

**ARCHITECTURAL DESIGN AND DESIGN MANAGEMENT  
AGREEMENT NO. 8500356**

This Architectural Design and Design Management Agreement No. 8500356 (“Agreement”) is entered into effective as of **Date of OBA** (“Effective Date”), between the Dallas/Fort Worth International Airport Board (“Board”) and **Consultant Name** (“Consultant”).

**Agreement Name:** Architectural Design and Design Management

**Consultant:**

**ADDRESS HERE**

**Agreement No.** 8500356

**Dallas/Fort Worth International Airport Board**

Design, Code & Construction Department

3003 South Service Road

P.O. Box 612008

Dallas/Fort Worth International Airport

DFW Airport, Texas 75261

**Authorized Representative:**

**Authorized Representative:**

**Phone:**

**E-Mail:**

**Phone:**

**E-Mail:**

**1) PRELIMINARY AGREEMENT MATTERS**

a) **Authorization** – This Agreement is authorized by Official Board Action/Resolution No. **2017-xx-xxx** adopted by Board on **date**.

**b) Services**

i) **Scope** – Board, the owner and operator of the Dallas/Fort Worth International Airport (“Airport”), desires to obtain from Consultant the services (“Services”) set forth on Exhibit 1 – Scope of Services, attached and Consultant desires to provide those Services to Board.

ii) **Warranties** – As of the Effective Date and continuing throughout the Term, Consultant warrants to Board that:

- (1) The Services will be performed in accordance with the professional skill and care ordinarily provided by competent consultants under Applicable Laws practicing in the same or similar locality and under the same or similar circumstances and professional license; and as expeditiously as is prudent considering the ordinary professional skill and care of a competent consultant.
- (2) Consultant will perform the Services in compliance with all Applicable Laws.

**c) Term and Effective Date**

- i) This Agreement will have a term (“Term”) of three (3) years in duration, commencing on the Effective Date.
- ii) Any Delivery Order issued pursuant to this Agreement may contain a performance period that extends beyond the Term of this Agreement and the Agreement, as to such Delivery Order, will be deemed still in effect through and including the term of the Delivery Order

**d) Interpretation/Agreement Documents**

i) **Defined Terms** – All capitalized terms used in this Agreement will have the meanings ascribed to them in the Agreement and on Exhibit 2 – Definitions, attached.

ii) **Agreement Documents/Order of Precedence** – This Agreement is comprised of the following documents (“Agreement Documents”):

- (1) Amendments/Modifications to Agreement (taking precedence sequentially by Amendment/Modification number)
- (2) Agreement
- (3) Exhibits to Agreement (taking precedence sequentially by Exhibit number), consisting of the following Exhibits:
  - (a) Exhibit 1 – Scope of Services
  - (b) Exhibit 2 – Definitions

- (c) Exhibit 3 – Compensation, Invoices, Consultant Key Personnel
- (d) Exhibit 4 – Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors
- (e) Exhibit 5 – Insurance Requirements
- (f) Exhibit 6 – M/WBE Provisions
- (g) Exhibit 7 – Commitment to Minority/Women Owned Business Enterprise Participation Form
- (h) Exhibit 8 – Schedule of Subcontractors (Final)
- (4) Amendments/Modifications to Delivery Order (taking precedence sequentially by Amendment/Modification number)
- (5) Delivery Order
- (6) Amendments/Modifications to Exhibits to Delivery Order (taking precedence sequentially by Amendment/Modification number and Exhibit number)
- (7) Exhibits to Delivery Order (taking precedence sequentially)
- iii) **Conflict** – If there is a conflict between any of the Agreement Documents, they will take precedence as follows:
  - (1) Exhibits 4 and 4.2; Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors
  - (2) The remainder of the Agreement Documents in the order listed in the Clause entitled “Agreement Documents/Order of Precedence”

## 2) **CONSULTANT PERSONNEL/REPRESENTATIVES**

### a) **Consultant Personnel Obligations**

- i) **Consultant Personnel** – Consultant and its Subconsultants/Subcontractors, as applicable, will be responsible, at its/their own Costs, for all general recruiting, hiring, training and educating of all Consultant Personnel, all of whom must be fully qualified and must be authorized under Applicable Laws to perform the Services. This does not include training, orientation or other related activities which may be required for work performance at or for DFW, which costs would be considered reimbursable under this Agreement. Consultant must maintain complete control over Consultant Personnel, Subconsultants/Subcontractors and similar Persons.
- ii) **Consultant Key Personnel** – Set forth on the Exhibit to this Agreement entitled “Consultant Key Personnel” are listed several core consultant key personnel (“Consultant Key Personnel”) that Consultant agrees to use in providing Services in accordance with the terms set forth in the applicable Exhibit. If applicable to specific Services, additional Consultant Key Personnel may be included in an individual Delivery Order on an as-required basis. Consultant and/or any Subconsultant/Subcontractor, as applicable, may not reassign or replace such Consultant Key Personnel without the prior written consent of the Board, which consent will not be unreasonably withheld; however, if no request is made for listed Key Personnel within six months of the initial listing, Consultant may reassign personnel at its discretion.
- iii) **Consultant’s Authorized Representative** – Consultant designates to act as its Consultant Authorized Representative the individual named on page 1 of this Agreement and such individual must:
  - (1) be a project executive and employee within Consultant’s organization, with the information, authority and resources available to properly coordinate Consultant’s responsibilities under this Agreement and any Delivery Order
  - (2) serve as primary interface and the single-point of communication for the provision of Services
  - (3) have day-to-day responsibility and authority to address issues relating to the Services
  - (4) devote adequate time and efforts to managing and coordinating the Services
- iv) **Removing Consultant Personnel**
  - (1) **Removal** – Within a reasonable period, but not later than 7 Days after Consultant’s receipt of notice from Board that the continued assignment to this Agreement of any Consultant Personnel is not in the best interests of Board, Consultant must remove or

cause to be removed such Consultant Personnel from this Agreement and any Delivery Order and the provision of Services under them.

- (2) **Immediate Removal** – In addition, Consultant agrees to remove or cause to be removed from this Agreement and this Delivery Order and the provision of Services under them, any Consultant Personnel who has engaged in willful misconduct or has committed a material breach of this Agreement immediately after Consultant becomes aware of such misconduct or breach or Board notifies Consultant of such occurrence.
  - (3) **Replacement** – If Board directs that any Consultant Personnel be removed, Consultant must provide or cause to be provided a replacement of comparable qualifications that is acceptable to Board. Consultant is responsible for all Costs associated with the replacement of any Consultant Personnel, which Costs are not compensable under this Agreement.
- v) **Board's Right to Question Assignments of Consultant Personnel to Particular Labor Categories** – At any time during the Term, Board may question whether a particular Consultant Personnel is appropriately assigned to a particular Labor Category set forth in the Agreement or Delivery Order. Consultant agrees, on its behalf and on behalf of all Subconsultants/Subcontractors, to provide Board with any reasonable documentation necessary for Board to evaluate a particular Consultant Personnel's assignment to a particular Labor Category and to move that individual to a more appropriate Labor Category if requested by the Board.

**b) Board's Authorized Representative**

- i) **Designation and Authority** – Board designates the Board Authorized Representative named on page 1 of this Agreement who will:
  - (1) serve as primary interface and the single-point of communication for Board under this Agreement and any Delivery Order
  - (2) have day-to-day responsibility to address issues relating to this Agreement and any Delivery Order
- ii) **Designee(s)** – Board Authorized Representative may also designate in writing to Consultant one or more individuals to act on his/her behalf under this Agreement or any Delivery Order.
- iii) **Limitation on Authority**
  - (1) **Governmental Entity** – Consultant acknowledges and agrees that Board is a governmental entity under Texas law and is required to follow certain statutory procedures under certain circumstances in:
    - (a) modifying this Agreement or any Delivery Order
    - (b) modifying the Services under this Agreement or any Delivery Order
    - (c) increasing or decreasing compensation payable pursuant to this Agreement or any Delivery Order
    - (d) otherwise altering the terms of the transaction embodied within this Agreement or any Delivery Order
  - (2) **Limited Authority** – Accordingly, Board Authorized Representative (as well as any other individuals acting on behalf of Board) may not be authorized to effectuate certain amendments or modifications absent Board's enactment of legislation and Consultant is deemed to understand all legal limitations on those individuals in acting under this Agreement and any Delivery Order and representing Board's interests in administering them. The Board will provide to Consultant written explanation of the Board Authorized Representative's authority upon written request.

**c) Board Security Identification/Access Media Authorization Badges –**

- i) Any Consultant Personnel that need access to the Airport's Air Operations Area ("AOA"), or the Security Identification Display Area ("SIDA") in order to provide Services must display a SIDA authorization badge issued by the Board's Department of Public Safety Access Control Office ("ACO").
- ii) Consultant must work with the Design Code and Construction badge sponsor to on-board and register the Consultant and the first badge holder applicant. The first badge holder will

- become the Authorized Employer Representative ("AER"). The AER will then start and manage the process of on-board and registering future Consultant badge applicants.
- iii) Badges are the property of the Board and must be surrendered immediately upon the first of the following to occur:
    - (1) the termination of this Agreement
    - (2) the earlier expiration of this Agreement
    - (3) the separation of the badged Consultant Personnel (e.g. after termination, resignation or otherwise) from the employ of Consultant/Subconsultant/Subcontractor, as applicable
    - (4) upon demand by Board
  - iv) Consultant's AER must log into the SAFE software to immediately inactivate badges for Consultant Personnel who are separated (e.g. after termination, resignation or otherwise) from the employment of Consultant/Subconsultant/Subcontractor, as applicable. Such Consultant Personnel must immediately surrender his/her badge to Consultant or the applicable Subconsultant/Subcontractor who, in turn will surrender it to Consultant for delivery to the ACO.
  - v) Consultant's AER must immediately inactivate lost, misplaced or stolen badges by logging into the SAFE software to change the status of the access card, and the replacement of the badge shall be paid by the Consultant at its own Cost.
  - vi) Consultant and all Subconsultants/Subcontractors and each of their Consultant Personnel agrees to follow and be bound by all procedures concerning badging that may exist in Board's Policies/Procedures/Rules/Regulations and Applicable Laws.
  - vii) Each Consultant Personnel may only wear the badge specifically issued to him/her.
  - viii) Consultant Personnel may be issued keys when necessary to perform Services.
  - ix) Keys are issued by the Board's Energy Transportation and Asset Management Department.
  - x) Keys are not transferable.
  - xi) All Consultant Personnel issued keys must comply with the rules listed on the Authorization for Keys form.
  - xii) Keys are the property of Board and must be surrendered by the Consultant Personnel to which a key is issued at the earlier of the following to occur:
    - (1) the termination of this Agreement
    - (2) the earlier expiration of this Agreement
    - (3) the separation of the badged Consultant Personnel (e.g. after termination, resignation or otherwise) from the employ of Consultant/Subconsultant/Subcontractor, as applicable
    - (4) upon demand by Board
  - xiii) Lost or stolen keys must be reported immediately to the Board Department from which it was issued (Board's Energy Transportation and Asset Management Department) and replaced by Consultant at its own Cost.

**3) LICENSES, PERMITS AND RESOURCES**

- a) **Licenses and Permits** – Consultant must obtain and maintain all applicable licenses, authorizations, consents, approvals and permits required under Applicable Laws to perform Services and comply with this Agreement. Any specific licenses, permits or similar items required for work to be performed at or for DFW will be identified in each Delivery Order and will be considered a reimbursable cost.
- b) **Consultant Resources** – Consultant must provide all resources necessary to provide the Services, except for non-monetary resources this Agreement or a Delivery Order obligate Board to provide.
- c) **Board Provided Resources**
  - i) **Parking** – Consultant Personnel will be entitled to park within the Airport's access-controlled parking revenue areas at no charge on the specific Days and times that they are providing Services.
  - ii) **Additional Resources** – On a Delivery Order basis, the Parties may agree that Board may provide certain additional non-monetary resources to Consultant such as office space, furniture, telephone and utilities.

4) **DELIVERY ORDERS**

- a) **Description of Services; Delivery Orders** – Services will be assigned to Consultant pursuant to Delivery Orders negotiated and executed between the Parties. If any Services to be performed are not specifically included on Exhibit 1 – Scope of Services, but are reasonably necessary to accomplish the purpose of this Agreement, they will be deemed to be implied in the scope of the Services to the same extent as if specifically described on Exhibit 1 – Scope of Services. Any such Services will be adequately defined by subsequent Delivery Order(s).
- b) **Delivery Order Procedure**
- i) **Master Document** – This Agreement will serve as a master document applicable to Delivery Orders issued under it.
  - ii) **Request for DO Proposal** – If Board identifies a project for which Services are required, it will provide to Consultant a written request for a Delivery Order Proposal (“Request for DO Proposal”). The Request for DO Proposal will contain sufficient information to enable Consultant to prepare a responsive Delivery Order Proposal (“DO Proposal”). The Request for DO Proposal may include, but not be limited to, the following:
    - (1) scope of Services
    - (2) schedule
    - (3) the specific method(s) of compensation that will be used under the Delivery Order
    - (4) additional compensation terms applicable to Delivery Order
    - (5) additional terms and conditions applicable to the Delivery Order
    - (6) facilities or equipment Board is willing to provide to Consultant while performing any Services under the Delivery Order
  - iii) **DO Proposal** – Within 14 Calendar Days (or sooner, if specified in the Request for DO Proposal) of Consultant’s receipt of a Request for DO Proposal, it will, at its own Cost (that is not reimbursable), prepare and submit to Board its DO Proposal. In Board’s Request for DO Proposal, it may:
    - (1) require Consultant to submit its DO Proposal in a certain format or on certain forms
    - (2) require Consultant to provide Board specifically requested information, including Cost information that details any proposed compensation categories and the specific Cost items in those categories
    - (3) take such further actions as may be necessary for the Parties to comply with any federal Applicable Laws, including those that concern and are included in the FAA’s Airport Improvement Program, Architectural, Engineering and Planning Consultant Services for Airport Grant Projects (including AC NO. 150/5100-14E [9/25/2015]), or similar federal Applicable Laws
  - iv) **Execution of Delivery Order** – If the Parties are able to agree on the terms of a Delivery Order, one will be executed.
- c) **No Obligation to Issue Delivery Orders** – Consultant acknowledges that this Agreement does not obligate Board to issue to it any Delivery Order for any Services for any project and that Consultant has no entitlement or expectation of being awarded any Services under it. Further, Board may also determine that it is in its best interests to issue an independent procurement for any of the Services contemplated under this Agreement, rather than issue a Delivery Order to Consultant for such Services.

5) **GENERAL COMPENSATION PROVISIONS**

- a) **Not to Exceed Amount**
- i) This Agreement will involve no actual payment of compensation to Consultant by Board; compensation will only be payable pursuant to a Delivery Order issued under this Agreement.
  - ii) For purposes of establishing available contract capacity out of which to pay compensation under any issued Delivery Order, the Parties agree that the amount of this Agreement during its Term will not exceed **Twelve Million Dollars \$12,000,000.00** (“NTE Amount”), unless increased by mutual agreement of the Parties and reflected in an amendment to this Agreement, subject to any requirement that Board legislatively approve such amendment.

**b) Consultant's Responsibility for Costs**

- i) Consultant is responsible for paying (and seeking allowed reimbursements) all Costs associated with providing Services under this Agreement and any Delivery Order, including all Costs associated with:
  - (1) obtaining and maintaining all applicable licenses, authorizations, consents, approvals and permits required;
  - (2) paying all taxes, levies, duties and assessments ("Taxes") of every nature due in connection with Consultant's performance of the Services. Consultant is responsible for payment of such Taxes to the appropriate governmental authority and compliance with the Texas Tax Code and Comptroller Rules and other Applicable Laws;
  - (3) providing all necessary Consultant Personnel, including Consultant Key Personnel;
  - (4) providing all necessary resources, except those non-monetary resources this Agreement or a Delivery Order obligate Board to provide; and
  - (5) paying any other Costs associated with providing the Services.

**c) Additional Limitations on Compensation –** Compensation payable/reimbursable under this Agreement is subject to certain limitations, including, but not limited to the following:

- i) **Administrative/Overhead Tasks –** Certain tasks associated with providing Services will not be compensable, and are considered to be part of Consultant's Overhead Cost structure. These include, but are not limited to, any aspect of Consultant's or any Subconsultants'/Subcontractors' invoicing, payroll, human resources, off-site document control and clerical tasks.
  - ii) **Principals –** Principals that are subject to reimbursement under this Agreement may only bill Board for Services performed that are directly applicable to a specific Delivery Order upon the prior written approval of Board. Consultant agrees to make its best efforts to identify any proposed Principal time in each DO Proposal at the time it is developed, to the extent practical.
  - iii) **Commuting Travel Time –** Consultant Personnel time incurred while commuting to/from the Airport is not compensable. Travel and other costs are reimbursable as defined and authorized in each Delivery Order and as described in Exhibit 3 – Compensation, Invoices, Consultant Key Personnel.
  - iv) **Exempt/Non-Exempt Consultant Personnel –** Board relies upon Consultant and its Subconsultants/Subcontractors to properly designate Consultant Personnel as exempt or non-exempt under the Fair Labor Standards Act. Board will not pay Consultant for back pay, penalty or interest imposed by the Department of Labor in the event of a dispute regarding the improper designation of its employees.
- d) Alternate Compensation Arrangements –** Board may, at its discretion, set up a Delivery Order for a specific project that provides compensation to be paid using a combination of the compensation methods allowed under this Agreement. Board may also choose other manners of compensation or combinations of such manners that it deems desirable and in its best interests, while also preserving the competitive pricing obtained during the negotiation of this Agreement with Consultant and remaining compliant with federal Applicable Laws concerning federal funding that may apply to any Delivery Order issued under this Agreement. Provisions concerning the submission of an invoice using a combined method of reimbursement, including appropriate provisions concerning progress payments, will be set forth in each applicable Delivery Order.

**6) GENERAL INVOICE PROVISIONS**

- a) **Monthly Submittal –** Unless otherwise stated in a Delivery Order, Consultant must prepare and submit to Board monthly invoices.
- b) **Alternate Invoicing Procedures –** Alternate requirements for submitting, processing and paying related invoices may be included in the applicable Delivery Order.
- c) **Due Date –** Billing will be made once per month and each invoice must be delivered on or before the 15<sup>th</sup> Day following the close of the invoice period for which Services were rendered and for which payment is sought, unless a Delivery Order modifies the invoicing process for it.
- d) **Subconsultants/Subcontractors –** Billing for all Subconsultants/Subcontractors performing Services during the billing period must be included with each invoice. No Consultant mark-up or

management fee is permitted..

- e) **Time Reports** – It is Consultant’s responsibility that the original(s) signed (by Consultant Personnel and his/her supervisor) time report for each employee engaged in the Services, used in preparing the invoice, be on file at Consultant’s local office, or office nearest job site. These signed time reports must include sufficient back-up information to allow Board to verify all components of any invoice should it desire to audit it. Unless required by a Delivery Order, individual time reports are not required to be included in the invoice. Summary time reports are required to be included in the invoice.
- f) **Services Rendered More than 90 Days Prior to Invoice** – No payment will be made for Services performed or reimbursable costs incurred more than 90 Days prior to the date the invoice is received by Board, unless otherwise approved by Board, in its sole discretion.
- g) **Payment of Invoices**
  - i) **30 Day Policy** – Board will endeavor to pay all approved invoices within 30 Days of the date of receipt by Board.
  - ii) **No Acceptance of Nonconforming Services** – No payment of any invoice or any partial or entire use of the Services by Board constitutes acceptance of any Services.
- h) **Payment of Other Persons**
  - i) **Prompt Pay Act** – Consultant must pay all Subconsultant/Subcontractors, suppliers, vendors, etc. in accordance with the Texas Prompt Pay Act; Texas Government Code; Chapter 2251.
  - ii) **Disputes with Subconsultants/Subcontractors**
    - (1) If any dispute arises between Consultant and a Subconsultant/Subcontractor concerning payment or Consultant anticipates a claim being asserted by a Subconsultant/Subcontractor for additional compensation under the applicable Subcontract or otherwise, Consultant must notify Board Authorized Representative of such dispute within 24 hours of Consultant becoming aware of it. Notification must be initially by telephone, followed-up with immediate written notification outlining the facts surrounding such dispute.
    - (2) If Consultant resolves such dispute, it must notify Board Authorized Representative of such resolution within 24 hours of its occurrence. Notification must be initially by telephone, followed-up with immediate written notification outlining the facts surrounding the resolution of the dispute.
- i) **Withholding of Payments**
  - i) **General Withholding** – If Board determines that an invoice has not been properly submitted and/or that payment under it is not due, in whole or in part, it may reject the invoice partially or in its entirety and request that it be corrected and resubmitted.
  - ii) **Withholding Event(s)** – In addition to other grounds explicitly set forth in this Agreement, Board may withhold, in whole or in part, payment under any invoice on account of any of the following events (“Withholding Event”):
    - (1) Failure to provide Services in accordance with the Agreement
    - (2) Unauthorized deviations from the Agreement
    - (3) Reasonable doubt that any Services will be completed according to an applicable schedule for their completion
    - (4) Failure to submit an invoice in a format required by this Agreement, any Delivery Order or as directed by Board
    - (5) Errors existing in a current invoice or discovered concerning a previously submitted invoice
    - (6) The existence of a dispute as to the amount that may be owed under any invoice, this Agreement or any Delivery Order
    - (7) Defective Services not corrected
    - (8) Failure of Consultant to make payments properly to Subconsultants/Subcontractors or Similar Persons
    - (9) Board receives a notice of non-payment or a lien claim from any Subconsultant/Subcontractor relating to Services and Consultant fails to dispute and contest such lien claim in an expeditious manner

(10)The occurrence of a Default by Consultant under this Agreement or any other Agreement with the Board to which Consultant is a party or is providing Services in any capacity

(11)Any other reasons existing under Applicable Laws

- iii) **Payment after Withholding Event(s)** – If Board withholds payment under an invoice, in whole or in part, as a result of a Withholding Event or otherwise and Consultant subsequently corrects it, Board will endeavor to make payment to Consultant of the withheld amount within 30 Days of Board being notified of, and confirming, such correction.

## 7) **REPORTS**

- a) **Board's Right to Request Reports** – Board may, at any time, request that Consultant provide Board with a Progress Summary Report and/or Progress Report for Services performed during any preceding invoice period or any other period directed by Board.
- b) **Progress Summary Report** – If requested, the Progress Summary Report must be provided in a format approved by Board, which details:
- i) the name of each Consultant Personnel engaged in the Services
  - ii) the total time each Consultant Personnel worked during the invoice period (on the specific work assignment)
  - iii) the classification and compensation rate of each Consultant Personnel
  - iv) a description of the Services performed by each Consultant Personnel
- c) **Progress Reporting:** Once each calendar month, Consultant must submit an invoice to the Board along with a Progress Report on services performed during the preceding one-month period. The invoice and report are due no later than the 15th of the month following the reporting month. The Progress Report must, at a minimum, contain the following sections:
- i) Project Summary Narrative Report. This report must identify the services completed in the prior month, services to be completed in the current month, and areas of design concern, if any.
  - ii) Summary of percent completion of major tasks and objectives defined in the Detailed Scope of Services, including any necessary back-up information.
  - iii) Cost Status/Earned Value Summary Report. The Board will provide an example of an electronic version of this report to Consultant.
  - iv) Bar chart schedule at a level of detail as directed by the Board.
  - v) Consultant's confirmation of the status of the estimate or opinion of probable cost relative to the Basis of Design in each Monthly progress report.
  - vi) Consultant's attestation that all design files and other project documents have been uploaded to the Board's specified document management system and that the uploaded files are current as of the date of the Progress Report.
  - vii) Monthly Schedule Update.
  - viii) The Board, at its discretion, may direct Consultant to alter the format of any monthly Progress Report, provide more detail in certain sections of it or require additional subject matter sections be included within it.

## 8) **MOST FAVORED CLIENT**

- a) Consultant represents and warrants to OWNER that the prices discounts, rebates, allowances, and other pricing terms offered pursuant to this Contract for substantially similar services and skill levels (sold in substantially equal or smaller quantities) are, and during the term of this Contract will be, the same as or lower, or more favorable than those contemporaneously offered by Consultant to any other client. If Consultant shall enter into arrangements during the term of this Contract with any other client providing for lower or more favorable prices, discounts, rebates, allowance, or other pricing terms, Consultant shall promptly notify OWNER in writing and make the same available to OWNER as of the date such prices or other more favorable terms became effective for another client, and this Contract shall be amended accordingly upon OWNER'S acceptance of such terms.
- b) This Article shall not apply to arrangements with other clients during the term of this Contract fitting one or more of the following classifications:



- i) not provided by the same operating unit (.i.e., provided by an operating unit that has no indirect cost pools in common with the operating unit providing services under this Contract)
  - ii) not in the same general geographical area (except that home office overhead rates should be consistent without regard to location)
  - iii) are pro bono in nature
  - iv) contracts that are primarily lump sum in nature, but may involve incidental hourly services
  - v) less than one hundred thousand dollars in value
- c) Annually, Consultant shall review and have an officer of its company certify in writing to Owner its compliance with this Article.
- d) Consultant shall insert this paragraph in all subconsultant contracts hereunder, except altered as necessary for the proper identification of the contracting parties and the Owner.

9) **DELIVERABLES, RECORDS, PROTECTED INFORMATION**

- a) **Board's Right to Review and Reject Deliverables** – Any Service or other document or item (“Deliverable”) to be submitted or prepared by Consultant under this Agreement will be subject to review by Board. Board may disapprove, if in the Board's sole opinion, the Deliverable is not in accordance with the requirements of this Agreement or any requirements or specifications expressly defined under any Delivery Order. Consultant must, at its own Costs, revise/correct nonconforming Deliverables until they meet the approval of Board. Consultant will not be compensated under any provision of this Agreement or any Delivery Order for such revision/correction of any Deliverable.
- b) **Board Information Systems Security** – Consultant agrees that it, all Subconsultants/Subcontractors, Consultant Personnel and any Persons acting on their behalf will follow all Applicable Laws concerning Board information systems security and information technology systems and assets.
- c) **SSI** – Consultant agrees that it, all Subconsultants/Subcontractors, Consultant Personnel and any Persons acting on their behalf, will comply with all Applicable Laws concerning the protection of Sensitive Security Information, as addressed in 49 C.F.R. Part 1520, and any similar Applicable Laws.
- d) **Records and Confidentiality**
- i) **Potential Access** – Consultant acknowledges that Board considers all information provided by it to Consultant and/or created by Consultant or any Subconsultants/Subcontractors or similar Persons relating to the performance of Services constitutes confidential information (“Confidential Information”) of Board. Consultant agrees that it will not use in any way, for its own account or the account of any Third-Party, nor disclose to any Third-Party (except as required by Applicable Laws), any of Board's Confidential Information and will take reasonable precautions to protect its confidentiality.
  - ii) **Exclusions** – Confidential Information does not include:
    - (1) **Subject to Disclosure under Applicable Laws** – Information that is subject to disclosure under the Texas Public Information Act, the federal Freedom of Information Act or similar Applicable Laws; or
    - (2) **Outside Source** – Information that Consultant can prove:
      - (a) Was known to it prior to receipt from Board, directly or indirectly, from a source other than one having an obligation of confidentiality to Board;
      - (b) Becomes known (independently of disclosure by Board) to Consultant, directly or indirectly, from a source other than one having an obligation of confidentiality to Board; or
      - (c) Becomes publicly known or otherwise ceases to be confidential, except through a breach of this Agreement by Consultant.
  - iii) **Requests for Disclosure** – If Consultant is requested to disclose to any Third-Party Confidential Information or information that it contends is not Confidential Information to which Consultant became privy as a result of this Agreement, Consultant must first notify Board of the request within 48 hours of its receipt of the request. Consultant must, in such notification, provide Board sufficient facts to enable it to determine whether Confidential

Information is involved in the request, give its consent to the disclosure as to all or part of the request or take action Board considers appropriate to protect the information at issue.  
Consultant agrees to fully cooperate with Board in accordance with the Board's determination as to how to respond to the request.

- e) **Ownership of Work Product** – All of Consultant's Work Product (defined to include, but not be limited to, Deliverables, reports, findings, recommendations, data, memoranda, notes, renderings, tracings, photographs or videos, notebooks, graphics, presentations, exhibits, posters, information boards, documents, graphs, summaries, or any other information whatsoever, whether in physical or electronic format, prepared in connection with this Agreement or any Delivery Order, the provision of Services, or otherwise) is the property of Board.

**10) AUDIT, RECORDS AND INSPECTION RIGHTS**

**a) Maintenance**

- i) Consultant (and Consultant's Subconsultants/Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves) must maintain, and Board will have the right to examine books, records, and documents including, but not limited to, Subcontracts, joint venture agreements, general ledgers, job Costs records, purchasing records, bank statements, cancelled checks, payroll records, project records and any other supporting evidence deemed necessary by Board to substantiate compliance with the terms of this Agreement or any Delivery Order, including, but not limited to, Costs and charges of whatever nature related to, incurred and/or anticipated to be incurred in the performance of this Agreement.
- ii) Such right of examination will include inspection at all reasonable times of Consultant's office or facilities or such parts thereof as may be engaged in the performance of this Agreement or any Delivery Order, and cooperation by Consultant Personnel (including, but not limited to, cooperation in obtaining records from Consultant's Subconsultants/Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves), as reasonably considered necessary by Board's representatives to complete the audit.

**b) Examination**

- i) **Scope** – Board will have the right to examine all books, records, documents, and other data of Consultant related to the negotiation, pricing, or performance of this Agreement, including Change Orders, Delivery Orders, Modifications, Amendments or similar documents, for the purpose of evaluating the accuracy, completeness and correctness of the costs or pricing data submitted or retained in connection with providing Services. The right of examination will extend to all records necessary to permit adequate evaluation of the Costs or pricing data submitted along with the computations and projections used therein. Proprietary/Trade Secret information may not be withheld from Board.
- ii) **Format, Costs, Availability**
- (1) Consultant's (and Consultant's Subconsultants'/Subcontractors', suppliers', vendors', insurance agents', and other agents' and any Persons' acting for or on any of their behalves) documents, records and other evidence will be subject to inspection and/or reproduction by Board. Consultant, (and Consultant's Subconsultants/Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves) must provide Board with retrievals, in the format(s), including, but not limited to, the file format(s), specified by Board, of computer based records or transactions that Board determines to be necessary to conduct the audit.
- (2) There will be no charge to Board for reasonable use of photocopy machines while conducting the audit, or for any costs of retrieving; downloading, and/or printing and delivering to Board any records or transactions stored in magnetic, optical, microfilm, or other media.
- (3) Consultant, (and Consultant's Subconsultants/Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves) must provide all records and retrievals requested within 7 Days.
- (4) Board may also request on a monthly basis, categories of records subject to Board's right to audit for review by Board.

**c) Retention**

- i) **General** – All records required to be produced/made available under this Clause must be made available at any office of Consultant where they are located at all reasonable times, for inspection, audit or reproduction, until the expiration of 2 years from the date of final payment. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Consultant must provide adequate and appropriate workspace to conduct all audits, inspections and reviews. If requested by Board, computer-based retrievals and copies of selected documents and records must be delivered to Board. Board will provide Consultant with reasonable advance notice of intended audits, inspections and reviews.
  - ii) **Termination** – If this Agreement is completely or partially terminated, the records relating to the Services terminated must be made available for a period of 2 years from the date of final payment.
  - iii) **Litigation/Claims** – Records which relate to litigation or settlement of claims arising out of the performance of this Agreement must be made available for a period of 2 years from the date of final disposition of such litigation or claims.
- d) Pass-Down** – Consultant must insert an Article containing all the provisions of this Clause, including this paragraph, in all Subcontracts, except altered as necessary for the proper identification of the contracting Persons. If requested by Board, Consultant must submit copies to Board of all Subcontracts and changes to Subcontracts pertaining to this Agreement. Failure to submit such written Subcontracts or to insert this Article in all Subcontracts will be reason to exclude some or the entire related payee's compensable Costs from the amounts payable to Consultant pursuant to this Agreement.
- e) Audit; Overcharges** – If an audit or review, in accordance with this Article, discloses overcharges (of any nature) by Consultant in excess of 3% of the total Agreement value audited, the cost of Board's audit will be reimbursed by Consultant (in addition to the amount overcharged). The amount of Board's audit reimbursement will not exceed the value of the overcharges.

**11) INDEMNIFICATION BY CONSULTANT AND BONDING**

**a) INDEMNIFICATION**

- i) **GENERAL INDEMNITY. CONSULTANT MUST INDEMNIFY AND HOLD BOARD, THE CITIES OF DALLAS AND FORT WORTH, TEXAS, AND THEIR AGENCIES AND RESPECTIVE BOARD MEMBERS, COUNCILMEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, ADVISORS, AND AGENTS, SUCCESSORS AND ASSIGNS, HARMLESS FROM ANY LOSSES, LIABILITIES, DAMAGES, DEMANDS AND CLAIMS, AND ALL RELATED COSTS (INCLUDING REASONABLE LEGAL FEES AND COSTS OF INVESTIGATION, LITIGATION, SETTLEMENT, JUDGMENT, INTEREST AND PENALTIES) TO THE EXTENT ARISING FROM CLAIMS OR ACTIONS BASED UPON:**
  - (1) **NEGLIGENT PERFORMANCE. CONSULTANT'S, ITS SUBCONSULTANT'S/SUBCONTRACTOR'S OR CONSULTANT PERSONNEL'S NEGLIGENT PERFORMANCE, NON-PERFORMANCE OF THE SERVICES OR BREACH OF THIS AGREEMENT OR ANY SUBCONTRACT;**
  - (2) **COMPENSATION. COMPENSATION OR BENEFITS OF ANY KIND, BY OR ON BEHALF OF CONSULTANT PERSONNEL;**
  - (3) **VIOLATION OF APPLICABLE LAWS. ANY ACTUAL, ALLEGED, THREATENED OR POTENTIAL VIOLATION OF ANY APPLICABLE LAWS BY CONSULTANT, ITS SUBCONSULTANTS/SUBCONTRACTORS OR CONSULTANT PERSONNEL, TO THE EXTENT SUCH CLAIM IS BASED ON THE ACT OR OMISSION OF CONSULTANT, ITS SUBCONSULTANTS/SUBCONTRACTORS OR CONSULTANT PERSONNEL, EXCLUDING ACTS OR OMISSIONS BY OR AT THE DIRECTION OF BOARD;**
  - (4) **DEATH OR INJURY. DEATH OF OR INJURY TO ANY INDIVIDUAL CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CONSULTANT, ITS SUBCONSULTANTS/SUBCONTRACTORS, CONSULTANT PERSONNEL OR ANY**

**PERSON ACTING FOR, IN THE NAME OF, AT THE DIRECTION OR SUPERVISION OF OR ON BEHALF OF CONSULTANT OR ITS SUBCONSULTANTS/SUBCONTRACTORS IN THE PERFORMANCE OF THE SERVICES; AND**

- (5) **DAMAGE TO REAL/PERSONAL PROPERTY. DAMAGE TO, OR LOSS OR DESTRUCTION OF, ANY REAL OR PERSONAL PROPERTY CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CONSULTANT, ITS SUBCONSULTANTS/SUBCONTRACTORS, CONSULTANT PERSONNEL OR ANY PERSON ACTING FOR, IN THE NAME OF, AT THE DIRECTION OR SUPERVISION OF OR ON BEHALF OF CONSULTANT, ITS SUBCONSULTANTS/SUBCONTRACTORS OR CONSULTANT PERSONNEL IN THE PERFORMANCE OF THE SERVICES.**
- ii) **LIMITATION ON INDEMNITY. THE INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS CLAUSE ARE NOT INTENDED TO APPLY TO ANY CLAIM OR ACTION BASED UPON BOARD'S ACTIONS OR ANY PERSON UNDER BOARD'S CONTROL.**
- b) **Customs Bond** – If Consultant Personnel are required to provide Services in a Customs security area of the Airport, Consultant or its Subconsultants/Subcontractors may be required to furnish a Customs Security Bond in accordance with Title 19 C.F.R. Part 113, in such amount and subject to such conditions as may be required by the Commissioner of Customs. The cost of the Customs Bond may be reimbursable if authorized under a Delivery Order. A customs bond, if required, must be filed with the applicable United States Customs Service office before a badge may be issued to allow access to the applicable Customs security area. All bond forms and activities necessary to complete this process should be obtained/coordinated with the United States Customs Service, in accordance with applicable Laws.

**12) PERFORMANCE EXCUSE, SUSPENSION, TERMINATION**

**a) Force Majeure**

- i) **Excuse** – Neither Party will be liable for default or delay in the performance of its obligations under this Agreement or any Delivery Order to the extent such default or delay is caused by a Force Majeure Event.
- ii) **Duration; Required Actions** – Upon the occurrence of a Force Majeure Event, the non-performing Party will be excused from performance of affected obligations for as long as:
- (1) the Force Majeure Event continues
  - (2) the Party continues to attempt to recommence performance to the extent commercially reasonable without delay
- iii) **Termination Option** – If any Force Majeure Event continues for 30 consecutive Days, Board may, at its option during such continuation, terminate this Agreement, in whole or in part, without penalty or further obligation or liability of Board.

**b) Suspending Services**

- i) **Notice** – Board may, by written notice to Consultant, suspend at any time the performance of any of the Services.
- ii) **Required Consultant Actions** – Upon receipt of a suspension notice, Consultant must, unless the notice requires otherwise:
- (1) immediately discontinue suspended Services on the date and to the extent specified in the notice
  - (2) place no further orders or Subcontracts for items of personal property or facilities with respect to suspended Services, other than to the extent required in the notice
  - (3) take any other reasonable steps to minimize Costs associated with the suspension
  - (4) follow any other reasonable directives from Board concerning the suspended Services

**c) Termination**

**i) Termination by Board for Cause**

- (1) **Causes** – Board may at its option, by giving written notice to Consultant, terminate this Agreement under the following circumstances:
  - (a) **Material Breach** – For a material breach of the Agreement by Consultant that is not cured by Consultant within 7 Days of the date on which Board provides written notice of such breach;
  - (b) **Non-Curable Material Breach** – Immediately upon written notice for a material breach of the Agreement by Consultant that is not reasonably curable, in Board's sole opinion, within 7 Days;
  - (c) **Multiple Non-Material Breaches** – Immediately upon written notice for numerous breaches of the Agreement by Consultant that collectively constitute a material breach or reasonable grounds for insecurity concerning Consultant's performance; or
  - (d) **Dishonesty, Fraud and Conflicts** – Immediately for engaging in behavior that is dishonest, fraudulent or constitutes a conflict of interest with Consultant's obligations under this Agreement.
- (2) **Re-procurement Costs** – In addition to all other rights and remedies Board may have if this Agreement is terminated by Board pursuant to the Clause entitled "Termination for Cause", Consultant will be liable for all Costs in excess of the compensation that would have been payable to Consultant for all terminated Services reasonably and necessarily incurred by Board in the completion of the Services, including the cost of administration of any agreement awarded to other Persons for completion.
- (3) **Conversion to Termination for Convenience** – If Board improperly terminates this Agreement for cause, the termination for cause will be considered a termination for convenience in accordance with the Clause entitled "Termination for Convenience."

**ii) Termination by Board for Insolvency** – Board may terminate this Agreement immediately by delivering written notice of such termination to Consultant if Consultant:

- (1) becomes insolvent, as that term may be defined under Applicable Laws, or is unable to meet its debts according to their terms of repayment
- (2) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors
- (3) is adjudicated bankrupt or makes an assignment for the benefit of its creditors generally;
- (4) fails to deny or contest the material allegations of an involuntary petition filed against it pursuant to any Applicable Laws relating to bankruptcy, arrangement or reorganization, which is not dismissed within 60 Days
- (5) applies for or consents to the appointment of any receiver for all or any portion of its property

**iii) Termination by Board for Convenience**

**(1) Process**

- (a) **Notice** – Board may terminate this Agreement for convenience upon 14 Days prior written notice.
  - (b) **Waiver** – Upon a termination for convenience, Consultant waives any claims for damages, including, but not limited to, loss of anticipated profits.
  - (c) **Sole Remedy** – As Consultant's sole remedy and Board's sole liability, Board will pay compensation for the Services properly performed prior to such notice of termination, and subsequent to the notice of termination, if subsequent Services are required in the notice, any reasonable Costs associated with complying with the Board's termination for convenience, and reasonable administrative costs of settling and paying claims arising out of the termination of Services under purchase orders or Subcontracts, except to the extent any products under such purchase orders or Subcontracts can be used by Consultant within 30 Days in its business following termination. If requested, Consultant must substantiate such claims with proof satisfactory to Board.
- (2) Effect of Termination for Convenience** – Upon termination of this Agreement, Consultant must immediately:

- (a) discontinue Services on the date and to the extent specified in the notice and place no further purchase orders or Subcontracts to the extent that they relate to the performance of the terminated Services
- (b) inventory, maintain and turn over to Board all Deliverables, work product, licenses (to the extent transferrable), equipment, materials, plant, tools, and property furnished by Consultant and paid for by Board or provided by Board for performance of the terminated Services
- (c) promptly obtain cancellation, upon terms satisfactory to Board, of all purchase orders, Subcontracts, rentals or any other agreements existing for performance of the terminated Services, or assign those agreements, as directed by Board
- (d) comply with all other reasonable requests from Board regarding the terminated Services
- (e) continue to perform in accordance with all of the terms and conditions of this Agreement any portion of the Services that are not terminated

**13) DISPUTE RESOLUTION**

- a) **Agreement to Attempt Resolution** – The Parties are fully committed to working with each other throughout the Term and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Consultant and Board each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Services.
- b) **Resolution Meeting** – If a dispute or disagreement cannot be resolved informally, Consultant Authorized Representative and Authorized Board Representative, upon the request of either Party, must meet as soon as conveniently possible, but in no case later than 30 Days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Authorized Representatives, the Parties will exchange relevant information that will assist the Parties in resolving their dispute or disagreement.
- c) **Alternative Dispute Resolution** – If Board and Consultant are still unable to resolve their dispute, each agrees to consider submitting such dispute to mediation or other acceptable form of alternate dispute resolution.
- d) **Continued Performance During Dispute** – Both Parties must continue performing under this Agreement while the Parties are seeking to resolve any dispute unless, during that time, this Agreement is terminated or expires.

**14) SUBCONSULTANTS/SUBCONTRACTORS**

- a) **Subcontracts** – Consultant agrees that, in order for it to provide the Services, it may be executing Subcontracts with various Subconsultants/Subcontractors or similar Persons for their provision of Services. Consultant agrees that it (and its Subconsultants/Subcontractors and similar Persons) will execute those Subcontracts with the intent to specifically benefit Board so that Board is a third-party beneficiary of such Subcontracts and is eligible to bring an action under any such Subcontract directly against the applicable Subconsultant/Subcontractor or similar Person with the same rights and remedies under such Subcontract and Applicable Laws as Consultant. Board's admission into evidence in any litigation involving a Subcontract of a copy of this Agreement and any Subcontract will be irrefutable, prima facie evidence of Board's third-party beneficiary status under such Subcontract.
- b) **Subcontracting; Responsibility** – If Consultant subcontracts any of the Services, Consultant will:
  - i) be responsible for the performance of Services by any Subconsultants/Subcontractors or similar Persons
  - ii) remain Board's sole point of contact for the Services
  - iii) be responsible for payment for Services to any Subconsultant/Subcontractor
- c) **Flow-Down Provisions** – Consultant must include in all Subcontracts it executes with any Persons providing Services the following provision:

"Consultant and \_\_\_\_\_ ("Subconsultant/Subcontractor") [insert title of

Subconsultant/Subcontractor] agree that by executing this Subcontract they intend to directly and not incidentally secure (a) benefit(s) for the Dallas/Fort Worth International Airport Board ("Board"), the governmental entity for which the Services under this Subcontract are ultimately being provided in accordance with Agreement No. xxxx ("Agreement") between Board and Consultant dated effective [REDACTED], 2017, and that they are executing this Subcontract for Board's direct and not incidental benefit.

Subconsultant/Subcontractor also agrees that Consultant has provided it with a copy of the Agreement and that such Agreement has been incorporated into the Subcontract by reference. Subconsultant/Subcontractor agrees that all of the obligations that Consultant has to Board under the Agreement's specific provisions referenced in this Clause are obligations that Subconsultant/Subcontractor has to Consultant by virtue of the Agreement's incorporation by reference into the Subcontract. The titles of the provisions in the Agreement/Exhibits that are subject to this flow-down requirement include, but are not limited to:

- (1) WARRANTIES
- (2) CONSULTANT PERSONNEL/REPRESENTATIVES
- (3) GENERAL COMPENSATION PROVISIONS
- (4) GENERAL INVOICE PROVISIONS
- (5) MOST FAVORED CLIENT
- (6) COMPENSATION, INVOICES, CONSULTANT KEY PERSONNEL
- (7) DELIVERABLES, RECORDS, PROTECTED INFORMATION
- (8) AUDIT; RECORDS AND INSPECTION RIGHTS
- (9) INDEMNIFICATION
- (10) SUBCONSULTANTS/SUBCONTRACTORS
- (11) CONFLICTS
- (12) DIVERSITY
- (13) BOARD CODE OF BUSINESS ETHICS
- (14) EXHIBIT 2 – DEFINITIONS
- (15) EXHIBIT 3 – COMPENSATION; INVOICES; CONSULTANT KEY PERSONNEL (AND ALL SUB-EXHIBITS);
- (16) EXHIBIT 4 – REQUIRED CONTRACT PROVISIONS FOR AIRPORT IMPROVEMENT PROGRAM AND FOR OBLIGATED SPONSORS (AND ALL SUB-EXHIBITS)
- (17) EXHIBIT 5 – INSURANCE REQUIREMENTS
- (18) EXHIBIT 6 – M/WBE PROVISIONS

It is the further intent of Consultant and Subconsultant/Subcontractor that Board will have all rights and remedies (including rights of enforcement directly against such Subconsultant/Subcontractor) under this Subcontract that Consultant has, notwithstanding that Board is not a signatory to this Subcontract. Board's admission into evidence in any litigation involving this Subcontract of a copy of this Subcontract will be irrefutable, prima facie evidence of Board's third-party creditor beneficiary status under this Subcontract."

- d) **Enforcement Assistance** – Consultant further agrees that it will provide Board any reasonable assistance Board may require in enforcing against a Subconsultant/Subcontractor all rights of Board under the applicable Subcontract.
- e) **Responsibilities for Acts and Omissions** – Consultant is responsible to Board for the acts and omissions of Consultant Personnel and similar Persons, and all other Persons performing any of the Services or supplying materials under a Subcontract to Consultant.

## 15) **CONFLICTS**

- a) **No Conflicts** – Consultant covenants that it, its Subconsultants/Subcontractors, Consultant Personnel and all Persons employed by it/them or acting as its/their representatives has/have no interest, nor may it or they acquire any interest, directly or indirectly, which would conflict in any manner with providing Services under this Agreement or any Subcontract. Consultant further covenants that no Person having such conflicting interest will be employed by it or any Subconsultants/Subcontractors or allowed to act as its/their representative.

**b) Prohibited Contracts/Agreements**

- i) **Prohibition** – Other than the Services provided concerning this Agreement, Consultant, Subconsultants/Subcontractors, Consultant Personnel or Persons employed by them or acting on their behalf [including Persons that comprise Consultant or any Subconsultant/Subcontractor (e.g. a joint venture, if Consultant or a Subconsultant/Subcontractor is a Joint Venture; a partner, if Consultant or a Subconsultant/Subcontractor is a partnership)] are prohibited from contracting with, or providing services to:
  - (1) Board
  - (2) Any Person doing business at the Airport
- ii) **Waiver** – Consultant may seek a waiver from this Clause for it, a Subconsultant/Subcontractor, a Consultant Personnel or a Person employed by them or acting on their behalf by requesting such waiver in writing setting forth in detail why Board should grant that waiver. Board's determination on any waiver request will be final.

**16) ATTORNEYS' FEES**

**a) Recovery**

- i) **Litigation Costs** – In any litigation filed by either Party against the other arising out of a dispute under or relating to this Agreement, the prevailing Party in the litigation, at trial and on appeal, will be entitled to recover its reasonable and necessary Attorneys'/Paralegals' fees and litigation costs (collectively, "Litigation Costs") incurred by it, as fixed by the Court in accordance with this Clause. The use of the term "Court" in this Clause refers to determinations concerning legal fees reserved to the judge and, in the case of a jury trial, to the jury, in accordance with Applicable Laws.
- ii) **In-House and Outside Counsel/Paralegals**
  - (1) **Recoverability** – Litigation Costs recoverable by any Party include Litigation Costs incurred by any In-House Counsel/Paralegals and/or Outside Counsel/Paralegals it uses.
  - (2) **In-House** – If a Party is represented by In-House Counsel, the attorneys' fees component of such Litigation Costs will be calculated by creating an hourly billing rate for each attorney based upon the following formula: Annual Salary/Allocated Annual Hours (2,080 Hours) + Applicable Overhead Rate = Hourly Billing Rate. Litigation Costs attributable to each attorney will be calculated using the computed hourly billing rate times the number of hours worked by such attorney on the litigation. This same formula will be used for calculating the paralegals' fees component of such Litigation Costs for In-House Counsel.
  - (3) **Outside Counsel** – If a Party uses Outside Counsel/Paralegals for the litigation, such Litigation Costs will be calculated at the billing rates of the firm's attorneys/paralegals participating in the litigation, times the number of hours worked by such participating attorneys/paralegals.
  - (4) **Dual Recovery** – A Party may recover Litigation Costs associated with In-House Counsel/Paralegals and Outside Counsel/Paralegals in accordance with this Clause even if both types of counsel are used in any particular litigation.

**b) Prevailing Party**

- i) **Condition to Recovery** – To qualify as a prevailing Party, a Party must obtain some relief on the merits of a claim or defense asserted by it against the other Party in the form of an enforceable judgment.
- ii) **Defendant May be a Prevailing Party** – The Parties acknowledge and agree that, in certain circumstances, a Party that is a defendant in litigation filed by the other Party, that acts in a purely defensive manner and that does not assert a counterclaim against the Party plaintiff may be a prevailing Party in the litigation that is entitled to an award of Litigation Costs by the Court.
- iii) **Multiple Prevailing Parties** – The Parties acknowledge and agree that, in certain circumstances, both may be considered prevailing Parties in any litigation brought between



them concerning this Agreement, particularly if both bring claims against the other in the form of original claims by the plaintiff Party and counterclaims by the defendant Party or if 1 Party asserts numerous claims against the other and some or all of those claims are successfully defended against.

**c) Nature of Claims**

- i) **Equitable Claims** – If the claim asserted by the prevailing Party involves equitable relief, the Court will determine an amount of Litigation Costs to be awarded that are equitable and just in light of the particular equitable relief sought and obtained.
- ii) **Legal Claims** – If the claim asserted by the prevailing Party is legal in nature and results in an award to the Party of monetary damages, the Court will determine an amount of Litigation Costs to be awarded that are equitable and just in light of the total monetary damages sought by the prevailing Party, the total Litigation Costs incurred by it in pursuing such monetary damages and the proportional relationship between the monetary damages actually awarded and the total Litigation Costs incurred. Awarded Litigation Costs must bear some reasonable relationship to the amount of monetary damages awarded.
- iii) **Allocation between Equitable and Legal Claims** – If a Party requests both equitable and legal relief and seeks the recovery of Litigation Costs for both types of relief, it must reasonably allocate its Litigation Costs between the equitable and legal relief sought so that the Court may appropriately apply this Clause and Applicable Laws in determining the amount of any Litigation Costs to be awarded to the prevailing Party.

- d) Court Guidelines** – It is the Parties' intent that this provision for the award of Litigation Costs will not be inflexibly enforced by the Court and that that the ultimate form of judgment rendered in the case is not necessarily controlling, but must give way to equitable considerations. The Court must compare the relief awarded on the claims and defenses asserted in the litigation with the Parties' demands on those same claims and defenses and their litigation objectives, as disclosed by the pleadings, trial briefs, opening statements and similar sources. The prevailing party determination, including instances where there are multiple prevailing Parties, and the resulting award of Litigation Costs, should be made only upon final resolution of the claims and defenses asserted in the litigation and only by a comparison of the extent to which each Party has succeeded in its contentions.

**17) DIVERSITY**

- a) **M/WBE Program** – Board's Business Diversity and Development Department established for this Agreement an M/WBE participation goal of 30% percent (the "Commitment"). Consultant agrees at all times during the Term to meet or exceed the Commitment and to comply with the requirements of Exhibit 6 – M/WBE Provisions concerning that goal and the Board's M/WBE Program.
- b) **Equal Opportunity** – In accordance with the policy statement in Board Resolution No. 80-095, Consultant agrees that it will take all necessary action to ensure that, in performing Services under this Agreement, it and its Subconsultants/Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or physical handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements.
- c) **Non-Discrimination** – Consultant agrees that it will take all necessary actions to ensure that, in connection with its performance under the Agreement, it will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements.

18) **GENERAL**

- a) **Litigation Assistance** – Consultant agrees to make any Person involved in providing Services available to Board for litigation support, expert testimony or other similar Services in the event Board is involved in litigation or anticipates being involved in litigation concerning matters for which Consultant provided Services under this Agreement. Specific terms for Consultant to provide litigation assistance will be included in a Delivery Order agreed to between the Parties at the appropriate time that will more fully address those Services and the compensation to be paid for them, including any reasonable Costs that will be reimbursed by Board.
- b) **Board Code of Business Ethics** – Consultant agrees to provide to Consultant Personnel a copy of the Board's Code of Business Ethics and to ensure that Consultant Personnel comply with such Code in terms of Consultant Personnel's' interaction with employees of the Board. Additionally, Consultant Personnel will comply with the terms of such Code of Business Ethics as if each were, in fact, an employee of the Board.
- c) **Standards and Codes** – Wherever references are made in the Agreement to standards or codes in accordance with which the Services are to be performed, the edition or revision of the standards or codes current on the Effective Date or the date the applicable Delivery Order was issued, whichever is later, will apply. In case of conflict between any referenced standards and codes and any Agreement Documents, the standards and codes will take precedence.
- d) **Interpretation** – All Consultant questions concerning interpretation or clarification of the Agreement, including the discovery of conflicts, discrepancies, errors or omissions, must be immediately submitted in writing by Consultant to Board for a determination. Board's determination on the issue will be final.
- e) **Time of Essence** – Time is important to both Board and Consultant in the performance of this Agreement and any Delivery Order issued under it and each agree that strict compliance is required as to any performance period set forth in the Agreement.
- f) **Applicable Laws** – The Agreement and Services will be governed by and construed in accordance with the substantive laws of the State of Texas without regard to its choice of law principles.
- g) **Jurisdiction and Venue** – The Parties consent to the exclusive jurisdiction of the state courts of Dallas or Tarrant County, Texas, or the United States District Court for the Northern District of Texas, and agree that all actions relating to this Agreement will be litigated in such courts.
- h) **Notices**
  - i) Any notice under this Agreement must be in writing and sent to the respective Party at the address on page 1 of this Agreement, and will be deemed delivered:
    - (1) when delivered by hand or courier or by overnight delivery with signature receipt required
    - (2) when sent by confirmed e-mail
    - (3) 3 Days after the date of mailing by United States mail, postage prepaid
  - ii) Any Party may change its address for communications by notice in accordance with this Section
- i) **Waiver** – Any waiver by the Parties or failure to enforce their rights under this Agreement will be deemed applicable only to the specific matter and will not be deemed a waiver or failure to enforce any other rights under this Agreement, and this Agreement will continue in full force and effect as though such previous waiver or failure to enforce any rights had not occurred. No supplement, modification, amendment or waiver of this Agreement will be binding on Board unless executed in writing by Board and, if necessary, approved by appropriate legislation.
- j) **Assignment** – Neither this Agreement, nor any rights or obligations under it, are assignable by Consultant in any manner without the prior written consent Board and any attempt to do so without such written consent will be void.
- k) **Publicity** – Consultant may not make any public announcement, communication to the media, take any photographs or release any information concerning Board, the Services or this Agreement without the prior written consent of Board.
- l) **Severability** – In the event that any provision of this Agreement is declared invalid, unenforceable or unlawful, such provision will be deemed omitted and will not affect the validity of other provisions of this Agreement.
- m) **Further Assurances** – Each Party must provide such further documents or instruments

required by the other Party as may be reasonably necessary to give effect to this Agreement.

- n) **No Drafting Presumption** – No presumption of any Applicable Laws relating to the interpretation of contracts against the drafter will apply to this Agreement.
- o) **Survival** – Any provision of this Agreement which contemplates performance subsequent to any termination or expiration of this Agreement or which must survive in order to give effect to its meaning, will survive the expiration or termination of this Agreement.
- p) **Independent Contractor**
  - i) **Legal Relationship** – Consultant is an independent contractor of Board and nothing in this Agreement will be deemed to constitute Consultant and Board as partners, joint ventures, or principal and agent, or be construed as requiring or permitting the sharing of profits or losses.
  - ii) **Authority to Act** – Neither Party has the authority to represent or bind or create any legal obligations for or on behalf of the other Party.
  - iii) **Subconsultants/Subcontractors** – Nothing contained in this Agreement or any document in any way relating to it (including, but not limited to, Subcontracts, purchase orders, invoices or similar documents) will create any contractual relationship between Board and any of Consultant's Subconsultants/Subcontractors, their employees, agents, representatives and similar Persons.
- q) **Third-Party Beneficiaries** – This Agreement is not intended, expressly or implicitly, to confer on any other Person any rights, benefits, remedies, obligations or liabilities.
- r) **Entire Agreement** – The Agreement contains the entire Agreement of the Parties relating to their subject matter and supersedes all previous communications, representations or agreements, oral or written, between the Parties with respect to such subject matter. This Agreement may only be amended or modified by a writing executed by each Party and approved by appropriate legislation, if necessary.
- s) **Counterparts; Solo Signature Page** – This Agreement may be executed in any number of counterparts (including counterpart signature pages), each of which will be deemed an original and all of which together will constitute one and the same instrument.
- t) **Cumulative Remedies** – All rights and remedies under this Agreement are cumulative and are in addition to and not in lieu of any other rights and/or remedies available under Applicable Laws, in equity or otherwise
- u) **No Third-Party Responsibility** – Consultant is responsible to Board for Consultant and Subconsultant/Subcontractor Services. Consultant is not responsible for the acts or omissions of other Persons engaged by Board or for their construction means, methods, techniques, sequences or procedures, or their health and safety precautions and programs, including construction site safety.

**19) REQUIRED CONTRACT PROVISIONS FOR AIRPORT IMPROVEMENT PROGRAM AND FOR OBLIGATED SPONSORS (UPDATED JANUARY 29, 2016)**

- a) **Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors** – Contractor must comply with the following Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors:
  - i) **General Civil Rights**
    - (1) The Contractor agrees that it will 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 handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.
    - (2) This provision binds the Contractor 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.
  - ii) **Title VI Solicitation Notice** – Board, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

- iii) **Compliance with Regulations –** Contractor 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.
- iv) **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 Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- v) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment –** In all solicitations, either by competitive bidding, or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- vi) **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 Acts, Regulations, and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- vii) **Sanctions for Noncompliance –** In the event of 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:
  - (1) Withholding payments to Contractor under the contract until Contractor complies; and/or
  - (2) Cancelling, terminating, or suspending a contract, in whole or in part.
- viii) **Incorporation of Provisions –** The Contractor will include the provisions of paragraphs i through xi 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 Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- ix) **Non-Discrimination Statutes –** During the performance of this contract, 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:
  - (1) 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)
  - (2) 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)
  - (3) 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)
  - (4) 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
  - (5) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age)
  - (6) 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)

- (7) 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)
- (8) 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
- (9) 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)
- (10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures 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
- (11) 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)
- (12) 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)
- x) **Federal Fair Labor Standards Act (Federal Minimum Wage)**
  - (1) 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.
  - (2) Contractor has full responsibility to monitor compliance to the referenced statute or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.
- xi) **Occupational Safety and Health Act of 1970 –** All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. 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.

Approved as to Form:

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Legal Counsel  
Dallas/Fort Worth International Airport Board

Consultant:  
**NAME OF BUSINESS ENTITY**

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

Dallas/Fort Worth International Airport Board

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

## Exhibit 1 – Scope of Services

### 1) GENERAL REQUIREMENTS

- a) Services provided under this Agreement will consist of providing architectural and engineering design, design management, and related services for various types of structures and facilities including buildings (new and refurbishment), MEP systems, airfield, civil engineering, and commercial site development projects under an indefinite delivery arrangement under the direction of Design Code and Construction (DCC) Senior Staff or Consultants as directed.
- b) All work will be ordered by Delivery Order.
- c) The firm(s) is/are expected to provide all services that are customary and usual in the performance of Services under this Agreement.
- d) Unless otherwise directed, Services will be performed at the Consultant's home office.

### 2) TYPES OF SERVICES

- a) **Facilities Architecture and Engineering - Full Discipline Team** – The Consultant must include as part of its design team all disciplines necessary to support the required services, including specialized subconsultants as required for, but not limited to, new and renovation/alteration projects. Consultant must be able to provide services related to planning, architectural/engineering design and production, mechanical, electrical (including low-voltage and Information Technology design), plumbing, fire protection, code analysis, civil, controls, sustainable design, structural, acoustical, thermal, automated people mover systems, vertical transportation, security (TSA, access control, blast protection), interiors, landscaping, signage, waterproofing, special systems (information display systems, 400 hz and pre-conditioned air units, loading bridges, aircraft docking guidance systems, baggage handling systems), capacity analyses, commissioning, inventory, surveying, geotechnical reports, subsurface utility engineering (SUE), Total Cost of Ownership Analysis and any and all other disciplines needed to complete design services for these projects. Consultant shall be aware that, based on the type and scope of the project, not all projects may require a full discipline team. Consultant is responsible for the coordination of all members of its design team.

### 3) DETAILED SCOPE OF SERVICES

The Delivery Orders may include, but are not limited to, some or all of the services listed below:

#### a) Planning/Development Services:

- i) Planning, programming, feasibility studies, computer modeling (including 3D visualization, renderings and architectural animation), environmental investigation and analysis, conceptual design development, plan coordination, cost estimating, site selection, budgeting, in adherence with FAA Part 77 Maps provide "Planning Level" height restrictions, scheduling and other related tasks.

#### b) Design Services:

- i) The Design Documents must illustrate and describe the refinement of the design of the Project and define the scope, relationships, forms, size and appearance of the Project by means of plans, sections, and elevations, typical sectional details, diagrams, equipment and furniture layouts. Airfield or civil related project by means of plans, profiles, typical sections, cross sections and details. The Design Documents must include specifications that identify major materials and systems, and establish, in general, their quality levels. Design Documents must also include all calculations, studies, technical evaluations and other tasks as required to provide complete Design Documents.
- ii) Consultant must provide a design so that all projects are in compliance with all local, state and federal requirements and codes. In addition, the Consultant must design each component of the project in accordance with the Board's design and construction standards. The Board's Design Criteria Manual is available for review at [dfwairport.com](http://dfwairport.com). Where applicable, Consultant is encouraged to design within these standards and specifications or to prepare detailed technical justifications for any proposed variances. The Consultant will also be required to comply with the following:

- (1) Provide a qualified representative(s) to attend design coordination

## **Exhibit 1 – Scope of Services**

- meetings and any other meetings upon request from DFW staff (attendance of disciplines will be determined by DFW staff).
- (2) Comply with, DFW Green Building Standards, latest edition and the DFW Construction and Fire Prevention Standards Resolution, latest edition. Coordinate with required utility companies, unless otherwise directed.
  - (3) Satisfy all FAA design criteria included in references as provided.
  - (4) Comply with applicable Federal Aviation Administration (FAA) Advisory Circulars for design and construction. (I.e. Safety Management Plans (SMS), etc.)
  - (5) Coordinate with the Board to develop special work sequence or schedule (if required), including permits, time restrictions, access, phasing, etc.
  - (6) Comply with Commercial Development guidelines and criteria as may be published for any development district.
  - (7) Develop list of basic design assumptions for Board approval.
  - (8) Provide optimized design solutions to maximize Board's Return-On-Investment where applicable.
  - (9) Validate design parameters and cost estimates for Common Infrastructure projects performed by Commercial Development Tenants.

### iii) Design Documents

The Design Documents effort is comprised of two phases, (i) Preliminary Design Phase, and (ii) Final Design Phase. Consultant must submit to the Board a number of deliverables specified in an applicable Delivery Order. Consultant shall submit documentation supporting their Quality Assurance-Quality Control plan review with each submittal. The required submittals can generally be characterized as follows:

- (1) **Preliminary Design Phase (Phase I)** (typically 10%-35% design as defined in delivery order). At the outset of the design process, Consultant will be afforded the opportunity to review documented existing conditions, as well as any conceptual design. Review of existing conditions includes preliminary data and analyses prepared by others, including topographic, subsurface conditions, geotechnical, hydraulics and hydrology, and utility data. The Board makes no warranty that the site conditions are true and correct. If needed, Consultant must procure the services of a licensed Geotechnical Engineer and perform the services required to support preliminary design.

In general, Preliminary Design should address and define the entire scope of the Project. This includes defining capacities for all utility and other infrastructure systems. When alternatives do exist, these alternatives should be developed, evaluated and selected. Routing, alignments and locations for all distribution systems should be established. Subsequent phases of engineering design will refine the engineering studies and will be concentrated into preparing bid documents.

For all proposed structures, the Consultant must define its type, size and location and use subsequent phases of the design to provide additional details consistent with the initial design assumptions. Consultant must apply and document value engineering initiatives throughout this phase of the design. Airport operational impacts must be addressed by developing preliminary construction phasing and sequencing schemes. Consultant must develop assumptions regarding airport/airline operations. This preliminary project implementation plan should include an assessment of its



## **Exhibit 1 – Scope of Services**

compliance with the overall project schedule and its potential cost implications.

Consultant will advance the design for the entire project and complete the Schematic Design Phase before delivering the Final Design of any portion of the Project. At the completion of the Preliminary Design Phase, Consultant must prepare a deliverable which must include a Preliminary Engineering Design Report (Basis of Design Report), plans, specifications, and provide the necessary information to support the development of a preliminary Opinion of Probable Construction Cost. The preliminary Opinion of Probable Construction Cost will be allocated to each package identified through the development of the Schematic Design Phase.

- (2) **Final Design Phase (Phase II)** (as defined in delivery order) Consultant will be required to complete the design for each Construction Bid Package or Work Package and prepare and submit drawings, specifications, calculations, the Sustainable Design Checklist, design reports and provide the necessary information to support the development of Opinion of Probable Construction Cost at this level of completion. The Consultant must submit Design Documents to the Board on a schedule established in an applicable Delivery Order. The Final Design Phase is generally defined as 70% design development documents, 100% Issued for Permit Documents, Issued for Bid Documents, Bidding Phase Support Services and compilation of the Issued for Construction Documents.

The Consultant will be responsible for responding to all review comments in writing and making necessary changes to the Design Documents prior to subsequent submittals, and for production and delivery of bid packages as directed by the Board.

The number of bid packages to be prepared will be determined in the applicable Delivery Order.

**(a) 70% Design Submittal**

Consultant must provide 70% Design Documents during the Design Development Phase, based on the accepted Schematic Phase submission. The 70% Design Documents must include sheets of the Construction Documents, completed to at least a 70% level. The 70% submittal must include a draft of the project specifications in their final format containing adequate technical information to supplement the drawings and to quantify materials, sizes, shapes and capacities. The 70% submittal is required to include an identification of long lead procurement items. Consultant must provide all calculations necessary to determine the final requirements and configuration of systems required for the execution of construction work. If the Opinion of Probable Construction Cost exceeds the Board's budget, the Consultant will be required to assist the Board in identifying potential construction cost reductions/value engineered cost savings to produce an Opinion of Probable Construction Cost at or less than the Board's budget as an alternative. Once accepted by the Board, the revised opinion of probable construction cost will be known as "Engineer's Estimate". The Board will review and provide comments on the 70% submittal. A set of review comments will be

## **Exhibit 1 – Scope of Services**

prepared and provided to the Consultant at the end of the review period. After delivery of the comments to the Consultant, the Board will schedule and conduct a meeting to review responses to review comments.

In addition to the Board's review, the Consultant's 70% Design Documents will be submitted to the appropriate jurisdictional agencies for review, comment and approval (if applicable). The Consultant will assist in obtaining agency approvals of plans and specifications, including updates and re-submittal of appropriate documentation.

- (b) **100% Issued for Permit Submittal** – The 100% submittal must address all comments and information received from the 70% Design Documents (or preceding submittal) and must be a comprehensive and complete set of documents in a format sufficient for permitting and procurement. The 100% submittal must include all specification coordinated with all drawings and “front end” documents. Calculations must be finalized with all necessary corrections from the 70% submittal.

Consultant must provide updated information to allow for the development of the Opinion of Probable Construction Cost based on the 100% level documents. If the updated opinion of probable cost exceeds the Engineer's estimate at 70%, the Consultant will be required to assist the Board in identifying potential construction cost reductions/value engineering cost savings to produce a probable cost estimate that is at or less than the Engineer's estimate at 70%. The 100% documents must be revised to incorporate any such accepted cost reduction measures and resubmitted.

The Board will review and provide comments on the Consultant's 100% submittal. A set of review comments will be prepared and provided to the Consultant at the end of the review period. After delivery of the comments to the Consultant, the Board will schedule and conduct a meeting to review responses to review comments.

Consultant's 100% documents will be submitted to appropriate jurisdictional agencies and project stakeholders for review, comment and approval (if applicable). The Consultant will assist in obtaining approvals, including submit updates and re-submittal of appropriate documentation. Further the 100% documents must contain all information and documentation required to apply for and obtain a Building Permit (if applicable to the specific task), with the exception of the required Contractor information.

Consultant must assess the project risks and submit a Risk Assessment Report to the Board along with the Issued for Bid Review set. Consultant must document the source of the risk, attempts made during the course of the design to mitigate a risk, and potential effects and/or outcomes arising from an unmitigated risk.

- (c) **Issued for Bid (IFB) Submittal**  
After resolution of all comments received from the

## **Exhibit 1 – Scope of Services**

100% design submittal, Consultant must provide a complete set of Bid Documents for review by the Board, Board will review and provide comments relative to the bid process. Upon receipt of the comments, the Consultant will make all required final edits to the Bid Documents.

Final drawings and specifications shall be complete for Issuing for Bidding and contain all information and documentation. The Consultant must deliver an "Issued for Bid" set of construction documents to the Board and the reprographic provider and must arrange and pay for document sets to be electronically distributed to designated plan houses.

**(d) Bidding Phase Services**

Consultant must assist the Board in preparing Addenda, attending pre-bid meetings, providing responses to potential bidder's questions, written evaluations of bids, as requested the Board. This scope includes coordinating with the Board to address questions during the Addendum period, incorporating changes/clarification to the plans and specifications in the form of Addenda or conformed Issued for Bid documents, when required, and coordinating Addenda with the reprographics provider.

**(e) Issued for Construction (IFC) Documents**

Consultant will prepare the "Issued for Construction" set of final construction documents conforming all Addenda items with the Issued for Bid documents and must provide the Issued For Construction documents to the Board no later than seven (7) calendar days after the bid opening.

**c) Permitting Process**

Consultant will be responsible for arranging reviews at the various stages of the design process to support the permitting process. At the 100% design completion phase as described in an applicable delivery order the Board will submit a permit application and the Consultant will be required to provide .PDF submittal of sealed sets of Construction Documents and all calculations necessary for the permit review process. Consultant must follow up on the review progress throughout the permit process to make all required corrections and to provide all required clarification documentations.

**d) Construction Phase (Phase III) – Responsibilities of the Consultant during the construction phase will be specified in an applicable Delivery Order and may include, but not be limited to, the following:**

- i) Visiting the jobsite to determine the progress and quality of the work and whether the work is proceeding in accordance with the Design Documents. If applicable, reviewing the construction progress for compliance with LEED certification requirements and obtaining and maintaining the required documentation for LEED certification. A site visit report will be prepared for each site visit conducted and submitted with the payment application.
- ii) Attending construction meetings for, among other things, coordinating, cost estimating, scheduling and discussing value engineering options.
- iii) Assisting the Board in evaluating the Contractor's initial submittals of project schedule, schedule of values, and list of required submittals. If applicable, Consultant will develop a plan for the Contractor's LEED submittals that coordinates with construction progress.
- iv) Reviewing and approving samples, shop drawings and other submissions for compliance with the Design Documents and, if applicable, timely LEED submittal

## **Exhibit 1 – Scope of Services**

- requirements, and responding within a maximum of 10 business days of receipt.
- v) Reviewing requests for material substitutions and responding within a maximum of 10 business days.
  - vi) Reviewing Requests for Information ("RFI") submitted by the Contractor and responding within a maximum of 10 business days of receipt.
  - vii) Prepare specifications revisions and drawing revisions as necessary to support responses to RFI.
  - viii) Interpreting plans and specifications where disagreement may arise or due to any unforeseen or unusual construction conditions.
  - ix) Reviewing change proposals and preparing design change notifications (DCNs).
  - x) Consulting and recommending concerning Contractor generated value engineering proposals.
  - xi) Causing any changes during construction as a result of a DCN, RFI, approved substitution or Change Order to be reflected in the electronic files.
  - xii) Participating during the construction process in the third party commissioning process.
  - xiii) Inspecting the project with the Owner Rep to assist in the determination of when substantial completion is achieved, participating in preparing the punch list, and providing documentation to the Board when the project is substantially complete.
- e) Post Construction**
- i) Assisting in verification of punch list completion and final inspections of the project, as well as start-up of building systems and equipment and/or other commissioning activities.
  - ii) Reviewing Contractor's as-built drawing submittals, warranties, operation and maintenance manuals, and closeout information for accuracy and completeness and preparing the final set of record drawings and corrected specifications are complete for archiving.
- f) Project Scheduling**
- i) Consultant will be responsible for developing and maintaining the Design Schedule throughout the Delivery Order. The Design Schedule will consist of a Baseline Schedule and Monthly Schedule Updates developed using the Board's approved project planning software, Oracle-Primavera P6 <sup>TM</sup> (current version or minimum version 6.2)
  - ii) The design schedule level of detail should be sufficient to represent the time required to accomplish the design phase for an individual Delivery Order and provide completion by milestone dates. It should include time for schedule review/approval process and time for incorporation of the final comments. Logic ties and activities that represent a critical path through the phases must be reflected in the schedule. Key interface points, and input required from other stakeholders are to be shown with dates that support the design schedule. If requested, Consultant must submit detailed schedule(s) that expands on the design schedule and ultimately supports the overall program schedules
  - iii) Consultant must have an individual who is identified as a Key Personnel, who can apply sound scheduling practices and is skilled in the planning and application of network techniques for design and construction projects and the use of Oracle's Primavera P6 <sup>TM</sup> scheduling software.
  - iv) Design Schedule General Requirements
    - (1) The schedule must have a Work Breakdown Structure (WBS) which correlates with the Design Phases. Additional coding may be requested to allow the schedule to be sorted in various formats.
    - (2) Consultant must resource load each activity with labor hour requirements consistent with the personnel classifications used in the development of the fee schedules.
    - (3) The schedule must support the issuance of all Permits and Contracts which will be supplied by the Board.
    - (4) All activity constraint dates must be approved by the Board.
    - (5) Prior to submitting each update schedule, the Consultant must review all proposed changes from the Board.
    - (6) Activities shown in the schedules must include all required

## **Exhibit 1 – Scope of Services**

deliverables.

- (7) Key interface points, contract modifications, addendums, bulletins, etc. must be identified.

### **v) Calendars**

- (1) Schedules for design and procurement will be based on a 7-day calendar. Additional calendars may be allowed if approved by the Board.

### **vi) Baseline Schedule**

- (1) The Baseline Schedule is a fixed project schedule used in measuring project progress and Consultant performance. Schedule assumptions supporting the basis of the Baseline Schedule will be listed and submitted. Consultant's Baseline Schedule must show all work to be completed within the Contract schedule, including any milestones, date for substantial completion; final completion and project close-out.
- (2) A Draft of the Baseline Schedule must be submitted fourteen (14) days after the issuance of a Notice-to-Proceed for the applicable project and include a .PDF of the bar chart and accompanying .xer schedule file. The approval of the Baseline Schedule is done for the sole purpose of ensuring all Critical Path Method (CPM) scheduling documents prepared by the Consultant are in conformance with the Contract's requirements. Modifications made to the applicable Contract may require Consultant to re-baseline the Project Schedule.

### **vii) Monthly Schedule Update**

- (1) The monthly schedule update is used to compare the current and forecasted performance to the planned performance. A .PDF of the bar chart and accompanying .xer schedule file is due with the monthly Progress Report by the 15th of the month following the reporting period. The Primavera update must indicate a Data Date of the 1st of the month and have all progress and resources updated.
- (2) As part of the monthly schedule update, the Consultant must prepare a written narrative report, highlighting the progress during the past update period. The written narrative report will include, but not be limited to, the following information:
- Summary of Work accomplished during the past update period
  - Analysis of critical path(s)
  - Analysis of time loss/gained during the update period
  - Identification of problem areas
  - Recommended solutions to current problems
- (3) The Consultant may not modify the original durations, activity relationships, constraints, manpower, or costs, add or delete activities, or alter Project CPM Schedule logic when updating the Project CPM Schedule without written approval from the Board.

**g) Coordination** – Consultant must provide technical and production-related coordination with respect to the services provided by other Consultants for related or enabling projects, as directed by the Board.

**h) Quality Assurance Plan and Quality Control Procedures (QA/QC)** – The Consultant will be required to prepare a comprehensive plan for QA/QC of its own engineering design work, including structured peer reviews, conformity to design standards, constructability reviews, drawing completeness and accuracy, and internal consistency and coordination. The plan must address the following:

- Management responsibility
- Design standard and documents

## **Exhibit 1 – Scope of Services**

- Document control
- Process control
- Standard of Care

Consultant's QA/QC plan for a Delivery Order must be submitted to the Board as part of the Consultant's proposal in response to a Delivery Order Services Request.

- i) **Progress Reporting** – Once each calendar month, Consultant must submit an invoice to the Board along with a Progress Report on services performed during the preceding one-month period. The invoice and report are due no later than the 15th of the month following the reporting month.

The Progress Report must, at a minimum, contain the following sections:

- Project Summary Narrative Report. This report must identify the services completed in the prior month, services to be completed in the current month, and areas of design concern, if any.
  - Summary of percent completion of major tasks and objectives defined in the Detailed Scope of Services, including any necessary back-up information.
  - Cost Status/Earned Value Summary Report. The Board will provide an example of an electronic version of this report to Consultant.
  - Bar chart schedule at a level of detail as directed by the Board.
  - Consultant's confirmation of the status of the estimate or opinion of probable cost relative to the Basis of Design in each Monthly progress report.
  - Consultant's attestation that all design files and other project documents have been uploaded to the Board's specified document management system and that the uploaded files are current as of the date of the Progress Report.
  - Monthly Schedule Update.
  - The Board, at its discretion, may direct Consultant to alter the format of any monthly Progress Report, provide more detail in certain sections of it or require additional subject matter sections be included within it.
- j) **Document Management** – All documents produced as part of the Consultant's services must be produced and recorded in accordance with the Board's document preparation and management requirements, which will be provided to Consultant separately.
- k) **Technical coordination support** – Consultant may be required to participate in discussions and/or other collaborative roles with various entities; including, but not limited to, the following:
- Board staff (All Departments);
  - Other Consultants/contractors;
  - Airline/Tenant representatives;
  - Federal Aviation Administration;
  - Transportation Security Administration;
  - Emergency response agencies;
  - State and Federal Regulatory agencies;
  - Public agencies;
  - Political Subdivisions; and/or
  - Public utilities
- l) **Value Engineering** – The Board will provide the Consultant an opportunity to implement a Value Engineering (VE) process.
- The criteria included within FAA Advisory Circular 150/5300-15 are referenced to guide the application of any VE proposal. The Consultant must submit a request for a VE review and receive written approval prior to implementing any change to the project approach, probable opportunity for life-cycle costs savings, the suggested revision purpose, design restrictions and possible operations and schedule impacts. A VE request for consideration must be submitted prior to the completion of the Preliminary Engineering Phase. If granted, the Consultant will fully develop a Value Engineering Plan to a negotiated scope and fee. Sharing of the VE life-cycle savings will not be considered in the services agreement.
  - Opportunities exist for VE benefit to the Board on tasks such as, but not limited to, program/project phasing and sequencing, materials management and sustainability

## **Exhibit 1 – Scope of Services**

initiatives.

- m) **Change Management** – If the Board identifies any changes that it wishes to make to the Project scope, it will notify the Consultant or, if Consultant believes that any recommendations made by the Board will result in a change of project scope, it will notify the Board. The Consultant will then quantify the cost impacts of such changes (i.e., construction, engineering, and management, project insurance and contingency) and calculate the impact on the Schedule. In addition, the Consultant must identify the decisions needed to evaluate the change and the responsible parties for such decisions. Consultant must submit such information within seven (7) days of notice of change to the Board for its direction.
  - n) **Timeliness of Performance** – All services must occur at the appropriate times required for the timely execution and completion of the specified deliverables in accordance with the schedule. Prior to Consultant's commencement of services, and at periodic times thereafter, the Board may identify certain tasks or sub-tasks as having greater or lesser priority at that time, and Consultant must act in accordance with such changed priorities. Consultant must evaluate the impact on the schedule and review those impacts with the Board as part of the approved change management process.
  - o) **Sustainable Design** – As part of the Board's goal to incorporate environmentally sustainable design in building and infrastructure improvements, Consultant is required to identify and provide a Leadership in Energy and Environmental Design (LEED) accredited professional on its staff to assist with design. A copy of the individual's LEED certificate must be provided to the Board upon request.
    - i) Consultant must reference the "Green Building Standards" latest edition, evaluate all available options and make formal recommendations to the Board for approval. Consultant must then implement and oversee the measures approved by the Board. Consultant shall implement best management practices for each project. (The Green Building Standards publication is available on the web at: [www.dfwairport.com](http://www.dfwairport.com).)
  - p) **Support Services**
    - i) Special Studies and Site Visits: Consultant must research and prepare any special studies required by the Board for the planning and development of project scope requirements or parameters.
    - ii) Peer Review: Consultant may be requested to provide peer review services for work performed by other design Consultants as well as analyze other projects to determine if they were completed in accordance with all applicable Board standards criteria, schedules and budgets.
    - iii) Conferences: Consultant may, at the direction of the Board, be required to attend certain conferences. Consultant must keep meeting minutes and distribute them, in a timely manner, to attendees and other designated parties.
    - iv) Consultant must also assign a project manager qualified to act in a liaison capacity, and available at all times, on all matters pertinent to each Delivery Order issued under the Contract.
  - q) **DFW Brand Standards**
    - i) Consultant must comply with all DFW Brand Standards in rendering services, to include: (color, fonts, pattern, photography principles, imager, sub-brands, brand fundamentals and overview, design guidelines, as well as visual and verbal branding systems.)
- 4) **DELIVERABLES**
- a) **General**
    - i) Consultant must prepare, assist in the preparation of, provide or review deliverables and provide follow-up, including, but not limited to written reports, engineer's reports, basis of design manuals, plans, analysis, presentations, regulations, permit applications, design concepts, design work programs, Design Documents, design calculations, reference data, design manuals, contract drawings, documents submitted for permit, electronic data files, technical specifications, assessment of risk document, material schedules and quantity takeoffs, cost estimates, detailed design and construction schedules, graphs, charts, composite drawings and/or diagrams of existing conditions, preliminary and underlying data, supplemental surveys provided by or to the Consultant including

## **Exhibit 1 – Scope of Services**

results of site investigations, utility investigations, or supplemental investigations of subsurface conditions, and other documents and information necessary for performance of the services ("Deliverables}).

### **b) CADD Deliverables**

- i) Consultant must provide the number of hard copies and electronic copies as specified in the applicable Delivery Order. All deliverables must be accompanied with a single, consolidated digital version in PDF with the same content and in the same order as the hard copy.
- ii) Consultant must submit to the Board all working files (including, but not limited to, CADD, worksheets and BIM models) at the time of milestone(s) deliverables required by the Agreement and applicable Delivery Order. Construction Documents must be developed in accordance with the Board's CADD/BIM Standards and transmitted electronically to the Board via solid-state storage device or the Consultant's download web interface. Submittals will be accepted by the Board in a format approved by the Agreement and applicable Delivery Order.
- iii) Each drawing must indicate the Consultant's name, address, phone number, Consultant and Board Contract Number, Board Permit Number, Texas Department of Licensing and Regulation Architectural Barriers Project Registration Number, date or revision date, and scale, consistent with the title block specifications detailed in the CADD Standards.
- iv) All drawings and specifications must also be placed on the Board's specified document management system (i.e. Primavera Unifier etc.) on a regular basis. On a monthly basis, Consultant must provide all files on the specified document management system are the most current. Consultant will submit the CADD Deliverables to the Board. The Board will review and examine the files, and Consultant must correct any errors detected at no additional cost to the Board.

### **c) Specification Deliverables**

- i) Consultant will be required to submit specifications in the format directed in the DFW Design Criteria Manual, or as otherwise directed by the Board, as the basis for writing and transmitting all specifications developed under the Contract.
- ii) New or customized specification sections, not currently included in the Board Master Specifications, must be developed utilizing the Board Master Specification current CSI format and software. Specifications must be transmitted for all reviews, between the Consultant and the Board, electronically utilizing the Board on-line file sharing system. A limited number of hard copies (printed) of the specifications may also be required for the review process.
- iii) Solicitation documents (e.g. Instruction to Bidders/Instructions to Proponents), General Provisions, Special Provisions, and Mandatory Provisions (Federal contracts only), and Division 00 and 01 Guide Specifications produced by the Board will be provided to the Consultant for inclusion with 100% Issued for Permit and Issued for Bid submittals. Consultant shall update and modify the Board provided Guide Specifications as necessary for the specific project and the Consultant is responsible for sealing/stamping and signing the Division 00 and 01 specifications included in the deliverables.



## **Exhibit 2 – Definitions**

When used in the Agreement, the following capitalized terms have the following meanings:

- 1) **“Agreement”** means the Agreement Documents.
- 2) **“AOA”** means the Air Operations Area, which is any area where aircraft may be operating or parked on the ground or helicopters may be air taxiing.
- 3) **“Applicable Law(s)”** means all federal, state or local statutes, laws ordinances, codes, rules, regulations, policies, standards, executive orders, consent orders, orders and guidance from regulatory agencies, judicial decrees, decisions and judgments, permits, licenses, reporting or other governmental requirements or policies of any kind by which a Party may be bound, then in effect or which come into effect during the time the Services are being performed, and any present or future amendments to those Applicable Laws, including those which specifically relate to: (a) the business of Board; (b) the business of Consultant or Consultant’s Subconsultants/Subcontractors; (c) the Agreement; or (d) the performance of the Services under this Agreement.
- 4) **“Board Security Policies”** means the policies set forth in The Agreement; Board Security Identification/Access Media Authorization Badges.
- 5) **“Central Terminal Area (CTA)”** means the Terminals and related Facilities within an area bounded on the South by the South Parking Control Plaza, on the North by the North Parking Control Plaza, on the East by the North-South line five feet beyond the aircraft side of the East Terminal Buildings, and on the West by a North-South line five feet beyond the aircraft side of the West Terminal Building or Buildings. Within the Terminal Complex are located both public and service roads.
- 6) **“Consultant Personnel”** means and refers to Consultant or Subconsultants/Subcontractors employees, agents, representatives or similar Persons performing Services.
- 7) **“Cost(s)”** means all direct and indirect personnel costs, material costs, equipment costs, vehicle and transportation costs, overhead costs, time costs, fee and profit, and any other cost required to be expended by Consultant or any Subconsultant/Subcontractor to provide the Services in accordance with the Agreement and any Delivery Order issued under it.
- 8) **“Day(s)”** means calendar days, unless otherwise specified.
- 9) **“FAA”** means the Federal Aviation Administration, Department of Transportation of the United States.
- 10) **“Fee”** means profit payable to Consultant/Subconsultants/Subcontractors.
- 11) **“Force Majeure Event(s)”** means acts of war, domestic and/or international terrorism, civil riots or rebellions, quarantines, embargoes and other similar unusual governmental actions, extraordinary elements of nature or acts of God.
- 12) **“Overtime Costs”** means Costs per hour for each Consultant Personnel rendering Services in excess of 40 hours per week, calculated using the LC-Rates multiplied by either 1 or 1.5, to the extent such Consultant Personnel is entitled to receive compensation for such excess hours under Consultant/Subconsultant/Subcontractor policies or Applicable Laws.
- 13) **“Party” or “Parties”** means Board and/or Consultant.
- 14) **“Person”** means individuals, partnerships, agents, associations, corporations, limited liability companies, firms or other forms of business enterprises, trustees, executors, administrators, successors, permitted assigns, legal representatives and/or other recognized legal entities.
- 15) **“Structures”** means the buildings, facilities, roads, bridges, paved areas, ramps, culverts, including headwalls and endwalls, drainage construction such as storm sewers, gutters, catch basins, drop inlets, manholes, retaining walls, lighting structures, and other construction which may be encountered on the site both above and below the surface of the ground.
- 16) **“Subcontract(s)”** means a contract or other document that constitutes a contractual agreement between 2 Persons at any tier under Consultant for the provision of Services and includes, for instance: [i] a Subcontract between Consultant and its Subconsultant/Subcontractor; and [ii] a Subcontract between a Consultant Subconsultant/Subcontractor and its sub-Subconsultant/Subcontractor.
- 17) **“Subconsultant(s)/Subcontractor(s)”** means a Person (whether as an independent contractor or agent), at any tier, that is performing Services, whether under a written Subcontract or otherwise.
- 18) **“Terminal Buildings (or Terminals)”** means the series of buildings within the Terminal Complex designed and built to accomplish the processing of passengers to and from aircraft.
- 19) **“Third-Party”** means a Person other than the Parties.

## **Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

- 1) **OVERVIEW** – Prior to commencement of any Phase as described in Exhibit 1 – Scope of Services, the Board and Consultant shall negotiate compensation amount for the services which will be included in each Delivery Order and or Phase. If Consultant fails, in the reasonable determination of the Board, to negotiate compensation in good faith or if the Consultant and the Board are unable to agree in good faith on such compensation, the Board may terminate the Delivery Order or this Agreement in accordance with its Termination provisions, as applicable.
- 2) **Schedule A – Board-Approved Fully Burdened Rates**
- 3) **Schedule B – Board-Approved Maximum Labor Cost Rates**
- 4) **Schedule C – Board-Approved Overhead Rates**
- 5) **Reimbursable Costs** – Reimbursable costs will consist of those costs described below which are incurred in the performance of Services under this Agreement, which are allowable and allocable to the Project; are not included in Overhead or Burden; and are routinely and uniformly charged to specific projects under Consultant's accounting system (collectively, "Reimbursable Costs"). Board has the right to apply these RC provisions in an appropriate manner that reflects the circumstances of a Consultant Personnel to which they apply, including the right to deny reimbursement of certain RC's in certain circumstances. Receipts are required to support costs exceeding \$25.00. Reimbursable expenses will be reimbursed at actual cost, with no additional mark-up.
  - a) **Expenses Incurred While In Travel Status On The Owner's Behalf**
    - i) **TRANSPORTATION**
      - (1) Air Travel – Reimbursed at the lesser of actual cost or airline coach rates when such travel is required and authorized by the Owner in furtherance of work hereunder and supported by legible copies of airline tickets. Official travel shall be by the most direct routing and Consultant shall maximize savings whenever possible including advance purchase options.
      - (2) Local Transportation – Transportation costs incurred by Consultant while in travel status will be reimbursed as follows:
        - (a) Taxi/limousine/airport bus – Reimbursed at actual cost.
        - (b) Rental Automobiles – Because of their cost, rental automobiles shall be used only when their use will affect a savings or other advantage, or when the use of other transportation is not feasible. Rental automobiles are limited to compact models when available. A legible copy of the automobile rental agreement is required. Rental of other than compact automobiles is allowable when compacts are not available or if more than two staff members are in the travel status. All rental cars will be returned with a full tank of gas when possible. Fuel charges will be reimbursed at the market price. Unreasonable or excessive fuel charges by the rental car agency will not be reimbursed.
        - (c) Private Automobile – Use of private or company owned or leased automobiles will be reimbursed at the current rate allowed by the Internal Revenue Service, or company policy, whichever is less.
        - (d) Tolls and parking charges for use of ferries, roads, bridges, and tunnels while traveling to and from commercial carriers and parking charges at destination are reimbursable at actual cost.
    - ii) **LODGING/MEALS**
      - (1) Dallas/Fort Worth Metropolitan Area – A per diem rate will be used to reimburse Consultant for overnight accommodations and meals in the D/FW area when in travel status on behalf of the Owner. The current rate is \$210.00 per authorized day (\$150.00 lodging/\$60.00 meals). This rate is to cover all lodging and meal charges, (including all taxes and gratuities) for one full day. This is a flat rate, and will be paid regardless of actual costs incurred for lodging and/or meals. Costs exceeding this flat rate, even if supported by receipts, are not allowable. If Consultant's internal policy is a lower rate, the lower rate will be used.
        - (a) Lodging – The following rate will be used when overnight travel is required: \$150.00 per night. If Consultant's internal policy is a lower rate, the lower rate will be used.
        - (b) Meals – The following rate will be used when travel is completed in the same day or a portion thereof: breakfast - \$15.00, lunch - \$15.00, dinner - \$30.00. If Consultant's internal policy is a lower rate, the lower rate will be used.

### **Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

(2) Outside Dallas/Fort Worth Metropolitan Area – Lodging and meal costs outside of the Dallas/Fort Worth Metropolitan Area will be reimbursed at actual and reasonable cost, not to exceed GSA rates for domestic travel and US Department of State rates for international travel.

*Please note that reimbursement for Airport Board employees' meals is not allowable.*

**b) Other Reimbursable Expenses**

- i) Security Identification Display Area (SIDA) Badges – Fee charged by Board to issue Security Identification Display Area Badges to Consultant Personnel that require access to a secured area at the Airport; (fees incurred for lost or stolen badges are not reimbursable.) The time spent obtaining a SIDA badge is not reimbursable.
- ii) Customs Bond, when required by the Board.
- iii) Premium on overtime – To the extent that Consultant pays its employees a premium in excess of its hourly rates for overtime spent on the Project and such premium is not included in the calculation of burden rates, the cost of the premium will be treated as a Reimbursable Cost and will not be subject to additional mark-up. Any such overtime must be in accordance with Consultant's policies which are subject to prior approval by the Board. This provision does not apply to Fully Burdened Rates.
- iv) Reproduction – Outside reproduction of material and documents required in the furtherance of work. For cost of in-house reproduction, prior approval of in-house rates through the Airport Contract Administrator is required.
- v) Home-office communications - Long distance telephone, express mail or other forms of communication directly required in the furtherance of work, provided such expenses are not included in determination of overhead rates.
- vi) Costs associated with Mobile Communication Devices will not be reimbursed.
- vii) Project Vehicle Costs – Consultant may qualify for reimbursement of certain vehicle Costs for vehicles that are dedicated to the provision of Services (e.g. project truck outfitted with appropriate lighting and signage for travel in the AOA that is left at a Board facility when not in use in providing Services). Project vehicles will be reimbursed at the wet lease rate of \$850.00 per month per authorized vehicle and defined in each Delivery Order. This wet lease rate will cover all costs related to the operation of the vehicle, including but not limited to state and local taxes and fees, insurance costs, maintenance, fuel, tolls and repairs. No other itemized or monthly reimbursement will be made on project vehicle costs. The Board in no way guarantees length of use. The Agreement between Consultant and The Board is not subject to any specific lease agreements and or contract terms between Consultant and vehicle providers or vendors. Vehicle Access Tags (VATs) will be furnished by The Board, at no cost, except for deposit or replacement of lost or damaged items with will not be considered a reimbursable cost. Specialty vehicle rates and cost reimbursement will be negotiated and defined in each Delivery Order.
- viii) Relocation Costs – The Owner may reimburse, under justified circumstances, reasonable relocation costs upon prior approval. Relocation costs will be considered on a case-by-case basis, and made only when the Owner determines such expenses are beneficial to the successful completion of the Work.
- ix) Training and Seminar Costs – Training and seminar costs for Consultant employees may be reimbursed only if such training or seminar directly benefits the Owner, and the Owner has approved such training in advance.
- x) All other – Reimbursed at actual cost, with no additional mark-up, for items used directly in the furtherance of work and approved by the Owner. Extraordinary expenses require prior Owner approval.

**c) Non-Allowable Costs**

- i) Non-Allowable Costs – Non-allowable costs include, but are not limited to: charges for local commute expenses, entertainment; first-class airfare; bidding and proposal costs; costs related to invoicing, payroll, human resources or other administrative functions; contributions and donation; personal telephone charges; dues and subscriptions; alcoholic beverages; expenses for transportation for personal pursuits; gifts; gratuities; bad debts including losses due to uncollectible customer's accounts and other claims, related collection costs, and related legal costs, arising from other businesses of the consultant; dividend provisions or

### **Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

payments and, in the case of sole proprietors and partners, distributions of profit; interest on borrowed capital; bonus payment for early completion of work, costs not properly documented and other charges expressly disallowed under the terms of this Agreement or included in determination of overhead rates.

- 6) **Subcontractor Costs** – The Board will reimburse Consultant for the costs of Subcontractors as those costs are incurred under or in connection with Subcontracts awarded by Consultant in accordance with the terms and conditions of this Agreement. In no event is Consultant entitled to any mark-up of Subcontractor costs. Subcontractor compensation is subject to the same terms and limitations established for Consultant's compensation in this Exhibit 3.

**Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

**Schedule A**

**Board-Approved Fully Burdened Rates**

When Applicable, the following Fully Burdened Labor Rates will apply to compensation under this Agreement:

<b>Labor Category PRIME</b>	<b>Fully Burdened Labor Rates (Field Office)</b>	<b>Fully Burdened Labor Rates (Home Office)</b>
Principal		
Senior Architect/Senior Engineer		
Architect/Engineer		
Intern Architect/Engineer in Training		
Project Manager		
Planner		
Designer		
Estimator		
Scheduler		
Technical/Specification Writer		
Technology Consultant		
Contract Administrator		
QA/QC Inspector		
CADD Technician		
Administrative Support Staff		
Surveyor (RPLS)		
Surveyor in Training		
Survey Field Party Chief		
Survey Party Instrumentman		
Survey Field Party Rodman		

<b>Labor Category SUB 1</b>	<b>Fully Burdened Labor Rates (Field Office)</b>	<b>Fully Burdened Labor Rates (Home Office)</b>
Principal		
Senior Architect/Senior Engineer		
Architect/Engineer		
Intern Architect/Engineer in Training		
Project Manager		
Planner		
Designer		
Estimator		
Scheduler		
Technical/Specification Writer		
Technology Consultant		
Contract Administrator		
QA/QC Inspector		
CADD Technician		
Administrative Support Staff		
Surveyor (RPLS)		
Surveyor in Training		
Survey Field Party Chief		
Survey Party Instrumentman		
Survey Field Party Rodman		

At Board's sole discretion, it may approve a Fully Burdened Labor Rate in excess of those contained in this table for specific Consultant Personnel as may be specifically requested in a Delivery Order.

**Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

<b>Labor Category SUB 2</b>	<b>Fully Burdened Labor Rates (Field Office)</b>	<b>Fully Burdened Labor Rates (Home Office)</b>
Principal		
Senior Architect/Senior Engineer		
Architect/Engineer		
Intern Architect/Engineer in Training		
Project Manager		
Planner		
Designer		
Estimator		
Scheduler		
Technical/Specification Writer		
Technology Consultant		
Contract Administrator		
QA/QC Inspector		
CADD Technician		
Administrative Support Staff		
Surveyor (RPLS)		
Surveyor in Training		
Survey Field Party Chief		
Survey Party Instrumentman		
Survey Field Party Rodman		

At Board's sole discretion, it may approve a Fully Burdened Labor Rate in excess of those contained in this table for specific Consultant Personnel as may be specifically requested in a Delivery Order.

### **Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

#### **Schedule B**

##### **Board-Approved Maximum Labor Cost Rates (All Firms)**

When Applicable, the following Maximum Labor Rates will apply to compensation under this Agreement:

<b>Category</b>	<b>Maximum Hourly Rate</b>
Principal	
Senior Architect/Senior Engineer	
Architect/Engineer	
Intern Architect/Engineer in Training	
Project Manager	
Planner	
Designer	
Estimator	
Scheduler	
Technical/Specification Writer	
Technology Consultant	
Contract Administrator	
QA/QC Inspector	
CADD Technician	
Administrative Support Staff	
Surveyor (RPLS)	
Surveyor in Training	
Survey Field Party Chief	
Survey Party Instrumentman	
Survey Field Party Rodman	

At Board's sole discretion, it may approve a Maximum Labor Cost Rate in excess of those contained in this table for specific Consultant Personnel as may be specifically requested in a Delivery Order.

**Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

**Schedule C**

**Board-Approved Overhead Rates**

The following Overhead Rates will apply to compensation under this Agreement:

<b>Consultant</b>	<b>Field Office Overhead Rate</b>	<b>Home Office Overhead Rate</b>
<b>Prime</b>		
<b>Subconsultant</b>		

The Parties will establish in a Delivery Order the specific Consultant Personnel, if any, that will be billed at the Home Office Overhead Rate; otherwise, Consultant Personnel providing Services under a Delivery Order will be deemed to be billed at the Field Office Overhead Rate. These Overhead Rates will be subject to upward and/or downward adjustment annually based upon the then-current audited rates of Consultant and/or its Subconsultants/Subcontractors.



## **Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

### **Exhibit 3.1(a) – Compensation Fully Burdened Rates Method, Not to Exceed**

#### **1) General Description**

- a) Consultant will be compensated for its Services based on fully burdened rates subject to an established Not-To-Exceed amount. Allowability and allocation of costs will be determined in accordance with the terms and conditions of this Agreement. As further described below, compensation will consist of: the Fully Burdened Labor Rates as set forth in Schedule A; Reimbursable Costs specifically included in each applicable Delivery Order; and Subcontractor Costs. Fully Burdened Rates will be multiplied by the number of hours worked to determine the total billable amount for Consultant's Services performed by Consultant's own forces. In addition, Reimbursable Costs and Subcontractor Costs incurred by the Consultant are reimbursable without mark-up of any kind by Consultant, including but not limited to Consultant's administrative costs or profit.
- i) **Fully Burdened Rates** – Fully Burdened Rates will be as set forth in Schedule A and in accordance with the methods and factors described in Exhibits 3.1(b) and 3.1(c), as applicable.
  - ii) **Reimbursable Costs** – As described in Exhibit 3.
  - iii) **Subcontractor Costs** – As described in Exhibit 3.

#### **2) Invoicing Requirements**

##### **a) Contents**

- i) Cost information for each Delivery Order will include the following for each person providing Services:
  - (1) Employer
  - (2) Name
  - (3) Professional License Number (if applicable)
  - (4) Description of duties performed during the period
  - (5) Fully Burdened Rate (Schedule A)
  - (6) Number of Hours Worked
  - (7) Chronological Listing of Reimbursable Costs incurred during the period (including documentation as required)
  - (8) Correct calculation of above components

## **Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

### **Exhibit 3.1(b) – Compensation Cost Plus Fixed Fee Method, Not to Exceed**

#### **1) General Description**

- a) Consultant will be compensated for its Services based on actual costs plus a fixed fee (i.e., profit), subject to an established Not-To-Exceed amount. Allowability and allocation of costs will be determined in accordance with the terms and conditions of this Agreement. As further described below, compensation will consist of: the actual cost of labor (Labor Costs); overhead and burden (including but not limited to payroll related taxes, insurance and fringe benefits) (Overhead) (not to exceed the maximum rates as set forth in Schedules B and C, respectively); Fixed Fee; Reimbursable Costs; and Subcontractor Costs. Labor Costs will be multiplied by the Overhead Rate in Schedule C to arrive at an amount to be reimbursed for Overhead; Labor Costs and Overhead will be added together and the total multiplied by the applicable Fee Rate to determine the amount that will become the Fixed Fee payable and arrive at the total billable amount for Consultant's Services performed by Consultant's own forces (Labor Costs + Overhead + Fixed Fee). In addition, Reimbursable Costs and Subcontractor Costs incurred by the Consultant are reimbursable without mark-up of any kind by Consultant, including but not limited to Consultant's administrative costs or profit.
- i) **Labor Costs** – Labor costs will consist of the actual costs of all allowable and allocable salaries and wages (exclusive of overtime premiums and payroll related taxes, insurance and fringe benefits) paid to Consultant's employees for the time spent in the performance of Services under this Agreement (collectively, "Labor Costs"). Maximum Hourly Labor Rates for Consultant by position classification are set forth in Schedule B to this Exhibit. Upon request, position classifications and maximum wage rates may be adjusted at the Board's discretion, on an annual basis, but any such adjustment in rates shall not increase labor rates by more than 3% each year or the CPI for Dallas Fort Worth area, whichever is lower. Labor costs associated with Consultant's principals for administrative tasks are not billable. Principals may bill for their hours for non-administrative tasks directly applicable to the Services only by request and prior approval of the Board.
- (1) Actual Payment Required. No Labor Costs billed by Consultant to Board for any Consultant Personnel may ever exceed the amount actually paid by Consultant or its Subconsultants/Contractors to any Consultant Personnel.
- (2) Independent Contractor Labor. To the extent that Consultant uses independent contractor labor (e.g. provided by a temporary labor service, etc.), Costs for such labor will be treated as a Reimbursable Cost and will not be subject to any mark-up.
- ii) **Overhead Costs** – The Overhead Rate set forth on Schedule C is inclusive of Overhead and Burden. "Overhead" includes the non-payroll indirect costs of the home and branch offices of Consultant which are allowable and allocable to the Services, and "Burden" includes payroll-related costs (e.g., payroll related taxes, insurance, and fringe benefits). The Overhead and Burden rates applicable to Consultant employees who perform Services in relation to this Agreement shall be the Consultant's audited rates approved by the Texas Department of Transportation ("TxDOT"), the United States Department of Transportation ("USDOT") or another governmental authority recognized by the Board. The Consultant must provide evidence of approval of the Overhead and Burden rate by TxDOT, USDOT or another cognizant authority on a yearly basis. However, the combined Overhead and Burden rate shall not exceed a maximum of 115% of labor costs for Field Office Staff and 140% of labor costs for Home Office Staff.
- (1) **Limitation on Overhead and Burden** In the event the Consultant does not have approved rates, the combined rates for Overhead and Burden will not exceed 100% for home office work, 50% for field offices, and 100% for field inspectors without an office. Further, the Consultant shall have one year in which to obtain Overhead and Burden rates approved by a recognized agency. Failure to do so is an event of default. Consultant's rates may not exceed the lowest of: (a) the current rate determined by TxDOT; (b) the rate determined at a later date by TxDOT; or (c) the rate determined at a later date by an audit acceptable to the Board. The Board has the right to recapture (via offset or refund) the difference between the amount it has actually paid to Consultant and the amount it should

### **Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

have paid under the preceding sentence. Notwithstanding the foregoing, the Board and the Consultant may negotiate lower rates.

- iii) **Fee: Fixed Fee** – An eight and one half percent (8.5%) fee rate will be used to determine the fixed fee applicable to Services provided with Field Office Staff and a ten percent (10%) fee rate will be used to determine the fixed fee applicable to Services provided with Home Office Staff to be earned in Consultant's performance of Services under this Agreement. Progress payments with regard to the fixed fee will be based on actual hours worked, during the invoice period. The Fixed Fee may be adjusted as a result of changes in the work to be performed to include, but not limited to, scope modification and actual hours expended in the performance of design and design support services. The fixed fee will be negotiated and separately stated in each applicable Delivery Order.
- iv) **Reimbursable Costs** – As described in Exhibit 3.
- v) **Subcontractor Costs** – As described in Exhibit 3.

#### **2) Invoicing Requirements**

##### **a) Contents**

- i) Cost information for each Delivery Order will include the following for each person providing Services:
  - (1) Employer
  - (2) Name
  - (3) Professional License Number (if applicable)
  - (4) Applicable Labor Category
  - (5) Exempt/Non-Exempt Status
  - (6) Description of duties performed during the period
  - (7) Actual Rate of Pay (subject to Maximum Labor Cost Rates in Schedule B)
  - (8) Number of Hours Worked
  - (9) Overhead Rate (Rates in Schedule C)
  - (10) Fixed Fee and Applicable Fee Rate for Progress Payments
  - (11) Chronological Listing of Reimbursable Costs incurred during the period (including documentation as required)
  - (12) Correct calculation of above components

## **Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

### **Exhibit 3.1(c) – Compensation Cost Plus Percentage Fee Method, Not to Exceed**

#### **1) General Description**

- a) Consultant will be compensated for its Services based on actual costs plus a percentage fee (i.e., profit), subject to an established Not-To-Exceed amount. Allowability and allocation of costs will be determined in accordance with the terms and conditions of this Agreement. As further described below, compensation will consist of: the actual cost of labor (Labor Costs); overhead and burden (including but not limited to payroll related taxes, insurance and fringe benefits) (Overhead) (not to exceed the maximum rates as set forth in Scheduled B and C, respectively); Fee; Reimbursable Costs; and Subcontractor Costs. Labor Costs will be multiplied by the Overhead Rate in Schedule B to arrive at an amount to be reimbursed for Overhead; Labor Costs and Overhead will be added together and the total multiplied by the applicable Fee Rate to determine the Fee payable and arrive at the total billable amount for Consultant's Services performed by Consultant's own forces. In addition, Reimbursable Costs and Subcontractor Costs incurred by the Consultant are reimbursable without mark-up of any kind by Consultant, including but not limited to Consultant's administrative costs or profit.
- i) **Labor Costs** – Labor costs will consist of the actual costs of all allowable and allocable salaries and wages (exclusive of overtime premiums and payroll related taxes, insurance and fringe benefits) paid to Consultant's employees for the time spent in the performance of Services under this Agreement (collectively, "Labor Costs"). Maximum Hourly Labor Rates for Consultant by position classification are set forth in Schedule B to this Exhibit. Upon request, position classifications and maximum wage rates may be adjusted at the Board's discretion, on an annual basis, but any such adjustment in rates shall not increase labor rates by more than 3% each year or the CPI for Dallas Fort Worth area, whichever is lower. Labor costs associated with Consultant's principals for administrative tasks are not billable. Principals may bill for their hours for non-administrative tasks directly applicable to the Services only by request and prior approval of the Board.
- (1) Actual Payment Required. No Labor Costs billed by Consultant to Board for any Consultant Personnel may ever exceed the amount actually paid by Consultant or its Subconsultants/Contractors to any Consultant Personnel.
- (2) Independent Contractor Labor. To the extent that Consultant uses independent contractor labor (e.g. provided by a temporary labor service, etc.), Costs for such labor will be treated as a Reimbursable Cost and will not be subject to any mark-up.
- ii) **Overhead Costs** – The Overhead Rate set forth on Schedule C is inclusive of Overhead and Burden. "Overhead" includes the non-payroll indirect costs of the home and branch offices of Consultant which are allowable and allocable to the Services, and "Burden" includes payroll-related costs (e.g., payroll related taxes, insurance, and fringe benefits). The Overhead and Burden rates applicable to Consultant employees who perform Services in relation to this Agreement shall be the Consultant's audited rates approved by the Texas Department of Transportation ("TxDOT"), the United States Department of Transportation ("USDOT") or another governmental authority recognized by the Board. The Consultant must provide evidence of approval of the Overhead and Burden rate by TxDOT, USDOT or another cognizant authority on a yearly basis. However, the combined Overhead and Burden rate shall not exceed a maximum of 115% of labor costs for Field Office Staff and 140% of labor costs for Home Office Staff.
- (1) Limitation on Overhead and Burden In the event the Consultant does not have approved rates, the combined rates for Overhead and Burden will not exceed 100% for home office work, 50% for field offices, and 100% for field inspectors without an office. Further, the Consultant shall have one year in which to obtain Overhead and Burden rates approved by a recognized agency. Failure to do so is an event of default. Consultant's rates may not exceed the lowest of: (a) the current rate determined by TxDOT; (b) the rate determined at a later date by TxDOT; or (c) the rate determined at a later date by an audit acceptable to the Board. The Board has the right to recapture (via offset or refund) the difference between the amount it has actually paid to Consultant and the amount it should have paid under the preceding sentence. Notwithstanding the foregoing, the Board and the Consultant may negotiate lower rates.

### **Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

- iii) **Fee: Percentage Fee** – An eight and one half percent (8.5%) fee rate will be applicable to Services provided with Field Office Staff and a ten percent (10%) fee rate will be applicable to Services provided with Home Office Staff to be earned in Consultant's performance of Services under this Agreement. Fee will be applied to Labor Costs and Burden.
- iv) **Reimbursable Costs** – As described in Exhibit 3.
- v) **Subcontractor Costs** – As described in Exhibit 3.

#### **2) Invoice Requirements**

##### **a) Contents**

- i) Cost information for each Delivery Order will include the following for each person providing Services:
  - (1) Employer
  - (2) Name
  - (3) Professional License Number (if applicable)
  - (4) Applicable Labor Category
  - (5) Exempt/Non-Exempt Status
  - (6) Description of duties performed during the period
  - (7) Actual Rate of Pay (subject to Maximum Labor Cost Rates in Schedule B)
  - (8) Number of Hours Worked
  - (9) Overhead Rate (Rates in Schedule C)
  - (10) Applicable Fee Rate
  - (11) Chronological Listing of Reimbursable Costs incurred during the period (including documentation as required)
  - (12) Correct calculation of above components

## **Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

### **Exhibit 3.1(d) – Compensation Lump Sum Method**

- 1) General Description, Lump Sum Method** – Method under which a Delivery Order (or portion of the Services provided under a Delivery Order) is paid for according to a fixed price agreed to between Board and Consultant.
- 2) Additional Rules** – The following additional rules will apply to the Lump Sum Method of compensation:
  - a)** In instances where a Request for DO Proposal indicates that Board desires Consultant to submit its DO Proposal using the Lump Sum Method for the applicable Services, Consultant should calculate its lump sum amount using one of the methods described in Exhibit 3.1(a), 3.1(b) or 3.1(c), as applicable, and as mutually agreed, including or excluding Reimbursable Costs, as mutually agreed and subject to federal reimbursement guidelines, when applicable.
  - b)** When Reimbursable Costs are required, those costs may be included in the Lump Sum amount or handled in a separate pass-through Cost category that is capped at a not to exceed amount, as mutually agreed and stated on the Delivery Order and subject to federal reimbursement guidelines, when applicable.
  - c)** Services compensated under the Lump Sum Method will be subject to an agreed upon clearly stated time frame during which they will be rendered.
  - d)** If the scope of Services under a Delivery Order using the Lump Sum Method changes, the Parties may renegotiate the lump sum compensation amount and/or schedule applicable to such Services.
- 3) Invoices** – Provisions concerning the submission of Lump Sum Method Invoices, including appropriate provisions concerning progress payments, will be set forth in each applicable Delivery Order using it as a method of compensation.

**Exhibit 3 – Compensation, Invoices, Consultant Key Personnel**

**Exhibit 3.2 – Consultant Key Personnel**

The following personnel will be considered “Consultant Key Personnel”. Consultant agrees to provide these individuals to the Board for a period of six (6) months from the Effective Date. For a period of six (6) months following the Effective Date of this Agreement, these individuals must be committed and available to perform Services as may be assigned by Delivery Order. If within the initial six (6) month period, any of these individuals is utilized by Board less than full-time, Consultant may, without penalty, remove the individual as a Consultant Key Personnel under this Agreement and provide a replacement with comparable qualifications that is acceptable to the Board.

<b>Individual (Name)</b>	<b>Position/Labor Category</b>

By mutual agreement additional Key Personnel may be authorized by Delivery Order(s) issued under this Agreement.









































**Exhibit 7 – Commitment to Minority/Women Owned Business Enterprise  
Participation Form**

USE FORM SUBMITTED WITH SOQ

**Exhibit 8 – Schedule of Subcontractors (Final)**

USE FORM COMPLETED AFTER SELECTION