

**CONSTRUCTION CONTRACT  
FOR  
9/27 VEHICLE SERVICE ROAD REHABILITATION - CONSTRUCTION**

**BY AND BETWEEN  
THE MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY  
AND  
(CONTRACTOR NAME)**

**MSCAA PROJECT NO. 23-1476-10-01**

**THIS CONSTRUCTION CONTRACT** (hereinafter referred to as "Contract") is made and entered into as of \_\_\_\_\_, between MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY, a body politic and corporate under the laws of Tennessee (hereinafter referred to as "**Owner**" or "**Sponsor**") doing business at 2491 Winchester Road, Suite 113, Memphis, Tennessee 38116-3856, and {insert **CONTRACTOR NAME**}, a {insert **LEGAL ENTITY TYPE and STATE**} doing business at {insert Contractor address}, (hereinafter referred to as "**Contractor**"). Owner and Contractor may sometimes be referred to herein individually as "Party" or collectively as "Parties."

**RECITALS**

**WHEREAS**, the Owner desires to have constructed certain work in Memphis, Tennessee, more particularly described as 9/27 Vehicle Service Road Rehabilitation - Construction, MSCAA Project No. 23-1476-10-01 (herein referred to as "the Project"); and

**WHEREAS**, the Contractor desires to enter into this Contract as an independent contractor and is ready, willing and able to construct the Project in accordance with the terms and subject to the conditions of this Contract; and

**WHEREAS**, if applicable, the "Program Manager" is to act as the Owner's representative, and the Owner will advise the Contractor in writing of the name of the Program Manager; and

**WHEREAS**, if applicable, the "Engineer" is the Owner's representative with responsibility for design of the technical specifications, and the Owner will advise the Contractor in writing of the name of the Engineer; and

**NOW, THEREFORE**, in consideration of good and valuable consideration, received or to be received, the sufficiency of which the Parties acknowledge, the Parties agree as follows:

**ARTICLE 1**

**SCOPE OF THE WORK AND TERM OF AGREEMENT**

**Section 1.01. Scope of the Work.** The general scope of the work is more particularly described in Exhibit A, which is attached hereto and incorporated herein by reference. Contractor agrees that the Project shall be constructed in accordance with the terms of this Contract and the "Contract Documents" as defined in Article 2 of this Contract. The term "Work" includes, but is not limited to, all labor, materials, supplies, tools, equipment and services necessary to construct the Project as described in the Contract Documents, whether or not all materials and equipment are incorporated or will be incorporated in the Project; and all Work deemed necessary to fully close the Project including demobilization.

**Section 1.02. Term of Contract and Completion.** The term of this Contract shall commence upon Owner's issuance of the Notice to Proceed pursuant to Section 3.01 and shall continue until the Work is completed in accordance with the Contract Documents, unless earlier terminated by the provisions set forth in Section 23 of this Contract.

## ARTICLE 2

### CONTRACT DOCUMENTS

**Section 2.01. Definition.** The "Contract Documents" form the Contract for the Work. The Contract Documents comprise of:

- (a) This Construction Contract (and all Exhibits referred to herein or attached hereto)
- (b) Addenda (with those of later-date having precedence over those of earlier date)
- (c) Advertisement for Bids/Proposals
- (d) Instructions to Bidders
- (e) Specifications
- (f) Drawings/Plans/Exhibits/Sketches
- (g) Contractor's Bid/Proposal
- (h) Cited standards for materials or testing
- (i) Other written requirements and other documents that may be required to describe and define the Work.

As used in this Contract, a "Modification" to Contract Documents after contract execution is either:

- (a) a written and signed Contract Amendment to this Contract; or
- (b) an accepted Request for Proposal ("RFP"); or
- (c) an Engineer's Supplemental Instruction ("ESI"); or
- (d) a Construction Change Directive (as defined in Section 9.02(c) of this Contract).

**Section 2.02. Intent of Contract Documents.** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are to be considered as one document.

**Section 2.03. Coordination of Contract Documents.** The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. In the event of conflicts or discrepancies among the Contract Documents, all terms of this Construction Contract shall supersede any conflicting terms stated within the Contract Documents.

**Section 2.04. Errors in Contract Documents.** Prior to commencing the Work, the Contractor shall review all of the Contract Documents for the purpose of identifying any error, inconsistency, omission, discrepancy or variance that may be contained therein. If the Contractor finds any error, inconsistency, omission, discrepancy or variance in the Contract Documents, it shall notify the Owner at least ten (10) days before beginning the affected portion of the Work. The Owner shall make any correction, interpretation or clarification promptly, basing its decision on the intent of the Contract Documents. Failure of the Contractor to timely notify the Owner of any such error, inconsistency, discrepancy or variance within the time provided by this paragraph shall bar the Contractor from making any claim for additional time or compensation caused by any such error, inconsistency, discrepancy or variance even if the error, inconsistency, discrepancy or variance caused the Contractor to incur additional expense or time of performance.

## ARTICLE 3

### PROGRESS OF THE WORK

**Section 3.01. Contract Time, Notice to Proceed, and Completion.**

(a) The Contractor shall commence the Work upon receipt of the written Notice to Proceed from the Owner. The Notice to Proceed will state the date on which the Contractor will begin the Work and which date the Work shall be substantially completed. Contractor shall be mobilized and on site ready for work on the date stated in the Notice to Proceed.

(b) The Contractor shall achieve Substantial Completion within **30 Calendar Days** of written Notice to Proceed. Time is of the essence, and the Substantial Completion date may be altered only as provided in this Contract.

(c) "Substantial Completion" shall occur when the Work is sufficiently complete in accordance with the Contract Documents, so the Owner can occupy or utilize the Work for its intended use, and when only minor punch list work remains to be done and a certificate of occupancy has been issued. The Owner will, upon written request of the Contractor, issue a certificate establishing the substantial completion date at any time after substantial completion has occurred. Use or Occupancy prior to all above conditions being met will not constitute substantial completion.

(d) "Final Completion" shall occur when the Work achieves Final Acceptance and is ready for Final Payment as defined in Section 4.08.

(e) The Contractor warrants that it will deliver the Project to the Owner free from any and all mechanics' liens or other encumbrances. Contractor further agrees to promptly (which is defined for purposes of this paragraph as no more than three (3) days from receipt of any lien or other notice) notify the Owner of the existence of any and all mechanics' liens filed by any subcontractors, materialmen, suppliers or sub-subcontractors. If any mechanics' liens are filed, Contractor shall, at its expense, bond off any such mechanics' liens within three (3) days from receipt of a written request of Owner to do so.

**Section 3.02. The Progress Schedule.** The Contractor is required to provide and maintain a Detailed Construction Project throughout the duration of the Work. The Contractor's Detailed Construction Schedule shall represent the Contractor's commitment and intended plan for completion of the Work in compliance with the Contract. The primary objective of the Detailed Construction Schedule is to insure adequate planning and execution of the Work by the Contractor and assist the Owner in evaluating the progress of the Work. See Exhibit G for additional schedule requirements. The Owner reserves the right to reschedule the Work, or the sequence of the activities of the Contractor, for no additional compensation should Owner deem such rescheduling to be in its best interest.

**Section 3.03. Extension of Substantial or Final Completion Date.**

(a) Except as otherwise expressly provided herein, the "Substantial Completion Date" or "Final Completion Date" shall be extended only for such number of calendar days that the Work is actually delayed by a casualty, a fire, or a Contract Amendment (hereinafter referred to as "Excusable Delays"). No extensions to the Substantial Completion Date shall be granted due to the negligence or fault of the Contractor or its subcontractors, non-availability of materials or non-availability of labor. No extension to the Substantial Completion Date shall be granted for the period of time during a delay in the performance of the Work which is caused in part by the Owner, the Program Manager, and in part by the Contractor or one for whom the Contractor is responsible ("Concurrent Delay"). A request for a time extension based upon inclement weather shall be governed by the provisions of 3.03(c).

(b) In order to obtain an extension of the Final Completion Date or the Substantial Completion Date due to an Excusable Delay, the Contractor in each instance shall give written notice to the Owner within seven (7) days after the occurrence of each Excusable Delay. If the Contractor fails to issue written notice to the Owner, its right to an extension, if any, will be deemed waived. The Contractor obligation shall demonstrate and document that delays are specific to the planned work activities or that such activities thus delayed were on Contractor's then-current Progress Schedule's critical path for the Project. The Owner shall render a written decision, which shall be made in good faith, granting or refusing the request of the Contractor for an extension within a reasonable time after receipt of the request for a time extension. If a Contract Amendment is agreed to by the Contractor and Owner, any extension of the Substantial Completion Date caused by the Contract Amendment work must be stated in the Contract Amendment and the Contractor will be barred from later seeking an extension to the Substantial Completion Date or Final Completion Date because of the Contract Amendment work. No extension to the Substantial Completion Date or the Final Completion Date shall be granted due to the aggregate number of Contract Amendments.

(c) A Weather Delay Day may be requested if adverse weather prevents the contractor or subcontractor from working 6-hours (Working Day) for critical path construction activities included in the day's schedule. Weekend days or holidays may only be considered if the Contractor had previously scheduled critical path construction activities on that day. The existence of Weather Delay Days will not relieve the Contractor's obligation to demonstrate and document that delays

caused by abnormal weather are specific to the planned work activities or that such activities thus delayed were on Contractor's then-current Progress Schedule's critical path for the Project.

**Section 3.04. No Damage for Delay.** Contractor agrees to perform the Work and to require the subcontractors to perform the Work in a timely and proper method so as to meet the required substantial completion date. In the event that the Contractor is delayed in the performance of the Work through no fault of the Contractor or its subcontractors, and for causes set forth in Section 3.03(a), and defined therein as Excusable Delay, then the Contractor may seek a time extension in accordance with the provisions of Section 3.03(b). Contractor agrees that such time extension is its sole and exclusive remedy for any damages regardless of the cause of such delays. Contractor also agrees that the Owner shall not be liable for any other monetary damages sustained by Contractor or its subcontractors for acceleration, disruption, inefficiencies, suspension or resequencing of the Work or any other damages related to the progress schedule regardless of the cause of such damages. The Owner shall not be liable for consequential damages of any nature for any reason at any time.

**Section 3.05. Liquidated Damages.** Time is of the essence on this Contract. The Contractor shall achieve Substantial Completion of the Work within the allotted time. Liquidated damages of \$500/day for each day, if conditions of Substantial Completion beyond the contractual established date, including phases, are not met.

## **ARTICLE 4**

### **PAYMENT**

**Section 4.01. Contract Price.** The Owner and Contractor agree that the Contractor shall be paid the amount of **Thousand and 00/100 Dollars (\$000.00)** ("Contract Price"), as set forth in the Contractor's Proposal, for completion of the Work in accordance with the Contract Documents. The Contract Price shall include all profit and overhead, including without limitation field overhead, general conditions and home office overhead of the Contractor. The Contract Price also includes all allowances specified in the Contract Documents.

**Section 4.02. Payment Procedures.** As Work proceeds under the Contract, payments ("Progress Payments") shall be made by the Owner to the Contractor in accordance with the following procedure:

(a) By the 1<sup>st</sup> day of each calendar month during the performance of the Work, the Contractor shall submit to the Owner an Application and Certificate for Payment, based on the Work completed during the previous month ("previous month" being defined for this Section only as the second calendar day of the prior month through the first calendar day of the current month), using a form approved by the Owner. Contractor shall not be paid any amounts exceeding the Contract Price set forth in Section 4.01 of this Contract, unless modified by a properly executed written Contract Amendment in accordance with the provisions of Article 9 of this Contract. If not included in the Contract Documents, the Contractor and Owner will establish unit costs or schedule of values for basis of Progress Payments.

(b) Each Application and Certificate for Payment shall be accompanied by: (1) lien waivers of the Contractor conditioned upon payment by the Owner of the amount sought in the Application; (2) other documentation as may be requested by the Owner for the proper review of the Application and Certificate for Payment; (3) a list of current subcontractors, sub-subcontractors and material suppliers; (4) the Business Diversity Monthly Compliance Reports; and (5) all documents required by the Owner Controlled Insurance Program ("OCIP") Manual, as applicable..

(c) The Owner or Engineer shall promptly review each Application and Certificate for Payment and recommend for approval such amount as is properly due under the Contract Documents.

(d) Payments by the Owner shall be made within thirty (30) days from the date on which an Application and Certificate for Payment has been submitted and approved by the Owner or the next working day if the thirtieth day is a Saturday, Sunday or holiday.

(e) When at least 95% of the work has been completed, no further Progress Payments will be made until Final Payment. See Section 4.08 for Final Payment requirements.

**Section 4.03. Mobilization.** "Mobilization" shall be considered the work which is conducted in preparation for the construction activities, which includes but is not limited to, movement of personnel, equipment, stockpiles, and supplies to

the project site. If not included as a bid item in the proposal form, a Mobilization pay item may be included at the discretion of the Owner at no more than 10% of the Contractor's Bid/Proposal amount. Mobilization, if included in unit costs or schedule of values, will be paid in full with the first pay application.

**Section 4.04. [Section Not Used].**

**Section 4.05. Payment for Material Stored On-Site.**

(a) Payment for the actual unit cost of materials suitably stored on the site of the Work ("Work Site") and intended for incorporation in the Work will be made by the Owner to the Contractor subject to the following conditions:

- (1) The material has been stored or stockpiled in a manner acceptable to the Owner.
- (2) The Contractor has furnished the Owner with satisfactory evidence that the material and transportation costs have been paid.
- (3) The Contractor has furnished the Owner legal title (free of liens or encumbrances of any kind) to the material stored or stockpiled.
- (4) The Contractor has furnished the Owner evidence that the material stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work.
- (5) The materials shall not be stored on the work site for more than ninety (90) calendar days before they are installed without the written consent of the Owner.
- (6) The materials shall be stored on the work site in accordance with applicable recommendations of the manufacturer and the instructions of the Owner.
- (7) A representative of the Owner or Engineer may inspect and inventory any stored materials.

(b) Payment will not be made for materials stored away from the work site without the written consent of Owner. In the event that the Owner consents to payment for materials stored off-site, such payment shall be conditioned upon submission by the Contractor of bills of sale or such other documentation satisfactory to the Owner to establish the title of the Owner to such materials or equipment, and the submission of satisfactory insurance certificates for the stored materials.

(c) Notwithstanding any provision herein to the contrary, if payments are to be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the work site, such payments shall be conditioned upon submission by the Contractor of bills of sale or such other documentation satisfactory to the Owner to establish the title of the Owner to such materials or equipment, and the submission of satisfactory insurance certificates for the stored materials to protect the interest of the Owner.

(d) Regardless of ownership or insurance, the Contractor shall remain the guardian and protector of all materials and equipment stored or incorporated into the Work.

**Section 4.06. Use of Payments.** The Contractor shall use all sums paid to it pursuant to this Contract for the performance of the Work in accordance with the Contract Documents. Upon the request of the Owner, the Contractor shall furnish satisfactory proof of payment, including, but not limited to, partial release of liens and the Small Business Participation Monthly Compliance Report, as to the disposition of any monies paid to the Contractor by the Owner.

**Section 4.07. Payment Not a Waiver.** Neither the approval or making of any payment to the Contractor, nor the partial or entire use or occupancy of the Work by the Owner, shall be deemed an acceptance of any portion of the Work.

**Section 4.08. Final Payment.**

(a) "Final Payment," by the Owner shall constitute a waiver of all claims by the Owner for performance of the Work except for claims of the Owner arising from unsettled liens, incomplete or defective workmanship, defective materials, failure to perform in accordance with the progress schedule, or for the breach of any guarantees of warranties provided or to be provided by the Contractor under this Contract. Acceptance of the Final Payment by the Contractor shall constitute a waiver and release of any and all claims which the Contractor may then have or in the future have against the Owner or the Engineer arising from the Work or this Contract.

(b) Final Acceptance of the Work shall occur only after all Work (including punch list items) provided for in the Contract Documents has been finally completed and accepted in writing by the Owner, and only after the Contractor has provided the Owner with instructions and operating manuals, parts lists, "record" drawings and all other items required by the Contract Documents.

(c) Within thirty (30) days after "Final Acceptance" of the Work, the Final Payment of amounts found properly due under the Contract Documents shall be paid to the Contractor.

(d) Final Payment shall not become due until the Contractor submits to the Owner the following:

- (1) An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied; and
- (2) A consent of surety to Final Payment; and
- (3) Other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Work, to the extent and in such form as may be designated by the Owner or Engineer; and
- (4) Any documents required by Article 6 of this Contract.

(e) The Owner shall issue a "Certificate of Final Completion" when, in its sole discretion, the Project has been completed and all conditions required by this Section 4.07 have been complied with by Contractor.

**Section 4.09. The Right of Owner to Withhold Payment.** The Owner may withhold or, on account of subsequent evidence, nullify, the whole or part of any Progress Payment, including the Final Payment, to such extent as may be necessary to reasonably protect itself from any of the following:

- (a) failure of the Contractor to perform the Work in accordance with the Contract Documents; or
- (b) third-party claims filed or reasonable evidence indicating probable filing of such claims; or
- (c) reasonable doubt that the Work will be substantially completed by the Substantial Completion Date; or
- (d) failure of the Contractor to make payments properly to subcontractors or for equipment, materials, services or labor; or
- (e) reasonable evidence of fraud, over-billing or overpayment; or
- (f) damage to the Owner, or to another contractor, subcontractor or sub-subcontractor caused by the Contractor; or
- (f) failure to provide certified payroll records (if applicable).

## ARTICLE 5

### EQUIPMENT AND MATERIALS

#### **Section 5.01. Materials Provided by Contractor.**

(a) Unless otherwise provided in the Contract Documents, the Contractor shall provide all equipment, materials, labor, services, water, and power to the Work Site, as well as all tools, equipment, lights, transportation, and other facilities necessary for the performance of the Work.

(b) All equipment, machinery, material, and articles incorporated in the Work shall be new and unused unless otherwise specified in the Contract Documents. When not specified in detail in the Contract Documents, the equipment, machinery, material, and articles incorporated in the Work shall be of the most suitable grade and quality for the purpose intended.

#### **Section 5.02. Type of Equipment Used.**

(a) When any equipment, machinery, material, or article is referred to by trade name, make, or catalog number followed by the words "or equal," the reference shall be regarded as establishing the minimum standard of quality and performance required and shall not be construed as limiting competition. The Contractor may, with the prior written approval of the Owner, use other equipment, machinery, materials, or articles which are at least equal in quality and performance to that named in the Contract Documents; provided, however, that in no event shall such approval be construed as a waiver of the right of the Owner to require equipment, machinery, materials, or articles which conform to the standard of quality and performance established by reference to the trade name, make, or catalog number of the equipment, machinery, materials, or articles for which the substitution has been approved. Any cost of redesign and additional expense resulting from the substitution shall be at the sole expense of the Contractor.

(b) The name of the manufacturer, model number, and other identifying information respecting the performance, capacity, nature, and rating of equipment, machinery, materials, and articles proposed in substitution of those specified in the Contract Documents shall be submitted to the Owner in sufficient time to avoid delays in the Work.

#### **Section 5.03. Non-Conforming Materials.**

(a) Equipment, machinery, materials or articles installed or used in the Work which do not comply with the requirements of the Contract Documents, and which have not been previously approved in writing by the Owner shall be installed or used at the risk of the Contractor of subsequent rejection by the Owner.

(b) The Contractor shall be fully and solely responsible for quality control for all equipment, machinery, materials or articles used in the performance of the Work.

**Section 5.04. Owner Furnishing Equipment or Fixtures.** The Owner may directly furnish any and all of the equipment or fixtures required for the Project. In the event the Owner elects to do so, the Contract Price shall be reduced by the amount which was to be charged by Contractor for such equipment or fixtures as set forth and included in the Contract Documents. A Contract Amendment reducing the Contract Price for that item of Work shall be executed by Owner and Contractor to reflect a reduction in the Contract Price for that item of Work and that the Owner is to furnish the equipment or fixtures. The Contractor shall assume responsibility for and be fully responsible for the care, custody, and control of all Owner furnished equipment or fixtures after said equipment or fixtures arrives on the Work Site.

## ARTICLE 6

### RECORD DRAWINGS AND DATA

**Section 6.01. Record Drawings.** A complete set of drawings shall be maintained by the Contractor at the Work Site for the purpose of accurately indicating all record conditions. The drawings shall be kept up-to-date and marked each

day to show all changes and variations and each entry shall be dated and verified as made. At the completion of the Work and prior to Final Payment, a complete set of marked record drawings shall be furnished by the Contractor to the Owner.

**Section 6.02. Operation and Maintenance Data.**

(a) The Contractor shall furnish complete and necessary data for the operation, repair, and maintenance of each operating component of the Work (hereinafter referred to as "the Data"). The Data shall include prints of shop drawings, "as-installed" conditions, sources of equipment and principal materials, specified tests and performance data, repair and maintenance data, lubrication instructions and recommendations, parts lists, and other catalog data or information required to operate and maintain any part of the Work. Care shall be taken to include all pertinent data and to exclude inapplicable or duplicative information.

(b) Prior to Final Payment, a set of Data shall be furnished to the Owner in an electronic PDF format and paper hard copies, when requested.

(c) Installation information for all machinery and equipment also shall be kept on the site of the Work during construction, but used or marked prints or data sheets are not to be used in assembling the final maintenance and operating manuals described in paragraph (b) of this Section 6.02.

(d) Operations and maintenance demonstrations by the manufacturer of all machinery and equipment shall be complete in all respects and shall specify the appropriate and inappropriate uses of the machinery and equipment.

**Section 6.03. Information from Suppliers.** The Contractor shall make it a requirement or condition of purchase from its suppliers of equipment and/or materials: (1) to furnish complete and adequate operating and maintenance data pertaining to their equipment and/or materials; (2) to assign to the Owner any warranty, express or implied, furnished by the manufacturer of the equipment and/or materials; and, (3) to assign to the Owner any customary maintenance or repair service, spare parts supply service, or personnel support service furnished by the manufacturer of the equipment and/or materials. If the terms and conditions of any warranty, maintenance or repair service, spare parts supply service, or personnel support service furnished by manufacturer of the equipment and/or materials are negotiable, they shall be negotiated by the Owner and the manufacturer.

## **ARTICLE 7**

### **SUBCONTRACTS**

**Section 7.01. Definition.**

(a) As used in the Contract Documents, a "subcontractor" is a person or organization that has a contract with the Contractor to perform any portion of the Work or to furnish any equipment, labor or materials to the Project.

(b) As used in the Contract Documents, a "sub-subcontractor" is a person or organization that has a contract with a subcontractor to perform any portion of the Work or to furnish any equipment, labor or materials to the Project.

**Section 7.02. No Contractual Relationship with Owner.** Nothing contained in the Contract Documents or otherwise shall create any contractual relationship between the Owner and any subcontractor or sub-subcontractor, and no subcontract or sub-subcontract shall relieve the Contractor of its responsibilities and obligations should any subcontractor or sub-subcontractor fail to perform its work in a satisfactory manner. The Contractor agrees to be as fully responsible to the Owner for the acts and omissions of its subcontractors and their sub-subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Contractor.

**Section 7.03. Award of Subcontracts.**

(a) Unless the Owner gives its written approval to Contractor, the Contractor shall not enter into a subcontract or purchase order with any entity that is a party in any litigation, arbitration, or other dispute resolution proceeding with the Owner. The Contractor shall request written confirmation from any potential subcontractor or supplier prior to the execution of any subcontract or purchase order that there is no pending litigation, arbitration, or other dispute resolution proceeding



where the Owner and the potential subcontractor or supplier are adverse parties. Such written confirmation shall be sent to the Owner within seven (7) days from the receipt of bids.

(b) If the Owner refuses to accept any subcontractor or material supplier (or sub-subcontractor) or person or organization because of such pending litigation, arbitration, or other dispute resolution proceeding, the Contractor shall submit an acceptable substitute at no additional cost to Owner.

**Section 7.04. Change of Subcontractors.** The Owner may require a change of any subcontractor. The Contract Price shall be adjusted accordingly due to the Owner's requiring a change of any subcontractor, sub-subcontractor, or material supplier previously approved in writing by the Owner, unless the change was required because the subcontractor, sub-subcontractor or material supplier was unable to timely or properly perform its work in accordance with the Contract Documents.

**Section 7.05. No Substitution of Subcontractors.** The Contractor shall not make any substitution for any subcontractor nor allow the substitution of any sub-subcontractor who has been accepted by the Owner, unless the substitution is required and previously approved by the Owner. Acceptable reasons for substitution (other than where required by the Owner) shall be limited to the following:

- (a) Inability of the subcontractor or sub-subcontractor to provide bonds, if required; or
- (b) Failure of the subcontractor or sub-subcontractor to perform according to approved schedules or other provisions of the Contract Documents; or
- (c) Other reasons which would reasonably render the subcontractor or sub-subcontractor unable to perform its work according to the Contract Documents as evidenced in writing by the Contractor.

**Section 7.06. Subcontract Terms.** All portions of the Work performed by a subcontractor or sub-subcontractor shall be pursuant to an appropriate agreement between the Contractor and the subcontractor (and where appropriate between subcontractors and sub-subcontractors) which shall contain provisions that:

- (a) Preserve and protect the rights of the Owner under the Contract Documents, including, but not limited to, the obligation to indemnify the Owner as set forth in Article 21 of this Contract with respect to the portion of the Work to be performed under the subcontract (or sub-subcontract) so that the subcontracting will not prejudice such rights; and
- (b) Require that such Work be performed in accordance with the requirements of the Contract Documents; and
- (c) Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party; and
- (d) Require that all requests for additional compensation, extensions of time or otherwise with respect to subcontracted portions of the Work be submitted to the Contractor (via any subcontractor or sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like requests by the Contractor upon the Owner; and
- (e) Name the Owner as an additional insured under all applicable insurance policies; and
- (f) Require compliance with the Small Business Participation Program requirements, including, but not limited to, the non-discrimination and prompt pay provisions.

**Section 7.07. Subcontractor Relations Requirements.** By appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound by the obligations, terms and conditions of this Contract and the Contract Documents, and to assume toward the Contractor all the obligations, terms, conditions and responsibilities which the Contractor, by this Contract and the Contract Documents, assumes toward the Owner and the Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and the Engineer under this Contract and the Contract Documents with respect to the Work to be performed by the subcontractor

so that subcontracting thereof will not prejudice the rights of the Owner or the Engineer. The Contractor shall require each subcontractor to enter into similar agreement with sub-subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of this Contract and the Contract Documents to which the subcontractor will be bound. Subcontracts shall similarly make copies of this Contract and the Contract Documents available to their respective proposed sub-subcontractors.

## **ARTICLE 8**

### **PAYMENT TO SUBCONTRACTORS**

**Section 8.01. Payments to Subcontractors from the Contractor.** The Contractor shall pay each subcontractor an amount equal to the percentage of completion allowed to the Contractor on account of the work of each subcontractor. Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the Contractor receives from MSCAA. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the MSCAA. When MSCAA has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the MSCAA. The Contractor shall also require each subcontractor to make similar payments to its sub-subcontractors as required by applicable law.

**Section 8.02. Withholding of Payment by the Owner.** If the Owner withholds monies for any cause which is the fault of the Contractor and/or the fault of a particular subcontractor, the Contractor shall pay all other subcontractors, in accordance with the terms of their applicable subcontract, if not in conflict with this Contract and applicable law, any time after the progress payment by the Owner should otherwise have been issued, for its Work to the extent completed. Notwithstanding this Section 8.02, Contractor may withhold funds from any subcontractor that is not performing its work in accordance with the Contract Documents.

**Section 8.03. Independent Obligation to Pay.** The obligation of the Contractor to pay its subcontractors (and their obligation to pay sub-subcontractors) is an independent obligation from the obligation of the Owner to make payment to the Contractor. The Owner shall have no obligation to pay or to see to the payment of any monies to any subcontractor or sub-subcontractor. The provisions of this Contract are solely intended for the benefit of the Owner and Contractor and not for any other person. Nothing in this Contract is intended to create any third party rights against the Owner.

## **ARTICLE 9**

### **CHANGES**

#### **Section 9.01. Changes in the Work.**

(a) The Owner, without invalidating this Contract, may order extra work or make changes by altering, adding to or deducting from the Work by executing a Contract Amendment or a Construction Change Directive in a form provided by the Owner or Engineer. All Work performed pursuant to a valid Contract Amendment or a Construction Change Directive shall be performed under the conditions of this Contract and the Contract Documents.

(b) The Owner shall have authority to make changes in the Work not involving extra cost, not involving an extension to the Substantial Completion Date, and not inconsistent with the purposes of the Work, but otherwise, no extra Work or change in the Work shall be made unless pursuant to a Contract Amendment or a Construction Change Directive and no claim by Contractor for additional cost or fee or any extension of the Substantial Completion Date shall be valid unless so ordered in a written Contract Amendment or a Construction Change Directive.

(c) Engineer's Supplemental Instructions (ESI) are written instruments prepared by the Owner or Engineer to issue additional instructions or interpretations or to order changes in the Work not involving extra costs or fees, or any extension of the scheduled Substantial Completion Date. Contractor shall give prompt written notice to Owner if it believes that the contents of an ESI require the Contractor to incur extra costs or fees or affect the Substantial Completion Date.

### **Section 9.02. Construction Change Directive.**

(a) A Construction Change Directive is a written order prepared by the Owner, Program Manager, or Engineer and signed by the Owner, Engineer or Program Manager directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Price or the Substantial Completion Date, or both. The Owner may, by Construction Change Directive, without invalidating this Contract, order changes in the Work consisting of additions, deletions or other revisions.

(b) A Construction Change Directive shall be used in the absence of an agreement on the terms of a Contract Amendment.

(c) If the Construction Change Directive provides for an adjustment to the Lump Sum Price, the adjustment shall be based on one of the following methods:

- (1) Mutual acceptance of a lump sum properly itemized and supported by sufficient documentation to permit evaluation; or
- (2) Unit prices stated in the Contract Documents or subsequently agreed upon; or
- (3) Cost to be determined in a manner agreed upon by the Parties and a mutually acceptable fixed or percentage fee; or
- (4) As provided in paragraph (f) of this Section 9.02.

(d) Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Price or the Substantial Completion Date.

(e) A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in the Contract Price, the Substantial Completion Date or the method of determining the adjustment. Such agreement shall be effective immediately and shall be recorded as a Contract Amendment.

(f) If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Price, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Price, a reasonable allowance for overhead and profit. In such case, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purpose of this paragraph shall be limited to the following:

- (1) The actual cost for labor, including social security and unemployment insurance, fringe benefits required by agreement, and workers' or workmen's compensation insurance; and/or
- (2) The actual cost of materials, supplies, machinery, and equipment, including cost of transportation, whether incorporated or consumed; and/or
- (3) The actual cost of subcontractors and sub-subcontractors; and/or
- (4) The actual cost of premiums for all bonds and insurance, permit fees and sales, use or similar taxes related to the Work; and/or
- (5) The actual additional costs of supervision and field office personnel, if any, directly attributable to the change.

(g) Pending final determination of cost to the Owner, amounts not in dispute may be included in Certificates and Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Price shall be actual net cost, as confirmed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be calculated on the basis of net increase, if any, with respect to that change.

**Section 9.03. Contract Amendment Procedure.** If the Owner desires extra Work or changes in the Work, the Owner shall submit a Request for Proposal ("RFP") to the Contractor. The Contractor shall furnish to the Owner a statement setting forth in detail the proposal of the Contractor for performing the extra Work or changes and the effect of the extra Work or changes, if any, in the Contract Price and the Substantial Completion Date attributable to the extra Work or changes set forth in the request of the Owner. If the Owner approves in writing the proposal of the Contractor, a Contract Amendment in the form provided by the Owner shall be executed by the Parties and the Contract Price and the Substantial Completion Date shall be adjusted accordingly. In preparing Lump Sum quotes in response to an RFP, the Contractor shall provide a cost breakdown to the Owner that provides sufficient detail for the Owner or Engineer to determine that the quoted costs are reasonable and allowable and to verify that markups are properly calculated according to the terms of this Contract.

**Section 9.04. Changes in the Contract Price.** Any increase or decrease in the Contract Price attributable to a Contract Amendment performed by the Contractor or any of its subcontractors will be paid for at the contract prices or agreed prices specified in the change order or supplemental agreement authorizing the extra work.

**Section 9.05. Time and Materials.**

(a) In the event that the Owner and the Contractor cannot agree on the amount or time extension, if any due, to the Contractor for a Contract Amendment, the Owner may, in writing, direct the Contractor to proceed with the performance of such Work. The Contractor agrees to comply with any such directive issued by the Owner.

(b) If any additional compensation is due to the Contractor as a result of a directive, it will be paid based on documented costs for labor, labor burden, insurance and taxes, materials, equipment, plus a set allowance for combined overhead and profit.

(c) The Contractor is responsible for preparing detailed daily reports documenting all labor, material, and equipment charges incurred and signed by both Contractor and Program Manager for all Time and Materials work.

(d) No payment will be made for work performed on a Time and Materials basis until the Contractor has furnished the Owner with itemized statements and all required backup documentation of the cost of such time and materials work.

(e) The total payment will be based on the total documented labor, material, and equipment cost plus the fixed percentages for combined overhead and profit specified above. This total payment shall constitute full compensation for all items of expense not specifically provided for the extra work or time and materials work.

**Section 9.06. Unconditional Obligation to Proceed.** Notwithstanding anything herein to the contrary, the Contractor will proceed with the Work so as to complete the Work on or before the Substantial Completion Date even if it has a dispute with the Owner concerning a Construction Contract Amendment, a Construction Change Directive or any extension of time which is or could be due to the Contractor pursuant to a Contract Amendment, a Construction Change Directive or otherwise.

**Section 9.07. Request for Additional Compensation.** If for any reason the Contractor believes that additional compensation is due for work not clearly provided for in the Contract Documents, the Contractor shall provide written notice to the Owner at least three (3) days before beginning the work which is not clearly provided for in the Contract Documents. If such notification is not given, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor shall not in any way be construed as proving or substantiating the validity of the request for additional compensation. When the work, which is the basis for the Contractor's request for additional compensation, has been completed, the Contractor shall, within ten (10) calendar days, submit evidence of costs incurred by the Contractor and a narrative which provides the basis for the request for additional compensation.

## ARTICLE 10

### **THE UNDERSTANDING OF THE CONTRACTOR**

**Section 10.01. Examination of Work Site.** The Contractor acknowledges that it has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground conditions, the character, quality and quantity of the materials, equipment, supplies, machinery, and facilities needed preliminary to and during the performance of the Work, the general and local conditions, and all other matters which can in any way affect the Work.

**Section 10.02. Sufficiency of Contract Documents and Representations of Contractor.**

(a) The Contractor acknowledges that the Contract Documents are sufficient to enable it to determine the cost of all of the Work and that the Work can be completed in accordance with the Contract Documents for the Contract Price.

(b) The Contractor acknowledges that any observed errors, discrepancies, omissions, ambiguities, or conflicts in the Contract Documents will be brought to the attention of the Owner, as set forth in Section 2.04 of this Contract, and in a timely manner in order to ensure substantial completion of the Work by the Substantial Completion Date. The Contractor shall be responsible for using its best efforts to discover and observe errors, discrepancies, omissions, ambiguities, or conflicts in the Contract Documents. In addition, the Contractor acknowledges that the Owner has not made nor shall it be deemed to have made any warranties, guarantees, or representations of any kind whatsoever regarding the sufficiency of the Contract Documents or any conditions relating to the Work.

(c) Contractor represents that it has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground use facilities at or contiguous to the Work Site and, subject to the provisions of Section 10.03 of this Contract, assumes responsibility for the accurate location of said underground use facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said underground use facilities are or will be required by Contractor in order to perform and furnish the Work for the Contract Price and substantially complete the Work by the Substantial Completion Date. However, notwithstanding anything herein to the contrary, the Contractor may, at its sole expense after receiving written permission from the Owner, and subject to any limitations specified by the Owner or Engineer, conduct any additional testing it deems necessary.

**Section 10.03. Differing Work Site Conditions.** If conditions are encountered at the Work Site that are: (1) subsurface physical conditions, which differ materially from those indicated in the Contract Documents; or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing Party shall be given to the other Party promptly before conditions are disturbed and in no event later than seven (7) days after the first observance of the conditions. The Owner or Engineer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost, or time required, for performance of any part of the Work; will recommend an equitable adjustment in the Contract Price or the Substantial Completion Date, or both. However, any equitable adjustment in the Contract Price shall not include additional general conditions costs. If the Owner determines that the conditions at the Work Site are not materially different from those indicated in the Contract Documents and that no change in the terms of this Contract is justified, the Owner shall so notify the Contractor in writing, stating the reasons. Claims by the Contractor in opposition to such determination must be made within fourteen (14) days after the Owner has given notice of the decision.

**Section 10.04. No Oral Modification.** No oral agreement or conversation with any officer, agent or employee of the Owner or its representatives, including the Engineer, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations contained in this Contract or the Contract Documents.

## ARTICLE 11

### **SUPERVISION OF THE WORK; SAFETY AND SECURITY**

**Section 11.01. The Superintendent of the Contractor.** The Contractor shall designate in writing to the Owner and keep on the Project during its progress a competent employee who has responsibility to oversee the Work ("Superintendent"). The Superintendent shall be satisfactory to the Owner. The Superintendent shall be changed upon

written request of the Owner but shall not be changed by the Contractor except with the consent of the Owner, unless the Superintendent ceases to be in its employ. The Superintendent shall represent the Contractor, and all directions given to him by the Owner shall be as binding as if given to the Contractor directly. The Superintendent shall devote his full time to the Work and shall maintain an office on the Work Site. The Superintendent shall direct, coordinate and supervise all Work, inspect all materials delivered to the Work Site to ascertain whether or not they comply with the requirements of the Contract Documents, and reject all non-conforming materials or workmanship.

**Section 11.02. Order and Discipline.** The Contractor shall at all times be responsible for enforcing strict discipline and good order among its employees, and all employees of its subcontractors and sub-subcontractors. If any person on the Work Site shall appear to be incompetent, disorderly or intemperate, in any way disrupts or interferes with the Work, or is in any other manner not qualified for or unfaithful to the job entrusted to him, such person shall be discharged from the Project immediately and shall not again be employed on the Work Site without the prior written consent of the Owner.

**Section 11.03. Cleaning Up.**

(a) During the performance of the Work, the Contractor shall keep the Work Site clean and free of all rubbish, waste materials, debris and other materials in accordance with the instructions set forth in the Contract Documents. At the end of each working day, the Contractor shall remove all waste materials, rubbish, debris, and other materials from and about the Work Site as well as all surplus materials, and shall leave the Work Site clean in accordance with the Contract Documents.

(b) The Contractor shall establish an active ongoing program to eliminate any foreign objects from the Work Site that may cause damage to aircraft or cause personal injury to other persons.

(c) The Contractor shall pay particular attention to haul routes used to and from the Work Site to prevent any construction debris from being dropped or tracked that may present a hazard.

(d) The Contractor, upon written notice from the Owner, shall promptly cut the grass and clean debris around the Work Site. If the Contractor fails to clean up any debris which is deposited as a result of construction operations, the Owner will, after notice, immediately do so. The cost thereof will be charged to the Contractor at actual cost per hour, but not less than the minimum rate of Two Hundred Fifty Dollars (\$250.00) per hour. The Contractor shall assume full responsibility for failure to perform cleanup operations required by this Section 11.03.

(e) All materials delivered to the Work Site shall be stored and handled so as to preclude inclusion of any foreign substances, and to prevent any discoloration or damage which might reduce its effectiveness as part of the Work.

**Section 11.04. Safety and Security.**

(a) The Contractor shall be solely responsible for and oversee all safety orders, precautions and programs necessary for the safety of the Work. The Contractor shall take the precautions set forth in the Contract Documents in order to ensure the safety of all persons involved in the Work, all other persons whom the Work might affect, all equipment and materials incorporated in the Work, all property on the Work Site and adjacent to it, and the Owner's business operations which are functioning on the Work Site or in the vicinity of it.

(b) The Contractor shall keep an accurate record of all persons who are on the Work Site and shall provide a copy of such list to the Owner with each monthly Application and Certificate for Payment. The Contractor, its subcontractors, their sub-subcontractors and all employees of same, shall comply with all security rules made by the Owner and the Federal Aviation Administration. In addition, Contractor shall comply with the construction safety and health guidelines which are set forth in Exhibit D.

(c) The Contractor shall conform to Owner's airport rules and regulations.

(d) Prior to the commencement of the Work, the Contractor shall provide to the Owner a list of all of its employees who will perform any portion of the Work.

**Section 11.05. Observation of the Work.**

(a) The Engineer, the Owner and persons designated by the Owner, shall at all times have access to the Work Site whenever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for observation. If the Owner or the Engineer discovers any defective Work in connection with any observation, it shall be reported to the Contractor in writing and the Contractor shall correct it.

(b) If the Contract Documents, the written instructions of the Owner, laws, ordinances, rules or regulations, or any public authority require any of the Work to be specifically tested or inspected, the Contractor shall give the Owner timely notice of its readiness for inspection and testing, and of the date set for such test or inspection. Inspections by the Owner or Engineer shall be promptly made. If any of the Work should be covered up without the approval or consent of the Owner, the Engineer or any public authority, it shall be uncovered for examination, if required by the Owner, the Engineer, or such other public authority, at the sole expense of the Contractor.

(c) Re-examination of questioned Work that has been previously tested or inspected by the Engineer or the Owner may be ordered by the Engineer or the Owner and, if so ordered, the questioned Work shall be uncovered by the Contractor. If such Work is found to be in compliance with the Contract Documents, the Owner shall pay the actual cost of the re-examination. If such Work is found not to be in compliance with the Contract Documents, the Contractor shall bear the costs of the re-examination.

(d) The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to fulfill the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, then the Contractor shall promptly and at its expense secure such services. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Owner or Engineer. The Owner and the Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

## **ARTICLE 12**

### **PERMITS, LICENSES, LAWS AND REGULATIONS**

**Section 12.01. Contractor to Secure All Permits.** The Contractor shall secure and pay for all construction related permits, including the building permit. The Contractor shall be responsible for all inspections required by governmental authorities in conjunction with the issuance of said permits. Contractor shall secure and pay for all governmental fees, licenses and other permits necessary for the lawful and proper execution and completion of the Work.

**Section 12.02. Compliance with Laws.** The Contractor shall give all notices and shall comply with all laws, ordinances, rules, regulations and orders of any public authority having jurisdiction over the Work, which have any bearing on the execution of the Work. If the Contractor observes that any of the Contract Documents are at variance in any respect with any such laws, ordinances, rules, regulations and orders, it shall promptly notify the Owner and the Engineer in writing and any necessary changes shall be made by the Contractor. If the Contractor fails to give such notice or executes any of the Work in a manner contrary to any such laws, ordinances, rules, regulations or orders, the Contractor shall bear all resulting costs to correct said Work to comply with such laws and regulations and be liable for any resulting fines, penalties, judgments or damages imposed on or incurred by the Owner.

## **ARTICLE 13**

### **TAXES AND OTHER FEES AND COSTS**

**Section 13.01. Payment of Taxes by Contractor.**

(a) Any and all taxes, excises, duties and assessments in any manner levied, assessed or imposed by any government or subdivision or agency having jurisdiction over the Work shall be the sole responsibility and liability of the Contractor.

(b) The Contractor shall promptly pay and discharge when due, unless the validity or application is being contested by the Contractor in good faith, any and all taxes, excises, duties and assessments, together with any interest and penalties, if any, the responsibility and liability for which the Contractor has assumed pursuant to the provisions of paragraph (a) of this Section 13.01, unless any such tax, excise, duty or assessment is levied, assessed or imposed upon the Owner, in which case the Owner shall promptly give the Contractor notice of such levy, assessment or imposition, whereupon the Contractor shall promptly pay and discharge the same. Upon the written request and at the sole expense of the Contractor, the Owner shall assist the Contractor in contesting the validity or application of any such levy, assessment or imposition, and in the event a refund of all or any part of any tax, excise, duty or assessment (including interest and penalties, if any), said refund shall be refunded to the Contractor (less the amount of expenses associated with such contest not previously reimbursed by the Contractor to the Owner).

(c) The Contractor shall pay all applicable fees, and for all damage to sidewalks, streets, Owner's property, and other public property or to any public utilities caused by the performance of this Contract.

**Section 13.02. Damage to Owner Property.** Contractor agrees to promptly notify Owner of any damage caused to Airport property arising from Contractor's activities at the Airport. Contractor also agrees to comply with any request made by the Owner for reimbursement of costs associated with any damage to Airport property arising from work performed at the Airport by Contractor or any of Contractor's representatives, managers, employees, agents, contractors, subcontractors, licensees or invitees or from the conduct of same. This provision shall survive the termination of this Contract.

## **ARTICLE 14**

### **SHOP DRAWINGS AND SAMPLES; MATERIAL TESTING**

#### **Section 14.01. Definitions.**

(a) As used in this Contract, "shop drawings" are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor, any subcontractor, sub-subcontractor, manufacturer, supplier or distributor, and which illustrates some portion of the Work.

(b) As used in this Contract, "samples" are physical examples furnished by the Contractor to illustrate materials, equipment or workmanship.

#### **Section 14.02. Submissions.**

(a) Contractor shall submit to Owner all shop drawings in electronic format or as hard copies in accordance with the Technical Specifications. Contractor shall review, stamp with its approval and submit, in orderly sequence so as to cause no delay in the Work or the work of any other contractor, all shop drawings and samples required by the Contract Documents or subsequently by the Owner or Engineer. Shop drawings and samples shall be properly identified as specified in the Contract Documents or as the Engineer or Owner may require. At the time of submission, the Contractor shall inform the Engineer and the Owner by separate written correspondence of any deviation in the shop drawings or samples from the requirements of the Contract Documents.

(b) By approving and submitting shop drawings and samples, the Contractor represents that it has determined and verified all field measurements, field construction criteria, materials, catalogue numbers and other data, and that it has checked and coordinated each shop drawing and sample with the requirements of the Work and the Contract Documents.

#### **Section 14.03. Review of the Engineer.**

(a) The Engineer will review and act upon shop drawings and samples with reasonable promptness so as to cause no unreasonable delay in the Work, but only for conformance with the design concept of the Work and with the information



given in the Contract Documents. The review of the Engineer or its agents of a given item shall not indicate approval of an assembly in which the item functions.

(b) The approval of the Engineer of shop drawings or samples shall not relieve the Contractor of its responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Engineer and the Owner by separate written letter of such deviation at the time of submission and the Owner or Engineer has given written approval of the specific deviation, nor shall the approval of the Engineer relieve the Contractor from responsibility for errors or omissions in the shop drawings or samples.

**Section 14.04. Corrections Made by Contractor.** The Contractor shall make any corrections required by the Owner or Engineer and shall submit the required number of corrected copies of shop drawing or new samples until approved by Owner. The Contractor shall direct specific attention in writing or on resubmitted shop drawings or samples to revisions other than the corrections requested by the Engineer or the Owner on previous submissions.

**Section 14.05. Prior Approval Required.** No portion of the Work requiring a shop drawing or sample submission shall be commenced until the submission has been approved by the Owner or Engineer. All such portions of the Work shall be performed in accordance with approved shop drawings and samples and the Contract Documents.

**Section 14.06. Submittal Schedule.** Within seven (7) days after execution of this Contract, the Contractor shall provide the Owner and the Engineer with a preliminary submittal schedule of the dates that each shop drawing or sample will be submitted for approval. Within thirty (30) days after execution of this Contract, the Contractor shall provide the Engineer and the Owner with a final schedule of the dates that each shop drawing or sample will be submitted for approval. The sequence of the submittals of the Contractor shall be scheduled so as to permit an orderly review by the Engineer. The schedule shall allow reasonable added time according to the number or complexity of shop drawings or samples in each submittal for the checking, correction and rechecking of corrections, as well as for return of approved or rejected shop drawings and samples to the Contractor. The submittal schedules shall allow not less than fourteen (14) calendar days for the Engineer to review any shop drawing or sample.

**Section 14.07. Material Testing.**

(a) If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Owner timely notice of its readiness so the Owner or Engineer may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals required by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspection, tests or approvals.

(b) If the Owner or Engineer determines that any Work requires special inspection, testing or approval which paragraph (a) of this Section 14.07 does not include, the Owner or Engineer will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in paragraph (a) of this Section 14.07. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Owner's or Engineer's additional services made necessary by such failure; otherwise, the Owner shall bear such costs and an appropriate Contract Amendment shall be issued.

(c) Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered to the Owner.

(d) If the Owner or Engineer is to observe the inspections, tests or approvals required by the Contract Documents, they will do so promptly.

## **ARTICLE 15**

### **THE RIGHT OF THE OWNER TO INSPECT AND AUDIT**

**Section 15.01. Right to Audit.** The Contractor shall keep full and accurate records of all costs incurred and items billed in connection with any Work which records shall be open to audit by the Owner, or any authorized representative of

the Owner, including but not limited to the Federal Aviation Administration and the Comptroller General of the United States during the course of the Project and until four (4) years after the final payment by the Owner to the Contractor. In addition, the Contractor shall make it a condition of all subcontracts and sub-subcontracts entered into in furtherance of the Work that any and all subcontractors and sub-subcontractors will keep accurate records of costs incurred and items billed in connection with the subcontract (or sub-subcontract) and that such records shall be open to audit by the Owner, or any authorized representative of the Owner, including but not limited to the Federal Aviation Administration and the Comptroller General of the United States during the course of the Work and until four (4) years after final payment by the Owner to the Contractor.

**Section 15.02. Review of Subcontracts.** Upon request of the Owner or Engineer, the Contractor shall provide the Owner with an executed copy of all subcontracts, sub-subcontracts and purchase orders entered into in furtherance of the Work.

## ARTICLE 16

### **SEPARATE CONTRACTS**

**Section 16.01. The Right of the Owner to Award Separate Contracts.** The Owner reserves the right to award other contracts in connection with work at or in the vicinity of the Work and the Contractor agrees to cooperate fully and not to unreasonably interfere with the work of such other contractors.

**Section 16.02. Cooperation.** The Contractor shall afford the other contractors of Owner the opportunity for the introduction and storage of their materials and equipment to their work sites and for the execution of their work. The Contractor shall properly connect and coordinate the Work with work of any other contractors of the Owner.

**Section 16.03. Inspection of Work of Other Contractors.** If any part of the Work depends, for proper execution or result upon, the work of another contractor of Owner, the Contractor shall inspect and promptly report to the Engineer and the Owner any discrepancies or defects in such work that render it unsuitable for such proper execution or results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the Work of the other contractor as fit and proper to receive the Work.

**Section 16.04. Responsibility for Damage.** Should the Contractor cause damage to the work or property of any other contractor of the Owner, including, but not limited to, delay, disruption, suspension of work and/or acceleration damages, the Contractor shall settle all claims with such other contractor if the other contractor will so settle. If such other contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings at the expense of the Contractor, or provide counsel of Owner's choice for Owner at the expense of Contractor, and if any judgment or award against the Owner results, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and other litigation costs which the Owner has incurred.

## ARTICLE 17

### **WARRANTIES OF THE CONTRACTOR**

**Section 17.01. Warranty of Title.** The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application and Certificate for Payment, whether incorporated in the Work or not, will pass to the Owner, free and clear of all liens, claims, security interests or encumbrances (hereinafter "Liens") and that none of the Work, materials or equipment covered by an Application and Certificate for Payment will have been acquired by the Contractor, or by any other person performing any part of the Work or furnishing materials and equipment for the Work, subject to an agreement under which a lien is retained by the seller or supplier.

**Section 17.02. Special Warranties.** When special guarantees or warranties are required by the Contract Documents for specific parts of the Work, the Contractor shall procure certified copies of such guarantees or warranties, countersign them and submit them to the Owner in triplicate. Delivery of such guarantees or warranties will not relieve the Contractor from any obligations assumed under any provision of this Contract or the Contract Documents.

**Section 17.03. Assignment of Warranties.** The Contractor hereby assigns to the Owner any and all existing assignable warranties, service life policies and patent indemnities of manufacturers of materials, equipment or items incorporated in the Work. Upon the request of the Owner or the Engineer, the Contractor shall give the Owner assistance in enforcing the rights of the Owner arising under such warranties, service life policies and patent indemnities. At the request of the Owner or the Engineer, the Contractor shall give notice (with copies to the Owner) to any such manufacturers of the assignment of such warranties, service life policies and patent indemnities.

**Section 17.04. General Warranty and Correction of Work.**

(a) In addition to any special guarantees or warranties contained in the Contract Documents, the Contractor warrants to the Owner that all materials and equipment furnished in performance of the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective.

(b) The Contractor shall promptly correct all defective Work to comply with the Contract Documents whether observed before or after the substantial completion date and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting defective Work.

(c) If, within one (1) year after the substantial completion date, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee or warranty required by the Contract Documents, any of the Work is found to be defective and not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner, or the Engineer, to do so.

(d) All defective or non-conforming Work shall be removed from the site of the Work if necessary, and the Work shall be corrected to comply with the Contract Documents without cost to the Owner. The Contractor also shall bear the cost of making good all work of other contractors destroyed or damaged by removal or correction of the defective Work of Contractor.

(e) If the Contractor fails to timely and properly correct defective Work, the Owner may correct it and hold the Contractor liable for all costs, expenses and damages, including attorney's fees and litigation costs incurred by Owner in correcting it.

(f) In addition to the foregoing warranty, a warranty period of one (1) year shall apply under the same terms and conditions as the original warranty, to any work, supplied in correction of defective work under warranty pursuant to the provisions of this Section 17.04 and the Contractor shall assign to the Owner any warranties, including extended warranties, which are available in connection with the performance of such correction of defective Work. The warranty period shall commence on the date the Owner accepts the corrective Work of the Contractor.

**ARTICLE 18**

**RIGHT OF THE OWNER TO DO WORK**

**Section 18.01. Right of the Owner to do Work.** If the Contractor should neglect to perform the Work properly or fails to do anything required by the Contract Documents, and the Contractor does not correct the untimely or improper performance within seven (7) days after written demand is made, the Owner may, without prejudice to any other remedy it may have under this Contract or at law or in equity, make good any deficiencies in the Work, including, but not limited to, supplementing the workforces of the Contractor and deduct all costs of doing so from the payment then due or thereafter due the Contractor. The Owner shall not be required to give multiple notices to the Contractor in order to exercise its rights under this paragraph.

**Section 18.02. Deduction for Uncorrected Work.** If the Owner deems it inexpedient to correct deficiencies in the Work pursuant to Section 18.01 of this Contract, the Owner may deduct the reasonable cost of correcting the deficiencies, including any attorney's fees and additional fees and expenses of the Engineer, from the payment then due or thereafter due to the Contractor, but the making of such a deduction shall in no way be deemed an election of remedies by the Owner.

### **Section 18.03. Correction of Work before Final Payment.**

(a) The Contractor shall promptly remove from the Work Site all materials, equipment or other items rejected by the Engineer or the Owner as failing to conform to the Contract Documents, whether incorporated in the Work or not, and the Contractor shall promptly replace and re-execute its original work to comply with the Contract Documents without expense to the Owner. In addition, the Contractor shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

(b) If the Contractor does not remove rejected material, equipment or other items within a reasonable time (as fixed by written notice from the Owner, or the Engineer), the Engineer or the Owner may remove such items and store them at the expense of the Contractor, or dispose of such material, equipment or other items at the sole discretion of the Owner. If the Contractor does not pay the expense of such removal or storage within ten (10) days, the Owner may, upon ten (10) days written notice, sell such items at auction or at private sale and shall account for the net proceeds of such sale, after deducting all the costs and expenses of removal that should have been borne by the Contractor.

## **ARTICLE 19**

### **INSURANCE**

**Section 19.01. Insurance Requirements.** The Contractor shall fully comply with all requirements relating to insurance for the Project as set forth in this Article 19.

**Section 19.02. Owner Controlled Insurance Program.** The Owner has established an Owner Controlled Insurance Program (OCIP). To the extent required by the Owner, Contractor shall fully participate in and comply with all requirements of the OCIP. A copy of the OCIP Manual is attached hereto as Exhibit C and incorporated herein by reference. However, if the OCIP is not used, Contractor agrees to meet the requirements for Insurance coverage referenced in Section 19.03. A copy of the Construction Safety and Health Guidelines is attached hereto as Exhibit D and incorporated herein by reference.

**Section 19.03. Contractor Provided Insurance Coverage.** During the Term of this Contract, Contractor shall comply with the insurance requirements set forth in Exhibit C ("Insurance Requirements").

**Section 19.04. Survival.** The insurance provisions of this Article 19 shall survive any termination of this Contract.

## **ARTICLE 20**

### **SURETY BONDS**

**Section 20.01. Surety Bonds Required.** The Contractor shall furnish and keep in force throughout the performance of the Work a separate performance bond and separate labor and material payment bond, each in the amount of the total of the Contract Price (as the same may be modified from time to time) conditioned upon the faithful performance of the Work by the Contractor and payment of all obligations arising in connection with the Work by the Contractor. The bonds shall also guarantee to the Owner that the Work shall be free of all liens. The bonds shall name the Owner as obligee and shall be in such form and with such sureties as the Owner may approve prior to commencement of the Work.

## **ARTICLE 21**

### **INDEMNIFICATION**

#### **Section 21.01. Indemnification of the Contractor.**

(a) Without limiting any insurance required herein and to the fullest extent permitted by law, Contractor, on behalf of itself, its subcontractors, their agents, their employees or any entity or person for which the Contractor is or may be responsible (hereinafter collectively referred to as "Indemnitors"), shall fully defend, indemnify, save and hold the Owner, the Board of Commissioners of the Owner, the Program Manager, the Engineer, their agents, employees, officers, directors,

partners and related entities (hereinafter collectively referred to as "Indemnitees") harmless from and against all liability, damages, loss, claims, demands, actions and expenses of any nature whatsoever, including, but not limited to reasonable attorney's fees which arise out or are connected with: (1) any negligent act, error or omission by any Indemnitor, or (2) the failure of the Indemnitor to comply with any applicable laws, statutes, ordinances, rules or regulations of any governmental or quasi-governmental authority, or (3) the material breach of any term or condition of this Contract by any of the Indemnitors.

(b) Without limiting the generality of the foregoing, the indemnity set forth in this Article 21 shall include all liability, damages, loss, claims, demands and actions on account of personal injury, death or property loss to any third party, any Indemnitees, any of the Indemnitees' employees, agents, licensees or invitees relating to the Project and which results from the negligent act, error or omission of Contractor.

(c) When the Contractor is obligated to provide the Owner a defense hereunder, it shall do so with qualified counsel that is selected by the Contractor and approved by the Owner. Such approval shall not be unreasonably withheld. In light of the Owner and Contractor's continuing relationship, however, the potential for conflicts of interests exists if the same counsel represents both the Owner and Contractor when the Contractor accepts the Owner's tender of defense under the indemnity provision of this Contract. Therefore, the Owner retains the right to select its own counsel from a list of qualified attorneys provided by Contractor or Contractor's insurer. The selected counsel's fees and expenses shall be paid for by Contractor or its insurer, and the counsel shall be different from that selected by Contractor to represent it in the same matter.

(d) The indemnity set forth in this Article 21 shall survive any termination of this Contract.

**Section 21.02. Labor Indemnity.** The Contractor shall indemnify, defend and hold harmless the Owner, the Board of Commissioners of the Owner, the Program Manager, and the Engineer, their agents, employees, officers, directors, partners and related entities, from any and all administrative and judicial actions (including reasonable attorney's fees related to any such action), incurred by the Owner, the Program Manager, or the Engineer in connection with any labor related activity arising from the wrongful acts or omissions of the Contractor or its subcontractors in the performance of the Work of the Contractor. As used in this Contract, "labor related activity" includes, but is not limited to, strikes, walk-outs, informational or organizational picketing, use of placards, or distribution of hand-outs or leaflets at or in the vicinity of any facility where the Owner conducts business. The Owner shall advise the Contractor if any labor related activity occurs and the Contractor shall arrange for the legal representation necessary to protect the Owner, the Program Manager, and the Engineer provided such representation is previously approved by Owner.

**Section 21.03. Royalties and Patents.** The Contractor shall pay all royalties and license fees in anyway relating to the Work, shall defend all suits or claims for infringement of any patent or copyrights, and shall indemnify and hold the Owner, the Board of Commissioners of the Owner, their agents, officers, directors, partners and related entities, harmless from loss on account of such suit or claim.

**Section 21.04. Attorney's Fees.** In the event it becomes necessary for Owner to employ an attorney to enforce any provision of this Contract or to defend against any claim or litigation initiated by the Contractor, then the Contractor shall be liable for all attorney's fees and litigation expenses of Owner.

## ARTICLE 22

### **RIGHT TO OCCUPY BY OWNER**

**Section 22.01. Early Occupancy by Owner.** The Owner has the right to occupy or use ahead of schedule, at no additional cost nor obligation to Owner, all or any substantially completed or partially completed portion of the Work when such occupancy and use are in its best interest, notwithstanding the time of completion for all of the Work. Maintenance of occupied portion will remain the Contractor's responsibility.

**Section 22.02. Corrections after Occupancy.** After the Owner has taken occupancy of all or any portion of the Work, the Contractor shall not disrupt the use and occupancy of the Owner to make corrections in the Work.

## ARTICLE 23

## **DEFAULT: RIGHT TO TERMINATE BY OWNER**

**Section 23.01. Breach of Contract Terms. (Required by FAA)** Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

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

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

### **Section 23.02. Default and Termination by Owner. (Required by FAA)**

(a) The Contractor shall be considered in default of his or her Contract and such default will be considered as cause for the Owner to terminate the Contract for any of the following reasons if the Contractor:

- (1) Fails to begin the Work under the Contract within the time specified in the Notice to Proceed, or
- (2) Fails to perform the Work or fails to provide sufficient workers, equipment and/or materials to assure completion of Work in accordance with the terms of the Contract, or
- (3) Performs the Work unsuitably or neglects or refuses to remove materials or to perform anew such Work as may be rejected as unacceptable and unsuitable, or
- (4) Discontinues the execution of the Work, or
- (5) Fails to resume Work which has been discontinued within a reasonable time after notice to do so, or
- (6) Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- (7) Allows any final judgment to stand against the Contractor unsatisfied for a period of 10 days, or
- (8) Makes an assignment for the benefit of creditors, or
- (9) For any other cause whatsoever, fails to carry on the Work in an acceptable manner.

Should the Engineer consider the Contractor in default of the Contract for any reason above, the Engineer shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Owner's intentions to terminate the Contract.

(b) If the Contractor or surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the Owner will, upon written notification from the Engineer of the facts of such delay, neglect or default and the Contractor's failure to comply with such notice, have full power and authority without violating the Contract, to take the execution of the Work out of the hands of the Contractor. The Owner may appropriate or use any or all materials and equipment that have been mobilized for use in the Work and are acceptable and may enter into an agreement for the completion of said Contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer will be required for the completion of said Contract in an acceptable manner.

(c) All costs and charges incurred by the Owner, together with the cost of completing the Work under contract, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and the surety shall be liable and shall pay to the Owner the amount of such excess.

**Section 23.03. Termination for Convenience by Owner. (Required by FAA)** The Owner may terminate this Contract without cause at any time by providing fifteen (15) days prior written notice to Contractor. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

- (a) Contractor must immediately discontinue work as specified in the written notice;
- (b) Terminate all subcontracts to the extent they relate to the work terminated under the notice;
- (c) Discontinue orders for materials and services except as directed by the written notice;
- (d) Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed Work, supplies, equipment and materials acquired prior to termination of the Work and as directed in the written notice;
- (e) Complete performance of the Work not terminated by the notice; and
- (f) Take action as directed by the Owner to protect and preserve property and work related to this Contract that Owner will take possession.

Owner agrees to pay Contractor for:

- (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 Owner's termination action.

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

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

**Section 23.04. Suspension by the Owner.**

(a) The Owner may order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine (hereinafter referred to as "Suspension").

(b) Provided the Suspension lasts for more than ninety (90) days, an adjustment to the Contract Price ("Adjustment") shall be made as set forth in paragraph (c) of this Section 23.02. The Substantial Completion Date shall be extended by written Contract Amendment to the extent that substantial completion is actually delayed by this Suspension. No Adjustment shall be made to the extent:

- (1) That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is in full or in part responsible; or
- (2) That an equitable adjustment is made or denied under another provision of this Contract.

(c) The amount of the Contractor's compensation for a Suspension pursuant to this Section 23.02 shall be limited to any properly documented costs of maintaining personnel and equipment in the field provided such costs are pre-approved

by the Owner in writing. The Owner shall not be liable at any time for home office overhead or consequential damages. At the Owner's option, the Contractor may be ordered to demobilize its forces because the Project is suspended. In such event, the Owner will reimburse the Contractor for the reasonable cost of demobilization and remobilization.

**Section 23.05. Assignment of Subcontracts.** In the event of termination by the Owner pursuant to this Article 23 or Exhibit E to this Contract, the Owner may require the Contractor to promptly assign to it all or some of the subcontracts, materials, tools, and equipment to be installed under this Contract, or rental agreements, and any other commitments which the Owner, in its sole discretion, chooses to take by assignment. In such event, the Contractor shall promptly execute and deliver to the Owner written assignments of such commitments.

## **ARTICLE 24**

### **HAZARDOUS MATERIALS**

#### **Section 24.01. Hazardous Materials Covenants.**

(a) Contractor hereby represents and warrants to and for the benefit of Owner that the Project or Work Site will not be used or operated in any manner that will result in the storage, use, treatment, manufacture or disposal of any Hazardous Materials (hereinafter defined) upon the Project or Work Site or any portion thereof or which will result in Hazardous Materials Contamination (hereinafter defined). For purposes of this Article 24, the term "Hazardous Materials" shall mean and refer to: (1) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (2) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (3) asbestos; (4) polychlorinated biphenyls; (5) urea formaldehyde; (6) any substance the presence of which on the premises is prohibited by any applicable environmental laws or regulations ("Laws") or by any other legal requirements affecting the Project or the Work Site; (7) petroleum based materials (with the exception of tires affixed to vehicles); and, (8) any other substance which is defined as hazardous, toxic, infectious or radioactive by any Laws or by any other legal requirements affecting the Project or Project site. For purposes of this Article 24, the term "Hazardous Materials Contamination" shall mean and refer to the contamination of the Project or Project site, soil, surface water, ground water, air, or other elements on, or of, the buildings, facilities, soil, surface water, ground water, air, or other elements on or of any other property as a result of Hazardous Materials at any time emanating from the Project or Work Site.

(b) In addition to and without limiting the generality of any other provision of this Contract, Contractor shall and hereby does indemnify and hold Owner, the Board of Commissioners of the Owner, the Program Manager, the Engineer, their agents, employees, officers, directors, partners and related entities harmless from and against any and all losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs and liabilities, including, but not limited to, attorney's fees and costs of litigation, and costs and expenses of response, remedial and corrective work and other cleanup activities, arising out of or in any manner connected with: (1) the "release" or "threatened release" (as those terms are defined in CERCLA and the rules and regulations promulgated thereunder, as from time to time amended) by Contractor or Contractor's employees, agents, delegees, invitees, licensees, concessionaires, subcontractors or representatives, of any Hazardous Materials; or (2) any occurrence of Hazardous Materials Contamination affecting the Project or Work Site caused by or resulting from, in whole or in part, the operations of the Contractor or Contractor's employees, agents, delegees, invitees, licensees, concessionaires, subcontractors or representatives. The provisions of this paragraph shall survive any payment or satisfaction of this Contract and such provisions shall remain in full force and effect.

(c) When use or storage of hazardous materials or equipment or unusual methods of construction are necessary, the Contractor shall obtain prior written approval from the Owner. The use of explosives is strictly prohibited provided, however, powder activated fasteners are permitted.

(d) If Contractor encounters on the Work Site any substance or material reasonably believed by Contractor to be hazardous, Contractor immediately shall (i) stop work in the area affected, (ii) take measures appropriate to the condition to keep people away from the suspected Hazardous Material and, (iii) report the condition to Owner in writing. If the Work is so stopped and Hazardous Material is found, the Work in the affected area shall not thereafter be resumed except by the issuance of a Construction Change Directive pursuant to Section 9.02 of this Contract. Any such Construction Change



Directive shall be limited to, an adjustment to the Substantial Completion Date appropriate. If no Hazardous Material is found after the Work is stopped, no Construction Change Directive is required to resume the Work in the affected area.

## ARTICLE 25

### MISCELLANEOUS

**Section 25.01. No Waiver.** No consent or waiver, express or implied, by either party to this Contract or of any breach or default by the other in the performance of any of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party. Failure on the part of the Owner to complain of any act or failure to act of the Contractor or to declare the Contractor in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of Owner.

**Section 25.02. Assignment.** This Contract shall not be assigned, delegated or transferred in whole or in part by the Contractor nor shall the Contractor assign any monies due or to become due to it without the prior written consent of the Owner.

**Section 25.03. Governing Law.** This Contract is entered into in Tennessee and shall be governed by and construed according to the laws of Tennessee. Any and all disputes arising out of this Contract, and/or the Project shall be decided by a state or federal court of competent jurisdiction in Memphis, Shelby County, Tennessee.

**Section 25.04. Execution of Contract.** The parties hereby agree and express their intent to execute this Contract electronically if Owner has a designated information processing system. The parties also hereby agree that this Contract may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**Section 25.05. Article and Section Headings.** Article and section headings contained in this Contract are for ease of reference only and shall not affect the interpretation or meaning of this Contract.

**Section 25.06. Parties in Interest.** This Contract shall inure to the benefit of and be binding upon the Parties and their respective successors, assigns and legal representatives. It is specifically agreed between the Owner and the Contractor that the Parties do not intend to create any third party beneficiary rights by the execution of this Contract.

**Section 25.07. Severability.** If any one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Contract, but it shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**Section 25.08. Written Notices.** Whenever by the terms of this Contract notice shall be given either to Owner or to Contractor, such notice shall be in writing and shall be sent by regular United States Postal Service, by hand-delivery, by registered or certified mail, by a nationally recognized overnight delivery service or by electronic mail with a delivery receipt. Notice intended for Owner shall be addressed to the Vice President of Operations as follows with a copy to Owner's General Counsel at the address for regular mail:

If to the Owner, address to:

Regular Mail or Hand Delivery  
Vice President of Operations  
Memphis-Shelby County Airport Authority  
2491 Winchester Rd., Suite 113  
Memphis, Tennessee 38116-3856

Certified Mail or Overnight Delivery  
4150 Louis Carruthers Drive  
Memphis, TN 38118  
(901) 922-8000

If to the Contractor, address to:

\_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Either Party, from time to time, may change its address by giving written notice to the other Party.

**Section 25.09. Exhibits.** All exhibits described in this Contract shall be deemed to be incorporated into and made a part of this Contract. If there is any inconsistency between this Contract and the provisions of any exhibits, the provisions of this Contract shall control to the extent of the inconsistency.

**Section 25.10. Entire Contract.** This Contract, together with the exhibits and the other Contract Documents, constitutes the entire agreement between the Owner and the Contractor and supersedes all prior written or oral agreements, understandings, representations, negotiations and correspondence between the Parties. This Contract shall not be supplemented, amended or modified by any course of dealing, course of performance or usage of trade and may only be amended or modified by a written instrument duly executed by officers of both Parties.

**Section 25.11. Non-Federally Assisted Projects.** Regardless of the funding source for the Project, Contractor hereby agrees to comply with all nondiscrimination provisions of this Contract.

**Section 25.12. Small Business Participation Programs.**

(a) The Project is subject to the requirements of Owner's Small Business Participation (SBP) Program. It is the responsibility of the Contractor to see that all requirements of the SBP Program are met. The SBP Program participation goal for the Project is **PERCENT (18%)**. The SBP Program goal shall apply to Change Orders. The Contractor must either meet the goal or make good faith efforts to do so. Good faith efforts are defined in Appendix A to 49 CFR Part 26. To qualify, a firm must be included on the Owner's list of certified SBE firms.

(b) In case of the Contractor's non-compliance with SBP Program requirements as applicable, including, but not limited to, documentation, cooperation, and truthfulness, the Authority shall impose such Contract sanctions as it may determine to be appropriate. This may include but is not limited to:

- (1) Withholding of payments to the Contractor under the Contract until the Contractor complies; and/or
- (2) Cancellation, termination, or suspension of the Contract, in whole or in part; and/or
- (3) Assessing sanctions; and/or
- (4) Payment by the Contractor to the Authority of an amount equal to the difference in the SBE dollar value contracted for and the dollar value achieved in documented SBE participation or any lesser amount or penalty as deemed appropriate by the Authority, which dollar value shall be considered liquidated damages for failure to perform the requirements of the Contract and for which Contractor and all of its subcontractors agree to be bound.

(c) Retainage will not be withheld on this project. No retainage will be withheld by MSCAA from progress payments due the Contractor. Retainage by the Contractor or subcontractors is prohibited, and no retainage will be held by the Contractor from progress payments due to subcontractors.

(d) Contractor must not terminate a SBE subcontractor listed in response to the solicitation (or an approved substitute SBE firm) without prior written consent of Authority. This includes, but is not limited to, instances in which Contractor seeks to perform work originally designated for a SBE subcontractor with its own forces or those of an affiliate, a non-SBE firm, or with another SBE firm.

Contractor shall utilize the specific SBEs listed to perform the work and supply the materials for which each is listed unless the Contractor obtains written consent from the Authority. Unless consent is provided by the Authority, Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed SBE.

The Authority may provide such written consent only if the Authority agrees, for reasons stated in the concurrence document, that Contractor has good cause to terminate the SBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

Before transmitting to the Authority its request to terminate and/or substitute a SBE subcontractor, Contractor must give notice in writing to the SBE subcontractor, with a copy to the Authority, of its intent to request to terminate and/or substitute, and the reason for the request.

Contractor must give the SBE five days to respond to the notice. In the response, the SBE must advise the Authority and Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why Owner should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), Owner may provide a response period shorter than five days.

**Section 25.13. No Financial Benefit.** Contractor understands and agrees that no Owner employee or member of the Board of Commissioners, Memphis City Council or Shelby County Commission shall receive any financial benefit arising out of this Contract, either directly or indirectly. Further, any fees paid to any person or entity by Contractor for assistance in obtaining this Contract with Owner must be fully disclosed to Owner. Notwithstanding any term, condition, obligation or provision in this Contract, any other writing, any other agreement, any oral understanding or agreement, or any conduct or failure to act by the Owner, Contractor stipulates and agrees conclusively that Contractor has against the Owner no right, entitlement or claim for any payment, compensation, cost or remuneration of any type other than pursuant to the terms of this Contract.

## ARTICLE 26

### **FEDERAL AVIATION ADMINISTRATION (FAA) REQUIRED CONTRACT PROVISIONS**

**Section 26.01. FAA Required Provisions.** Federal laws and regulations require that specific contract provisions be included in certain contracts and subcontracts. All such provisions are set forth in Exhibit E, which is attached hereto and incorporated herein by reference. Contractor hereby agrees to insert these provisions in each contract and subcontract (to the extent applicable) related to the performance of this Contract and to require each of its subcontractors to do the same. Contractor also hereby agrees to incorporate these provisions by reference for work done under any purchase order, rental agreement or other agreement for supplies or services related to the performance of this Contract. Contractor further agrees to be responsible for compliance with these provisions by any subcontractor, lower-tier subcontractor or service provider. Contractor acknowledges that the FAA prevents any modification to these provisions that creates a conflict with federal laws and regulations or changes the intent of the required provision.

## ARTICLE 27

### **STATE REQUIRED CONTRACT PROVISIONS**

**Section 27.01. State of Tennessee Laws and Regulations - Grant Contract Provisions.** State laws and regulations require that specific contract provisions be included in certain contracts and subcontracts. All such provisions are set forth in Exhibit F, which is attached hereto and incorporated herein by reference.

*The remainder of this page intentionally left blank.  
[Signature page to follow.]*

**IN WITNESS WHEREOF**, the Parties have made and executed this Contract as of the day and year first above written.

**MEMPHIS-SHELBY COUNTY  
AIRPORT AUTHORITY**

**CONTRACTOR**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: President and CEO

Title: \_\_\_\_\_

**Approved as to Content:**

By: \_\_\_\_\_

Title: Vice President of Operations

**Approved as to Form and Legality:**

By: \_\_\_\_\_

Title: General Counsel

**Reviewed and Approved:**

By: \_\_\_\_\_

Title: Director of Development

**EXHIBIT A  
TO  
UNIT PRICE CONSTRUCTION CONTRACT  
FOR  
9/27 VEHICLE SERVICE ROAD REHABILITATION - CONSTRUCTION**

**BY AND BETWEEN  
THE MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY  
AND  
(CONTRACTOR NAME)**

**SCOPE OF WORK**

**(Insert Scope)**

“The scope of work is more specifically described in the Contract Documents, as defined in Article 2 of this Contract.”

**EXHIBIT B  
TO  
UNIT PRICE CONSTRUCTION CONTRACT  
FOR  
9/27 VEHICLE SERVICE ROAD REHABILITATION - CONSTRUCTION**

**BY AND BETWEEN  
THE MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY  
AND  
(CONTRACTOR NAME)**

**CONTRACT DOCUMENTS**

**EXHIBIT C  
TO  
UNIT PRICE CONSTRUCTION CONTRACT  
FOR  
9/27 VEHICLE SERVICE ROAD REHABILITATION - CONSTRUCTION**

**BY AND BETWEEN  
THE MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY  
AND  
(CONTRACTOR NAME)**

**OWNER CONTROLLED INSURANCE PROGRAM**

**INSURANCE REQUIREMENTS (OCIP)**

**C.1. Owner Controlled Insurance Program**

The Owner has elected to implement an Owner Controlled Insurance Program (OCIP) that will provide **Workers' Compensation, Employer's Liability, Commercial General Liability, Excess Liability and Builders' Risk insurance** for Contractors and Subcontractors of every tier who have been properly enrolled and are providing direct labor to the Project. A general summary of coverage provided by the OCIP is included in the MSCAA OCIP Manual, (hereinafter called the Manual), a copy of which is attached hereto and made a part of this Agreement and should be attached to and incorporated in every subcontract. All terms and conditions of Exhibit C will apply during the term of the contract. The Owner agrees to pay all premiums associated with the OCIP.

While the OCIP provides uniform coverages and reasonable limits, the OCIP is not intended to meet all the insurance needs of the Contractor and eligible Subcontractors who have been properly enrolled. In addition to any insurance provided by Owner, the Contractor and all Subcontractors working on the Project will be responsible for providing certain insurance as specified in paragraph C.2. Contractors and eligible Subcontractors should discuss the OCIP with their insurance agent or consultant to assure that other proper coverages are maintained. Contractor and eligible Subcontractors enrolled in the OCIP agree that the insurance company policy limits of liability, coverage terms and conditions shall determine the scope of coverage provided by the OCIP.

**C.1.1. Applicability of the OCIP**

Participation in the OCIP by the Contractor and all eligible Subcontractors is mandatory but not automatic. The Contractor and each eligible Subcontractor (as defined below) must follow the enrollment procedures shown in the Manual. The Contractor shall comply with all requirements of the OCIP as outlined in the OCIP Manual and shall require all eligible Subcontractors to comply with requirements of the OCIP manual. The Manual may be updated and revised during the course of construction to reflect any changes in State Law, Rules and/or Regulations or Procedures that may be necessary or appropriate, and said revisions will replace all previous versions. Copies of any revised Manual will be distributed by the OCIP Administrator.

- If the Contractor or any eligible Subcontractor fails to enroll any of its eligible Subcontractors of any tier, it will be subject to a penalty charge of the full and complete deduct as shown in C.1.2.c or 3% of the subcontract cost, whichever is greater. Note: Collection of the penalty charge of any non-enrolled contractor(s) of any tier does not provide automatic coverage in the program.
- If any Contractor or any eligible Subcontractor enrolls in the OCIP more than 30 days after its start date, it will have to provide a No Known Loss Letter to the Carrier along with the enrollment documentation.

Eligible Subcontractor includes all Subcontractors providing or subcontracting for direct labor on any Designated Project (see definition of ineligible Subcontractors below).

Ineligible Subcontractor includes (but is not limited to) subcontractors performing any type of environmental remediation work (example: asbestos or underground tank removal), consultants, suppliers (that do not perform or subcontract installation), vendors, materials dealers, guard services, janitorial services, truckers (including trucking to any Designated Project where delivery is the only scope of work performed), employee leasing companies, temporary labor services and other temporary project services. However, such Employee leasing and temporary labor service companies can be insured

by the OCIP but must be submitted for review to the OCIP administrator prior to acceptance.

A Designated Project is a project designated and approved by the Owner as a Designated Project and, enrolled by the OCIP Administrator with the insurance company. This project is a Designated Project. A Designated Project includes operations necessary or incidental to the Work. The Contractor's/Subcontractor's regularly established workplace, plant, factory, office, shop, warehouse, yard or other property even if such operations are for fabrications of materials to be used at the job site or training of apprentices will be considered off-site and not covered by the OCIP.

Unless otherwise directed by the Owner, the Contractor, eligible Subcontractors and all Subcontractors not enrolled in the OCIP, will be required to maintain at least the insurance coverages set forth in paragraph C.2 and are required to participate in the MSCAA OCIP Safety Program. Contractor will promptly furnish the Owner, or their designated representative, certificates of insurance giving evidence that all required insurance is in force.

#### **C.1.2. Contractor Insurance Cost Identification**

The Contractor and eligible Subcontractors will exclude their cost for all insurance coverages to be provided by the Owner for the work at any Designated Project from their bid. The Contractor and each Subcontractor of any tier warrant that all insurance premium calculations for work performed at the Designated Project Site have been correctly identified and removed from their bids.

#### **C.1.3. Change Order Pricing**

Contractor and all enrolled Subcontractors will price each change order to exclude the cost of insurance.

#### **C.1.4. Assignment of Return Premiums**

The Owner will be responsible for the payment of all premiums associated solely with the OCIP and will be the sole recipient of any dividend(s) and/or return premium(s) generated by the OCIP. In consideration of the Owner's provision of said coverages under the OCIP program, the Contractor and eligible Subcontractors agree to:

- 1) Exclude all applicable insurance costs for coverage provided by the Owner associated with their contract work and excluded from their bid; and cooperate with the OCIP Administrator in the administration of the OCIP.
- 2) Irrevocably assign to and for the benefit of the Owner, all return premiums, premium refunds, premium discounts, dividends, retentions, credits, and any other monies in connection with the OCIP insurance. Contractor also assigns its right of cancellation of all insurance policies provided by Owner. Contractor agrees to evidence such assignment by executing and delivering the Form-2. Contractor further agrees to require each eligible Subcontractor to execute the assignment on the Form-2, for the benefit of the Owner.

#### **C.1.5 Audit of Contractor and/or Subcontractor Payroll**

For insurance purposes, the Contractor and all tiers of Subcontractors agree to keep and maintain accurate and classified records of their payroll for operations at any Designated Project. Contractor and all eligible Subcontractors agree to furnish a copy of the Monthly Payroll Reporting Form, Form 5, to the OCIP Program Administrator by the 20th of each month and attach a copy of the Form-5, to their monthly pay application. If this report (Form-5) is not attached to the monthly pay application, payment may be held until the report is received.

The Contractor and all eligible Subcontractors will permit the Owner and its representative to examine and/or audit its books and records pertaining to any Designated Project. Contractor and eligible Subcontractor will also provide any additional information to the Owner or its appointed representatives as may be required. At the end of each contract, an audit may be performed of the reported payroll by the OCIP Carrier.

Upon Final Completion of each contract, the Contractor and eligible Subcontractors will furnish a completed and signed Form-4 - Notice of Anticipated Completion Form (a copy of which is attached hereto as "Form-4") to the OCIP Administrator, together with all required documentation.

Demobilization payments will not be released until all closeout documentation has been received and approved.

#### **C.1.6. OCIP Deductibles**



**General Liability:**

If a claim arises under the Owner provided Commercial General Liability OCIP policy from the partial or sole negligence of a Contractor or Subcontractor, or for violation of any OCIP Safety Requirements, such Contractor or Subcontractor shall be responsible for reimbursing the Owner's deductible to the extent of their respective negligence, as determined solely by owner, up to a maximum of \$10,000 per occurrence per Contractor.

**Builders Risk:**

The Contractor shall be responsible for a deductible of \$25,000 for each and every loss.

**C.1.7. Termination/Modification of the OCIP**

The Owner reserves the right to terminate or to modify the OCIP or any portion thereof. To exercise this right, the Owner will provide thirty (30) days advance written notice of termination or material modification to the Contractor and all eligible Subcontractors covered by the OCIP. In such event, the Contractor will promptly obtain appropriate replacement insurance coverage acceptable to the Owner. Written evidence of such insurance will be provided to the Owner prior to the effective date of the termination or modification of the OCIP coverages. The reasonable cost of such replacement insurance will be reimbursed by the Owner to the Contractor.

**SPECIAL NOTE:** The Contractor and eligible Subcontractors who have completed their work at any Designated Project and whose insurance as provided by MSCAA OCIP has been terminated, and who returns to the site to perform warranty work does so under its own insurance coverages and not under those provided by MSCAA OCIP.

**C.2 Contractor Provided Coverages**

All insurance obtained by the Contractor pursuant to this Agreement shall be written by insurance companies licensed to do business in Tennessee and acceptable to Owner.

Prior to the commencement of any operations by or on behalf of the Contractor relating to the Project, and with respect to any and all such operations, the Contractor shall procure, maintain and provide to Owner and the Program Manager:

- 1) Evidence of Contractor's **Commercial Automobile Liability Insurance**. A certificate of insurance and copy of endorsement shall be provided as evidence of:
  - a) Coverage for Owner, their officers, directors and employees as additional insureds.
  - b) Coverage to apply to all liability arising out of the ownership or use of all vehicles owned by, hired by, or used on behalf of the Contractor.
  - c) Waiver of Subrogation to be provided in favor of the Owner, the Design Professional, the Program Manager and their officers, directors, and employees.
  - d) If hazardous materials or waste are to be transported, the policy will be endorsed with the MCS-90 endorsement in accordance with the applicable legal requirements.

This insurance shall be for an amount not less than \$1,000,000 combined single limit liability.
- 2) Evidence of Contractor's **Workers' Compensation and Employer's Liability Insurance**. A certificate of insurance or, at Owner's request, a certified policy copy shall be provided as evidence of:
  - a) Coverage for claims for damages arising out of bodily injury, occupational sickness or disease or death of Contractor's employees under any applicable workers' compensation statute or any other applicable employers' liability law. Certificate of insurance or policy must clearly identify that coverage applies in the state of Tennessee.
  - b) A waiver of subrogation by the insurer against the Owner the Design Professional, the Program Manager and their officers, directors and employees.
  - c) This insurance shall include Employer's Liability limits of not less than \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease each employee and \$1,000,000 bodily injury by disease in the aggregate.
  - d) All Enrolled Contractors must provide Workers' Compensation and Employer's Liability insurance covering all employees for injuries that occur AWAY from the Designated Project Site or after OCIP termination, expiration, or cancellation.
  - e) Ineligible subcontractors or subcontractors not enrolled must provide coverage for ALL operations.
- 3) Evidence of Contractor's **Commercial General Liability Insurance**. Certificate of insurance and copies of endorsements to Contractor's primary commercial general liability policy and shall be provided as evidence of:

- a) Coverage for Owner and the Design Professional, Program Manager, their officers, directors and employees as additional insureds as respects claims or liabilities arising from or connected with Contractor's work, operations and completed operations. The additional insured endorsements shall be at least as broad as the ISO CG 2010 (1001) during the course of construction and CG2037 (1001) until the expiration of the statute of repose, or its carrier equivalent.
  - b) Coverage shall be primary and non-contributing with any coverage Owner maintains in its own name and on its own behalf.
  - c) Coverage shall be written on an occurrence coverage form, with coverage at least as broad as that provided under the current edition of the ISO Commercial General Liability coverage form, CG 0001. Other than standard exclusions applicable to pollution, asbestos, mold, employment practices, ERISA and professional liability, there shall be no limitations or exclusions beyond those contained in the standard policy forms which apply to property damage, products and completed operations, contractual liability or construction defects. In addition to procuring and maintaining this insurance during the duration of the contract, contractor agrees to continue to procure and maintain products and completed operations liability insurance coverage for a minimum of six (6) year(s) after the date the contract is completed or terminated or in accordance with the applicable statute of limitations under state law, whichever is longer.
  - d) Waivers of subrogation by insurers against Owner, Design Professional, Program Manager and their officers, directors and employees.
  - e) Contractual Liability Insurance applicable to the indemnification agreement contained in Section 21.01 of this Agreement.
  - f) The required amounts of primary Commercial General Liability Coverage in the amount of:
 

|             |   |
|-------------|---|
| \$1,000,000 | Bodily Injury and Property Damage Limit for each occurrence |
| \$1,000,000 | Personal & Advertising Injury                               |
| \$2,000,000 | General Aggregate (Annual)                                  |
| \$2,000,000 | Products/Completed Operations Aggregate (annual)            |

The general aggregate limit shall apply separately to each project.
  - g) All Enrolled Contractors must provide General Liability insurance covering third-party losses that occur AWAY from the Project Site (including products liability for any product manufactured, assembled or otherwise worked upon away from the Designated Project Site) or after OCIP termination, expiration or cancellation.
  - h) Ineligible contractors or subcontractors not enrolled must provide coverage for ALL operations.
  - i) The policy will be endorsed to exclude any "Designated Project" for onsite coverage only, if you are a participant in the OCIP.
- 4) Evidence of Contractor's **Excess or Umbrella Liability Insurance**. Certificate of insurance and copies of endorsements to Contractor's Excess or Umbrella liability policy and shall be provided as evidence of this excess liability or umbrella insurance with an annual aggregate amount of not less than \$10,000,000 for the Contractor and \$1,000,000 limits required of subcontractors unless otherwise stated in the Contract Documents, and shall be excess and follow form over primary coverages included herein. Such coverage will be excess and "drop down" for defense and indemnity in the event of exhaustion of the underlying insurances of Commercial, Automobile, Liability, Employer's Liability and the Commercial General Liability policies.
- 5) Evidence of **Professional Liability Insurance** (If Applicable):
- |                                 |             |
|---------------------------------|-------------|
| Per Claim and in the Aggregate: | \$1,000,000 |
|---------------------------------|-------------|
- All professional services firms must provide professional liability insurance appropriate for their profession. Architectural and engineering firms must provide coverage for liability arising out of design errors and omissions. The policies shall provide a three (3) year extended reporting period.
- 6) Evidence of **Contractors Pollution Liability Insurance** (If Applicable):
- |   |             |
|---|-------------|
| Each Occurrence Limit and in the Aggregate: | \$1,000,000 |
|---|-------------|
- Coverage applies to third-party bodily injury and property damage claims (including natural resource damage), and clean-up costs, caused by pollution conditions which result from covered operations performed by, or on behalf of, contractors and subcontractors of all tiers at the Designated Project Site. Coverage shall apply to claims for mold and fungus damage that result from the work as well as gradual and sudden and accidental pollution incidents arising from activities of the contractors working at the project site.
- Coverage must be evidenced for on-site and off-site transportation which may result in a pollution incident/event and

non-owned disposal site coverage (if applicable to the project).

The policy shall be endorsed to provide a Waiver of Subrogation in favor of the Owner, Design Professional and Program Manager. In addition, the Owner, their officers, directors and employees shall be included as Additional Insureds.

7) **Evidence of Contractor's Equipment Insurance:**

The Contractor is responsible for their tools and equipment including, but not limited to, construction trailers and their contents and temporary scaffolding at the project site, whether owned, leased, rented or borrowed. Contractor acknowledges and agrees that the Owner will not be responsible for any loss or damage to their tools and equipment. If insured, the Contractor's insurance policies covering tools and equipment will include a waiver of subrogation and any other rights of recovery in favor of the Owner. If uninsured, the Contractor will hold harmless the Owner, Program Manager and Design Professional for loss or damage to their tools and equipment.

8) **Aircraft/Aviation Liability Insurance** (If Applicable):

Each Occurrence Limit and in the Aggregate (including passenger liability): \$1,000,000

The operator of an aircraft of any kind, whether manned or unmanned, must maintain liability insurance covering bodily injury and property damage on a Combined Single Limit basis. If non-employee passengers are carried, there cannot be a per-passenger sublimit.

Prior to commencing operations, the operator must provide the Owner with a certificate of insurance naming the Owner, their officers, directors and employees as additional insureds on a primary and non-contributory basis. Operator and their insurer(s) must hold the Owner harmless and waive subrogation with respect to damage to the aircraft

If aircraft is to be used to perform lifts at the Designated Project Site, a "slung cargo" endorsement must be included to cover the full replacement value of any equipment being lifted.

**NOTE:** If the Contractor and / or eligible Subcontractor participating in the OCIP choose(s) to have the policy endorsed to include any "Designated Project" site during the construction period, coverage should be Excess and/or Difference in Conditions (DIC) of the OCIP and this cost should not be passed back to the Owner. Inclusion of any "Designated Project" Site on such insurance policies shall not replace the OCIP coverage or otherwise affect the cost identification requirement in paragraph C.1.2.

**C.2.2. Contractor's Insurance Primary.**

Any coverage applicable to Owner under Contractor's insurance policies shall be primary and non-contributing with any insurance maintained by Owner in its own name and on its own behalf. Copies of endorsements to Contractor's policies shall be provided to Owner.

**C.2.3. Cancellation.**

All such insurance shall be in form and substance satisfactory to the Owner and shall provide that not less than thirty (30) days' notice of cancellation or non-renewal, other than non-payment of premium which shall be ten (10) days' notice, be provided to Owner. If unavailable, Contractor must provide Owner with thirty (30) days' advance written notice of cancellation, other than non-payment of premium, which shall be ten (10) days' notice. Contractor must notify Owner of any material change or reduction in coverage to the Contractor's insurance policies.

**C.2.4. Certificates of Insurance - Contractor Provided Insurance Coverage Requirements**

As shown in Section C.2

**Description of Operations for contractors participating in the OCIP shall read:**

Workers' Compensation and Commercial General Liability coverages shown above do not apply to any Designated Project at the Memphis International Airport.

**Additional Insured Wording for Contractors shall read:**

Memphis-Shelby County Airport Authority, Program Manager, Design Professional and their officers, commissioners, agents and employees as now or hereafter exist as respect to the services / work to be performed under this Agreement, for coverages as required by contract MSCAA Project #23-1476-10-01.

**Additional Insured Wording for Subcontractors shall read:**

For Subcontractors participating in the OCIP

The Memphis-Shelby County Airport Authority, Program Manager, Design Professional and their officers, commissioners, representatives, agents and employees ATIMA are additional insureds for coverages as required by contract.

For Subcontractors not participating in the OCIP

The Memphis-Shelby County Airport Authority, Program Manager, Design Professional and their officers, commissioners, representatives, agents and employees ATIMA and Awarding Contractor are additional insureds as respect to the services / work to be performed under this Agreement for coverages as required by contract.

IN THE EVENT THAT THE LAW OF THE STATE IN WHICH THE PROJECT IS LOCATED (OR APPLICABLE LAW) LIMITS THE ADDITIONAL INSURED COVERAGE THAT OWNER MAY REQUIRE FROM CONTRACTOR AND SUBCONTRACTORS, THEN CONTRACTOR AND SUBCONTRACTORS SHALL BE REQUIRED TO OBTAIN ADDITIONAL INSURED COVERAGE TO THE FULLEST EXTENT OF COVERAGE AND LIMITS ALLOWED BY APPLICABLE LAW AND THIS CONTRACT SHALL BE READ TO CONFORM TO SUCH LAW.

**Filing of Certificates**

Certificates of insurance acceptable to the Owner shall be filed with the Owner by furnishing to the OCIP Administrator, prior to commencement of the Work. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment.

A sample is provided of a certificate of insurance is provided in the OCIP Manual.

**MSCAA OCIP**

c/o Willis Towers Watson National Project Insurance Practice.

Attn: OCIP Administrator

15305 North Dallas Parkway, Suite 1100

Addison, TX 75001

**C.2.5. The Right of the Owner to Maintain Insurance.**

In the event the Contractor fails to furnish and maintain the required insurance or to furnish certificates of insurance, the Owner shall have the right, at its option, to terminate this Agreement or to take out and maintain such insurance, and hold the Contractor liable for the cost. Compliance by the Contractor with the requirements of this Article shall in no way relieve the Contractor from liability under any provision of this Agreement or the Contract Documents.

**C.2.6. Other Insurance**

Any type of insurance or any increase of limits of liability not described in this section which the Contractor or any Subcontractor requires for their own protection or on account of any statute will be their own responsibility and their own expense. Any type of insurance or any increases of limits of liability not described herein that the Contractor or any Subcontractor requires for its own protection or on account of statute shall be its own responsibility and its own expense. If the Contractor or the Subcontractors maintain any insurance policies covering owned, leased or borrowed, equipment, such policies shall contain a waiver of subrogation against the Owner. Each item must be shown as a line item and approved by the Owner.

**C.2.7. Deductibles**

The Contractor shall be responsible for the payment of the deductible amounts for any insurance in force pursuant to this Agreement whether such insurance is furnished by the Owner or the Contractor.

**C.2.8. Insurance for Project Property While outside the United States and Canada.**

If any project property is in transit or is located outside the continental United States or Canada for any reason, Contractor shall arrange to insure such property for its full replacement value separate from the other insurance described herein.

**C.2.9. Subcontractors Flow-Down Clause.**

Subcontractors of all tiers are subject to the same insurance requirements as Contractor. Contractor shall cause each Subcontractor employed by Contractor to purchase and maintain such insurance and upon request, must promptly furnish Owner with copies of certificates of insurance evidencing coverage for each Subcontractor.

#### **C.2.10. No Representation of Coverage Adequacy.**

In specifying minimum Contractor insurance requirements, Owner does not represent that such insurance is adequate to protect Contractor for loss, damage or liability arising from its work. Contractor is solely responsible to inform itself of the types or amounts of insurance it may need beyond these requirements to protect itself. The insurance requirements set forth in minimum amounts shall not be construed to relieve Contractor for liability in excess of such coverage, nor shall it preclude Owner from taking such other actions as is available to it under any other provision of the contract.

#### **C.2.11. Contractor Responsibilities**

The Contractor will cooperate with and will require all eligible Subcontractors to cooperate with The Owner and/or the OCIP Administrator with regards to the administration and operation of the OCIP. The Contractor and eligible Subcontractors responsibilities will include, but not be limited to:

- 1) Compliance with all rules and regulations of the applicable State Insurance Bureau/Board; failure to meet state requirements may result in fines being assessed, and, if this occurs, the Owner shall deduct from monies due or to become due under the provisions of this contract for any applicable fines that are assessed against the Owner, the Contractor or any eligible Subcontractor;
- 2) Compliance with applicable Construction Safety Program;
- 3) Provision of necessary contract, operations and insurance information, including verification of current Worker's Compensation Experience Modifier;
- 4) Cooperation with any insurance company or OCIP Administrator with respect to requests for claims, payroll or other information required under the program;
- 5) The Contractor and all eligible Subcontractors shall adhere to and perform all reporting requirements as set forth in the Claims Procedures portion of the OCIP Program Manual.

#### **C.2.12. Contractor's Responsibility for its Subcontractors.**

The Contractor will include this Exhibit and the Manual with the bid documentation. The Contractor will require that all eligible Subcontractors participate in the OCIP and comply with all rules and procedures as outlined in MSCAA Enrollment Process Summary. It will be the Contractor's responsibility to submit to The Owner and its designated representative all bid documentation for approval. If Contractor fails to comply with this section and any eligible Subcontractors do not enroll in the program, the Owner has the right to retain the 3% of subcontracted work as a penalty from the awarding Contractor/Subcontractor as set out in C.1.2.c.

#### **C.2.13. Approval of Forms and Companies**

All insurance described in this Section will be written by an insurance company or companies satisfactory to the Owner and licensed to do business in Tennessee and will be in a form and content satisfactory to the Owner. No party subject to the provisions of this contract will violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein.

#### **C.2.14. Coverage to be provided by Contractor during Warranty Period**

During the period following the final acceptance date and prior to expiration of the warranty period hereunder, Contractor will maintain in full force and effect all insurance as specified in paragraph C.2 covering all Work performed during such period.

### **C.3. Waiver of Subrogation and Waiver of Rights of Recovery**

#### **Owner Controlled Insurance Program**

Except as respects any deductibles identified above, Owner waives all rights of subrogation and recovery against the

Contractor and all Subcontractors of all tiers to the extent of any loss or damage, which is insured under the OCIP. Except as respects the deductibles identified above, Contractor waives all rights of subrogation and recovery against the Owner, Design Professional and Program Manager, other Contractors and Subcontractors of all tiers to the extent of any loss or damage, which is insured under the OCIP. The Contractor and each Subcontractor will require all Subcontractors to similarly waive their rights of subrogation and recovery in each of their respective construction contracts with respect to their work on any Designated Project.

#### **Contractor Provided Coverages**

Contractor waives all rights of subrogation and recovery against the Owner, Design Professional and Program Manager, to the extent loss or damage is insured under the Contractor's policies. The Contractor and each Subcontractor will require all Subcontractors to similarly waive their rights of subrogation and recovery in each of their respective construction contracts with respect to their work on any Designated Project.

#### **C.4. Project Safety Administration**

It is the responsibility of the Contractor to maintain total control of safety to ensure that its employees and the general public will be provided an environment free of recognized hazards during construction activities. In carrying out this policy it is clear the only accepted level of performance is to be "Incident Free" on this project each and every day.

##### **A. Project Safety Manual**

The safety requirements of any Designated Project Safety Manual are a supplementary document to all Government rules, codes and regulations. It is understood that the ultimate responsibility for providing a safe place to work rests with each individual Contractor. All Contractors are responsible for full compliance with the requirements and standards referenced in the manual.

##### **B. New Employee Orientation**

Each new Contractor or Subcontractor employee will be required to attend an orientation program. This orientation is designed to communicate all project specific safety policies, procedures, and expectations of "the Safety Team" in regard to the construction of any Designated Project.

##### **C. Contractor Safety Program Review**

To proactively monitor the safety, health and environmental performance of Contractors and Subcontractors the Owner and/or his Representative, will be conducting a periodic review of Contractor or Subcontractor safety programs. This will be a formal process, which will be done with or without advanced notice. Upon completion of the Safety Program Review, a list of recommendations will be provided to the Contractor or Subcontractor. There will be a timeline developed and agreed upon for the purpose of abating any deficiencies in the Contractor or Subcontractor safety program.

#### **C.5. No Release**

The provision of the OCIP by The Owner will in no way be interpreted as relieving the Contractor or any Subcontractor of any other responsibility or liability under this agreement or any applicable law, statute, regulation or order.

#### **C.6. CIP Exclusion Limitation**

If any party's insurance includes an exclusion tied to Controlled Insurance Programs (a.k.a. "wrap-ups" or "CIPs") or other project-specific insurance, it may apply only to the extent of coverage available to that party under the CIP or other Sponsor-provided insurance. Such exclusion may not be broader than what the CIP or such other Sponsor-provided insurance actually covers.



## MSCAA OCIP V

### **An Owner Controlled Insurance Program Manual for Construction Projects**

## MSCAA OCIP – ENROLLMENT SUMMARY

### Contract Bid – All Contractors/Subcontractors

Bid package will be furnished to bidders

1. All eligible Contractors/Subcontractors of every tier will exclude their cost of insurance for coverage provided by the Owner from their bid. Contractors and eligible Subcontractors should discuss the OCIP with their insurance agent or consultant to assure that the OCIP insurance identification cost is accurate.
2. Contractors and Subcontractors at any tier shall not charge any eligible Subcontractor for its participation in the OCIP.
3. Workers' Compensation – Tennessee Payroll Rules are applicable to WC payroll. First dollar coverage is given to all Contractors on WC.
4. General Liability – Mandatory deductible not to exceed \$10,000 will apply to any loss as described in the OCIP manual. 5% credit will be applied to Contractor's premium for this deductible

### Contract Award

Once notification of contract award has been received, all eligible Contractors/Subcontractors of every tier will complete and submit Form 2 with the required certificate of insurance. Any Contractors or Subcontractors who enroll in the OCIP 30 days after their start date will have to provide a No Known Loss Letter to the Carrier along with the enrollment documentation. The OCIP Administrator will:

- 1) Assign a location code for this contract, forward the **Form 2** to the insurance carrier for enrollment into program
- 2) Issue a certificate of insurance which will reflect all OCIP coverages. The original copy will be sent to the enrolled contractor/Subcontractor with a copy to their awarding contractor.

### Change Order

Contractor and all enrolled Subcontractors will price each change order to exclude the cost of insurance provided by the Owner.

### Monthly Payroll Reporting

The Enrolled Contractor/Subcontractor will receive a Payroll Request e-mail from the following email address on behalf of Willis Admin at the beginning of each month during construction reminding them to complete their payroll report via the link in the email by the payroll due date. The payroll link will expire in 30 days. If the payroll link expires, please contact your Willis Towers Watson CIP Administrator to receive an updated link.

### If Contractor/Subcontract receives additional contracts

Once the contractor/Subcontractor has enrolled in the OCIP, all additional contract bids must also exclude the Contractor's cost of insurance for coverage provided by the Owner. **Form 2** must be submitted to the OCIP Administrator to receive confirmation of enrollment in the OCIP for the additional contract. (Contact the OCIP Administrator if you have questions). The OCIP Administrator will:

- 1) Assign a location code for this contract, forward the **Form 2** to the insurance carrier for enrollment into program
- 2) Issue a certificate of insurance which will reflect all OCIP coverages. The original copy will be sent to the enrolled contractor/Subcontractor, a copy to their awarding contractor.

### When Contractor/Subcontract reaches Substantial Completion

Notice of Anticipated Completion - **Form 4** – Prior to completion of all work being performed under the contract. This will initiate Closeout Procedures. Payroll and Receipts may be audited.

### When Contractor/Subcontractor has completed the Work

Contractor should notify their insurance agent/broker to remove any exclusion for this Designated Project from their primary policies.

### Claims

All Contractors/Subcontractors must follow claims rules and procedures outlined in the MSCAA OCIP Manual.

### Safety

All Contractors/Subcontractors must follow safety rules and procedures outlined in the MSCAA OCIP Site Specific Safety Plan.

### Notice to All Contractors/Subcontractors

Failure to follow the Enrollment or Claims procedures outlined in MSCAA OCIP Manual may result in fines being assessed by the State Bureau/NCCI, State's Workers' Compensation Commission or the Owner against the Contractor or Subcontractor. If the Owner or Carrier is assessed fines due to Contractor's or Subcontract's failure to follow State rules or regulations, the Owner will deduct from monies due or to become due for any applicable fines.

**CHANGES TO ANY OCIP REQUIREMENT OR PROCEDURE MUST BE APPROVED BY THE OWNER AND OCIP ADMINISTRATOR.  
NO CONTRACTOR OR SUBCONTRACTOR HAS THE AUTHORITY TO AMEND THE OCIP REQUIREMENTS.**



## **INTRODUCTION**

This manual identifies, defines, and assigns responsibilities related to the administration of the Memphis-Shelby County Airport Authority (MSCAA) Owner Controlled Insurance Program (OCIP).

This manual:

- Describes the OCIP and details the insurance-related responsibilities of the various parties involved.
- Provides a basic description of the OCIP structure and operation, with an overview of coverage provided by the OCIP and guidelines for carrying out specific administrative and audit procedures.
- Provides answers to questions that are likely to arise during the course of the project.

Because it is impossible to anticipate every question or situation that may arise, the directory lists those involved in the administration of the OCIP and their areas of expertise. Please feel free to call with any questions.

This Manual will be updated as changes dictate during this project.

### **NOTE**

- This Manual does not, and is not intended to, provide coverage interpretations or complete information about coverages.
- The terms and conditions of the insurance policies govern how coverage is applied.
- The information herein is not intended to alter any provisions of the actual contract documents of the Contractors, and if any such conflict occurs, the contract documents will govern.

**CHANGES TO ANY OCIP REQUIREMENT OR PROCEDURE MUST BE APPROVED BY THE SPONSOR AND OCIP ADMINISTRATOR. NO CONTRACTOR OR SUBCONTRACTOR HAS THE AUTHORITY TO AMEND THE OCIP REQUIREMENTS.**

## ADMINISTRATION

### Program Management

#### OCIP Program Coordinator

Willis Towers Watson

John Shorten

8285 Tournament Drive, Suite 130

Memphis, TN 38125

Phone: (901) 248-3102

Fax: (901) 248-3101

E-mail: [john.shorten@willistowerswatson.com](mailto:john.shorten@willistowerswatson.com)

#### OCIP Program Unit Manager

Willis Towers Watson

Nancy Jarmon

500 North Akard St., Suite 4300

Dallas, TX 75201

Phone: (972) 973-2394

Fax: (972) 386-5561

E-Mail: [nancy.jarmon@willistowerswatson.com](mailto:nancy.jarmon@willistowerswatson.com)

### OCIP Administration

Willis Towers Watson

Starla Lacey

Five Course Parkway, Suite 1800

Atlanta, GA 30328

Phone: (404) 224-5000

Cell: (404) 536-8567

E-Mail: [starla.lacey@willistowerswatson.com](mailto:starla.lacey@willistowerswatson.com)

### On-Site Safety

Willis Towers Watson

Wes Shelby

4225 Airways Blvd.

Memphis, TN 38116

Phone: (901) 344-1659

Cell: (901) 604-2136

Fax: (901) 345-6636

E-Mail: [wes.shelby@willistowerswatson.com](mailto:wes.shelby@willistowerswatson.com)

## Claims Management

### Zurich North America

PO Box 968077

Schaumburg, IL 60196-8077

**FAX NUMBER FOR REPORTING CLAIMS:** (877) 967-2567

**GENERAL CLAIMS FAX NUMBER:** (615) 872-1303

**GENERAL PHONE NUMBER:** (800) 366-8366

| Leadership       | Title                             | Phone          | Email  |
|------------------|-----------------------------------|----------------|--|
| Tammy Fike       | GL Sr. Specialist                 | (404) 851-3616 | <a href="mailto:tammy.fike@zurichna.com">tammy.fike@zurichna.com</a>                 |
| Ginny Howard     | WC Team Manager                   | (615) 872-1315 | <a href="mailto:ginny.howard@zurichna.com">ginny.howard@zurichna.com</a>             |
| Karen Kingo      | WC Pension Manager                | (847) 413-5868 | <a href="mailto:karen.kingo@zurichna.com">karen.kingo@zurichna.com</a>               |
| Vea Storey       | WC Claims Specialist              | (615) 872-1241 | <a href="mailto:veatrice.storey@zurichna.com">veatrice.storey@zurichna.com</a>       |
| Patricia Painter | WC Claims Specialist              | (615) 391-7501 | <a href="mailto:patricia.painter@zurichna.com">patricia.painter@zurichna.com</a>     |
| Nat Woodruff     | Claims Customer Service Executive | (404) 851-3278 | <a href="mailto:nathaniel.woodruff@zurichna.com">nathaniel.woodruff@zurichna.com</a> |

## **Insurance Policy References**

### **Workers Compensation**

**Insurance Company:** Zurich American Insurance Company  
**Master Policy Number:** WC 6675835-00  
 Each Contractor and/or Subcontractor will be issued their own Workers' Compensation Policy  
 Part One - Workers' Compensation TN State Limits  
 Part Two - Employers' Liability  
     Bodily Injury by Accident – Each Accident \$1,000,000  
     Bodily Injury by Disease – Policy Limit \$1,000,000  
     Bodily Injury by Disease – Each Employee \$1,000,000  
 Part Three – Other States Insurance  
     All States except those listed in Part One and Monopolistic States (OH,ND,WA,WY)

### **Commercial General Liability**

**Insurance Company:** Zurich American Insurance Company  
**Master Policy Number:** GLO 6675834-00  
 General Aggregate Limit (Other than Products – Completed Operations) \$4,000,000  
 Product-completed Operations Aggregate Limit \$4,000,000  
 Personal and Advertising Injury Limit (Any One Person or Organization) \$2,000,000  
 Each Occurrence Limit \$2,000,000  
 Fire Legal Liability (Any One Fire) \* \$250,000  
 Medical Expense Limit (Any One Person) \$10,000

### **Umbrella Liability**

**Insurance Company:** ACE Property and Casualty Insurance Company  
**Master Policy Number:** XCQ G46622029 001  
**Limits:** \$25,000,000 excess of primary

### **Excess Liability – Layer 1**

**Insurance Company:** Allied World National Assurance Company  
**Master Policy Number:** 0313-3804  
**Limits:** \$10,000,000 excess of \$10,000,000

### **Excess Liability – Layer 2**

**Insurance Company:** ACE Property and Casualty Insurance Company  
**Master Policy Number:** XCQ G7257896A 001  
**Limits:** \$15,000,000 excess of \$15,000,000

### **Excess Liability – Layer 3**

**Insurance Company:** Great American Security Insurance Co.  
**Master Policy Number:** EXC 4051403  
**Limits:** \$12,500,000 excess of \$12,500,000

### **Excess Liability – Layer 4**

**Insurance Company:** Starr Indemnity & Liability Company  
**Master Policy Number:** 1000587787221  
**Limits:** \$15,000,000 excess of \$15,000,000

**Insurance Company:** Endurance Risk Solutions Assurance Co.  
**Master Policy Number:** XSC30019604800  
**Limits:** \$15,000,000 excess of \$15,000,000

**Insurance Company:** Westchester Surplus Lines Insurance Company

**Master Policy Number:** G72578387001  
**Limits:** \$20,000,000 excess of \$20,000,000

## ***Program Definitions***

|  |  |
|--|--|
| <b>Owner Controlled Insurance Program (OCIP)</b> | The Insurance Program under which Workers' Compensation, Employer's Liability, Commercial General Liability and Excess Liability are procured or provided on a project "wrap-up" basis for Contractors/Subcontractors(s) of any tier, who have been properly enrolled, while performing operations on a designated Project Site for Memphis-Shelby County Airport Authority.   |
| <b>Insured</b>                                   | The Memphis-Shelby County Airport Authority, Contractors(s) and Subcontractors of any tier who are enrolled in the OCIP and who have been named in a policy, certificate of insurance, or advice of insurance.   |
| <b>Enrolled Contractors</b>                      | "Enrolled Contractors", mean "Eligible Contractors" who, prior to the commencement of their work on the covered project, have completed the appropriate enrollments documents for the "designated project site".   |
| <b>Insurer</b>                                   | Insurance Company, as identified in the Insurance Policy Reference section.  |
| <b>OCIP Coordinator and Administrator</b>        | The firms responsible for the insurance broker and administration of the OCIP.   |
| <b>OCIP Safety Consultants</b>                   | These representatives are employees of the Insurer and Willis Towers Watson who will provide safety consulting services to MSCAA, and its contractors enrolled in the OCIP.  |
| <b>Project Description</b>                       | All Designated Projects identified and approved by the Owner and on file with the Insurance Company.   |
| <b>On-Site Activities/ Designated Project</b>    | <p>Zurich's designated project means:<br/>           "The project shown in this Schedule, including operations on the project site or location that are necessary or incidental to the project as described in contract documents. "Designated Project" includes the work site(s) associated with such "designated project(s)" and any offsite staging areas, if they are dedicated solely to the "designated project(s)" and the sponsor agrees to provide coverage. Also included are those areas immediately adjacent to the "designated projects", including boundaries of local streets or public easement, in which the enrolled subcontractors at any tier perform work under their respective contracts."</p> <p>The OCIP does not provide insurance coverage for permanent yards or other locations of any Contractors/Subcontractors, except as specifically requested by Contractors and, if accepted by insurer, endorsed to the policy.</p> |
| <b>Eligible Contractors</b>                      | <b>Insured by the OCIP:</b> Eligible Contractors include all contractors providing direct labor on the Designated Project (see definition of ineligible contractors below). Temporary labor services and leasing companies are to be treated as subcontractors.  |
| <b>Ineligible Contractors</b>                    | <b>Not insured by the OCIP:</b> Includes (but is not limited to) contractors performing any type of environmental remediation work (example: asbestos or underground tank removal), consultants, suppliers (that do not perform or subcontract installation), vendors, materials dealers, guard services, janitorial services, truckers (including trucking to any Designated Project where delivery is the only scope of work performed), Blasting Contractors or Any Person or organizations that manufactures or fabricates products or components outside the designated project that does not also install the product or component at the designated project, employee leasing   |

companies, temporary labor services and other temporary project services. However, such Employee leasing and temporary labor service companies can be insured by the OCIP but must be submitted for review to the OCIP administrator prior to acceptance.

**Certificate of Insurance**

Written evidence of the existence of coverage terms of a particular insurance policy.

## COVERAGE SUMMARY

The OCIP coverage applies only to work performed under the Agreement at any Designated Project Site for eligible enrolled contractors. Contractor and Subcontractors must provide their own insurance as detailed in the contract.

Through a combination of insured and self-insured insurance programs the Owner, at its sole expense, will provide and maintain in force the types of insurance listed in subsection (1) through (4) below as a part of the OCIP for Contractor and eligible Subcontractors who have been enrolled. Contractor and eligible Subcontractors enrolled in the OCIP agree that the insurance company policy limits of liability, coverage terms and conditions shall determine the scope of coverage provided by the OCIP.

This section provides a brief description of the coverages provided under the OCIP. The Contractor shall refer to the actual policies for details concerning coverages, exclusions, and limitations. Policies are available for review upon request.

While the OCIP is intended to provide uniform coverages and reasonable limits, the OCIP is not intended to meet all the insurance needs of the Contractor and all eligible Subcontractors who have been properly enrolled. Contractor and eligible Subcontractors enrolled in the OCIP agree that they will discuss the OCIP with their insurance agent or consultant to ensure that proper coverages are maintained. It is the contractors' responsibility to notify their agent that the work performed on-site will be insured under an OCIP.

1) **Workers' Compensation and Employers' Liability Insurance** (Off-site operations are excluded unless locations are scheduled & approved by the Owner and OCIP insurance carriers) with Statutory Limits with All States Endorsement and minimum Employer's Liability Limits will be provided as follows:

- a) \$1,000,000 Bodily Injury with Accident - Each Accident.
- b) \$1,000,000 Bodily Injury by Disease - Policy Limit
- c) \$1,000,000 Bodily Injury by Disease - Each Employee; and

Each Enrolled Contractor will be issued a separate Workers' Compensation policy. The premium and loss experience on the Project Site will be reported to the appropriate rating authorities in the normal manner for use in calculating Enrolled Contractors' future experience modifiers. OCIP loss experience will impact Contractor's future insurance costs and, therefore, compliance with the project safety guidelines will directly benefit all Contractors.

2) **Commercial General Liability Insurance**, (Off-site operations are excluded unless locations are scheduled & approved by the Owner and OCIP insurance carriers) will be provided on an "occurrence" form under a single liability policy. Certificates of insurance will be provided to the Contractor and all tiers of eligible Subcontractors reflecting the following Limits of Liability, Coverages, and Terms:

a) Limit of Liability: Limits of Liability Shared by all Enrolled Contractors

|  |             |
|--|-------------|
| General Aggregate Limit (Other than Products – Completed Operations)   | \$4,000,000 |
| Product-completed Operations Aggregate Limit                           | \$4,000,000 |
| Personal and Advertising Injury Limit (Any One Person or Organization) | \$2,000,000 |
| Each Occurrence Limit  | \$2,000,000 |
| Fire Legal Liability (Any One Fire)                                    | \$250,000   |
| Medical Expense Limit (Any One Person)                                 | \$10,000    |

b) Coverage and Terms:

- i) Occurrence Basis.
- ii) Products.
- iii) Contractual Liability specifically designating the indemnity provision of this agreement as an insured contract.
- iv) Completed Operations (Six Year Term).
- v) Independent Contractor/Subcontractor's Liability.
- vi) Personal Injury, Explosion, Collapse, and Underground (X, C, U) exclusion deleted.
- vii) Coverage limited to any Designated Project.
- viii) General Aggregate Limits will apply per project and annually.
- ix) Products and Completed Operations Aggregate Limit applies once or all projects and applies once for the policy period and extended completed operations period combined; and
- x) Policy Exclusions include (but are not limited to) asbestos, pollution, mold, professional liability, employment

practices, EIFS, impaired property and work or operations performed away from any Designated Project Site.

- c) If a claim arises under the Owner provided Commercial General Liability OCIP policy from the partial or sole negligence of a Contractor or Subcontractor, or for violation of any OCIP Safety Requirements, such Contractor or Subcontractor shall be responsible for reimbursing the Owner's deductible to the extent of their respective negligence, as determined solely by owner, up to a maximum of \$10,000 per occurrence per Contractor.
- d) The limits of liability detailed under 2) a) apply to construction operations within the property boundary of the applicable Airport under the management of MSCAA and as per the issued policies' definitions.

3) **Umbrella and Excess Liability Insurance** (Off-site operations are excluded)

- a) Limits of Liability Shared by all Enrolled Contractors
  - i) \$100,000,000 per Occurrence
  - ii) \$100,000,000 Aggregate
  - iii) \$100,000,000 Products / Completed Operations Aggregate

- 4) **Builder's Risk Insurance** will be provided on "All-Risk" coverage on a replacement cost basis, subject to the limits of the insurance policy. This insurance will include the interests of the Owner the Contractor and all tiers of Subcontractors in the Work. The Builders Risk policy will not provide coverage against loss by theft or disappearance of any materials (unless the materials are to be incorporated into the Project), tools, or equipment of the Contractor or any tier of Subcontractor, or any other person furnishing labor or materials for the Work. The Contractor shall be responsible for a deductible of \$25,000 for each loss.

## **ACCIDENT REPORTING AND CLAIMS PROCEDURES**

When accidents happen, everyone needs to work together. Even though the Contractors and each Subcontractor has instituted tough safety measures, work-related accidents are bound to occur. When they do, the OCIP Insurers stand ready to serve the Contractors and Subcontractors, but they need help if they are to perform this service in the most effective and efficient manner.

Each Contractor/Subcontractor should have the claims procedures and emergency numbers posted on the jobsite and in all vehicles.

The Insurer will have a claims adjuster available to handle all Commercial General Liability and Workers' Compensation claims.

The Insurer will arrange for legal counsel to handle all lawsuits emanating from the project.

Never discuss any accident or claim with anyone except authorized representatives of MSCAA, Contractor, the Insurer(s), and the Owners Insurance Broker or Law Enforcement agencies.

### ***MSCAA Emergency Procedures (Serious Injuries)***

1. Contact MSCAA Emergency Dispatch at **(901) 922-8333 (DO NOT call 911)**. Specific directions should be given to the accident scene. If the accident occurred in the SIDA area, give location in relation to an active taxiway/runway. If outside the SIDA, give location relative to a street or construction gate. Explain the extent of injuries.
2. Notify the on-site OCIP Safety Coordinator, Wes Shelby, (901) 604-2136 (cell).
3. Methodist South Hospital Emergency Room, 1300 Wesley Drive, Memphis, TN, will be used (901) 516-3700, the decision on the treating medical facility will be made by the EMT, in serious cases, the Med Trauma Center may be used.
4. Contractors must always have currently qualified First Aid personnel on site. First Aid supplies must be readily available and maintained, including rubber gloves to protect First Aid personnel against blood borne pathogens, etc.
5. After the call for emergency unit is made to MSCAA, the contractor should send escorts to all locations where the emergency unit could enter the site.
6. If the injured employee does not speak English, send a good interpreter to the treating medical facility.
7. The Contractor should provide the Medical Facility with a completed Authorization for Treatment form (sample provided in the OCIP Manual).



**A. Workers' Compensation Claims**

1. Seek immediate medical attention for the injured person(s).
2. Immediately notify your supervisor and project manager of the situation.
3. Notify the on-site OCIP Safety Coordinator, Wes Shelby, (901) 604-2136 (cell). If you cannot reach Wes, please leave a voice mail message.
4. Complete a **First Report of Injury form** and the **Claim Reporting Cover Sheet** (include appropriate Location Code) and forward to **Zurich Insurance Company** via fax **877-967-2567** or email [usz\\_carecenter@zurichna.com](mailto:usz_carecenter@zurichna.com) immediately. If not possible, then send before the end of the business day.
5. MSCAA the Contractor's safety representative or designated person will transport the injured worker to

**Concentra Medical Center**  
**2831 Airways Boulevard**  
**Suite 102**  
**Memphis, TN 38132**  
**Phone: (901) 348-0200**  
**Hours: 8a.m. to 8p.m. (Mon. – Fri.)**

If accident occurs and Concentra Medical Center is not open:

**Methodist South Hospital**  
**1300 Wesley Drive**  
**Memphis, TN 38116**  
**Phone: (901) 516-3700**  
**24 Hours, 7 days per week**

Or

**Baptist Memorial Hospital DeSoto**  
**7601 Southcrest Parkway**  
**Southaven, MS 38671**  
**Phone: (662) 349-4000**  
**24 Hours, 7 days per week**

6. Complete the **Accident Investigation Form** and forward it along with the **Claim Reporting Cover Sheet** to Wes Shelby, OCIP Safety Coordinator (e-mail: [Wes.Shelby@willis.com](mailto:Wes.Shelby@willis.com), fax: (901) 345-6636, or mail: 4225 Airways Blvd., Memphis, TN 38116 before the end of the day.
7. Receipt of Acknowledgement of Claim and claim number from Zurich Insurance Company will be sent to the contact person provided on the Claim Reporting Cover Sheet and to Wes Shelby, OCIP Safety Coordinator. The claim number should be used for future reference.
8. All medical bills, hospital bills, etc. should be forwarded to Zurich Insurance Company identifying the injured employee and claim number.

### **After Hours / Close of Business Claims Reporting**

1. Call Zurich Insurance Company at (800) 987-3373.
2. Tell the Zurich representative that an injury just occurred and that you need to be routed to the on-call specialist to authorize treatment.
3. You will either be placed directly in touch with the on-call person, or the on-call person will be paged and will return your call within two hours.
4. If hospital needs to speak with Zurich directly, the contractor will have to supply the hospital name and phone number to Zurich, and they will call the hospital directly.

### **B. Commercial General Liability Claims**

Any occurrence involving Bodily Injury or Property Damage to members of the public that is NOT caused by an automobile accident.

1. Seek immediate medical attention for any injured person(s).
2. Immediately notify your supervisor and project manager of the situation.
3. Notify the on-site OCIP Safety Coordinator, Wes Shelby, (901) 604-2136 (cell). If you cannot reach, please leave a voice mail message.
4. Complete the **Claim Reporting Cover Sheet** (include appropriate Location Code) and forward to Zurich Insurance Company via fax **(866) 691-7068** or email [usz\\_carecenter@zurichna.com](mailto:usz_carecenter@zurichna.com) immediately. If not possible, then send before the end of the business day.
5. Complete the Accident Investigation Form and Claim Reporting Cover Sheet (include appropriate Location Code) and forward to Wes Shelby, OCIP Safety Coordinator, (e-mail: [wes.shelby@willis.com](mailto:wes.shelby@willis.com), fax: (901) 345-6636, or mail: 4225 Airways Blvd., Memphis, TN 38116).
6. Receipt of Acknowledgement of Claim and claim number from Zurich Insurance Company will be sent to the contact person provided on the Claim Reporting Cover Sheet and to Wes Shelby, OCIP Safety Coordinator. The claim number should be used for future reference.
7. All investigation reports, pictures, medical bills, hospital bills, etc should be forwarded to Zurich Insurance Company identifying the injured individual, claimant and claim number.

### **C. Duties in the event of a claim or suit**

1. Follow the claims reporting procedures above.
2. You must see to it that the OCIP Safety Coordinator, Wes Shelby, is notified promptly of an "occurrence" which may result in a claim. Notice should include:
  - a. How, when and where the "occurrence" took place; and
  - b. The names and addresses of any injured persons and witnesses.
3. If a claim is made or "lawsuit" is brought against any insured, you provide written notice of the claim or "lawsuit".
4. You and any other involved insured must:
  - a. Cooperate with the Insurer in their investigation, settlement or defense of the claims or "suit"; and
  - b. Assist the Insurer, upon their request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
5. No Insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without Insurer's consent.

### **D. Automobile Claims**

Even though no Automobile Liability or Physical Damage coverage is provided under the OCIP, the Contractor/Subcontractor must notify Wes Shelby, OCIP Safety Coordinator, in writing of any automobile accident which could be related to the project. This should be done as soon as possible following the accident.

**E. Contractor's Equipment Claims**

Even though no coverage is provided under the OCIP for loss of or damage to Contractor's or Subcontractor's owned equipment the Contractor/Subcontractors must notify Wes Shelby, OCIP Safety Coordinator, in writing, of any loss or damage to their equipment at the project. This should be done as soon as possible, following first knowledge of loss or damage.

**F. Miscellaneous Claims Notes**

1. Any incident that involved injury to persons or property is to be reported to Wes Shelby, OCIP Safety Coordinator's office immediately.
2. Any claims adjuster representing a Contractor/Subcontractor's normal insurer who seeks to come onto Any Designated Project site must obtain written authorization from Wes Shelby, OCIP Safety Coordinator, prior to coming on the site. There will be no exceptions to this stipulation.

**FORMS**

**Zurich Claim Reporting Cover Sheet**

**Incident Investigation Report**

**Workers' Compensation Referral Slip for Injured Employees**

**Authorization to Treat**

**Form 1 – Notice of Sub-contract Award**

**Form 2 – Enrollment Form**

**Form 4 – Notice of Anticipated Completion**

**Certificate of Insurance**

**ZURICH CLAIM REPORTING COVER SHEET**Email to: [USZ\\_CARECENTER@ZURICHNA.COM](mailto:USZ_CARECENTER@ZURICHNA.COM)

OR

Fax to: (866) 691-7068

Account Name: **Memphis Shelby County Airport OCIP V**Master WC policy #: **WC 6675835-00**Master GL Policy #: **GLO 6675834-00**

Project Location: \_\_\_\_\_

Subcontractor/Employer: \_\_\_\_\_

Subcontractor/Employer Policy Number: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact Phone Number: \_\_\_\_\_

Contact Fax Number: \_\_\_\_\_

Location Code: \_\_\_\_\_

Injured Worker: \_\_\_\_\_

**Attention Zurich Representative** – Please fax the receipt and claim number immediately to the contact above.

**Incident Investigation Report**

(To be completed within 24 hours by Supervisor at time of incident)

**INJURED EMPLOYEE INFORMATION**

|                    |         |            |                      |          |            |
|--------------------|---------|------------|----------------------|----------|------------|
| Employee Name      | Male    | Female     | Date of Birth        | Ht.      | Wt.        |
| Employee Address   |         |            |                      |          |            |
|                    | Street  | City       | State                | Zip Code | Home Phone |
| Employer Name      | Address |            |                      |          |            |
| Date of Incident   | Time    | AM/PM      | Jobsite/Area         |          |            |
| Employee Job Title |         |            | Length of Employment |          |            |
| Weather Condition  | Shift   | Supervisor |                      |          |            |

**UNSAFE ACTS**

What actions caused or contributed to the incident?

- ☐ Operating equipment without authority  
☐ Failure to warn/signal  
☐ Failure to secure/lock out/tag out  
☐ Reaching into/servicing equipment in operation  
☐ Making safety devices inoperable  
☐ Used defective equipment  
☐ Took unsafe/improper position  
☐ Horseplay, disruptive actions  
☐ Improper lifting or movement  
☐ Other: \_\_\_\_\_  
☐ No unsafe action

What actions caused or influenced above unsafe acts?

- ☐ Unaware of job hazards  
☐ Inattention to hazards  
☐ Unaware of safe method/procedure  
☐ Tried to gain or save time  
☐ Influence of fatigue/illness  
☐ Influence of emotions/stress  
☐ Defective vision/bodily defects  
☐ Under influence of alcohol or drugs  
☐ Failure to enforce procedures/rules  
☐ Other: \_\_\_\_\_

**UNSAFE CONDITIONS**

What conditions of tools, equipment, or environment contributed to incident?

- ☐ Inadequate guard/barrier/safety device  
☐ Inadequate/improper protective equipment  
☐ Inadequate warning system  
☐ Defective or work tools/equipment materials  
☐ Congestion or restricted area  
☐ Fire or explosion hazard  
☐ Hazardous storage method  
☐ Unsecured against movement  
☐ Lighting/noise/visual obstruction  
☐ Environmental/atmospheric conditions  
☐ Other: \_\_\_\_\_  
☐ No unsafe condition

What caused or influenced above unsafe condition?

- ☐ Defective/worn from normal use  
☐ Defective/worn from abuse/misuse  
☐ Housekeeping/cleaning failure  
☐ Lack of preventative maintenance  
☐ Inadequate maintenance  
☐ Exposure to environment  
☐ Inadequate purchasing  
☐ Safety inspection failure  
☐ Other: \_\_\_\_\_  
☐ Unknown

**INJURY/ILLNESS DATA**

Describe the nature and extent of injury/illness (body part affected, type of injury, etc.) \_\_\_\_\_

|  |     |    |   |
|--|-----|----|---|
| Was first aid administered?            | Yes | No | If yes, what type and by whom                   |
| Was employee taken to hospital/clinic? | Yes | No | If yes, list name, address, and phone number of |
| hospital/physician/nurse attending     |     |    |   |

List any eyewitnesses to the incident and others who might provide information about the incident \_\_\_\_\_

**INCIDENT/ILLNESS EVALUATION**

How did the incident occur? Describe in detail the task the employee was doing when injured or became ill. Include specifics such as equipment, structure tools, materials, objects (size, shape, and weight), people involved in the task, positions, distances, rate of movement, sequence of events, etc.

\_\_\_\_\_

(Attach any additional information comments, documentation of interviews, sketches, pictures, etc. as necessary)

**Incident Investigation Report****Incident/Illness Evaluation (continued)**

Type of exertion/body motion during injury: Pull \_\_\_\_\_ Lift \_\_\_\_\_ Bend \_\_\_\_\_ Reach \_\_\_\_\_ Twist \_\_\_\_\_ Other \_\_\_\_\_  
 Was this the employee's regular job? Yes \_\_\_\_\_ No \_\_\_\_\_ How much experience does this employee have on this job? \_\_\_\_\_  
 Was the employee trained in this job or task? Yes \_\_\_\_\_ No \_\_\_\_\_ When was last training on this task? \_\_\_\_\_  
 Was this the employee's first job-related injury or illness? Yes \_\_\_\_\_ No \_\_\_\_\_ If no, briefly describe previous injuries (date, nature, extent, etc.) \_\_\_\_\_

Hours of overtime worked in last 24 hours \_\_\_\_\_ Did this possibly contribute to incident? If so, describe \_\_\_\_\_

Does a safety rule or policy apply to this task? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, describe rule and how employee followed or violated \_\_\_\_\_

Does a specific procedure for task exist? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, describe procedure briefly and if it was followed \_\_\_\_\_

Is protective equipment required for this task? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, describe equipment, if it was used, if it was adequate/functioned properly, and if the employee(s) were trained on it. \_\_\_\_\_

Is there possibly any third party which contributed to the incident? (Other contractors, employee, etc.) Yes \_\_\_\_\_ No \_\_\_\_\_  
 If yes, describe. \_\_\_\_\_

Did any unsafe physical/environmental conditions exist? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, describe conditions (physical, mechanical, electrical, etc.) which contributed to the incident \_\_\_\_\_

Is material handling equipment required for this task? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, was it used and did it function properly? \_\_\_\_\_

**Possible actions to be taken to prevent reoccurrence**

|   |  |  |
|---|--|--|
| _____ Reinstruction of employee(s) involved         | _____ Do/revise Job Safety Analysis        | _____ Repair/replace/modify equipment  |
| _____ Preventative instruction of others who do job | _____ Revise/establish safety rule         | _____ Improve clean-up procedure       |
| _____ Training of employee(s)                       | _____ Reassign employee to another job     | _____ Improve inspection procedure     |
| _____ Action to improve enforcement                 | _____ Require/replace protective equipment | _____ Eliminate/reduce congestion      |
| _____ Reprimand/discipline of employee(s) involved  | _____ Install safety guard device          | _____ Improve design/construction      |
|   |  | _____ Improve environmental conditions |

**CORRECTIVE ACTION(S) TAKEN OR PLANNED**

| What was/will be done | By Whom | Estimated Completion Date | Completion Confirmed |          |
|-----------------------|---------|---------------------------|----------------------|----------|
|                       |         |                           | Date                 | Initials |
|                       |         |                           |                      |          |
|                       |         |                           |                      |          |
|                       |         |                           |                      |          |
|                       |         |                           |                      |          |
|                       |         |                           |                      |          |

Was incident discussed with employee to prevent reoccurrence? Yes \_\_\_\_\_ No \_\_\_\_\_ Date \_\_\_\_\_  
 Any disciplinary action taken? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, describe what type. \_\_\_\_\_

**FOLLOW UP COMMUNICATION**

YES \_\_\_\_\_ NO \_\_\_\_\_ Incident site reviewed by supervisor with employee (and safety coordinator if applicable.)  
 YES \_\_\_\_\_ NO \_\_\_\_\_ Incident review meeting conducted. Attended by \_\_\_\_\_  
 YES \_\_\_\_\_ NO \_\_\_\_\_ Employee or supervisor reviewed incident with work group.  
 YES \_\_\_\_\_ NO \_\_\_\_\_ Employee reviewed injury with safety committee  
 YES \_\_\_\_\_ NO \_\_\_\_\_ Project Safety informed of incident

Date of Report \_\_\_\_\_ Prepared by \_\_\_\_\_ Signature \_\_\_\_\_ Title \_\_\_\_\_

Reviewed by \_\_\_\_\_ Superintendent \_\_\_\_\_



## MSCAA OCIP V

4225 Airways Blvd.  
Memphis, TN, 38116

### WORKER'S COMPENSATION REFERRAL SLIP FOR INJURED EMPLOYEES

**On-Site EMT:** **(901) 922-8333**

*Authorized Clinic:* **Concentra Medical Center**  
**2831 Airways Boulevard**  
**Suite 102**  
**Memphis, TN 38132**  
**(901) 348-0200 (Phone)**  
**(901) 348-0046 (Fax)**

**Clinic Hours:** **8 a.m. to 8 p.m. (Mon. – Fri.)**

*Authorized After-* **Methodist South Hospital**

*Hours Clinics:* **1300 Wesley Drive**  
**Memphis, TN 38116**  
**(901) 516-3700**

**Baptist Memorial Hospital DeSoto**  
**7601 Southcrest Parkway**  
**Southaven, MS 38671**  
**(662) 349-4000**

Employee Name: \_\_\_\_\_ Date: \_\_\_\_\_

Employer: \_\_\_\_\_ Employer Policy Number: \_\_\_\_\_

Location Code (if known): \_\_\_\_\_ Claim Number (if known): \_\_\_\_\_

Account Name: **Memphis Shelby County Airport Authority OCIP V**  
Insurer: **Zurich**  
Master Policy Number: **WC 6675835-00**

#### **Instructions for medical facility:**

The person listed above has been injured on the job. Please provide the employee with medical treatment per OCIP protocol.

## MSCAA OCIP V Authorization to Treat

### Local Office Information

Company Name: \_\_\_\_\_  
 Designated Representative: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

### Billing Information for Drug Screens

Company Name: **Zurich North America**  
 Address: PO Box 968077  
 Schaumburg, IL 60196-8077  
  
**Phone: (800) 366-8366 Fax: (615) 872-1303**

### Insurance Information for Work Comp Carrier

Company Name: Zurich American Insurance Company **Master Policy #: WC 0183275-00**  
 Address: PO Box 968077  
 Schaumburg, IL 60196-8077  
  
**Phone: (877) 928-4531 Fax: (866) 691-7068**

### Services Required

Worker's Comp Injuries \_\_\_\_\_

### Drug Screen Required For (employer to check necessary testing):

|                                     |                      |
|-------------------------------------|----------------------|
| _____ Pre-Employment                | _____ Random         |
| _____ Probable Cause                | _____ Post Accident  |
| _____ Urine (collection only)       | _____ Breath Alcohol |
| _____ Test Cup (Cocaine, PCP, etc.) |                      |

**Treating Medical Center:** Please be advised if negative, DO NOT send out. Be sure to mark on the Chain of Custody (COC) the information for the employer:

Employer: \_\_\_\_\_ Fax: \_\_\_\_\_

Special Instructions: Use TEST CUP. Do NOT send out unless the test reads positive.

Fax results to designated employer listed above.

Company Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## MSCAA OCIP V

### Notice of Subcontract Award and Request for Insurance

Send this Form to:

**Willis Towers Watson**

**Starla Lacey, CSS**

**Copy: Nancy Jarmon, CSS**

**500 N. Akard St., Suite 4300**

**Dallas, TX 75201**

**Phone: (972) 715-6303**

**Email: [starla.lacey@wtwco.com](mailto:starla.lacey@wtwco.com)**

**Email: [nancy.jarmon@wtwco.com](mailto:nancy.jarmon@wtwco.com)**

**Phone: (404) 536-8567**

RE: Project Name: \_\_\_\_\_

This is to inform you that we have awarded the following subcontract to the following Subcontractor:

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

\_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

Office Contact: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Type of Work: \_\_\_\_\_ Job # \_\_\_\_\_ Contract Value: \$ \_\_\_\_\_

Award Date: \_\_\_\_\_ Estimated Start Date: \_\_\_\_\_

Awarding Contractor: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

Prime Contractor (if different) \_\_\_\_\_

***DO NOT complete this form for your own company.***

*A Form-1 should be completed on each of your Subcontractors.*

- **Award Date – date Notice to Proceed was given (Verbally or in Writing)**

- **Start date is mandatory – date shown will be the effective date of coverage.**

**Any Contractors or Subcontractors who enrolls in the OCIP 30 days after their start date will have to provide a No Known Loss Letter to the Carrier along with the enrollment documentation.**

- ☐ Additional Contract  
☐ Time & Material Contract  
☐ Short Term (< 30 days)  
☐ Small Contract (< \$30,000)

## MSCAA OCIP V ENROLLMENT FORM

**Project:** \_\_\_\_\_

### CONTRACTOR'S INFORMATION

Contractor: \_\_\_\_\_ Indv \_\_\_\_\_ Ptshp \_\_\_\_\_ Corp \_\_\_\_\_ J/V \_\_\_\_\_  
 Address: \_\_\_\_\_ FEIN: \_\_\_\_\_  
 Office Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
 Site Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
 Safety Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
 Insurance Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
 Payroll Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
 Address (if different): \_\_\_\_\_

### CONTRACT INFORMATION

**Contract Value: \$** \_\_\_\_\_

Job Name/Description: \_\_\_\_\_ Contract/JOB #: \_\_\_\_\_  
 Awarding Contractor: \_\_\_\_\_ Prime Contractor: \_\_\_\_\_  
 Award Date: \_\_\_\_\_ Start Date: \_\_\_\_\_ Est Completion Date: \_\_\_\_\_  
 Self Performed: \_\_\_\_\_ %, Est. CV \$: \_\_\_\_\_ Subcontracted \_\_\_\_\_ %; Est. CV \$: \_\_\_\_\_  
 Est. # of Subcontractors \_\_\_\_\_ Est. Man hours \_\_\_\_\_ DBE/MBE/WBE: \_\_\_\_\_

### CURRENT INSURANCE INFORMATION;

**Contractors' Insurance Broker or Agent:**

**PLEASE PRINT**

Company Name: \_\_\_\_\_ Contact: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_ Phone: (\_\_\_\_\_) \_\_\_\_\_

### WORKERS' COMPENSATION

Current Experience Modifier: \_\_\_\_ (Provide documentation confirming)

| W.C. Classification | W.C. Class Codes | Estimated Payroll |
|---------------------|------------------|-------------------|
| 1.                  |                  |                   |
| 2.                  |                  |                   |
| 3.                  |                  |                   |
| 4.                  |                  |                   |

**It is each Contractor's responsibility to notify its own insurance carrier to exclude all work to be done under this contract from your current insurance program. Any Contractors or Subcontractors who enrolls in the OCIP 30 days after their start date will have to provide a No Known Loss Letter to the Carrier along with the enrollment documentation.**

Contractor warrants that the insurance costs for coverages provided by the Owner have been removed from the bid and no eligible Subcontractor has been charged by the Contractor for its participation in the OCIP. The OWNER, or their Agent, is granted permission by Contractors to inspect the insurance and payroll records. At completion of the Work, Owner's Agent shall have the right to audit the project payroll records of Contractors. Any and all returns of premiums, dividends, discounts or other adjustments to any OCIP policy, including rights of cancelation, is assigned, transferred and set over absolutely to OWNER. This assignment is valid for insurance policies whose premiums have been paid by the OWNER on behalf of such Contractors.

Signed \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

**Send this Form to:**

**Willis Towers Watson**

**Starla Lacey, CSS**

**Copy: Nancy Jarmon, CSS**

**Phone: (972) 715-6303**

**Email: [starla.lacey@wtwco.com](mailto:starla.lacey@wtwco.com)**

**Email: [nancy.jarmon@wtwco.com](mailto:nancy.jarmon@wtwco.com)**

500 N. Akard St., Suite 4300  
Dallas, TX 75201

Phone: (404) 536-8567

MSCAA V- FORM 4

**MSCAA OCIP V**  
**NOTICE OF ANTICIPATED COMPLETION**  
(to be submitted with Final Pay Request)

Send this Form to:

**Willis Towers Watson**  
**Starla Lacey, CSS**  
**Copy: Nancy Jarmon, CSS**  
**500 N. Akard St., Suite 4300**  
**Dallas, TX 75201**

Phone: (972) 715-6303  
Email: [starla.lacey@wtwco.com](mailto:starla.lacey@wtwco.com)  
Email: [nancy.jarmon@wtwco.com](mailto:nancy.jarmon@wtwco.com)  
Phone: (404) 536-8567

Please be advised, we, \_\_\_\_\_ are scheduled to complete our work  
for: Awarding Contractor: \_\_\_\_\_ Prime Contractor: \_\_\_\_\_  
Project Description: \_\_\_\_\_ Actual Start Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_  
Reported Contract Value: \_\_\_\_\_ Final Contract Value: \_\_\_\_\_  
Self Performed Work: \_\_\_\_\_ Subcontracted Work: \_\_\_\_\_  
Estimated WC On Site Payroll: \_\_\_\_\_ Final WC On Site Payroll: \_\_\_\_\_

We used the following enrolled subcontractors, who will also complete their work on the date shown above:

| <u>Subcontractors</u> | <u>Reported Contract Value</u> | <u>Final Contract Value</u> |
|-----------------------|--------------------------------|-----------------------------|
| _____                 | _____                          | _____                       |
| _____                 | _____                          | _____                       |
| _____                 | _____                          | _____                       |
| _____                 | _____                          | _____                       |
| _____                 | _____                          | _____                       |

This is our contract: YES ☐ NO ☐

We are still working on the following contracts:

| <u>Location Code</u> | <u>Awarding Contractor</u> | <u>Prime Contractor</u> |
|----------------------|----------------------------|-------------------------|
| _____                | _____                      | _____                   |
| _____                | _____                      | _____                   |
| _____                | _____                      | _____                   |
| _____                | _____                      | _____                   |
| _____                | _____                      | _____                   |

Your Company's Name: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_

Final insurance audits may be made under the applicable policies. Please show who in your office (or another location if applicable) is responsible for this information:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip \_\_\_\_\_



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|   |   |                   |
|---|---|-------------------|
| PRODUCER<br>Agent Company Name<br>Address<br>City, State ZIP<br>Attn: | CONTACT<br>NAME:                            |                   |
|   | PHONE<br>(A/C, No. Ext):                    | FAX<br>(A/C, No): |
| INSURED<br>OCIP Enrolled Contractor                                   | E-MAIL<br>ADDRESS:                          |                   |
|   | INSURER(S) AFFORDING COVERAGE               |                   |
|   | NAIC#                                       |                   |
|   | INSURER A : AM BEST Rating A- VII or better |                   |
|   | INSURER B :                                 |                   |
|   | INSURER C :                                 |                   |
|   | INSURER D :                                 |                   |
| INSURER E :   |   |                   |
| INSURER F :   |   |                   |

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR<br>LTR | TYPE OF INSURANCE   | ADDL<br>INSR | SUBR<br>WVD | POLICY NUMBER | POLICY EFF<br>(MM/DD/YYYY) | POLICY EXP<br>(MM/DD/YY) | LIMITS   |
|-------------|---|--------------|-------------|---------------|----------------------------|--------------------------|--|
|             | GENERAL LIABILITY <i>Applies to Off Site Risks</i>  | X            | X           |               |                            |                          | EACH OCCURRENCE \$1,000,000  |
|             | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY  |              |             |               |                            |                          | DAMAGES TO RENTED PREMISES(Ea occurrence) \$   |
|             | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR                            |              |             |               |                            |                          | MED EXP (Any one person) \$  |
|             | GEN'L AGGREGATE LIMIT APPLIES PER:  |              |             |               |                            |                          | PERSONAL & ADV INJURY \$1,000,000  |
|             | <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC |              |             |               |                            |                          | GENERAL AGGREGATE \$2,000,000  |
|             |   |              |             |               |                            |                          | PRODUCTS-COMP/OP AGG \$2,000,000   |
|             | AUTOMOBILE LIABILITY <i>Applies to Off and On Site Risks</i>  | X            | X           |               |                            |                          | COMBINED SINGLE LIMIT (Ea accident) \$1,000,000  |
|             | <input checked="" type="checkbox"/> ANY AUTO  |              |             |               |                            |                          | BODILY INJURY(Per person) \$   |
|             | <input checked="" type="checkbox"/> ALL OWNED AUTOS   |              |             |               |                            |                          | BODILY INJURY(Per accident) \$   |
|             | <input checked="" type="checkbox"/> HIRED AUTOS   |              |             |               |                            |                          | PROPERTY DAMAGE (Per accident) \$  |
|             | <input type="checkbox"/> SCHEDULED AUTOS  |              |             |               |                            |                          | \$   |
|             | <input checked="" type="checkbox"/> NON-OWNED AUTOS   |              |             |               |                            |                          | \$   |
|             | <input checked="" type="checkbox"/> UMBRELLA LIAB   | X            | X           |               |                            |                          | EACH OCCURRENCE \$1,000,000  |
|             | <input checked="" type="checkbox"/> EXCESS LIAB   |              |             |               |                            |                          | AGGREGATE \$1,000,000  |
|             | <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$  |              |             |               |                            |                          | \$   |
|             | WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY <i>Applies to Off Site Risks</i>                           | N/A          | X           |               |                            |                          | <input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER |
|             | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)                               |              |             |               |                            |                          | E.L. EACH ACCIDENT \$1,000,000   |
|             | If yes, describe under DESCRIPTION OF OPERATIONS below  |              |             |               |                            |                          | E.L. DISEASE - EA EMPLOYEE \$1,000,000   |
|             | OTHER   |              |             |               |                            |                          | E.L. DISEASE - POLICY LIMIT \$1,000,000  |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Workers' Compensation and Commercial General Liability coverages shown above do not apply to any Designated Project at the Memphis International Airport – only for off-site activities/operations. The Memphis-Shelby County Airport Authority, its officers, commissioners, representatives, agents and employees ATIMA and [AWARDING CONTRACTOR] are additional insureds applicable to the Auto Liability Insurance and off-site Commercial General Liability insurance policies including Excess Umbrella. 30 Day Notice of Cancellation or Non-Renewal other than 10 days for non-payment of premium is provided to MSCAA. Waiver of Subrogation in favor of MSCAA is provided by all policies.

## CERTIFICATE HOLDER

MSCAA OCIP  
c/o Willis Towers Watson  
Attn: OCIP Administrator  
500 North Akard St., Suite 4300  
Dallas, TX 75201

## CANCELLATION

SHOULD ANY OF THE ABOVE-DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Contract: Contractor Name  
Project Name  
MSCAA Project No. \_\_\_\_\_



|  |  |
|--|--|
|  |  |
|--|--|

EXHIBIT D  
TO  
UNIT PRICE CONSTRUCTION CONTRACT  
FOR  
9/27 VEHICLE SERVICE ROAD REHABILITATION - CONSTRUCTION

BY AND BETWEEN  
THE MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY  
AND  
(CONTRACTOR NAME)

CONSTRUCTION SAFETY AND HEALTH GUIDELINES

OCIP CONSTRUCTION SAFETY AND HEALTH GUIDELINES

# Memphis-Shelby County Airport Authority

## Construction Safety and Health Guidelines



|  |  |
|--|--|
|  |  |
|  |  |
|  |  |
|  |  |

| Revision | Date       |
|----------|------------|
| 1        | 11/30/2012 |
| 2        | 05/02/2016 |
| 3        | 02/06/2017 |

---

Contract: Contractor Name  
Project Name  
MSCAA Project No. \_\_\_\_\_

## Confirmation of these Project Safety & Health Guidelines

It is the responsibility of the Contractor to maintain total control of safety to ensure that employees and the general public are provided with an environment free of hazards during construction and renovation activities. This program does not relieve the Contractor of their responsibilities regarding the safety of their employees, the employees of their Subcontractors and sub-subcontractors, protection of the general public and the preservation of property.

**Contractors shall develop their own written site-specific safety and health plans for the Memphis-Shelby County Airport Authority.** At minimum, the safety and health plan shall meet the requirements of 29CFR1926 – Federal OSHA Construction regulations and the requirements established in the **Memphis-Shelby County Airport Authority** Construction Safety Guidelines. In short, as required by law, each Contractor is responsible for protecting the health and safety of its employees and the employees of each subcontractor and sub-subcontractor while ensuring they have a safe and healthful place to work. The site-specific safety and health program shall be submitted for approval within fifteen (15) days after the Notice to Proceed for approval to the Project Safety Manager, Wes Shelby, 4225 Airways Blvd., Memphis, TN.

The Safety Requirements of these safety guidelines are a supplementary document to all Government rules, codes and regulations. It does not negate, abrogate, alter or otherwise change any provisions of these rules, codes and/or regulations, and is intended to supplement and enforce the individual program of each contractor and the overall safety effort. It is understood that the ultimate responsibility for providing a safe place to work rests with each individual Contractor.

In the event of a conflict between the provisions of these guidelines and applicable local, State or Federal safety and health laws, regulations and/or standards, contract documents or the Contractor's Safety Plan the more stringent shall apply.

By Signature, each individual confirms their understanding of the contents of this manual and shall conform to the standards of safety outlined in this manual.

\_\_\_\_\_  
Contractor – Project Manager

\_\_\_\_\_  
Contractor – Field Supervisor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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## POLICY STATEMENT

**Memphis-Shelby County Airport Authority** is committed that all construction workers have the best possible working environment while working on this project. It shall be the responsibility of each Contractor/Subcontractor to abide by the Safety and Health Provisions listed in OSHA 29 CFR 1926.

In addition, each Contractor, Subcontractor and Sub-Subcontractor shall abide by **Memphis-Shelby County Airport Authority** Construction Safety Guidelines, Federal Regulations, State laws and regulations, local and county laws and regulations which are applicable.

The primary goal established for the **Memphis-Shelby County Airport Authority** is to safely perform work with “**ZERO ACCIDENTS**”; totally free from lost time injuries for the mutual benefit of the worker, environment, and community.

The safety goals and objectives established for the Project can only be achieved when everyone commits to perform their tasks safely and efficiently. This commitment to achieve these goals will result in both increased productivity and the PREVENTION of job related injuries and illnesses. This will be considered as safe construction.

## Definitions

OCIP Team – Means the Owner **Memphis-Shelby County Airport Authority**, Willis Towers Watson and all applicable insurance carrier representatives or the representative of defined such agencies and firms working together to implement the OCIP insurance program.

Construction Managers – Means the Management Group or General Contractor that has direct contract with the Owner **Memphis-Shelby County Airport Authority** to provide the overall control of the construction at the project.

General Contractor – Means the Contractor that has direct contract with the owner or Construction Managers as bid for the project. The General Contractor is also the controlling contractor on the construction site when a Construction Manager is not present.

Subcontractor – Means the contractor and or contractors that carry contracts with the General Contractor or Construction Managers. Subcontractors bid portions of the scope of work to be completed.

Sub-Subcontractors – Means any subcontractors of a subcontractors working or contracted to do work on the project.

Critical Lift – A lift that exceeds 75% of the rated capacity of the crane or requires the use of more than one crane. Also, relates to the installation of equipment and or materials that are critical to the completion of the project and damage to such equipment and/or material could result in delays to the project.

The General Public – Is defined as all persons not employed by or under contract, subcontract or sub-subcontract to the **Memphis-Shelby County Airport Authority**.

## PREFACE

From the inception of **Memphis-Shelby County Airport Authority** there has been a determination and commitment to provide a safe environment for all workers and for the public from hazards associated with the construction of the Project.

All Contractors shall implement measures that will create safety awareness, promote safe work practices at the job site and pursue the contract objectives in the safest possible manner. Each Contractor shall bear sole and exclusive responsibility for safety in all phases of their work. Nothing contained herein shall relieve such responsibility.

**Each Contractor shall be responsible for all its subcontractors' and sub-subcontractors' compliance with the project safety requirements.**

**Contractors shall develop their own written site-specific safety and health plan for the MSCAA OCIP.** At minimum, the safety and health plan shall conform to the requirements addressed in the Occupational Safety and Health Act of 1970 and all additions and revisions thereto, and the requirements established in the **Memphis-Shelby County Airport Authority** Construction Safety Guidelines. In short, as required by law, each Contractor is responsible for protecting the health and safety of its employees while ensuring they have a safe and healthful place to work.

### **Contractor developed plans/program(s).**

Programs will be reviewed and approved by OCIP Team. Example(s) of such OSHA mandated plans/programs are shown below.

|                              |                              |
|------------------------------|------------------------------|
| Site Traffic Control Plan    | Fall Protection Plan         |
| Fire Protection Plan         | Trench Safety Plan           |
| Respiratory Protection Plan  | Hazard Communication Program |
| Confined Space Entry         | Scaffold Safety Program      |
| Hearing Conservation Program | Ladder Safety Training       |
| Dust Control Plan            |                              |

**Emergency Procedures** shall be made part of the Contractor's Safety Program. The following provisions shall be included in the emergency plan:

- Highest ranking supervisor automatically becomes responsible for the handling any emergency that occurs during his working hours; they may call upon the assistance of any available worker. A responsible supervisor must be designated for each shift.
- On a regular basis, at both supervisory and "weekly tool box meetings" instruct and update all employees in any course of action for emergencies.
- Establish teams to handle each of the various emergencies.
- Following an emergency, ranking personnel shall secure the area as expediently as possible and provide access and an account of the emergency to authorized representative(s) of MSCAA. Questions from the media should be referred to MSCAA.

Emergency procedures that may occur during any 24-hour period in the following categories must be

established by each contractor:

- a. Fire
- b. Employee injury
- c. Pedestrian injury due to work activity of any kind
- d. Property damage and damage to above ground and buried utilities
- e. Public demonstrations
- f. Bomb threats

On a regular basis, the Contractor shall review and, when necessary, update Emergency Procedures for maximum effectiveness. The contractor should provide MSCAA, the Construction manager, and the on-site safety rep a telephone list of key management personnel, for after-hours emergency contact.

Should a serious accident or emergency occur, the contractor shall contact the Construction Manager immediately. If an emergency requires the presence of an ambulance or the Fire Department, including nights, weekends and holidays, the contractor shall call MSCAA emergency dispatch at (901)922-8333. Non injury accidents need to be reported to the airport police at (901)922-8298. **DO USE 911**

## Site Access

- 1. Use only designated haul routes/crossings.**
- 2. Stay in assigned work area as identified on plans and as defined by fences and barricades. Barricades/fences must not be crossed.**
- 3. Instructions from guards and escort personnel must be obeyed.**

Contractors, Subcontractors, and Sub-Subcontractors will be monitored for implementation and application of their respective safety programs at the work site. Members of the OCIP Team shall have the authority to stop work when either site conditions and/or work practices present an imminent danger until those conditions and/or practices are corrected. Contractors will be notified of any non-compliance and corrective action required. This notice, when delivered to the contractor or their representative at the site of the work, shall be deemed sufficient notice of non-compliance and corrective action required. After receiving the notice, the contractor shall immediately take corrective action. If the contractor fails or refuses to take corrective action promptly, a stop work order may be issued. The cost to bring the work activity into compliance shall be incurred by the Contractor, Subcontractor or Sub-subcontractor. The Contractor, Subcontractor or Sub-Subcontractor shall not submit a request for extension of time or increased costs as a result of any such stop work order. Members of the OCIP Team shall not be liable for any damages experienced by the Contractor due to the work stoppage. Progress payments may also cease until the Contractor and/or its Subcontractor and Sub-Subcontractors is in full compliance with all applicable safety and health rules, standards and regulations.

Each Contractor and their subcontractors and sub-subcontractors shall establish and enforce an effective disciplinary program (Appendix B). Contractors shall discipline and/or dismiss employees who violate established rules and regulations. This includes immediate termination for serious violations, repeated violations, or the refusal to follow safety and health rules.

OCIP Team members shall have the authority to effectively remove from the site, any person



(employees including supervisors and management of any contractor) who is regarded as a frequent violator of safe work practices, or who fails to ensure persons working under their supervision or in a work place they control are not exposed to serious work hazards. Any Competent Person assigned to identify existing and predictable hazards and authorized to eliminate them, which fails to perform this duty for any reason shall be replaced by the employer.

The Contractor shall not receive additional payment or reimbursement for safety items and procedures which have been identified as required by the Project Safety and Health Guidelines.

Failure to comply with the contract safety requirements will be considered as non-compliance with the contract and may result in remedial action including withholding of progress payments due the Contractor and/or termination of the Contractor from the site.

In the event the work or any portion thereof is shut down by either an outside agency or because of an unsafe condition as determined by the OCIP Team, the responsible Contractor shall bear the total cost caused by that shut down.

In no case shall the Contractor be relieved of overall responsibility for compliance with the requirements of federal, state and local safety and health laws for all work to be performed under the contract

For any construction equipment working near operating right of way and in aircraft safety areas that could encroach into MSCAA's operating right of way and air craft safety areas shall submit to MSCAA (and obtain approval from the MSCAA) a plan describing the use of such equipment, and the necessary precautions to be taken to preclude any accidental encroachment unto the right of way or aircraft safety area.

## INTRODUCTION

### ***Construction Safety and Health Guidelines, Purpose and Scope***

These guidelines are established to aid in the prevention of job-related accidents and health problems during the construction of the **Memphis-Shelby County Airport Authority**. These guidelines set forth elements which all Contractors, subcontractors and sub-subcontractors shall include in their safety plan. This manual is not all-inclusive. Other elements may be added, or conveyed individually to Contractors to whom they expressly apply. There are other essentials which some Contractors, by nature of the specific type of work being performed, must integrate within their own safety plan.

These guidelines set forth basic rules and regulations for all personnel involved in the construction of the Project. The intent of these guidelines is to enhance and supplement the safety and health standards which are required by law, in contract documents, and are applicable to the construction projects for which it is applied. These guidelines do not cover the full spectrum of published safety and health standards mandated by law, and Contractors shall not assume that they are responsible only for those which are referenced in this manual, nor that they are current and quoted as published. It is the responsibility of the Contractor and its employees to ensure that they are in compliance and their safety plan is in compliance with all safety directives required by law.

In the event of a conflict between the provisions of these guidelines and applicable local, State or Federal safety and health laws, regulations and/or standards, contract documents or the Contractor's Safety Plan the more stringent shall apply.

## RESPONSIBILITIES

### General

Each participant involved in the construction of the Project is individually responsible for conducting their activities to ensure compliance with all applicable safety and health requirements. Construction activities of the Contractor and their Subcontractors and sub-subcontractors will be monitored for compliance with FAA, MSCAA, Federal, State, County, and local safety and health regulations and contract safety and health requirements.

### Contractors

The Contractor shall be responsible for the safety and health of employees, subcontractors, sub-subcontractors, visitors, and vendors in accordance with State, Local and Federal regulations, and the Contract Documents. Each Contractor shall establish and submit for review a written Safety and Health Plan which includes details commensurate with the work to be performed. The Contractor's Safety and Health Plan shall clearly describe the contractor's commitments for meeting its obligations to provide a safe and healthful work environment for its employees and subcontractor employees, to protect vendors, visitors, and members of the general public. The Contractor's Safety and Health Plan shall reference Federal OSHA standards, and any other rules or regulations applicable to construction activities.

*Each Contractor shall designate an on-site Safety Representative who is charged with the responsibility of on-site safety management. The Safety Representative's sole duty shall be safety management and shall not have other collateral duties. At minimum the safety representative shall meet the requirements of a "competent person" as defined by OSHA for all phases of construction and have a minimum of three (3) years construction safety experience. A resume shall be provided that outlines such items as: work experience, education, training completed and professional organizations, etc. The safety representative shall remain on the Project until contract acceptance (full-term of contract). Safety representative must be knowledgeable on SC-230, SC-240, and other safety requirements as outlined in GP-200, the safety plan and site safety manual. The safety representative shall be interviewed by the OCIP Team.*

As a condition of this contract, a safety improvement team shall be established for this project. The following guidelines (Appendix H) shall be followed.

As a condition of their contract, all Contractors shall submit to the Project Safety Manager or designee:

- A site-specific safety plan within fifteen (15) days after receipt of Notice to proceed and prior to start of any construction activities.
- The name and qualifications (resume) of designated on-site safety person;
- An immediate copy of all citations and/or warning of safety violations received from any state or federal jurisdiction, agency, insurance company, or by any of its subcontractor.

The Contractor shall:

- Ensure that all employees, subcontractors' and sub-subcontractors' employees are given a comprehensive Safety and Health orientation. This orientation shall include general Safety and Health procedures and policies as well as the project specific rules, regulations and specific hazards. Employees shall be advised that disregard for these rules, or any other applicable Safety and Health regulations shall be subject to company disciplinary action and/or removal from the project. All workers shall complete an acknowledgment that indicates the worker has read, understood, and will abide by the rules and regulations. The following information shall be obtained from all employees: worker's name, date of orientation, Contractor's name and project name (Appendix A).
- Investigate all accidents and incidents that result in personal injury or illness to workers, damage to buildings or equipment and any incident with the general public.
- Conduct daily job inspections, identify unsafe conditions or work practices and assure they are corrected, and maintain

- documentation.
- Conduct weekly, documented, safety meetings with Contractor supervisory personnel.
- Attend monthly Safety committee meetings and participate
- Assure that employees acting in a supervisory capacity understand and enforce all safe work practices. **Foreman and supervisors are required to have completed a 10-hour OSHA Outreach hazard recognition course within Two (2) years prior to directing work on the project.** Documentation must be made available for review
- Assure that employees acting in a supervisory capacity understand and enforce all safe work practices. **Foreman and supervisors are required to have completed a 10-hour OSHA Outreach hazard recognition course within Two (2) years prior to directing work on the project.** Documentation must be made available for review.
- Assure a Competent Person is provided at work locations where required by OSHA.
- Assure that all Personal Protective Equipment (PPE) is available and being used as required.
- Assure all construction equipment and motor vehicles certification, inspection, repair and controls are in compliance with the safety requirements of the project and OSHA. Annual crane certification shall be available for review for each to a crane on the project.
- Prior to making critical crane lift, detailed lift plan shall be submitted. (See Appendix C, "Critical Lift Checklist")
- Assure that all hand and power tools are in safe working order.
- Assure that all work areas are kept clear of debris and trash and that adequate trash barrels are placed throughout the work area and emptied frequently.
- Provide the appropriate number and types of sanitary facilities for employees.
- Assure that fall protection equipment is provided and used. Inspections of this equipment shall be documented and on file for review.
- Assure that all perimeter cables, barricades, or any other safety-related items are installed correctly and maintained. If another Contractor must remove a safety item, coordinate this activity with the Contractor who installed the device and other Contractors who may be exposed. **Safety devices shall be replaced by the Contractor removing them.**
- Warning signs, tags, or barricades shall be installed if other safety devices are removed.
- Assure that employees receive adequate training as required by the Project and OSHA. Additional training for foreman and safety representative may be required based on unique hazards involved in a task.

## WORKPLACE SUBSTANCE ABUSE POLICY

The contractor shall submit as a part of their overall Safety and Health Plan a copy of their company Workplace Substance Abuse policy. This policy shall at minimum comply with Appendix D, "Substance Abuse".

The Contractor shall ensure that all subcontractors and sub-subcontractors are in compliance. The Contractor shall submit a monthly notarized letter stating they and their subcontractors are in compliance with the Project's Substance Abuse Policy.

Contractors should contact the State of Tennessee, at 1-800-332-2667, if there are questions concerning the Tennessee Drug Free Workplace Program. Contractors should also consult their own legal counsel.

## INSTRUCTION AND TRAINING

### ***Safety Orientation Program***

Newly employed, promoted, and/or transferred personnel shall receive an orientation regarding the general safety and health rules and regulations as well as the site specific policies and hazards prior to starting work on the construction site. The Contractor shall be responsible for the orientation of their employees, Subcontractors and sub-subcontractors, and visitors. Documentation of this orientation shall be maintained on file for review (Appendix A). Hard hat stickers (provided by the Project) are to be issued to an employee following their orientation, and then documented on training Log Sheet. It is the responsibility of the contractor to ensure that non-English speaking employees receive these same instructions in a language they understand. Safety orientation of all personnel shall include at a minimum the following topics Safety orientation of all personnel shall include at a minimum the following topics:

- Unique hazards of the project
- Employer/personnel responsibilities under OSHA Standards – location of required posters
- Personal protective equipment, including appropriate work attire
- Confined space entry
- 6-Foot fall rule - 100% continuous fall protection (*including steel erection and scaffolds*)
- 100% eye protection, 100% hard hat protection
- Appropriate guarding and other warning devices
- Housekeeping
- Fire protection
- Accident reporting procedures - First-aid facilities - Emergency procedures
- Crane and lifting hazards
- Scaffolding tagging requirements
- Hazard communication/ Right-to-Know, location of MSDS's
- Substance abuse policy
- Disciplinary procedures
- Trenching & excavation
- Electrical hazards

## PROTECTION OF THE PUBLIC

All necessary precautions to prevent injury to the public or damage to property of others shall be taken. The "Public" is defined as all persons not employed by or under contractor or subcontractor to **Memphis-Shelby County Airport Authority**. Installation of temporary barriers and/or fencing designated to protect the Public shall be reviewed and approved by the Owner and/or their representative. Precautions shall include but not be limited to the following:

1. Work shall not be performed in any area occupied by the Public unless specifically permitted according to the terms of the contract or in writing.
2. When necessary to maintain public use of work areas involving vehicular roadways, etc., the contractor shall protect the Public in accordance with the applicable regulations.
3. Appropriate warnings, signs and instructional safety signs shall be conspicuously posted where necessary. In addition, a signal person shall control the moving of motorized equipment in areas where the public might be endangered. All signage warnings and traffic control shall comply with the particular agency that takes judicial precedence.
4. Each project work area shall be protected by a fence constructed and erected per MSCAA requirements.
5. Barricades for the general public or public roadways shall be secured against accidental displacement and in place at all times, except when temporary removal is required. As such times, a flag person shall be assigned to control the unprotected area. Barricades used on the airfield will be reconstructed erected and maintained per MSCAA/FAA requirements.
6. Required signs and symbols shall be visible at all times when work is being performed and shall be removed or covered promptly when the hazards no longer exist.

### ***Group Tours and Site Visitors***

It is particularly important that a high degree of protection be afforded to all persons on the authorized tours of construction

work-sites. The following instructions shall be complied with, as applicable, by the Contractor and those responsible for arranging such tours. The following procedures shall be followed:

- a) Group tours shall be cleared through the site **Memphis-Shelby County Airport Authority** office, allowing maximum advance notice.
- b) If visitors to the site will be on foot or out of the vehicle/bus, the individual or organization requesting the tour shall ensure that:
  - In all cases, the Construction Manager, MSCAA and the contractor shall be advised of any tour in a timely manner prior to the tour taking place.
  - Release and Hold Harmless Agreement – Each visitor shall be required to sign a release and hold harmless agreement prior to the commencement of the tour.
  - MSCAA will coordinate the tour arrangements and ensure notification to the Construction Manager
  - Tour groups are limited to no more than (25) twenty-five persons.
  - Visitors are required to wear appropriate clothing and shoes.
  - Children under 18 years of age are not be permitted on the Project tours.
  - All visitors shall comply with Contractor safety requirements.
  - Site **Memphis-Shelby County Airport Authority** or designee personnel will escort Tours.

## **HARASSMENT-FREE WORK POLICY**

### ***Employee Harassment***

It is the policy of **Memphis-Shelby County Airport Authority** to provide a workplace free from employee harassment on the basis of race, color, religion, sex, national origin, age, handicap, disability, etc. Improper interference with the ability of an employee to perform their work activities will not be tolerated. Harassment can appear in many forms, including derogatory comments, jokes, slurs, unwanted physical contact, derogatory drawings or threats.

### ***Sexual Harassment***

Unwanted sexual advances, requests for sexual favors and other verbal physical conduct of a sexual nature will not be tolerated. Sexual harassing conduct includes, but is not limited to:

- ☐ Unwelcome sexual flirtation, touching, advances or propositions
- ☐ Verbal abuse of a sexual nature, including graphic or suggestive comments about an individual's dress or degrading words used to describe and individual
- ☐ The display in the work place of sexually suggestive objects or pictures, including nude photographs
- ☐ Other verbal or physical conduct of a sexual nature can affect an employee's work performance

### ***Reporting of Harassment***

It is the policy of **Memphis-Shelby County Airport Authority** to actively investigate any alleged incidence of harassment. Anyone who believes they have been harassed should contact the project manager. Any allegation or complaint will be held in the strictest confidence.

Any employee who commits a wrongful act of harassment shall be subject to disciplinary action, up to

and including termination.

## **REPORTING, ACCIDENT INVESTIGATION, AND RECORDKEEPING**

Contractors shall provide an American Red Cross and CPR Certified First Aid representative and designate an appropriate area for the first aid and medical care to treat injured employees at the job site. A copy of the First Aid Representative's qualifications shall be submitted to the Project Safety Manager.

The contractor must designate an individual to coordinate injury treatment with the workers' compensation carrier. The contractors' designated representative should also coordinate return to work and availability of modified work.

To coordinate medical services, the contractor will complete "Employee Medical Data Sheet" and "Company Drug Screen Request" forms.

### ***Reporting***

All accidents resulting in employee injury, property damage, or involving the general public shall be reported immediately to the designated project representative and the Project Safety Manager.

The Contractor and their subcontractors and sub-subcontractors shall complete a Supervisor's Incident Report Form (See Appendix E) and submit the report to the Project Safety Manager for all job-related accidents involving any of the following:

1. Any employee injury of the contractor, any subcontractor or sub-subcontractor.
2. Any injury and/or incident with the general public (including any alleged injuries reported by a member of the general public).
3. Equipment
4. Property

A formal accident investigation report and "First Report of Injury" shall be submitted within 24 hours. Pertinent facts that are not available within the above time shall be submitted as soon as available in a supplemental report.

A drug and alcohol test shall be administered to employee(s) injured and/or any employees in a work crew involved in an accident involving bodily injury.

### ***Record-Keeping and Files***

The Contractor and all Subcontractors and sub-subcontractors shall maintain a master or central file for safety and health related documentation on the jobsite. Files shall be maintained in such a manner that distinguishes each contractor and their subcontractors from other subcontractors and sub-subcontractors.

See Insurance manual for claim reporting procedures.

## ***Accident Investigation***

All accident/incidents shall be investigated by the contractor's safety supervisor and/or their safety designee. An accident investigation report must be submitted to the Designated Project Representative, OCIP Administrator/Willis Towers Watson and OCIP Insurance Carrier within twenty-four (24) hours of the occurrence.

The accident investigation should generate appropriate recommendations for corrective actions to prevent recurrence of similar accidents. Depending upon severity of the accident, the foreman of the injured worker may be requested to appear at the job safety and coordination meeting to:

1. Describe the cause of accident.
2. Report as to what corrective action has been initiated to avoid future accidents.

The Contractor and all Subcontractors shall maintain a current OSHA 300 log. The log shall be available for review by any OCIP team member at any time.

The Contractor and all Subcontractors and Sub-Subcontractors shall submit on a monthly basis a monthly summary of accident/incidents for the project. The summary shall follow the format contained within (Appendix G).

Under the direction of MSCAA AD HOC Committee may be appointed for investigation of serious accidents that result in loss of life, injury to several workers on pedestrians or major property loss. The committee will submit a report to MSCAA at the conclusion of the investigation.

## **RETURN-TO-WORK**

Under the OCIP Program, every effort shall be made to **return employees to work as soon as possible** after an accident and under the direction of the physician. The insurance carrier will be in contact with the physician to determine the employee's physical demands and limitations.

A return-to-work program shall be developed and implemented by each Contractor to assist workers who are temporarily disabled due to an injury or illness. The Contractor and all subcontractors shall participate in the return-to-work program.

The Contractor, Subcontractor or Sub-subcontractor shall agree that their injured employees shall be treated by an authorized medical treating facility. The medical facility shall be utilized for initial treatment and evaluation of all injured employees. Follow-up care will be provided in accordance with applicable Workers' Compensation statutes.

When employees report a work related illness or injury, they shall be taken to the approved medical facility for examination and/or treatment. If the doctor determines that the employee qualifies for "Return to Work" ("light-duty"), the doctor will complete appropriate forms indicating the restrictions and conditions for transitional work.

The Contractor, Subcontractor or Sub-subcontractor shall provide modified work until the employee is able to resume regular duties. All modified work is temporary in nature and is designed to facilitate a return to regular duties as soon as possible. Modified duty positions may be offered at any location of the project or on any shift. Modified work can also be provided at other work locations of the Contractor with approval from the OCIP Team.

In no case shall an injured employee be laid-off or terminated from a "alternative work" position, unless first discussed with the Owner and it's representatives.

## WORK PRACTICE CONTROL

### Overview

The primary focus of these Safety and Health Guidelines is to provide guidance for Contractors. Each Contractor shall have on site and available for employee review a written safety and health plan. This plan shall cover work exposures the contractors work operations. It is a project requirement that each and every employee conduct their operations in accordance with OSHA and all other applicable standards for all project operations

**Memphis-Shelby County Airport Authority** prohibits the use, possession, concealment, transportation, promotion or sale of the following controlled items:

- a. Firearms, weapons, and ammunition – except when authorized for security reasons.
- b. Switchblades.
- c. Unauthorized explosives, including fireworks.
- d. Stolen or contraband.

### Hazard Communication Program

The Contractor shall develop a written Hazard Communication Program that contains at minimum the following elements:

- The name of the program coordinator.
- A list of hazardous substances present within the Contractor's workplace.
- A written system that ensures MSDS's are obtained and made readily accessible to all employees, including lower tier subcontractor personnel, on each shift. In the event of an emergency, MSDS's shall be made available on an immediate basis.
- A labeling program that ensures that containers of hazardous substances in the workplace are properly labeled with the name of the substance and any applicable hazard warnings.
- A training program regarding hazards of substances that are used in the workplace and the protective measures that must be taken by the employee or any other persons potentially exposed to the hazardous substances.

The Contractor shall ensure that each employee, prior to working with, or being potentially exposed to hazardous substances, receives initial training on the Hazard Communication Program and the safe use of the hazardous substances. Additional training shall be provided to employees whenever new substances are introduced to the workplace.

Permanent records shall be maintained by the Contractor, describing all Hazard Communication Program training.

### Record-Keeping and Files

The Contractor and all Subcontractors and sub-subcontractors shall maintain a master or central file for safety and health related documentation on the jobsite. Files shall be maintained in such a manner that distinguishes each contractor and their subcontractors from other subcontractors and sub-subcontractors.

Contractors shall submit and/or have available on site:

| REPORT NAME             | Annual | Immediately | 24 Hr. | Weekly <sup>1</sup> | Monthly <sup>2</sup> | Per Occurrence | Per Request |
|-------------------------|--------|-------------|--------|---------------------|----------------------|----------------|-------------|
| Annual Crane Inspection | X      |             |        |                     |                      |                | X           |
| Chemical Inventory      |        |             |        |                     | X                    |                | X           |



|  |  |   |  |   |   |   |   |
|--|--|---|--|---|---|---|---|
| Contractor Weekly Inspection                       |  |   |  | X |   |   | X |
| Critical Lift Checklist                            |  |   |  |   |   | X | X |
| First Report of Injury                             |  | X |  |   |   | X |   |
| Incident Investigation                             |  | X |  |   |   | X |   |
| MSDS's   |  |   |  |   | X |   | X |
| OSHA 300 Log                                       |  |   |  |   | X |   | X |
| OSHA Citations                                     |  | X |  |   |   | X |   |
| Safety Observation                                 |  |   |  | X |   |   |   |
| Safety Plan of Action or JSA <sup>3</sup>          |  |   |  | X |   | X | X |
| Safety Statistics                                  |  |   |  |   | X |   | X |
| Safety Training                                    |  |   |  |   | X |   | X |
| Substance Abuse Policy compliance notarized letter |  |   |  |   | X |   | X |
| Toolbox Safety Meetings                            |  |   |  | X |   |   | X |
| Daily equipment / Vehicle Inspections              |  |   |  |   |   |   | X |

Daily -- Daily inspections are required on all equipment / vehicles.

<sup>1</sup> Weekly – Weekly reports are due the following Tuesday morning

<sup>2</sup> Monthly – Monthly reports are due by the 6<sup>th</sup> of the following month.

<sup>3</sup> Safety Action Plan or JSA – As required by contract or specification

The Owner and it's Representatives shall have the right to review all documentation at any time upon request. The Contractor shall give full cooperation during these reviews.

The following documentation shall be in the safety files:

- A written project site specific Safety & Health Plan
- Hazard Communication Program, including current MSDS's. A project specific MSDS file shall be maintained on-site for employee review
- Site emergency plans
- All required safety & health permits
- Weekly safety meeting reports - including meeting topic(s) and employee attendance sheets
- Specific job hazard worker training
- Daily jobsite safety inspection reports - including documentation of corrective measures
- Equipment inspection reports
- Crane inspection reports - daily and monthly (annual certification reports required prior to equipment operation)
- Employee orientation training records
- Accident investigation reports, including near-misses
- Job hazard analysis
- Competent person qualifications
- Written safety violations
- Noise and air quality monitoring

### **Job Safety Analysis (JSA)**

In order to provide Contractor employees with a safe workplace through pre-planning hazardous work, a Job Safety Analysis (JSA) shall be prepared. JSA's shall be required when thorough pre-job planning, it is determined that the process, equipment or procedure indicates potential for serious injury and/or property damage. The Contractor shall also prepare a JSA upon request by an OCIP Team member. JSA's will be done daily. JSA's should be kept in the work area, possibly

at the tool box and/or where they are readily available to the workers. JSA's will be also be on file with the contractor.

The JSA shall be used by Contractors to analyze the jobs they perform, to identify the existing and potential hazards associated with each job step and establish controls for them. These JSA's shall be used as a task specific training tool to instruct employees, inspectors, and visitors of potential hazards and required safety precautions. Each employee working on the project shall sign a training log indicating that they understand the hazards of the project as indicated on the JSA.

Examples of activities that may require a JSA:

- Potential for collapse, (work-in trenching, tunneling. This may include demolition, etc).
- Potential release of stored energy, (electrical, pressure, explosive, etc).
- Crane supported work plate form use.
- Critical crane lifts (two cranes used to lift one load).
- Unusual crane operation as defined by the CIP Team.
- Potential exposure to uncontrolled hazardous materials or wastes.
- Blasting operations
- Abrasive /Sandblasting, Hydro blasting, etc.
- Potential injury from burns, both chemical and thermal.
- Respirator use.
- Potential oxygen-deficient environments.
- Entry into confined space.
- Potential of entanglement in, on, or between objects.
- Work in public streets and highways.
- Lockout/Tagout.
- Operations involving fall exposure.
- Structural Steel Erection.
- Use of new or Hazardous Materials, procedures, equipment.
- Material Storage & Handling.
- Powder actuated tool use.
- Suspended scaffolds.
- Scaffold erection.
- Scaffold dismantlement
- Rock drilling.
- Work on live electrical systems.

## **SPECIFIC PROJECT SAFETY REQUIREMENTS**

### ***Controls for possible conflicts between construction operations and aircraft***

- 1) Contractor must request that a notice to Airmen (NOTAM) be issued prior to start of any construction that might affect navigable airspace or surface movement.
- 2) Barricades and temporary lighting must be installed and maintained per specs.
- 3) Operators of equipment/vehicles must be instructed on routes and haul procedures.
- 4) All personnel must stay in defined work areas. Fences/barricades are not to be crossed.
- 5) No access to active taxiways/runways will be allowed without prior authorization and direction/escort by MSCAA personnel.

## ***Scaffolds, Stair Towers and Work Platforms***

The Project requires **100% continuous fall protection** during the erection and dismantling of scaffolds where employees may be exposed to a fall greater than (6) six feet. A competent person must be present during erection, dismantling or moving of scaffold. The Contractor/Subcontractor shall develop and use a scaffold tagging system similar to the following:

### **Tagging**

The tagging procedure, at minimum, shall consist of three (3) tags. The appropriate tag will be placed on a scaffold approved by the competent person. Each tag must have at least the following information and be visible by all employees:

- Date tag was placed - date of the last inspection.
- Name of person inspecting. All tags must be weather resistant.

A **GREEN** tag means the scaffold complies with federal OSHA regulations and can be used by any person.

A **YELLOW** tag indicates the scaffold is complete but does not meet all federal OSHA specifications. This tag will be used only in special circumstances. Special precautions, such as wearing a safety harnesses may be required because any accessory, such as a handrail, could not be installed due to the location of the scaffold.

A **RED** tag shall be placed on a scaffold that is being erected, dismantled, damaged and/or defective. No employees except members of the erection/dismantling crew shall work from a red tagged scaffold.

Employees will be instructed to read tags before using scaffolds. If a tag is not attached to the scaffold, **DO NOT USE** the scaffold.

*Exceptions:* Single buck or Baker scaffolds need not be tagged.

## ***Walking and Working Surfaces***

### **Barrier Identification Tape**

Barrier identification tape is strictly prohibited from being used for any form of personnel fall protection. Barricade tape around excavations can be used for short term (24-hours), after this period physical barriers are required.

- **YELLOW** barricade tape shall be used for **CAUTION/WARNING**
- **RED** barricade tape shall be used for **DANGER DO NOT ENTER**

Note: Once the area barricaded is free of the hazard(s) for which it was erected the tape will be removed and properly discarded.

## ***Fall Protection***

Employees shall not be exposed to fall hazards. When an employee observes a fall hazard, they will notify their supervisor of the hazard. The responsible Contractor will immediately correct the hazard. **100% continuous fall protection, for fall hazards greater than six (6') feet, shall be implemented on this Project - including steel erection and scaffold use, erection and dismantling.**

Each Contractor shall be responsible for meeting fall protection requirements in their overall safety and health program.

Each Contractor shall evaluate ALL fall exposure conditions or tasks and must develop a Fall Protection Plan which outlines what methods, procedures and/or devices will be used in their program.

Each Contractor shall be responsible for implementing the requirements to achieve fall protection in accordance with all Federal, State, local rules, regulations, and the OCIP Safety and Health Guideline.

All fall protection systems used on this project shall comply with OSHA regulations and the project safety guidelines. Fall protection shall provide a positive means of protection. **Controlled Access Zones and Safety Monitoring Systems are not considered positive means of fall protection and shall not be permitted.** Any employee exposed to a fall greater than six (6) feet shall use approved fall protection equipment or devices. Fall protection systems shall be designed and installed under the direction of a Registered Professional Engineer or Qualified Person. Fall protection is required, as a minimum, under the following examples:

- Formwork and reinforcing steel. Each employee on the face of formwork or reinforcing steel shall be protected from falling 6 feet or more to lower levels by Personal Fall Arrest Systems, safety net systems, or positioning device systems.
- When working from a telescoping, articulating, or rotating type lifts and scissors lifts, personnel shall wear a safety harness with shock absorbing lanyard, secured to an approved anchorage point.
- When working on a ladder higher than six (6) feet from a solid surface, if the employee's torso extends past the side rails or if a vertical ladder extended a total of 20' or greater.
- When working on a platform or other support not equipped with an adequate guardrail, which is higher than six (6) feet from a solid surface.
- When working from a crane-suspended work platform, a safety harness with shock absorbing lanyard is mandatory.
- When an employee may have to be lowered into or raised from a confined space, a personal fall arrest system will be worn. The employee will be supported by an approved platform or a boatswain's chair, with certified hoisting device and fall arrest device.
- When working adjacent to an unguarded floor opening or sloped roof, a lifeline system is desirable for mobility. A positive means of fall protection must be provided unless it can be proven infeasible.
- When working adjacent to a deep excavation, pit or trench. Employees will be instructed on the proper wearing and use of personal Fall Protection Arresting Device Systems.
- **Barricade tape is not adequate fall protection.**

The Fall Protection Plan shall detail in writing when fall protection is required and exactly how this protection is to be provided. This written plan is required for any Contractor exposing workers to falls six (6) feet or greater.

The Contractor shall prepare a written training program to ensure that each employee who might be exposed to fall hazards is knowledgeable of the Fall Protection Plan requirements. The program shall enable each employee the ability to recognize the hazards of falling and shall train each employee in the procedures to be followed in order to eliminate or minimize these hazards.

The Contractor shall assure that each employee has been trained.

**Personnel, who have been trained, then re-trained and continue to violate the established fall protection plan/regulations shall be removed from the project IMMEDIATELY.**

### ***Confined Space Entry***

All employees required to enter a confined space shall be knowledgeable of the hazards involved with confined space entry. Prior to the start of such an entry the Contractor involved in the work will develop a Confined Space Entry Procedure. The Contractor shall train all personnel who will enter the confined space. No one shall enter a confined space area until properly instructed. Contractors shall identify all confined spaces within their work area with a sign identifying the area as a confined space.

A Confined Space Entry procedure shall be used to:

- Prevent inadvertent operation of equipment and/or work process while people are working in the confined space.
- Eliminate unexpected exposure to hazardous materials, oxygen deficient or inert/toxic gaseous atmosphere while working in confined spaces.
- Plan for a timely and effective response to an emergency during a confined space entry.

Confined Spaces are considered to be areas with limited entry and exit, or poor natural ventilation, and not intended for human occupancy. Examples of a confined space include: tanks, covered basins, vaults, columns, mixers, manholes, pipelines, sumps, ditches or excavations. All spaces shall be considered permit-required confined spaces until the pre-entry procedures demonstrate otherwise.

Safety considerations include but are not limited to: atmosphere testing for gaseous conditions/lack of oxygen, appropriate personal protective and emergency equipment, and additional personnel as needed to assure communications and assist the individual conducting the entry.

A Permit Required Confined Space means confined space that has one or more of the following:

- May or may not potentially contain a hazardous atmosphere;
- Contains a material that has potential for engulfing entrant;
- Has internal configuration that could trap the entrant;
- Contains any other recognized serious health or safety hazard;

Contractors shall provide their own permit.

A Non-Permit Required Confined Space is a confined space that does not contain or with respect to atmospheric hazards, the potential of causing death or serious physical harm.

### ***Employee Ground Transportation***

The purpose of this section is to establish minimum acceptable guidelines for the safe transportation of all personnel traveling within the Project confines. Eliminate personal accidents and injuries resulting from improper equipment use.

Contractors are responsible for assuring that all personnel follow the requirements of this section and prohibit improper transportation of employees and visitors. Transporting employees in cargo beds of pick-ups, vans, etc. is prohibited, unless approved seats and seat belts are provided and used.

- Operators must be qualified. Vehicle operators must have valid state operator's license
- All equipment/vehicles must be identified (company logo) per specifications.
- Safe speed must be maintained and adjusted to site conditions.
- Use flashers/headlamps as directed.
- Mobile cranes, forklifts, winch trucks, front-end loaders, tractors and other materials handling equipment are not permitted to transport passengers.
- Trucks
  - A maximum of three passengers are permitted to ride inside of the truck cab unless the cab is specifically designed to accommodate additional passengers.
  - Passengers shall ride with all portions of their bodies inside the truck body or frame.
  - Passengers shall be in the seated position, with the seat belts secured and adjusted properly, before the vehicle is set in motion.
  - Riding on a vehicle's bumper or tailgate is prohibited.
  - Tailgates will be closed and latched before the vehicle is operated.
  - Passengers are not permitted to ride in the body of a dump truck, in the bed of a pickup truck or in trailers.
  - Passengers are not permitted to ride on top of the load or to hold materials from shifting.
  - Vehicles must be designed to accommodate passenger transportation or the vehicle shall not be used for that purpose.
  - Drivers transporting passengers shall follow the posted speed limit and Project traffic rules.
  - The Contractor shall establish a designated employee parking area. Employee vehicles shall not be allowed on the construction project.

## ***Housekeeping - MUST BE A CONTINUING PROCESS***

The purpose of this section is to incorporate into the day-to-day work activity a good housekeeping action plan that will be followed by all Contractors working on the project.

- Contractors, through inspection and example, are responsible for assuring that trash and debris remain out of the work areas. Contractors are responsible for all of their work areas and the work areas of their subcontractors and sub-subcontractors. If poor housekeeping practices are observed, corrective action will be discussed with the appropriate Contractor to remind them that cluttered work areas will not be tolerated and that their work area(s) pose a hazard to his employees and other personnel.
- Should the Contractor fails to address and correct their poor housekeeping upon 24 hour written notification, the "owner" may at its option, cause the same to be removed and charge the expense of such removal to the appropriate Contractor.
- Specific attention is needed for operations to the Aircraft Operation Area (AOA).
- Contractors shall monitor their work areas daily or more frequently if needed to assure that all debris is removed to minimize hazards.
- Immediately available vacuum sweeper for cleaning taxiway/runway crossings.
- Personnel immediately available for taxiway and runway cleanup. (Provide brooms to supplement cleanup by sweeper.)
- Access to taxiway/runway crossings for cleanup only at the direction of MSCAA guard.
- Loading of haulage vehicles to minimize spillage.
- Maintenance of vehicles/equipment so that no fluids will leak.
- Provide waste containers at the direction of the Construction Manager.

## ***Project Electrical Requirements***

- The Contractor shall implement an electrical safety program. This safety program element shall include safe installation, work practices, maintenance, and special equipment considerations. All electrical installations, either temporary or permanent, shall be in conformance with the National Electrical Safety Code, NFPA-70, ANSI-C1, and low and high voltage electrical safety orders OSHA code requirements. Only qualified employees shall install electrical tools and equipment, defective and/or improperly installed equipment shall be repaired immediately.
- Only qualified electricians familiar with code requirements shall be allowed to perform electrical work.
- Extension cords used with portable electrical tools and appliances shall be heavy duty (minimum 12 AWG) and of the three-wire type. Cords shall be covered, elevated or otherwise protected from damage that would create a hazard to construction site personnel.
- Electrical cords and equipment shall be visually inspected before each shift for external defects. All damaged and defective cords shall be removed from service immediately (this includes cords with the ground prong missing). Cords shall be repaired with approved heat-shrink methods, electrical tape is not permitted.
- All temporary electrical tools, cords and equipment shall be properly protected by ground fault circuit interrupters (GFCI). All portable generators shall have properly functioning GFCI outlets. GFCI receptacles shall be tested monthly with a multi-range GFCI tester (the tests shall be documented) to insure the GFCI is properly functioning and protecting the worker.
- A "task-specific" lockout/tagout safety plan shall be established to ensure power sources to equipment and/or machinery are isolated and de-energized. This plan shall establish minimum steps necessary to disable equipment and machinery to prevent the unexpected release of potentially hazardous energy. Lockout/Tagout shall be performed in accordance with 29 CFR 1910.147.

## ***Cranes and Hoisting Equipment***

- Cranes and hoists shall not be used without a current annual certificate of examination and testing issued by an accredited crane examiner. **Annual inspection certificates shall be available when cranes arrive on-site. Operators manual shall be in the cab of each crane prior to crane operation.**
- Only qualified and designated personnel shall operate cranes or hoisting equipment. Crane operators must have current (Certified Crane Operator) CCO certification and/or local or state certification.
- Rated load capacities and recommended operating speeds, special hazard warnings, or instructions, shall be conspicuously posted on all equipment; they shall be visible to the operator from his/her control station, and an

accessible fire extinguisher of 10:ABC rating, shall be available at all operator stations or cabs of equipment. Crane operations position shall be kept clear of loose tools or material.

- Outrigger cribbing shall be used for all crane operations. The size of the cribbing shall be determined by taking the cranes capacity and dividing by 5 (example: 40 to crane divided by 5 = 8 sq. ft. per outrigger).
- All cranes working over shafts or lifting personnel platforms shall have anti-two block devices installed and operating properly.
- Radio or other positive means of communication shall be used to direct the operator when the point of operation is not in direct view of the operator.
- The operator shall respond to signals from only one person. The operator shall not follow any signal which is not understood, but shall always obey a stop signal.
- The operator shall be responsible for the operations and load under their control at all times. Whenever there are doubts about the safety of movement, the operator shall stop operations until safety is assured.
- A warning signal, such as a horn, shall be sounded to alert personnel to proximity of moving loads. Loads should not be passed over personnel, and personnel should not be permitted to work in the area directly under a suspended load.
- Concrete buckets - Employees shall be permitted to work under concrete buckets while the buckets are elevated.
- **Employees shall keep out from under suspended loads at all times.**
- Employees shall not ride on loads, slings, hooks, buckets or other load handling attachments.
- All repairs, adjustments, modifications, rigging assembly or dismantling shall be conducted only by qualified and authorized personnel.
- The swing radius shall be barricaded or other positive means shall be taken to prevent personnel from entering the area between the counter weight/swing radius and any stationary and/or outside obstructions.
- A critical lift checklist will be completed and submitted anytime:
  - 2 cranes are used to make a lift
  - when a lift exceeds 75% of the load chart
  - or any unusual conditions are encountered(See Appendix C, "Critical Lift Checklist")
- Crane suspended work platforms shall only be used if there is no other safe means to reach the work area. The Contractor shall complete a JSA prior to the lift.
- Any overhead wire shall be considered to be energized unless and until the person owning such line or operating officials of the electrical utility supplying the line assures that it is NOT ENERGIZED and it has been visibly grounded at the work site.
- Taglines shall be used to control all loads
- Daily inspection of all cranes shall be completed and documented prior to crane use

## ***Rigging***

- Major rigging operations shall be planned and supervised by Competent Personnel to ensure that the best methods and most suitable equipment and tackle are employed. This should be the superintendent or foreman in charge.
- Job site management shall ensure that:
  - Proper rigging equipment is available.
  - All rigging is inspected before use. Documented inspections are required.
  - Correct load ratings are available for the material and equipment used for rigging.
  - Rigging material and equipment are maintained in proper working condition.
- The supervisor of the hoisting operation shall be responsible for:
  - Proper rigging of the load.
  - Supervision of the rigging crew.
  - Ensuring that the rigging material and equipment have the necessary capacity for the job and are in safe condition.
  - Ensuring correct assembly of rigging material or equipment as required during the operation, such as the correct installation of lifting bolts.
  - Safety of the rigging crew and other personnel as they are affected by the rigging operation.

## ***Excavation (Any process which disturbs soil)***

- A. Contact MSCAA/FAA thru the Construction Manager at least 72 hours prior to proposed work for location of underground hazards (cables, ducts, fuel lines, etc.). A request form will be provided to the contractor.
- B. The contractor must contact Tennessee one call at least 72 hours prior to proposed excavation for location of utilities. Contractor must make arrangements to have personnel at the site when utilities are located. Documentation of the control number must be maintained on site.
- C. **Utilities must be located/marked prior to any process that disturbs the soil.**

### ***Earthmoving Equipment and Trucks***

- All earthmoving equipment shall be maintained in safe working condition and shall be appropriate and adequate for the intended use.
- Only authorized personnel shall operate equipment. Operators of equipment, machinery or vehicles shall be qualified and properly licensed for the operation involved.
- Equipment maintenance shall be performed only by qualified mechanics.
- Equipment operators and truck drivers shall make a documented pre-shift safety inspection of their equipment. Any conditions that effect safe operation will be corrected before use.
- Equipment shall not be operated unless all required safety devices are in place and functioning properly.
- Careless, reckless or otherwise unsafe operation or use of equipment shall result in discipline and may constitute grounds for dismissal.
- Before performing any service or repair work, all equipment shall be stopped and positively secured against movement or operation, locked and tagged out of service, unless it is designed to be serviced while running, following the manufacturer's instructions.
- When equipment is serviced or repaired, the operator shall dismount until the service or repair is completed and then make a complete walk-around safety check before remounting.
- All heavy equipment including: cranes, forklifts, dozers, end-loaders, skid-steers, etc., shall have a reverse signal/back-up alarm audible above surrounding background noise.
- All off-highway earthmoving equipment and trucks such as loaders, dozers, scrapers, motor graders, rock trucks, tractors, rollers and compactors shall be equipped with roll-over protective structures (ROPS) and seat belts.
- Seat belts shall be used and adjusted properly by operators of all heavy equipment.
- Mobile equipment shall not be left unattended unless parked securely to prevent movement, with all ground engaging tools lowered to the ground, brakes set and the engine off.
- Equipment parked at night shall be lighted, barricaded or otherwise clearly marked when exposed to traffic. Keys shall not be left in equipment overnight.
- Personnel shall not be transported or ride on equipment or vehicles that are not equipped with seats for passengers.
- When fueling equipment or vehicles with gasoline or liquefied petroleum gas (LPG) the engine shall be shut down.
- All equipment and vehicles shall be equipped with appropriate fire extinguisher or fire suppression system.
- Haul roads shall be designed, constructed and maintained for safe operation consistent with the type of haulage equipment in use. Standard traffic control signs shall be used where necessary.
- Elevated roadways shall have axle high beams or guards maintained on their outer banks.
- Equipment, tools, and materials hauled on pickups and flat bead trucks must be secured to prevent them from falling onto the road.

### ***Welding & Cutting***

- Welding leads and cutting hoses shall be kept clear of walkways and stairways.
- Flash arrestors shall be installed provided in both oxygen and acetylene hoses at the regulator connection.
- Welders shall wear approved eye and head protection when welding. Personnel assisting the welder shall also wear approved eye protection.
- Prior to welding or cutting a "20-ABC" rated fire extinguisher shall be within easy reach of the worker. A fire watch shall be stationed at all locations where sparks and/or flames may fall to a lower floor/work area or to another side of a wall.
- A suitable cylinder truck, with chain shall be used to keep cylinders from being knocked over while in use.
- Spent welding rods shall be picked up and disposed of daily.
- When practical all welding and cutting operations shall be shielded by non-combustible or flame-proof screens.



- Oxygen and acetylene cylinders shall not be stored inside buildings.
- Rubber boot protectors shall be provided on all welding leads where they make connections at the welding machine

## ***Personal Protective Equipment***

### **Eye and Face Protection**

All employees shall wear safety glasses 100% of the time while on the construction site. Minimum eye protection shall include approved safety glasses **with side shields** which meet the standards specified in ANSI Z-87.1-1989 (this shall also include prescription eye wear).

Additional eye and face protection in combination shall be worn when:

- Welding, burning or cutting with torches
- Using abrasive wheels, portable grinders or files
- Chipping concrete, stone or metal
- Working with any materials subject to scaling, flaking or chipping
- Drilling or working under dusty conditions
- Using explosive actuated fastening or nailing tools
- Working with compressed air or other gases

Only clear safety glasses shall be worn inside any building(s).

### **Head Protection**

All construction workers shall wear hard hats which meet ANSI Z 89.1-1986, 100% of the time while on the construction site. Hard hats shall display the company decal where the employee works.

All delivery personnel, vendors and visitors shall wear approved hard hats while on the project.

### **Hearing Protection**

Work areas shall be monitored to identify areas of high noise exposure (85 dBA and higher). All work areas identified as high noise exposure shall be properly posted to warn employees of the exposure.

Appropriate hearing protection shall be worn in work areas where noise levels are 85 dBA or greater.

### **Respiratory Protection**

Contractors whose work activities warrants that employees wear respiratory protection, shall establish and implement a respiratory protection program. The program shall meet the requirements set forth in 29 CFR 1926.134.

### **Foot Protection**

All personnel on the construction site shall wear leather hard-soled work boots. No one is permitted to wear sneakers (including ANSI approved), tennis shoes or athletic shoes of any type, sandals, high heels or thongs on the construction site.

### **Clothing**

Suitable clothing for construction shall be worn on the construction site. Shirts with sleeves (at least t-shirt (4 inches) in length), full length pants and reflective safety vests shall be required. Shorts, sweat pants or tank-tops are not allowed.

## Appendix A - Safety Orientation

**Check each box when completed** - To be completed by all employees on the jobsite. To be completed by site supervision and employee prior to beginning work.

- ☐ Alcohol and/or drug use, fighting or horseplay are prohibited and will result in immediate termination
- ☐ 100 % eye protection, hard hats and reflective safety vests are required when on the construction project
- ☐ Review potential hazards on the project and the precautions to be taken to prevent injury
- ☐ Disciplinary Policy:
  - Non-serious violation
  - First violation - Verbal warning
  - Second violation - Verbal & written warning
  - Third violation - Verbal & written warning and three day suspension without pay
  - Fourth violation - Employee discharge from company
  
  - Serious violation - (see disciplinary policy)
  - First violation - Verbal & written warning
  - Second violation - Employee discharge from company
- ☐ Hazard Communication Program - location of MSDS's and written program on the project
- ☐ All accidents, injuries and unsafe conditions shall be reported to supervisor immediately
- ☐ Medical treatment protocols for injuries requiring off-site medical treatment with a doctor
- ☐ Safety meetings are held on a weekly basis (attendance is mandatory)
- ☐ All employees shall dress properly while working. Minimum attire is long pants, shirt with at least 4 inch sleeves and sturdy above the ankle work boots
- ☐ Ground fault circuit interrupters (GFCI) are required on all tools. All extension cords and power tools shall be properly grounded. Notify supervision immediately if defective equipment exists.
- ☐ All employees exposed to a fall exposure of six or greater, shall be protected by the means of fall protection. Specific training is required for fall protection.
- ☐ Employee are not allowed to work in excavations 4 feet or more in depth, unless they are properly sloped or protected by shielding or shoring
- ☐ Lockout/tagout is required when working on equipment or tools where unexpected start-up may occur or the release of energy may result in injury
- ☐ Before any employee is allowed to wear a respirator (including paper masks) they must be medically approved by a doctor and fit-tested
- ☐ Scaffolds shall be inspected and tagged prior to use by any personnel. Red tag means DO NOT USE; Yellow Tag means section of scaffold does not meet OSHA standards and Green Tag means SAFE FOR USE.
- ☐ Other hazards discussed related to the construction project:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### **Equipment Issued**

- ☐ Hardhat
- ☐ Safety Glasses
- ☐ Orange vest
- ☐ Fall Protection Harness & Lanyard
- ☐ Respirator
- ☐ Other \_\_\_\_\_

**To be completed by supervisor in the field with the employee**

- ☐ Show employee around the project and discuss potential hazards
- ☐ Introduce employee to crew members
- ☐ Assign new employee to experienced work crew
- ☐ Specify work duties
- ☐ Where to eat lunch

This is to acknowledge that I have completed new employee orientation and understand that failure to comply with the Safety Program may be grounds for dismissal.

Employee Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Emergency Contact: \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Supervision Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix B – Employee Disciplinary Guideline

The discipline policy is intended to encourage compliance with the requirements of the Federal Occupational Safety and Health Act of 1970 (OSHA) and all additions and revisions thereto, as well as other applicable federal, state and local requirements and this Safety and Health Guideline. Workers performing work in an unsafe manner that would endanger the employee, other workers or the public shall be subject to discipline or termination.

The Project Representative in conjunction with the Project Manager and Project Foreman will determine the course of action best suited to the circumstances. The steps to be taken shall be progressive, except in the most egregious circumstances and shall include:

- a) **Non-Serious** – Initial, isolated, or rare instances of violation, that do not result in danger to the employee, property, or others, should be corrected through non disciplinary discussion and instruction. Safety violations of a less serious nature will be handled as follows:

|                |   |
|----------------|---|
| First Offense  | Verbal Warning                                  |
| Second Offense | Written Warning                                 |
| Third Offense  | Employee given three-day suspension without pay |
| Fourth Offense | Employee Discharge                              |

- b) **Serious** – One which could result in serious injury or loss of life or serious loss of property, shall be subject to:

|                |   |
|----------------|---|
| First Offense  | Employee given three-day suspension without pay |
| Second Offense | Employee Discharge                              |

- c) **Supervisor Accountability** – If two or more employees working for the same supervisor are found in serious violation as described above, that subcontractor supervisor is also subject to disciplinary action up to and including immediate discharge.

**Documentation** - Notice of safety violation (written) shall be given to the employee, and a copy sent to the Project Safety Representative.

## Appendix C - Critical Lift Checklist

Project: \_\_\_\_\_

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

Description of Lift: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of supervisor in charge of lift: \_\_\_\_\_

Name of crane operator(s): \_\_\_\_\_

Name of signal person(s): \_\_\_\_\_

### **Crane Data:**

Make and Model: \_\_\_\_\_

Boom Length: \_\_\_\_\_

Counterweight: \_\_\_\_\_

Capacity: \_\_\_\_\_

### **Load Data:**

Gross Load Weight: \_\_\_\_\_

Rigging Weight: \_\_\_\_\_

Load block & line Weight: \_\_\_\_\_

Max. Load Radius: \_\_\_\_\_

Min. Load Angle: \_\_\_\_\_

Max. Boom Angle: \_\_\_\_\_

Min. Boom Angle: \_\_\_\_\_

Net Load Weight: \_\_\_\_\_

### **Pre-Lift Requirements:**

\_\_\_\_\_ Load is within chart limits.

\_\_\_\_\_ Has the Center of Gravity of the Load been established and marked?

- \_\_\_\_\_ Is rigging adequate and in good condition?
- \_\_\_\_\_ Load chart utilized is for exact crane model; boom type, length, tip; counterweight.
- \_\_\_\_\_ Competent person in charge of lift: Name
- \_\_\_\_\_ Competent signal person identified: Name
- \_\_\_\_\_ Pre-pick meeting held with crew
- \_\_\_\_\_ Written crane inspection completed within 1 day of critical pick
- \_\_\_\_\_ Swing path not over personnel
- \_\_\_\_\_ Footing is sound and level (soil conditions/compaction, underground tunnel or utilities).
- \_\_\_\_\_ Pre-planning for radio or hand signal communications.
- \_\_\_\_\_ Minimum clearances from power lines can and will be maintained.
- \_\_\_\_\_ The load radius has been measured with tape measure.
- \_\_\_\_\_ Weather conditions have been checked, including wind speed.
- \_\_\_\_\_ Load will not touch boom at any time.
- \_\_\_\_\_ For dual crane lift – diagrams have been prepared.
- \_\_\_\_\_ Pad blocking is adequate and substantial.
- \_\_\_\_\_ Outriggers are fully extended.

Signed: \_\_\_\_\_

Supervisor in Charge

## Appendix D – Substance Abuse

### Policy Statement

The Owner **Memphis-Shelby County Airport Authority** and the OCIP Team are committed to providing project employees with a drug-free and alcohol-free workplace. It is our goal to protect the health and safety of these employees and visitors to our job site, promote a productive workplace, and protect the reputation of our project.

Consistent with those goals, the use, possession, distribution or sale at project sites of drugs, drug paraphernalia or alcohol is prohibited. A program of drug and alcohol testing will be instituted to monitor compliance with this policy.

**Contractors / Subcontractors refusing to comply with this Drug and Alcohol Policy will not be permitted to work on this OCIP project and will be noted as being in violation of their contract with the 9/27 VEHICLE SERVICE ROAD REHABILITATION - CONSTRUCTION / or other contractors & subcontractors working on this project.**

This Policy does not represent a contract between the Owner **Memphis-Shelby County Airport Authority**, Design and Development, the OCIP Team, Owners of project, Construction Managers, General Contractors, Subcontractors, employees or perspective employees of the project.

### Policy Administration

It is our combined goal to protect the health and safety of personnel, craft workers, and visitors to our job site; to promote a productive workplace, and protect the reputation of this OCIP.

### Prohibited Substances

1. Drugs or Drug is defined as any substance which may impair mental or motor function including but not limited to illegal drugs, controlled substances, designer drugs, synthetic drugs, look alike drugs, and under circumstances described in this policy -prescription drugs.
2. Alcohol is defined as any beverage or substance containing alcohol, ethyl alcohol or ethanol. "Alcohol Testing or Alcohol test means testing by certified breath-alcohol technician using a DOT approved initial screening device or urine alcohol testing conducted by a certified laboratory and confirmed by gas chromatography/mass spectroscopy (GC/MS)". Test levels must not meet or exceed .04 grams per 210 liter of breath.

### Pre-Project Testing

Prior to the beginning work on this Project, employers will be required to insure that all employees have met the requirements of this policy with a negative (passing) test result. Employers and employees not meeting the requirements will not be allowed to work on this OCIP job site.

### Additional Testing of Employees

1. **Post-Accident:** It is agreed that drug and alcohol testing of employees shall be required after each and every work related incident. This testing shall take place at the medical facility providing treatment for the injury. A work related accident is defined as an accident resulting in an injury requiring treatment by a physician to the employee or other employees injured and / or resulting in damage to property or equipment.

2. **Reasonable Suspicion:** Is defined as supervision having a reason to suspect employee drug or alcohol use. The employer will bear the cost of this test.

### Points of Understanding Regarding Substance Abuse Testing

1. The employer, the medical facility and the testing laboratory agree that the results of the described tests are to be held in strictest **CONFIDENCE** between the employer, the OCIP Workers Compensation Carrier and the medical facility (MRO). This is an issue of employee – employer relationship (employment) and falls under the requirements within the employers program.
2. This statement is noted for the purpose of adjudicating a workers compensation claim. The OCIP Workers Compensation Carrier requires the employer to report all accident related drug and alcohol test results to them immediately.

### Testing Procedures

1. At a minimum pre-project and post-accident testing is required.
2. Testing shall include the following drugs at a minimum:  
**Marijuana, Cocaine, Opiates, Amphetamines, Phencyclidine, Barbiturates, Benzodiazepines, Methadone, Propoxyphene**
3. For reasons of safety, any employee subject to a reasonable suspicion test shall be suspended until test results are available.

### Prescription Drugs

The use of current valid prescription Drugs that may impair an Employee's ability to safely perform his or her duties must be reported to the safety director, supervisor and management personnel.

### Alcoholic Beverages

Under no circumstances are alcoholic beverages allowed on the project site.

### Disciplinary Action

1. A positive pre-project or post-accident test will result in worker dismissal from this project site
2. Employees found using, selling, possessing or manufacturing drugs shall be removed from this project and may be reported to local law enforcement.

### Confidentiality

All actions taken under this policy will be in conformance with the Local Drug Testing Act

### Subcontractors and Vendors

Subcontractors, sub-tiered contractors, vendors and their employees shall cooperate with this policy in achieving a drug-free and alcohol-free workplace.



### **Amendments to Policy**

Amendments to this policy may be issued to comply with project owner requirements, state or local laws, or federal contract requirements.

Company Name \_\_\_\_\_

**DRUG AND ALCOHOL POLICY  
ACKNOWLEDGMENT AND ACCEPTANCE STATEMENT**

I certify that I have read and understand the statement and policy. I further understand that prior to employment and during employment, I am subject to drug and alcohol screening tests. I agree to provide the specimen appropriate to such drug or alcohol test(s) as may be required. I further understand that my property and I may be subject to search under the terms of this policy while I am on the Owner's premises. Failure to provide the appropriate specimen, or to permit a search, will subject me to removal from this site.

I also understand that I will not be allowed to go to work prior to the reporting of my pre-employment drug test results.

If I am an employee of a subcontractor company, an employee of an affiliate company assigned to the job site, or a contract staff, I understand that I am subject to pre-employment drug testing and all testing conditions of this Policy. Failure to provide the appropriate specimen or to permit a search or a positive test result will result in my immediate removal from this job site.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Witness

## Guidelines for Reasonable Suspicion

### Observation Checklist

1. **Walking**    ☐ Stumbling    ☐ Staggering    ☐ Falling    ☐ Unable to Walk  
                  ☐ Swaying    ☐ Unsteady    ☐ Holding On    ☐ Normal
2. **Standing**    ☐ Swaying    ☐ Rigid    ☐ Sagging at Knees    ☐ Unable to Stand  
                  ☐ Staggering    ☐ Feet Wide Apart
3. **Speech**    ☐ Shouting    ☐ Silent    ☐ Whispering    ☐ Slow  
                  ☐ Rambling    ☐ Mute    ☐ Slurred    ☐ Slobbering  
                  ☐ Incoherent    ☐ Confused    ☐ Normal
4. **Demeanor**    ☐ Cooperative    ☐ Polite    ☐ Calm    ☐ Sleepy  
                  ☐ Silent    ☐ Talkative    ☐ Crying    ☐ Excited  
                  ☐ Sarcastic    ☐ Fighting
5. **Actions**    ☐ Resisting    ☐ Fighting    ☐ Threatening    ☐ Erratic  
                  ☐ Communications  
                  ☐ Drowsy    ☐ Profanity    ☐ Hyperactive    ☐ Hostile  
                  ☐ Calm
6. **Eyes**    ☐ Bloodshot    ☐ Watery    ☐ Dilated    ☐ Glassy  
                  ☐ Droopy    ☐ Closed    ☐ Normal
7. **Face**    ☐ Flushed    ☐ Pale    ☐ Sweaty    ☐ Normal
8. **Appearance/**    ☐ Unruly    ☐ Messy    ☐ Dirty    ☐ Partially  
Dressed
- Clothing**    ☐ Body    ☐ Stains    ☐ Neat    ☐ Normal  
                  ☐ Excrement
9. **Breath**    ☐ Alcoholic    ☐ Faint Alcohol    ☐ No Odor  
                  ☐ Odor    ☐ Odor
10. **Movement**    ☐ Fumbling    ☐ Jerky    ☐ Slow    ☐ Hyperactive  
                  ☐ Nervous    ☐ Normal
11. **Eating/**    ☐ Gum    ☐ Candy    ☐ Mints    ☐ Other – identify  
**Chewing**
12. Other observations: (Visible drug use, possession, sale, etc.: attendance; poor work performance or accident; tampering with drug test; credible reports, etc.)

\_\_\_\_\_

\_\_\_\_\_

Observed by: \_\_\_\_\_ Observed by: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Location: \_\_\_\_\_

## Appendix E - Supervisor's Report of Bodily Injury

Date of Accident \_\_\_\_\_ Date Returned to Work: \_\_\_\_\_  
Location of Accident \_\_\_\_\_ Time of Accident \_\_\_\_\_ am/pm  
Contractor/Subcontractor Involved \_\_\_\_\_  
First Aid: \_\_\_\_\_ Recordable \_\_\_\_\_ Lost Time \_\_\_\_\_ Fatality \_\_\_\_\_  
Damage\* \_\_\_\_\_ Fire \_\_\_\_\_ Property \_\_\_\_\_  
Equipment \_\_\_\_\_  
Injured Person: \_\_\_\_\_ SSN: \_\_\_\_\_  
Address: \_\_\_\_\_ Occupation: \_\_\_\_\_  
\_\_\_\_\_ Home Phone: \_\_\_\_\_  
Male \_\_\_\_\_ Female \_\_\_\_\_ Age \_\_\_\_\_  
Nature of Injury: \_\_\_\_\_  
First Aid Administered By: \_\_\_\_\_  
Hospital \_\_\_\_\_  
Physician \_\_\_\_\_  
Witnesses: \_\_\_\_\_  
\_\_\_\_\_  
Equipment and/or Materials Involved: \_\_\_\_\_  
Cause Of Accident: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Superintendent's Corrective Action: \_\_\_\_\_  
\_\_\_\_\_  
Employee's Signature: \_\_\_\_\_  
Supt. Signature \_\_\_\_\_  
Date of report: \_\_\_\_\_

\*Attach a list of damaged property and/or equipment excluding motor vehicles. Indicate owner's names and addresses. Complete "Report of Damage to Equipment or Property" (Appendix F).

## Appendix F - Report of Damage to Equipment or Property

Date \_\_\_\_\_

Contractor/Subcontractor \_\_\_\_\_

Location of Accident \_\_\_\_\_

Equipment Involved \_\_\_\_\_

Personal injuries Yes \_\_\_\_\_ No \_\_\_\_\_

Damage Estimate \$ \_\_\_\_\_

Witness to Accident

Statement Obtained

Statement Attached

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Remarks \_\_\_\_\_

Time of Accident \_\_\_\_\_ AM \_\_\_\_\_ PM \_\_\_\_\_ Date \_\_\_\_\_

Weather Conditions \_\_\_\_\_ Temperature \_\_\_\_\_

Roadway or surface type \_\_\_\_\_ Wet \_\_\_\_\_ Dry \_\_\_\_\_ Other \_\_\_\_\_ \*

\*If other, explain \_\_\_\_\_

If more space is required, use back of this sheet for additional information and sketches.

Signed \_\_\_\_\_

Title \_\_\_\_\_

Employee Name \_\_\_\_\_

## Appendix G - Contractor Monthly Report of Safety Statistics

|  |            |                                |                 |
|--|------------|--------------------------------|-----------------|
| <b>MONTHLY<br/>ACCIDENT EXPERIENCE<br/>SUMMARY</b>   |            | CONTRACT NO:                   |                 |
|  |            | CONTRACTOR/SUBCONTRACTOR NAME: |                 |
|  |            | MONTH                          | YEAR            |
|  |            | REPORTING PERIOD:<br>THROUGH:  |                 |
|  | THIS MONTH | YEAR TO DATE                   | PROJECT TO DATE |
| HOURS WORKED   |            |                                |                 |
| PAYROLL  |            |                                |                 |
| A. FIRST-AID CASES<br>B. OSHA RECORDABLE CASES<br>C. LOST TIME CASES<br>(list each under comments)<br>D. TOTAL LOST WORK DAYS<br>E. PROPERTY DAMAGE<br>F. EQUIPMENT<br>G. GENERAL PUBLIC |            |                                |                 |
| OSHA Recordable Incidence Rate*<br>Lost Time Incident Rate*  |            |                                |                 |
| COMMENTS:  |            |                                |                 |
| Prepared By:   | Date       | PM/Superintendent              | Date            |

## **Appendix H – Safety Improvement Team Guidelines**

The Owner recognizes that a cooperative effort is required to insure a safe construction project. Therefore, the Contractor shall establish a Safety Improvement Team to facilitate the proper cooperative attitude.

The Safety Improvement Team shall be composed of an equal number of employee and management representatives. The management personnel (4) will consist of one Owner representative, one person from the Contractor, one from the workers' compensation/general liability insurance carrier and a representative of subcontractor supervision. The employee members (4) shall be selected from the various subcontractor trades on a voluntary basis or by nomination to serve a minimum of one year each.

The Contractor's Safety Manager shall serve as the Safety Improvement Team advisor and is responsible for providing meeting agendas and minutes, giving assignments to the committee, and publicizing committee accomplishments. Safety Improvement Team meeting minutes and attendance roster shall be maintained.

The Contractor's Safety Manager is responsible for assuring that Committee members are adequately trained to perform their duties and responsibilities.

The Contractor's Safety Manager is responsible for assuring that subcontractors with 25 or more employees establish their own Safety Improvement Team commensurate with the NRS requirements.

The primary purpose of the Safety Improvement Team is to evaluate safety and health program effectiveness, suggestions, hazard reports, hotline reports, etc., and to provide suggestions and recommendations to improve workplace safety.

Additional duties include advising and educating employees in safe working practices, investigating accidents and their causes, recommending preventative measures, inspecting work areas, and other duties as assigned

Meetings shall be held at least monthly, discussion items shall include:

- Inspection Reports

- Accident Reports

- The safety of construction methods and practices

- Review and make recommendations on employee hazard reports, hotlines, etc.

The Safety Improvement Team members will receive their regular rates of pay while performing Safety Improvement Team duties. Time spent performing Safety Improvement Team duties shall be documented using normal time reporting procedures.

**EXHIBIT E  
TO  
UNIT PRICE CONSTRUCTION CONTRACT  
FOR  
9/27 VEHICLE SERVICE ROAD REHABILITATION - CONSTRUCTION**

**BY AND BETWEEN  
THE MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY  
AND  
(CONTRACTOR NAME)**

**FAA REQUIRED CONTRACT PROVISIONS**

**EXHIBIT E**

**FAA REQUIRED CONTRACT PROVISIONS – ALL CONTRACTS**

Federal laws and regulations require that recipients of federal assistance (Sponsors) include contract provisions in certain contracts, requests for proposals, or invitations to bid. The provisions are as follows:

**1. Title VI Clauses for Compliance with Nondiscrimination Requirements (FAA Provision A6.4.1).** (Reference: 49 USC § 47123)

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

**Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

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

**Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

**Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the contractor under the contract until the contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

**Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation



Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## **2. Title VI List of Pertinent Nondiscrimination Acts and Authorities (FAA Provision A6.4.5).**

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 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

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

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

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

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

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

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and 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 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

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

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

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

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

## **3. Federal Fair Labor Standards Act (FAA Provision A17). (Reference: 29 U.S.C. § 201, *et seq.*)**

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

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. 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.

## **4. Occupational Safety and Health Act of 1970 (FAA Provision A20). (Reference: 29 CFR part 1910)**

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. The 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.

**5. General Civil Rights Provisions (FAA Provision A5).** (Reference: 49 U.S.C. § 47123)

The 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 the contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964. If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor. The above provision obligates the Contractor for the period during which the property is owned, used or possessed by the Contractor and the airport remains obligated to the Federal Aviation Administration.

## FAA REQUIRED CONTRACT PROVISIONS – AIP CONTRACTS

### 6. Buy American Preference (FAA Provision A4). (Reference: 49 USC § 50101)

The contractor agrees to comply with 49 USC § 50101, BABA and other related Made in America Laws,<sup>1</sup> U.S. statutes, guidance, and FAA policies, which provides that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

The bidder or offeror must complete and submit the certification of compliance with FAA's Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA's Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

#### CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR CONSTRUCTION PROJECTS

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101, BABA and other related Made in America Laws, U.S. statutes, guidance, and FAA policies, by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter "X".

☐ Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 BABA and other related U.S. statutes, guidance, and policies of the FAA by::

- a) Only installing steel and manufactured products produced in the United States; or
- b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States; or
- c) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
- d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner or the FAA evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic products.
- 3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- 4. Certify that all construction materials used in the project are manufactured in the U.S.

☐ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

1. To submit to the Owner within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that support the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
4. To furnish US domestic product for any waiver request that the FAA rejects.
5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver** - The cost of components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- d) Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) A completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bids and/or offers;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title

## CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR EQUIPMENT/ BUILDING PROJECTS

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101, BABA and other Made in America Laws, U.S. statutes, guidance, and FAA policies by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter "X".

☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:

- a) Only installing steel and manufactured products produced in the United States, or;
- b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States, or;
- c) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
- d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic product.
- 3. To furnish US domestic product for any waiver request that the FAA rejects.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

☐ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

- 1. To submit to the Owner within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that support the type of waiver being requested.
- 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
- 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### Required Documentation

**Type 3 Waiver** - The cost of the item components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- d) Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials, would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bidders and/or offerors;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

|              |           |
|--------------|-----------|
| _____        | _____     |
| Date         | Signature |
| _____        | _____     |
| Company Name | Title     |

**7. Clean Air and Water Pollution Control (FAA Provision A7).** (Reference 2 CFR § 200, Appendix II(G))

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

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

**8. Contract Workhours and Safety Standards Act Requirements (FAA Provision A8).** (Reference: 2 CFR § 200, Appendix II (E))

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 Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this clause.

4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

**9. Debarment and Suspension (FAA Provision A11).** (Reference: 2 CFR part 180 (Subpart C); 2 CFR part 1200; DOT Order 4200.5)

**CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT**

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.

**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 Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the FAA 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.

**10. Prohibition of Segregated Facilities (FAA Provision A19).** (Reference: 41 CFR § 60)

- (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 Opportunity clause in this contract.
- (b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, 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 Opportunity clause of this contract.

**11. Access to Records and Reports (FAA Provision A1).** (Reference: 2 CFR § 200.333, 2 CFR § 200.336)

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

**12. Affirmative Action Requirement (FAA Provision A2).** (Reference: 41 CFR part 60-4, Executive Order 11246)

**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**

Goals for minority participation for each trade: 32.3%

Goals for female participation in each trade: 6.9%

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

#### **13. Copeland "Anti-Kickback" Act (FAA Provision A9).** (Reference: 2 CFR § 200, Appendix II (D), 29 CFR Parts 3 & 5)

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

#### **14. Davis-Bacon Requirements (FAA Provision A10).** (Reference: 2 CFR § 200, Appendix II (D), 29 CFR Part 5)

##### **1. Minimum Wages**

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is



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

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

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

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

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

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

- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding.**

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

## **3. Payrolls and basic records.**

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i) and that such information is correct and complete;
  - (2) That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;
  - (4) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the sponsor, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the

suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees.**

- (i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) **Equal Employment Opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### **5. Compliance with Copeland Act Requirements.**

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

#### **6. Subcontracts.**

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause

requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

**7. Contract Termination: Debarment.**

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes Concerning Labor Standards.**

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of Eligibility.**

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**15. Disadvantaged Business Enterprises (FAA Provision A12).** (Reference: 49 CFR part 26)

- (a) **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 DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the 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.
- (b) **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 ten (10) days from the receipt of each payment the prime contractor receives from Memphis-Shelby County Airport Authority. The prime contractor agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Memphis-Shelby County Airport Authority. This clause applies to both DBE and non-DBE subcontractors.

**16 Energy Conservation Requirements (FAA Provision A14).** (Reference: 2 CFR § 200, Appendix II(H))

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

**17.1 Equal Employment Opportunity (EEO) (FAA Provision A16).** (Reference: 2 CFR 200, Appendix II(C), 41 CFR § 60-1.4, Executive Order 11246)

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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 he 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 contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts 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.

**17.2 Equal Employment Opportunity Specification (FAA Provision A16).** (Reference: 2 CFR 200, Appendix II(C) 41 CFR § 60-1.4, Executive Order 11246)

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:

(1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

- (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period and the contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

- n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.
10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).



**18. Lobbying and Influencing Federal Employees (FAA Provision A18).** (Reference: 31 U.S.C. § 1352, 49 CFR part 20, Appendix A)

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.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

**19. Rights to Inventions (FAA Provision A22).** (Reference: 2 CFR § 200, Appendix II(F), 37CFR § 401)

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

**20. Trade Restriction Certification (FAA Provision A26).** (Reference: 49 USC § 50104, 49 CFR part 30)

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

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

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

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

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

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

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

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

**21. Veteran's Preference (FAA Provision A27).** (Reference: 49 USC § 47112(c))

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

**22. Procurement of Recovered Materials (FAA Provision A21).** (Reference: 2 CFR § 200.322, 40 CFR part 247)

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 contract 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:

- a) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or,
- b) 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](http://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.

**23. Seismic Safety (FAA Provision A23).** (Reference: 49 CFR part 41)

- (a) In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.
- (b) The contractor agrees to ensure that all work performed under the contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

**24. Distracted Driving (FAA Provision A13).** (Reference: Executive Order 13513, DOT Order 3902.10)

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

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

**25. Tax Delinquency and Felony Conviction (FAA Provision A24).**

**CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

**Certifications**

- a) The applicant represents that it is ( ) is not ( ✓ ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- b) The applicant represents that it is ( ) is not ( ✓ ) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

**Note**

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

**Term Definitions**

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

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

**26. Domestic Preferences for Procurements (FAA Provision A28)**

**CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS**

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

**27. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (FAA Provision A14)**

**PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

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

**EXHIBIT F  
TO  
CONSTRUCTION CONTRACT  
FOR  
9/27 VEHICLE SERVICE ROAD REHABILITATION - CONSTRUCTION**

**BY AND BETWEEN  
THE MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY  
AND  
(CONTRACTOR NAME)**

**STATE REQUIRED CONTRACT PROVISIONS**

**EXHIBIT E**

**FAA REQUIRED CONTRACT PROVISIONS – ALL CONTRACTS**

Federal laws and regulations require that recipients of federal assistance (Sponsors) include contract provisions in certain contracts, requests for proposals, or invitations to bid. The provisions are as follows:

**1. Title VI Clauses for Compliance with Nondiscrimination Requirements (FAA Provision A6.4.1).** (Reference: 49 USC § 47123)

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

**Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

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

**Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

**Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the contractor under the contract until the contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

**Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the

contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## **2. Title VI List of Pertinent Nondiscrimination Acts and Authorities (FAA Provision A6.4.5).**

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 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

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

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

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

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

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

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and 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 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

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

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

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

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

## **3. Federal Fair Labor Standards Act (FAA Provision A17). (Reference: 29 U.S.C. § 201, *et seq.*)**

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

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. 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.

## **4. Occupational Safety and Health Act of 1970 (FAA Provision A20). (Reference: 29 CFR part 1910)**

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. The 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.

**5. General Civil Rights Provisions (FAA Provision A5).** (Reference: 49 U.S.C. § 47123)

The 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 the contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964. If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor. The above provision obligates the Contractor for the period during which the property is owned, used or possessed by the Contractor and the airport remains obligated to the Federal Aviation Administration.

## FAA REQUIRED CONTRACT PROVISIONS – AIP CONTRACTS

### 6. Buy American Preference (FAA Provision A4). (Reference: 49 USC § 50101)

The contractor agrees to comply with 49 USC § 50101, BABA and other related Made in America Laws,<sup>1</sup> U.S. statutes, guidance, and FAA policies, which provides that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

The bidder or offeror must complete and submit the certification of compliance with FAA's Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA's Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

#### CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR CONSTRUCTION PROJECTS

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101, BABA and other related Made in America Laws, U.S. statutes, guidance, and FAA policies, by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter "X".

☐ Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 BABA and other related U.S. statutes, guidance, and policies of the FAA by::

- e) Only installing steel and manufactured products produced in the United States; or
- f) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States; or
- g) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
- h) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 5. To provide to the Owner or the FAA evidence that documents the source and origin of the steel and manufactured product.
- 6. To faithfully comply with providing US domestic products.
- 7. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- 8. Certify that all construction materials used in the project are manufactured in the U.S.

☐ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:



1. To submit to the Owner within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that support the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
4. To furnish US domestic product for any waiver request that the FAA rejects.
5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### Required Documentation

**Type 3 Waiver** - The cost of components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

- e) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- f) Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- g) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- h) Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) A completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bids and/or offers;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title

## CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR EQUIPMENT/ BUILDING PROJECTS

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101, BABA and other Made in America Laws, U.S. statutes, guidance, and FAA policies by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter "X".

☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:

- e) Only installing steel and manufactured products produced in the United States, or;
- f) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States, or;
- g) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
- h) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic product.
- 3. To furnish US domestic product for any waiver request that the FAA rejects.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

☐ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

- 5. To submit to the Owner within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that support the type of waiver being requested.
- 6. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
- 7. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
- 8. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### Required Documentation

**Type 3 Waiver** - The cost of the item components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- e) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- f) Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- g) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- h) Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials, would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bidders and/or offerors;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title

**7. Clean Air and Water Pollution Control (FAA Provision A7).** (Reference 2 CFR § 200, Appendix II(G))

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

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

**8. Contract Workhours and Safety Standards Act Requirements (FAA Provision A8).** (Reference: 2 CFR § 200, Appendix II (E))

**5. 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.

**6. 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.

**7. Withholding for Unpaid Wages and Liquidated Damages.**

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this clause.

**8. 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.

**9. Debarment and Suspension (FAA Provision A11).** (Reference: 2 CFR part 180 (Subpart C); 2 CFR part 1200; DOT Order 4200.5)

**CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT**

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.

**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:

4. Checking the System for Award Management at website: <http://www.sam.gov>.
5. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
6. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the FAA 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.

**10. Prohibition of Segregated Facilities (FAA Provision A19).** (Reference: 41 CFR § 60)

- (d) 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 Opportunity clause in this contract.
- (e) "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.
- (f) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

**11. Access to Records and Reports (FAA Provision A1).** (Reference: 2 CFR § 200.333, 2 CFR § 200.336)

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

**12. Affirmative Action Requirement (FAA Provision A2).** (Reference: 41 CFR part 60-4, Executive Order 11246)

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO  
ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

14. 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.

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

#### **Timetables**

Goals for minority participation for each trade: 32.3%

Goals for female participation in each trade: 6.9%

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

16. 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.
17. As used in this notice and in the contract resulting from this solicitation, the "covered area" is Memphis, Shelby County, Tennessee.

#### **13. Copeland "Anti-Kickback" Act (FAA Provision A9).** (Reference: 2 CFR § 200, Appendix II (D), 29 CFR Parts 3 & 5)

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

#### **14. Davis-Bacon Requirements (FAA Provision A10).** (Reference: 2 CFR § 200, Appendix II (D), 29 CFR Part 5)

##### **11. Minimum Wages**

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is

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

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

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

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

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

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

- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **12. Withholding.**

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

## **13. Payrolls and basic records.**

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i) and that such information is correct and complete;
- (2) That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;
- (8) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the sponsor, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the

suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **14. Apprentices and Trainees.**

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### **15. Compliance with Copeland Act Requirements.**

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

#### **16. Subcontracts.**

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause



requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

**17. Contract Termination: Debarment.**

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**18. Compliance with Davis-Bacon and Related Act Requirements.**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**19. Disputes Concerning Labor Standards.**

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**20. Certification of Eligibility.**

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**15. Disadvantaged Business Enterprises (FAA Provision A12).** (Reference: 49 CFR part 26)

- (c) **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 DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the 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.
- (d) **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 ten (10) days from the receipt of each payment the prime contractor receives from Memphis-Shelby County Airport Authority. The prime contractor agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Memphis-Shelby County Airport Authority. This clause applies to both DBE and non-DBE subcontractors.

**16 Energy Conservation Requirements (FAA Provision A14).** (Reference: 2 CFR § 200, Appendix II(H))

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

**17.1 Equal Employment Opportunity (EEO) (FAA Provision A16).** (Reference: 2 CFR 200, Appendix II(C), 41 CFR § 60-1.4, Executive Order 11246)

During the performance of this contract, the contractor agrees as follows:

- (2) 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 he 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 contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts 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.

**17.2 Equal Employment Opportunity Specification (FAA Provision A16).** (Reference: 2 CFR 200, Appendix II(C) 41 CFR § 60-1.4, Executive Order 11246)

4. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:

(5) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);

(6) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

- (7) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- (8) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
5. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
6. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
18. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
19. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period and the contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.
20. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
- q. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- r. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

- s. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.
- t. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
- u. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.
- v. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- w. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- x. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- y. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- z. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- aa. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- bb. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- cc. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

- dd. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - ee. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - ff. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.
21. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
22. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.
23. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
24. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
25. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
26. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**18. Lobbying and Influencing Federal Employees (FAA Provision A18).** (Reference: 31 U.S.C. § 1352, 49 CFR part 20, Appendix A)

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

- (4) 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.
- (5) 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.
- (6) 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, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

**19. Rights to Inventions (FAA Provision A22).** (Reference: 2 CFR § 200, Appendix II(F), 37CFR § 401)

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

**20. Trade Restriction Certification (FAA Provision A26).** (Reference: 49 USC § 50104, 49 CFR part 30)

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

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

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

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

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

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

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

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

#### **21. Veteran's Preference (FAA Provision A27).** (Reference: 49 USC § 47112(c))

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

#### **22. Procurement of Recovered Materials (FAA Provision A21).** (Reference: 2 CFR § 200.322, 40 CFR part 247)

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 contract 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:

- b) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or,
- b) 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](http://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.

#### **24. Seismic Safety (FAA Provision A23).** (Reference: 49 CFR part 41)

- (c) In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.
- (d) The contractor agrees to ensure that all work performed under the contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes

that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

**24. Distracted Driving (FAA Provision A13).** (Reference: Executive Order 13513, DOT Order 3902.10)

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

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

**25. Tax Delinquency and Felony Conviction (FAA Provision A24).**

**CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

**Certifications**

- c) The applicant represents that it is ( ) is not ( ✓ ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- d) The applicant represents that it is ( ) is not ( ✓ ) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

**Note**

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

**Term Definitions**

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

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

**26. Domestic Preferences for Procurements (FAA Provision A28)**

**CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS**

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

**27. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (FAA Provision A14)**

**PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**



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

**EXHIBIT G  
TO  
CONSTRUCTION CONTRACT  
FOR  
9/27 VEHICLE SERVICE ROAD REHABILITATION - CONSTRUCTION**

**BY AND BETWEEN  
THE MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY  
AND  
(CONTRACTOR NAME)**

**PROJECT SCHEDULE REQUIREMENTS**

Submit a detailed schedule for design, construction, and completion:

1. Gantt chart
2. Milestone dates clearly identified
3. Task start and completion dates
4. Phasing for each section
5. Contractor recommendations that will benefit the overall project schedule
6. Milestones/Tasks to include, but not limited to:
  - Notice to Proceed (NTP)
  - Mobilization
  - Material Procurement/Lead Times (if applicable)
  - Design (if applicable)
  - Permitting (if applicable)
  - Substantial Completion for Each Phase
  - Demobilization
  - Closeout
    - Provide items in Section 4.08