies provided by the Uniform Commercial Code, Chapter 25 of the NC General Statutes, for breach of express warranties and implied warranties. Seller has, and will maintain in effect, all professional licenses, certificates, permissions, authorizations, consents, and permits it needs to carry out its obligations under this Agreement. These warranties shall be in addition to any warranties of broader scope and services warranties and guarantees given the Authority by Seller. Equipment required to be corrected or replaced shall be subject to this warranty and a new warranty period to the same extent as Equipment originally delivered under this Agreement. Neither review nor approval of the Seller's work by the Authority shall in any way limit or remove the Seller's liability therefore.

(b) Time and rate of delivery are of the essence, except when delay is due to causes beyond the Seller's reasonable control and without Seller's fault or negligence. Risk of loss or damage to the Equipment prior to the time of their acceptance by the Authority is upon the Seller. All shipments are U.S. F.O.B. Destination for domestic shipping or Incoterms DDP for international shipments.

(c) Acceptance shall be after inspection and testing, or no later than 30 days after delivery, whichever is sooner. Testing will include having purchased materials perform acceptably to Buyer under Buyer's normal usage. Payment should not be construed as acceptance, and signature of Buyer's receiving agent at time of delivery should not be construed as acceptance of merchandise or of any terms that conflict with this Purchase Order. All material which is discovered to be defective or which does not conform to any warranty or specifications of the Seller upon initial inspection, or at any later time if the defects contained in the material were not reasonably ascertainable upon the initial inspection, may be returned to the Seller for full credit or replacement at the election of the Authority. All transportation charges on rejected materials, both to and from the original destination, shall be at the expense of Seller. No goods returned as defective shall be replaced without the Authority's written authorization.

(d) Upon request of the Authority, Seller shall furnish the Authority with written proof of payment of all costs of labor, material and other charges that entered into the cost of

work performed by Seller, including its agents and contractors, which proof shall be in the form of waiver of lien or right of lien, and Seller hereby waives and relinquishes all liens and claims statutory or otherwise, which Seller now has or may hereafter have arising hereunder.

VII. TERMINATION

(a) The Authority may by written notice of default to Seller (a) terminate the whole or any part of this Agreement in any one of the following circumstances: (1) if Seller fails to make shipment of the Equipment or fails to perform within the time specified herein or any extension thereof; or (2) if Seller fails to comply with the other terms and conditions of this Agreement, and (b) procure upon such terms as the Authority shall deem appropriate, Equipment substantially similar to those so terminated, in which case Seller shall continue performance of this Agreement to the extent not terminated and shall be liable to Authority for any excess costs for such similar Equipment and any expenses incurred in connection therewith.

(b) In addition to all of the other rights which the Authority may have to cancel this Agreement, the Authority may terminate this Agreement in whole or in part at any time prior to delivery and acceptance for any reason upon written notice to the Seller. If the termination is not due to Seller's breach of its obligations: (a) the Authority will pay the order price for all Equipment completed in accordance with this Agreement prior to the date of termination unless said Equipment is part of Seller's standard commercial product; and (b) the Authority will pay an equitable proportion of the order price for Equipment in process and for all materials acquired for the purpose of fulfilling this order which Seller is unable to cancel, return or otherwise use in its operations. The Authority will not be liable to Seller for any costs for completed Equipment, goods in process or materials acquired or contracted for if such costs were incurred prior to the date of this Order. Cancellation charges shall be subject to Authority audit.

VIII. RESERVED

IX. COMPLIANCE WITH APPLICABLE LAWS

(a) The Seller 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:** Seller 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 Seller and potential debarment of the Seller as permitted by applicable law.

(c) The Authority shall have the right to audit the Seller'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. Seller will permit the Authority-designated representatives to examine, at a reasonable time and during normal business hours, all records, data, information and Work Product that the Authority may reasonably require in order to confirm that the services provided by Seller are (i) being conducted in conformance with this Agreement and (ii) in compliance with applicable laws and regulations. If any audit conducted pursuant to this paragraph reveals that the Seller has breached its obligations under applicable law, this Agreement, the Authority may conduct follow-up audits to ensure that any such breach has been cured.

(d) Seller 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. Seller shall not utilize in the performance of this Agreement any subcontractor that is identified on the Final Divestment List.

X. RIGHTS AND REMEDIES

The Authority's rights and remedies as set forth herein shall be in addition to any other right or remedy now and hereafter provided by law or in equity. All rights and remedies shall be cumulative and not exclusive of each other. No delay by the Authority in exercising a right or remedy shall constitute acquiescence thereof.

XI. 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 Seller from delivering the Equipment.

(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 Seller. If the Agreement is terminated under this paragraph, Seller 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.

XII. OTHER CONDITIONS

(a) The Seller's Contract Manager shall be _____. The Seller shall not replace or substitute for the Contract Manager during the Term except upon written notice to and receipt of written approval of the Authority. Said notice to the Authority shall state the reason(s) for the proposed replacement or substitution.

(b) The Authority's Contract Administrator shall be Desiree Milioni . The Seller shall communicate and coordinate all matters related to this Agreement through and with Desiree Milioni or her designee.

(c) Notices required to be given under this Agreement shall be delivered to:

FOR THE AUTHORITY:

Michael J. Landguth, President & CEO
PO Box 80001
1000 Trade Dr.
RDU Airport, NC 27623

With a copy to:

Erin Locklear, General Counsel

FOR THE SELLER:

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XIII. MINORITY AND WOMEN-OWNED SMALL BUSINESS PROGRAM

(a) The Authority has established a Minority and Women-Owned Small Business Program to encourage equal opportunity for MWSBs to compete for employment as Sellers, subcontractors, suppliers and service providers.

1. 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 any change orders and contingency (“**MWSB Goals**”). The Authority has assigned the following MWSB Goals for work assigned to the Seller hereunder: Minority-owned business participation (“**MB Goal**”): 5%.
2. Woman-owned business participation (“**WB Goal**”): 5%.

Such participation can be included in any portion of the Seller’s order. 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.

(b) If the Seller proposes to terminate or substitute a MWSB after submitting a proposal, the Seller must make good faith efforts to find a substitute MWSB for the original MWSB to meet its MWSB commitment. The Seller must give the MWSB notice in writing, with a copy to 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 Authority prior to being made.

(c) The Seller has a continuing obligation to meet the MWSB utilization to which it committed at contract award, inclusive of change orders, amendments, and modifications. The Authority reserves the right to modify any portion of this Agreement (up to and including termination of all of the Agreement) if it determines, in its sole discretion, that the Seller has failed to make a good faith effort to secure MWSB participation at a percentage equal to or greater than the goal stated above.

XIV. TAXES

All sales and use taxes applicable to the Equipment for the Authority shall be paid by the Authority to Seller, as invoiced, and subsequently remitted by Seller to the applicable tax collection agency, unless otherwise agreed upon or required by applicable law. North Carolina Sales and Use tax applies to Authority purchases. The Authority is exempt from Federal Excise Tax under Registry No. 56-70-0047K as provided by Chapter 23 of the Internal Revenue Code.

XV. RECORDS REQUIRED FOR GOVERNMENTAL FUNDING

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

XVI. 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.

XVII. 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.

XVIII. 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. 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 “Seller” shall mean and include the Seller, its employees, suppliers and agents.

XIX. GOVERNING LAW

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. The exclusive venue for any action between the Authority and Seller arising out of or in connection with this Agreement shall be in Wake County, North Carolina. In addition, the Federal Aviation Authority requires the Authority and its vendors, suppliers, Sellers and consultants to comply with certain contracting requirements. Those relevant additional provisions are contained in **Exhibit C** which by this reference is hereby incorporated herein.

XX. 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, IX, X, XV, XIX, and XX**.

XXI. 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.

XXII. 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.

XXIII. ENTIRE AGREEMENT

This Agreement, including all attachments hereto, 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 only by written agreement between the Seller and the Authority.

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IN WITNESS WHEREOF, the parties, by and through their duly authorized agents, have hereunto set their hands and seal(s), all 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

INSERT NAME OF COMPANY

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
DESCRIPTION OF EQUIPMENT

EXHIBIT B

COMPENSATION FOR EQUIPMENT

The attached **Exhibit** describes Seller's payment for Equipment. To the extent it includes expenses, profits, overhead, etc. (collectively, "**Cost Components**"), the Cost Components herein shall not be exceeded except by prior written agreement of the Authority pursuant to the terms of the Agreement.

EXHIBIT C

REQUIRED FEDERAL AVIATION AUTHORITY CONTRACT PROVISIONS

A2. AFFIRMATIVE ACTION REQUIREMENTS

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

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

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

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is North Carolina, Wake County, Raleigh

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

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:

1. **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.

2. **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.

3. **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.

4. **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.

5. **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.

6. **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.

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 LowIncome 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

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

A12. DISADVANTAGED BUSINESS ENTERPRISE

Contract Assurance (§ 26.13)

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

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

Prompt Payment (§26.29) – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [specify number] days from the receipt of each payment the prime contractor receives from [Name of recipient]. The prime contractor agrees further to return retainage payments to each subcontractor within [specify the same number as above] days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the [Name of Recipient]. This clause applies to both DBE and non-DBE subcontractors

A17. FEDERAL FAIR STANDARDS ACT (FEDERAL MINIMUM WAGE) REQUIREMENTS

The Contractor has full responsibility to monitor compliance with the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA). The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

A20. 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 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration

A21. 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 Subcontractor 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-guidelinesconstruction-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

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

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

The Authority agrees to pay Contractor for:

- 1) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- 2) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
- 3) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with subcontractors and suppliers; and
- 4) reasonable and substantiated expenses to the Contractor directly attributable to the Authority's termination action.

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

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

TERMINATION FOR DEFAULT

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract if the Contractor:

1. Fails to commence the Work under the Contract within the time specified in the Notice- to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

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