

**COMMERCIAL DEVELOPMENT PROGRAM MANAGEMENT/CONSTRUCTION
MANAGEMENT SERVICES
AGREEMENT NO. 8500361**

This Commercial Development Program Management/Construction Management Services No. 8500361 (“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: Commercial Development Program Management/Construction Management Services

Consultant:
ADDRESS HERE

Authorized Representative:

Phone:
E-Mail:

Agreement No. 8500361

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:

Phone:
E-Mail:

1) PRELIMINARY AGREEMENT MATTERS

- a) **Authorization** – This Agreement is authorized by Official Board Action/Resolution No. **20xx-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) Exhibit 4- 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 **Fifteen Million Dollars \$15,000,000.00** (“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 15th 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 _____, 2018, 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 %. The Consultant has committed to %. 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.

Approved as to Form:

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) This Agreement will consist of providing On-Call Commercial Development Services at Dallas Fort Worth International Airport for highly experienced professionals.
- b) Services must support long-term master planning and visioning for Airport's Commercial Development, as well as analysis and definition of near-term strategies which align with the long-term vision and support the Airport's emphasis on the customer experience. Services may include all aspects of Commercial Development, including, but not limited to: master planning and design services, estimating, scheduling, project management/construction management, hotel analysis, survey, land use planning, environmental services, as well as creating presentation and marketing material.
- c) Services required under this Agreement and any issued Delivery Order will be provided to DFW's Commercial Development Department, and may support other departments directly involved in Delivery Order scopes. Services may be completed with full time on location staff as defined in each Delivery Order.
- d) This is an indefinite delivery Agreement. All Services required will be established in and funded by individual Delivery Orders that may (but are not required to) be issued by DFW from time to time.

2) Specific Scope of Services: The Services that DFW may ask Consultant to provide under this Agreement include, but are not limited to:

- a) **Master Planning and Design Services:** These Services may include, but not be limited to:
 - i) Developing Commercial Development Master Plans in line with the DFW Land Use Plan;
 - ii) Design Master Plans which would include civil and architectural programming and design to maximize usage according to DFW's Development Criteria;
 - iii) Site Investigation services including but not limited to: Traffic Studies, Storm pre-existing conditions vs proposed designs, geotechnical investigations, and utilities capacity analysis;
 - iv) Facility Designs & Engineering for Commercial Development Projects.
- b) **Estimating Services:** Providing Estimating Services that may include, but not limited to, the following:
 - i) Provide market pricing on estimates, change orders, and proposals received from Developers; for validation by DFW Airport-Design, Code and Construction's Project Control Group.
 - ii) Create program cost estimates based on market pricing for investment in Master Planned infrastructure and individual facilities; for validation by DFW Airport-Design, Code and Construction's Project Control Group.
- c) **Scheduling Services:** Providing Scheduling Services using many types of programs including Primavera P6 software, MS Project, and others; for validation by DFW Airport-Design, Code and Construction's Project Control Group. Scheduling services may include, but not limited, to the following:
 - i) Create/update program schedules for master developments;
 - ii) Validate/review schedules provided by developers for tenant projects;
 - iii) Validate/review schedules provided for DFW Airport projects;
 - iv) Provide weekly updates to Commercial Development on all project schedules being tracked;
 - v) Coordinate and integrate Commercial Development schedules with other DFW Departments to provide required updates for DFW Executives;
 - vi) Cost load schedules based on estimates received and provide updates per actual payments during construction;
 - vii) Analyze construction schedules for errors in logic and sequencing.

Exhibit 1 – Scope of Services

- d) Project/Construction Management Services:** Providing Project Management Services that may include, but not limited to, the following:
- i) Program Development – develop a detailed scope of work for all activities as needed;
 - ii) Program Management – be responsible for the coordination of all Services required to plan, design and construct projects in accordance with the budget and schedule for assigned projects;
 - iii) Review and monitor design team compliance with stated scope and design criteria to prevent scope creep;
 - iv) Perform program and design reviews with various stakeholders for compliance, constructible and biddable plans, specifications, phasing and packaging;
 - v) Review and coordinate estimates at various stages of design to determine if project is within budget;
 - vi) Review and Monitor for compliance with BIM and other production standards and specification compliance between multiple design packages and projects within the Program;
 - vii) Claims avoidance, claims management, and change order analysis – support the analysis and development of responses as directed;
 - viii) Manages Contract closeout Coordinate and facilitate the completion of administrative items and documentation required to complete Contract close-out activities;
 - ix) Pre-construction support – assist in the design review, to include cost optimization, with focus on, but not limited to, phasing, logistics, constructability, resource/task production and duration, and long-lead item identification;
 - x) Construction Quality Assurance Management (including field inspection and supervision) – Provide QA inspection and supervision as defined in approved staffing plan, in coordination with construction inspection staff and DFW Code Compliance group during construction activities;
 - xi) Cost and Budget Control. Provide and maintain financial planning and control system. This system should have the capability of monitoring actual costs versus budget costs for each program component or phase. The system shall have the capability to produce schedule forecasts, earned value analysis and what-if scenarios;
 - xii) Project reporting and communication development – provide monthly reports as required by the Airport and schedule regular status review meetings on schedule and budget status of the program.
- e) Hotel Analysis:** The Services of Hotel Analysis may ask the Consultant to provide under this Agreement include, but are not limited to:
- i) Provide consultation and analysis for Airport Hotel investments and operations;
 - ii) Create presentations on Hotel reporting for Executives and Commercial Development Staff;
 - iii) Provide Market Analysis' for Hotel trends in the area and comps.
- f) Land Use Planning:** Providing Land Use planning Services that may include, but not be limited to:
- i) Providing real estate development planning for a wide range of Airport developments, including, but not limited to, commercial developments, cargo facilities, airline support facilities and Airport operational facilities;
 - ii) Site assessments;

Exhibit 1 – Scope of Services

- iii) Master planning;
 - iv) Utility/infrastructure assessment and planning;
 - v) Preparing development criteria;
 - vi) Reviewing individual "Plan of Developments" for compliance confirmation with master plan and development criteria;
 - vii) Space planning;
 - viii) Airspace permitting;
 - ix) Managing Airport resources such as soil stockpiles; and
 - x) Coordinating with others (including Host Cities) responsible for property acquisition, land valuation, market studies, trend analysis, lease negotiations and utility/infrastructure assessment and planning.
- g) Presentation and Marketing Services:** These Services may include, but not be limited to:
- i) Creation and editing of marketing video materials;
 - ii) Creation and editing of brochures and pamphlets;
 - iii) Power Point presentations on upcoming and existing projects.
- h) Specialty Consultant Services**
- i) Any other consultants deemed necessary for Real Estate Investigation, Development, and Marketing.
- i) Technical Support:** These services include but are not limited to:
- i) Providing a wide array of technical support related to planning, such as jet blast analysis, line of sight studies, air service analysis, evaluation of new and emerging technologies, aircraft striping modeling for terminal gating studies.
 - ii) Graphics support may include, but not be limited to; computer aided design and drawing (CADD) services, GIS analysis and data formulation in coordination with DFW Airport's Design, Code and Construction department, visualizations, 3D imaging, animations, exhibits, square footage calculations, written and visual communications and documentation.
 - iii) Creation of technical models, tools, processes and procedures to support effective Airport planning.
 - iv) Creation or update of existing water, sewer, reclaimed, and storm water system models as needed to support land use expansion
- j) Technical Coordination Support:** Consultant may be required, from time to time, to participate in discussions and/or other coordinating roles with different organizations to include, but not be limited to:
- i) Airline representatives;
 - ii) DFW operations and facility groups;
 - iii) DFW planning and aviation consultants;
 - iv) DFW construction managers;
 - v) Federal Aviation Administration;
 - vi) Transportation Security Administration;
 - vii) Emergency response agencies;
 - viii) Construction Managers;
 - ix) Planning/Environmental Consultants;
 - x) Commercial Developers and prospective tenants
 - xi) Architectural/engineering design consultants;
 - xii) Regulatory agencies; and/or
 - xiii) Public utilities.
- k) Special Studies and Site Visits:** Consultant must coordinate the review of past DFW studies for data and research and prepare any special studies required for the planning and development of project scope requirements or parameters required by DFW.

Exhibit 1 – Scope of Services

- l) Document Management:** All documents created by Consultant under this Agreement must be produced and recorded in accordance with DFW's document preparation and management requirements, which will be provided to Consultant separately.

- m) Deliverables/Schedules:**
 - i) Deliverables will be identified in the applicable Delivery Order and may include, but not be limited to, exhibits, briefings, reports, white papers, near-term response strategies, long-term visions, Master Planning and/or design documents, surveys, estimates, and schedules;
 - ii) Electronic copies of all final documents must be provided to DFW in the "native" program file format, in addition to an electronic portable document format (PDF); and
 - iii) Any applicable schedule for the provision of Services and deliverables will be established in the applicable Delivery Order.

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 C

Board-Approved Overhead Rates

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

Consultant	Field Office Overhead Rate	Home Office Overhead Rate
Prime		
Subconsultant		

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.

Individual (Name)	Position/Labor Category

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

Exhibit 4 – Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors

Non-AIP Funded

- 1) **FAA Publication:** This Exhibit 4 complies with the FAA’s Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors, which may be found at http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/#allContracts. If there is a conflict between this Exhibit 4 and the FAA Provisions, the FAA Provisions control.
- 2) **Application of Exhibit 4:** This Exhibit 4 applies to all Delivery Orders issued under this Agreement.
- 3) **Contractor Obligations:** Contractor:
 - a) (including all subcontractors) must insert this Exhibit 4 in each lower tier contract (e.g. subcontract or sub-agreement);
 - b) (including all subcontractors) must incorporate this Exhibit 4 by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services; and
 - c) is responsible for compliance with this Exhibit 4 by any subcontractor, lower-tier subcontractor or service provider.
- 4) **Conflicts:** All federal laws and regulations applicable to this Agreement/Contract take precedence over any conflicting local or state laws.
- 5) **Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors:** Contractor must comply with the following:
 - a) **General Civil Rights:**
 - i) 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.
 - ii) 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.
 - b) **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.
 - c) **Compliance with Regulations:** Contractor will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
 - d) **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.
 - e) **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

**Exhibit 4 – Required Contract Provisions for Airport Improvement Program and for
Obligated Sponsors**

contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

- f) **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.
- g) **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:
- i) Withholding payments to Contractor under the contract until Contractor complies; and/or
 - ii) Cancelling, terminating, or suspending a contract, in whole or in part.
- h) **Incorporation of Provisions:** The Contractor will include the provisions of the clauses entitled "Compliance with Regulations", "Non-discrimination", Solicitations for Subcontracts, including Procurements of Materials and Equipment", Information and Reports", Sanctions for Noncompliance" and "Incorporation of Provisions" 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.
- i) **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:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
 - 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid

**Exhibit 4 – Required Contract Provisions for Airport Improvement Program and for
Obligated Sponsors**

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

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

j) Federal Fair Labor Standards Act (Federal Minimum Wage):

- i) 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.
- ii) 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.

k) 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.

Exhibit 5 – Insurance Requirements

- 1) **Policies** – At all times during the term of this Agreement or any extension thereof, the Consultant must procure, pay for and maintain, with approved insurance carriers, the insurance set forth below, and must require all Subconsultants/Subcontractors performing work for which the same liabilities may apply under this Agreement to do likewise, or provide for coverage for subconsultants.
 - a) Worker’s Compensation Liability Insurance: Statutory Limits. With respect to the services provided under this Agreement and during the Agreement’s term, Consultant shall not opt out of or otherwise fail to maintain such coverage notwithstanding any provision in Texas State law which would allow an employer that option. The worker’s compensation and employer’s liability coverage required hereunder must in all things comply with the substantive requirement for such coverage contained in Texas State law.
 - b) Employer’s Liability Insurance: \$500,000 each accident, and each disease.
 - c) Commercial or Comprehensive General Liability (CGL):
 - i) Minimum Required Limits: \$1,000,000 per Occurrence \$2,000,000 Aggregate.
 - ii) Policy coverage must be on an “occurrence” basis using the 1986, or successor, CGL form(s) as approved by the Texas Department of Insurance.
 - d) Attachment of endorsements: Aggregate Limits of Insurance and Additional Insured. (Per Project): All endorsements shall require prior approval by the Owners Authorized Representative.
 - e) Commercial or Comprehensive Automobile Liability: Coverage must be provided for owned, hired, and non-owned vehicles. Minimum Required Limits: \$500,000 combined single limit. Excess/Umbrella of \$5,000,000.00 required for vehicles operated outside the AOA and \$10,000,000.00 for vehicles operated within the AOA.
 - f) Excess/Umbrella Liability: An Umbrella Liability policy in the amount of \$5,000,000 must be maintained at all times during the terms of this Agreement if Consultant or its Subconsultants/Subcontractors will not operate vehicles in the AOA. Policy must be on an “occurrence basis”. **NOTE: Excess/Umbrella of \$10,000,000 will be required for vehicles operated within the AOA.**
 - g) Professional Liability: The Prime consultant, including all joint venture partners, must provide coverage for Professional Liability in the minimum amount of \$1,000,000 to be maintained at all times during the term of the Agreement and a minimum of one year after the expiration date of the Agreement. Coverage may be provided through a surplus lines insurance company licensed for that class of business in the State of Texas. Subconsultants/Subcontractors with subcontracts totaling less than \$1,000,000 in aggregate on all Delivery Orders, must provide coverage for Professional Liability in the minimum amount of \$1,000,000 to be maintained at all times during the term of the Agreement and a minimum of one year after the expiration date of the Agreement. Coverage may be provided through a surplus lines insurance company licensed for that class of business in the State of Texas.

- 2) **Special Conditions** – Concerning insurance to be furnished by Consultant, it is a condition precedent to acceptability thereof that:
 - a) Unless noted herein, all policies are to be written through a company licensed for that class of business in the State of Texas. The company rating must be listed on the Certificate of Insurance as listed in A.M. Best Key Rating Guide and be rated a minimum of A- or VII and be of acceptable financial size. If a required insurance coverage is provided by a risk retention group or purchasing group as defined by statute and such group has met all the requirements of the Texas Department of Insurance, the Best Rating requirement may be waived.
 - b) Approval, disapproval, or failure to act by the Owner regarding any insurance supplied hereunder shall not relieve the Consultant of full responsibility or liability for damages and accidents as set forth herein. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the Consultant from liability.
 - c) No special payment shall be made by the Owner for any insurance that the Consultant may be required to carry; all are included in the loaded rates, overhead and/or multiplier, and/or fee.
 - d) “DFW International Airport BOARD, et al”, will be included as an additional insured on the following policies:
 - i) Comprehensive General Liability Policy
 - ii) Comprehensive Auto/Truck Policy
 - iii) Umbrella Liability Policy

Exhibit 5 – Insurance Requirements

- e) “DFW International Airport BOARD, et al,” includes the Board of Directors of the Dallas/Fort Worth International Airport, the Cities of Dallas and Fort Worth, Texas, and their respective officers, directors, agents, employees, volunteers, and designated and/or authorized representatives and subsidiary agencies.
 - f) The insurance companies issuing the policy or policies shall have no recourse against the Owner for payment of any premiums or for assessments under any form of policy.
 - g) In the event that the statutory limit on tort claims liability generally applicable to the Owner is increased as a result of any action taken by any governmental body, regulatory agency or court, the now increased tort claims exposure shall automatically become the minimum requirement for liability insurance provided herein if higher than the primary liability limits specified above.
 - h) Should this Agreement require the use of subconsultants, it will be the sole responsibility of the Prime Consultant to verify that such Subconsultants/Subcontractors are in compliance with the insurance provisions of this Agreement. It will be the sole responsibility of the Prime Consultant to provide to the Owner subconsultants’ certificates of insurance, if requested by the Owner. The Owner reserves the right to reject and or remove any Subconsultant/Subcontractor who cannot demonstrate proof of the insurance coverage required hereunder.
- 3) Any of such insurance policies may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered hereby.
- 4) Proof of Insurance**
- a) Upon request by the Board, Consultant shall provide copies of Consultant’s corporate insurance policy documents for viewing at the Board’s offices at DFW Airport, Texas, for review to the extent necessary for the Board to verify compliance with the contractual requirements of the insurance coverages. Regardless of such requests, certificates of insurance must be provided and reviewed for compliance prior to start of work. The Board acknowledges and agrees that such information reviewed shall be treated as confidential information and will sign a mutually acceptable Nondisclosure Agreement, if requested by the Consultant.
 - b) Certificates indicating Consultant coverage to be in force must be filed with the Owner prior to commencement of the Work, and must provide for 10 Days prior written notice of cancellation to be given the Owner.
 - c) Evidence of renewal of coverage must be delivered at least 10 Days prior to expiration of any particular policy.
 - d) All certificates must be issued on the Accord Form or Owner’s Certificate of Insurance form. No substitutions shall be accepted without prior written authorization from the Owner, which authorizations shall be discretionary.
 - e) All certificates of insurance must include the DFW Project Name, DFW Contract Number, Owner contact person and must include the name, address and telephone number of a resident agent to whom any requisite may be delivered.
- 5) Waiver of Subrogation**
- a) With exception of professional liability all policies shall waive the insurer’s right of recovery or subrogation against the Board and the Cities. Insurers shall have no right of recovery or subrogation against the Owner, it being the intention of the parties that insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance. For purpose of defining Additional Insured and Waiver of Subrogation, the term “Dallas Fort Worth International Airport Board (the Board) and the Cities of Dallas and Fort Worth, Texas” (the Cities) shall also mean the elected officials, boards, officers, employees, agents and representatives of the Board and the Cities
 - b) Changes to Insurance: Insurance requirements may be changed by the Owner during the term of this Agreement due to changes in the law, changes in Owner policy, or increased risk due to the nature of the work being performed.

Exhibit 6 – M/WBE Provisions

- 1) **MINORITY AND WOMEN BUSINESS ENTERPRISE (M/WBE) PROGRAM CLAUSE (11-01-2013)**
The Contractor/vendor has committed to % M/WBE participation of the total dollar value of this Contract including any change orders and/or modifications throughout the term of this Contract/agreement. The commitment is a contractual commitment upon execution of the Contract.

a) GENERAL REQUIREMENTS

- i) It is the policy of the Dallas/Fort Worth International Airport Board of Directors (“Board”) to support the growth and development of Minority/Women Business Enterprises (“M/WBE”) that can successfully compete for Airport construction-related professional services prime contracting and subcontracting opportunities.
- ii) A “Contractor” is defined as one who participates, through a Contract or any other contractual agreement. For purposes of these Provisions, a Contractor is one who seeks to do business with the Board by submission of a bid or proposal on any such contract or subcontract. A Contractor includes but is not limited to a Contractor, consultant, developer or vendors.
- iii) It is the policy of the Board to ensure non-discrimination in the award and administration of Board Contracts. Consequently, the Contractor must fully comply with the requirements of the Board’s Minority/Women Business Enterprise Program Policies and Administrative Procedures in proposing and performing hereunder.
- iv) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of the Board’s Policies. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the Board deems appropriate. The Contractor shall insert an Article containing all of the provisions of this Section, including this paragraph, in all subcontracts hereunder, except altered as necessary for the proper identification of the contracting parties and the Board under this Contract.
- v) The Business Diversity & Development Department (“BDDD”) is responsible to ensure compliance with the Board’s M/WBE Policy and Administrative Procedures. BDDD has the mission to proactively facilitate and maximize business and capacity building opportunities for M/WBEs by collaborating with internal customers and implementing effective innovative programs and approaches for prime and subcontracting opportunities.
- vi) The Contractor specifically agrees to comply with all applicable provisions of the Board’s Policies and any amendments thereto. M/WBE and Non-M/WBE subcontractors also agree to comply with all applicable provisions of the Board’s M/WBE Policy and Administrative Procedures (“Policies”).
- vii) The Contractor shall maintain records, as specified in the Audit and Records Section of the Special Provisions in the Contract, showing:
 - (1) Subcontract/supplier awards, including awards to M/WBEs;
 - (2) Specific efforts to identify and award such Contracts to M/WBEs, such as when requested copies of executed Contracts with M/WBEs to establish actual M/WBE project participation.

b) ADMINISTRATIVE REQUIREMENTS

- i) All Contractors are charged with knowledge of and are solely responsible for complying with each requirement of the Policies in making a bid and, if awarded a Contract, in performing the work described in the Contract documents. These instructions are intended only to generally assist the Contractor in preparing and submitting a compliant bid. Should any questions arise regarding specific circumstances, Contractors must consult with the BDDD office at 972-973-5500.
- ii) The Contractor shall appoint a high-level official to administer and coordinate the Contractor’s efforts to carry out its M/WBE contractual commitments.
- iii) The Contractor agrees to submit monthly reports of payments and subcontract and/or supplier awards to M/WBEs and Non-M/WBEs in such form and manner and at such times as the Board shall prescribe.
- iv) The Contractor shall provide BDDD access to all books, records, accounts and personnel in accordance with the Audit and Records section of these Special Provisions. Such access will

Exhibit 6 – M/WBE Provisions

be used for, among other purposes, determining M/WBE participation and compliance with the Policies. All Contractors may be subject to interim and post-contract M/WBE audits. Audit determination(s) regarding Contractor's compliance with the Policies may be considered and have a bearing on consideration of the Contractor for award of future Contracts.

c) GOALS AND GOOD FAITH EFFORTS

- i) Each Contractor must comply with the terms and conditions of the Policies in making its bid or proposal and, if awarded the Contract, in performing all work thereunder. A Contractor's failure to comply with any Rules or Regulations promulgated pursuant thereto, or any additional requirements contained herein may render a bid or proposal non-responsive and may constitute cause for rejection.
 - (1) Responsive; compliance with requirements. If a bid/proposal meets the contract-specific goal or shows an adequate good faith effort in accordance with the Policies, then BDDD shall notify the procuring department to regard the bid/proposal as responsive.
 - (2) Non-Responsive; failure to meet requirements. If a bid/proposal subject to a contract-specific goal does not meet the goal or show an adequate good faith effort, or provide the necessary documentation or forms outlined in the Policies, then BDDD shall notify the procuring department to regard the bid/proposal as non-responsive. Such determination shall result in no further consideration of the bid/proposal by the Airport
 - (a) *Informal meeting.* If BDDD finds the bid/proposal non-responsive in accordance with the above, the non-responsive bidder/proposer may request an informal meeting with the Vice President or designee within two (2) business days from the date that the Airport notifies the bidder/proposer of the inadequacy of the proposal. Such meeting shall be scheduled by BDDD. All deficiencies in the bid/proposer shall be explained to the bidder or proposer at such meeting after which the bidder/proposer shall be allowed to clarify the original documentation submitted. BDDD will at no time, however, allow additional information, documentation, certification certificates, subcontractors, joint venturers, suppliers, manufacturers, manufacturer's representatives or brokers that may later be added to the contract or to the original participation submitted at the time of the bid or proposal to be counted toward meeting of the project goal. If after this informal meeting the Vice President still finds the bid or proposal to be non-responsive, the Vice President or designee's decision shall stand with no further consideration.
- ii) Under the Policies, BDDD establishes a contract-specific goal for each Contract. The specific goal for this Contract is stated in the Advertisement and Invitation to Bid. In order to comply with the bid/proposal requirements of the Policies, a Contractor must either meet the M/WBE Contract Specific Goal or demonstrate that the Contractor has made sufficient good faith efforts to meet the Contract Specific Goal. If the Contractor will not meet the M/WBE goal, it shall nevertheless be eligible for award of the Contract if it can demonstrate to BDDD that it has made good faith efforts to meet the M/WBE goal. This good faith effort documentation must be submitted with the Contractor's bid or proposal.
- iii) A Contractor cannot require exclusive subcontracting or teaming arrangements or agreements with subcontractors.
- iv) For Contracts awarded using the procurement methods of Indefinite Delivery, Construction Management-at-Risk or Design Build, the Vice President of BDDD may determine the requirements to address the Contract goal by means of a Compliance Plan for utilization of M/WBEs on such Contract, or for alternative demonstration of good faith efforts by the Proposer. The development, scope and utilization of such compliance plans shall be addressed in a separate document.
- v) In evaluating a Contractor's good faith efforts submission, BDDD will only consider those documented efforts that occurred prior to the good faith effort submission
- vi) The submission of good faith efforts documentation is a matter of responsiveness and shall include a specific response to each of the following criteria with the bid or proposal. In addition, a Contractor may supplement its responses to include any additional information with the bid or proposal the Contractor believes may be relevant. Failure of the Contractor to

Exhibit 6 – M/WBE Provisions

demonstrate adequate good faith efforts as to any one of the following categories shall render the overall good faith showing insufficient and the bid/proposal non-responsive. The required M/WBE good faith efforts are set forth below:

- (1) Whether the contractor/vendor/bidder conducted market research to identify small business contractors and suppliers and solicit through all reasonable and available means the interest of all certified D/S/M/WBEs that have the capability to perform the work of the contract. This may include attendance at any pre-bid or pre-proposal meetings to discuss subcontracting and supplier opportunities (acceptable documentation shall include copies of the meeting sign-in sheets with contractor name noted as signed-in) and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all D/S/M/WBEs listed in the State and/or Local respective directories of firms that specialize in the areas of work desired (as noted in the D/S/M/WBE directory) and which are located in the area or surrounding areas of the project.
- (2) Whether the contractor/vendor/bidder advertised in general circulation, trade association, and/or D/S/M/WBE focused media concerning subcontracting and supplier opportunities (acceptable documentation shall be copies of advertisement, newspaper page where advertisement was posted or print media confirmations).
- (3) Whether the contractor/vendor/bidder should solicit this interest as early in the acquisition process being at least five (5) business days prior to bid opening as practicable to allow the D/S/M/WBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder/proposer should determine with certainty if the D/S/M/WBEs are interested by taking appropriate steps to follow up initial solicitations at least three (3) business days prior to bid opening to determine with certainty whether the DBEs were interested (appropriate steps may be demonstrated by second contact attempts by letter, facsimile transmission, telephone communication or email, if bidder/proposer failed to make contact on its first attempt).
- (4) Whether the contractor/vendor/bidder selected portions of the work to be performed by D/S/M/WBEs in order to increase the likelihood that the D/S/M/WBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate D/S/M/WBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates D/S/M/WBE participation.
- (5) Whether the contractor/vendor/bidder provided interested D/S/M/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract. The ability or desire of a contractor/vendor/bidder to perform the services of a contract with its own workforce does not relieve the contractor/vendor/bidder of the responsibility to meet the contract goal or demonstrate good faith efforts to do so (The bidder/proposer shall make a moderate and reasonable adjustment to the normal and practiced industry standard that demonstrates a reasonable willingness to divide up scopes of work to provide more opportunities for D/S/M/WBEs to bid/quote).
- (6) Whether the contractor/vendor/bidder negotiated in good faith with interested D/S/M/WBEs. It is the bidder's/proposer's responsibility to make a portion of the work available to D/S/M/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available D/S/M/WBE subcontractors and suppliers, so as to facilitate D/S/M/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of D/S/M/WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for D/S/M/WBEs to perform the work.
- (7) Whether the contractor/vendor/bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including D/S/M/WBE subcontractors, and would take a firm's price and capabilities as well as contract goals

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into consideration. However, the fact that there may be some additional costs involved in finding and using D/S/M/WBEs is not in itself sufficient reason for a bidder's/proposer's failure to meet the contract D/S/M/WBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder/proposer of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from D/S/M/WBEs if the price difference is excessive or unreasonable.

- (8) Whether the contractor/vendor/bidder did not reject D/S/M/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the D/S/M/WBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder/proposer or prime contractor to accept unreasonable quotes in order to satisfy contract goals.
 - (9) Whether the contractor/vendor/bidder prime contractor's inability to find a replacement D/S/M/WBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original D/S/M/WBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement D/S/M/WBE, and it is not a sound basis for rejecting a prospective replacement D/S/M/WBE's reasonable quote.
 - (10) Whether the contractor/vendor/bidder make efforts to assist interested D/S/M/WBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 - (11) Whether the contractor/vendor/bidder make efforts to assist interested D/S/M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - (12) Whether the contractor/vendor/bidder effectively use the services of available minority/women community organizations; minority/women contractors' groups; Local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of D/S/M/WBEs.
 - (13) Whether the contractor/vendor/bidder in determining whether a bidder/proposer has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, DFW will review the performance of other bidders/proposers in meeting the contract goal. For example, when the apparent successful bidder/proposer fails to meet the contract goal, but others meet it, DFW may reasonably raise the question of whether, with additional efforts, the apparent successful bidder/proposer could have met the goal. As provided in §26.53(b)(2)(vi), the bidder must submit copies of each D/S/M/WBE and non-D/S/M/WBE subcontractor quote submitted to the bidder when a non-D/S/M/WBE subcontractor was selected over a D/S/M/WBE for work on the contract to review whether D/S/M/WBE prices were substantially higher; and contact the D/S/M/WBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to D/S/M/WBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.
- vii) BDDD will review not only at the different kinds of efforts that the Contractor has made but also the quantity and intensity of those efforts. Efforts that are merely pro-forma are not good faith efforts to meet the goal, even if they are sincerely motivated. BDDD will also consider if, given all relevant circumstances, the Contractor's efforts could reasonably be expected to produce a level of M/WBE participation sufficient to meet the goal.
 - viii) Whether or not the Contract Specific Goal has been met and/or whether there were sufficient good faith efforts is considered a matter of the Contractor's responsiveness. The requirement to submit documentation that the goal has been met or good faith efforts documentation has been submitted in the manner prescribed by BDDD is considered a matter of the Contractor's responsiveness. The Board will only award Contracts to

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Contractors determined to be responsive and responsible. If a Contractor fails to submit good faith efforts documentation with the bid or proposal, it waives the right to appeal the good faith efforts decision. The Vice President of BDDD or designee shall determine whether the Contractor made the required good faith efforts to meet the M/WBE Contract goal and, if not, shall recommend that the Contractor be deemed non-responsive.

- ix) If a Contractor desires a review of the Vice President of BDDD's decision, it shall file a written request for final reconsideration within two (2) business days after receipt of the decision to the Reconsideration Official:

Executive Vice President
Administration & Diversity
P.O. Box 619428
DFW Airport, TX 75261-9428

As part of the reconsideration, the Contractor will have the opportunity to provide written documentation or argument concerning the issue of good faith.

- x) The Contractor has a continuing obligation as a covenant of performance to meet the M/WBE utilization to which it committed at Contract award, inclusive of change orders, amendments, and modifications. If the Contractor during Contract performance must replace a M/WBE for any reason, it must follow the provisions herein governing the substitution of M/WBEs and make documented good faith efforts to meet its original M/WBE contractual commitment.

(1) Such good faith efforts during Contract performance must include, but are not limited to:

- (a) Solicitation of M/WBEs that are certified in the applicable area of work or specialty;
- (b) Providing interested M/WBEs with adequate information about the plans, specifications, scope of work and requirements of the Contract;
- (c) Fairly investigating and evaluating the interested M/WBEs' regarding their capabilities, not rejecting M/WBEs as unqualified without sound reasons based on a thorough investigation, and providing verification, including a statement giving the Contractor's reasons for its conclusion, that it rejected each non-utilized M/WBE because the M/WBE was not qualified;
- (d) Negotiating in good faith with interested M/WBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested M/WBEs and providing written documentation why the Contractor and any of the M/WBEs contacted did not succeed in negotiating an agreement; and
- (e) Effectively using the services of available minority and women community organizations; chambers and Contractor groups; local, State, and Federal business assistance offices, and other organizations that provide assistance in the identification of M/WBEs

(2) A Contractor determined not to have made good faith efforts to meet its M/WBE contractual commitments may request administrative review and final reconsideration by the Vice President of BDDD. The Contractor may elect to meet in person to discuss whether the Contractor made good faith efforts in accordance with the Policies. BDDD's determination shall be final.

d) COUNTING M/WBE PARTICIPATION

- i) BDDD will evaluate each bid or proposal to determine the responsiveness of the bid or proposal to the Policies. In determining if a Contractor's committed levels of participation meet or exceed the solicitation's Contract Specific Goal, BDDD shall base its determination solely on the information provided in the bid or proposal document.
- ii) Unless otherwise specified in the solicitation, all bids or proposals for the provision of Indefinite Delivery for a period of time and with no delineation of the dollar amount for specific on-call projects, the Contractor shall submit only the anticipated overall percentage of M/WBE contractual commitment and post award, submit a completed Compliance Plan for review and approval by the Vice President of BDDD.
- iii) If a joint venture is proposed to meet the Contract Specific Goal or any portion thereof, the total value of the distinct and clearly defined portions of the work of the Contract that the M/WBE will perform with its own workforce, reflect its capital contribution, control, management and profits; and for which it is at risk will be counted.

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- iv) When calculating participation levels, percentages and dollar amounts for each M/WBE, the Contractor cannot round up in determining whether or not the total of these amounts meets or exceeds the Contract Specific Goal.
- v) A M/WBE must be certified as a M/WBE by a Board-approved entity and have a place of business in the Airport's market area at the time of bid or proposal submission to be counted towards meeting the Contract Specific Goal. Other certifications are not acceptable.
- vi) Post award, the Contractor may count towards its M/WBE contractual commitment a M/WBE that is certified during the performance of the Contract if the M/WBE is added to the Contract or substituted for a M/WBE pursuant to section herein.
- vii) The Contractor may not count toward its M/WBE contractual commitment the dollar value of work performed by a M/WBE after it has ceased to be certified.
- viii) M/WBE prime Contractors can count their self-performance toward meeting the M/WBE goal, but only for the scope of work and at the percentage level they will self- perform.
- ix) When a M/WBE participates in a Contract, the Contractor shall count only the value of the work actually performed by the M/WBE toward M/WBE goals.
- x) A Contractor cannot count toward the Contract Specific Goal amounts paid to an affiliate subcontractor, as defined in 49 C.F.R. Part 16.5
- xi) The Contractor shall count the entire amount of that portion of a Contract (or other Contract not covered by this section) that is performed by the M/WBEs own work forces. The Contractor may count the cost of supplies and materials obtained by the M/WBE for the work of the Contract, including supplies purchased or equipment leased by the M/WBE (except supplies and equipment the M/WBE subcontractor purchases or leases from the prime Contractor or its affiliate).
- xii) The Contractor shall count toward the M/WBE goals the entire amount of fees or commissions charged by a M/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a Board Contract, provided it determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- xiii) When a M/WBE subcontracts part of the work of its Contract to another firm, at any tier, the value of the subcontracted work may be counted towards the M/WBE goal only if the M/WBE's subcontractor is itself a M/WBE. Work that a M/WBE subcontracts to a non-M/WBE firm does not count toward M/WBE goals.
- xiv) The Contractor will count expenditures to a M/WBE subcontractor toward the M/WBE goal only if the M/WBE is performing a commercially useful function on the Contract.
 - (1) A M/WBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the M/WBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the materials itself. To determine whether a M/WBE is performing a commercially useful function, the Contractor must evaluate the amount of the work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing, the M/WBE credit claimed for its performance of the work, and other relevant factors.
 - (2) A M/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of M/WBE participation. In determining whether a M/WBE is such an extra participant, the Contractor must examine, among other relevant factors, similar transaction, particularly those in which M/WBEs do not participate.
 - (3) If a M/WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract with its own work forces, or the M/WBE subcontracts a greater portion of the work of a Contract then would be expected on the basis of normal industry practice for the type of work involved, the Contractor must presume that it is not performing a commercially useful function.
 - (4) When a M/WBE is presumed not to be performing a commercially useful function as

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provided in this section, the M/WBE may present evidence to rebut this presumption. BDDD may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

- xv) The Contractor shall use the following factors in determining whether a M/WBE trucking company is performing a commercially useful function:
- (1) The M/WBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Contract, and there cannot be a contrived arrangement for the purpose of appearing to meet the M/WBE goal.
 - (2) The M/WBE must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.
 - (3) The M/WBE shall receive credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
 - (4) The M/WBE may lease trucks from another M/WBE, including a owner-operator who is certified as a M/WBE. The M/WBE who leases trucks from another M/WBE shall receive credit for the total value of the transportation services the lessee M/WBE provides on the Contract.
 - (5) The M/WBE may also lease trucks from a non-M/WBE, including from an owner-operator. The M/WBE who leases trucks from a non-M/WBE is entitled to a credit only for the fee or commission it receives as a result of the lease arrangement. The M/WBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a M/WBE.
 - (6) For purposes of this paragraph, a lease must indicate that the M/WBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the M/WBE, so long as the lease gives the M/WBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the M/WBE.
- xvi) The Contractor shall count expenditures to M/WBEs for materials or supplies towards the M/WBE goal as follows:
- (1) M/WBE Manufacturer
 - (a) If the materials or supplies are obtained from a M/WBE manufacturer, count one hundred percent (100%) of the cost of the materials or supplies towards the M/WBE goal.
 - (b) For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
 - (2) M/WBE Regular Dealer
 - (a) If the materials or supplies are purchased from a M/WBE regular dealer, count sixty percent (60%) of the cost of the materials or supplies towards the M/WBE goal.
 - (b) For purposes of this section a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - (c) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
- xvii) With respect to materials or supplies purchased from a M/WBE which is neither a

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- manufacturer nor a regular dealer, count the entire amount of fees or commission charges for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, towards the M/WBE goal, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. However, the Contractor shall not count any portion of the cost of the materials and supplies themselves toward M/WBE goals.
- xviii) If a M/WBE subcontractor is not certified at the time of the execution of the Contract, supplemental agreement or subcontract, the Contractor may not count the firm's participation toward the M/WBE goal until the firm is certified. Additionally, the Contractor shall not count the dollar value of work performed under a Contract with a firm after it has ceased to be M/WBE certified.
- xix) The Board reserves the right to reject the participation of a certified firm for credit towards meeting the Contract goal, in its sole discretion.
- xx) BDDD will count M/WBE participation where the M/WBE or joint venture partner performs a portion of work on the Contract and the percentage of ownership or equity of the M/WBE in joint venture. BDDD will allow the joint venture to count the total dollar value of the Contract equal to the distinct, clearly defined scope of the work of the Contract that the M/WBE joint venture partner performs with its own forces toward the M/WBE commitment and for which it is at risk.
- xxi) The Contractor shall not count the participation of a M/WBE subcontractor toward the goal until the amount has been actually paid to the M/WBE.
- xxii) The following expenditures to M/WBE firms may also count toward the M/WBE goal:
- (1) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Airport to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (2) The fees charged for delivery of material and supplies required on a job site (but not the cost of materials and supplies themselves) when the hauler, trucker or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) The fees of commission charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- e) CERTIFICATION
- i) In order to count the participation of M/WBEs towards the Contract goal, the M/WBE must be certified by the North Central Texas Regional Certification Agency (NCTRCA), DFW Minority Supplier Development Council or the Women's Business Council Southwest. Other certifications are not acceptable.
 - ii) In addition to having a valid certification from one of the entities listed above, the M/WBE must have a place of business in the Airport's market area at the time the firm is submitted for credit towards meet the M/WBE goal, which is defined as for purposes of these Special Provisions as the North Texas Commission twelve-county area of Dallas, Tarrant, Collin, Delta, Denton, Ellis, Hunt, Johnson, Kaufman, Parker, Rockwall, and Wise counties. The M/WBE must provide any requested documentation to establish its place of business to the satisfaction of BDDD.
 - iii) **The Contractor must submit to BDDD a properly completed M/WBE Certification Certificate or letter, with all required attachments, for all M/WBEs proposed to be utilized as subcontractors or suppliers to meet the Contract goal at the time of bid/proposal submission.** The Board reserves the right to reject the participation of a certified firm for credit towards meeting the Contract goal, in its sole discretion. Such rejection shall be in writing and state the reason(s) for the rejection. A Contractor whose

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- proposed certified firm is rejected for goal credit may request reconsideration of the rejection to the BDDD in writing. The request for reconsideration must be received by the BDDD within five (5) business days of the notification of rejection. BDDD's decision on the request shall be final.
- iv) A firm must be certified as a M/WBE at the time of bid or proposal submission to be counted towards meeting the goal for purposes of determining Contract award.
 - v) Post award, a Contractor may count M/WBEs certified during the performance of the Contract towards its M/WBE contractual commitment once documentation confirming such certification is submitted to BDDD.
 - vi) BDDD maintains a current listing of certified M/WBEs. Bidders and proposers must use its Directory to assist them in locating M/WBEs for the work required on the Contract. The M/WBE Directory is located at:
<https://dfw.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=dfw&XID=5886>
 - vii) M/WBE certification does not constitute a representation or warranty as to the qualifications or capabilities of any certified firm.
- f) **M/WBE UTILIZATION FORMS AND RELATED DOCUMENTATION**
- i) Each Contractor must submit for all solicitations, bids or proposals, completed M/WBE utilization forms as outlined below to be considered responsive.
 - (1) Request for Proposals (RFP) or Request for Qualifications (RFP):
 - **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
 - **Preliminary Schedule of Subcontractors** must be submitted at the time of proposal submission.
 - **Certification Certificates** Copies of corresponding certification certificates must be attached to the Preliminary Schedule of Subcontractors.
 - **Good Faith Effort Documentation**. If the Contractor fails to meet the M/WBE goal, this documentation must be submitted at the time of proposal submission.
 - **Final Schedule of Subcontractors** shall be submitted with the best and final offer.
 - **Intent to Perform as a Subcontractor** A signed and executed form for each M/WBE subcontractor identified on the Final Schedule of Subcontractors shall be submitted with the best and final offer.
- OR
- (2) Request for Price Proposal for a task/delivery order under an Indefinite Delivery Contract:
 - **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
 - **Compliance Plan** Post Contract award, submit to BDDD for review and approval.
 - **Final Schedule of Subcontractors** At the time that a delivery order price proposal is requested, the Final Schedule of Subcontractors must be submitted with the price proposal submission.
 - **Certification Certificates** Copies of corresponding certification certificates must be attached to the Final Schedule of Subcontractors.
 - **Intent to Perform as a Subcontractor** A signed and executed form for each M/WBE subcontractor identified on the Final Schedule of Subcontractors must be submitted with the final agreed-upon price proposal for each delivery order.
 - ii) Any commitments to meet the M/WBE goal must be detailed on the **Commitment to M/WBE Participation** form included with the bid/proposal. This commitment includes the following:
"The Contractor must maintain the M/WBE participation level to which it committed at Contract award throughout the performance of the Contract. A Contractor may not terminate for convenience a M/WBE subcontractor (or an approved substitute M/WBE firm) and then perform the work of the terminated subcontract with its own workforces, those of an affiliate, or any other firm without the prior written consent from BDDD. When a M/WBE subcontractor is terminated, or fails to complete its work on the Contract for any reason, the Contractor is required to make good faith efforts to substitute another M/WBE to fulfill its M/WBE

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- contractual commitment.”
- iii) The **Schedule of Subcontractors** form must list all subcontractors the Contractor intends to use in performing the work of the project, including non-M/WBEs, and detail the preliminary and/or final percentage and dollar commitment of the Contractor to M/WBE participation. Only M/WBEs identified and the levels of participation listed for each at the time of bid submission will be considered in determining whether the Contractor has met the goal. All M/WBEs must be properly certified under the guidelines of the CERTIFICATION section. Submission of the **Intent to Perform as a Subcontractor** form for each M/WBE shall constitute a representation by the Contractor to the Board that it believes the M/WBE to be certified as a M/WBE to perform the work as designated. It shall also represent a commitment by the Contractor that if it is awarded the Contract, it will enter into a subcontract with the M/WBE for the work described at the approximate price and percentage set forth in the **Intent to Perform as a Subcontractor** form.
 - iv) If the M/WBE's information or status changes after the form has been submitted but prior to award of the Contract, the Contractor must immediately notify BDDD of the change and a written explanation for the change by submitting a **Request for Approval of Change to Final Schedule of Subcontractors** form. No change in M/WBE participation after bid submission, but prior to Contract award, may change, or be deemed to change, the Contractor's submitted bid amount. The Modification and Substitutions section of the Policies shall govern the modifications and substitutions of the M/WBEs that occur after Contract award.
 - v) Except as authorized by BDDD, the Contractor shall enter into formal agreements with the M/WBEs listed on the **Final Schedule of Subcontractors and Intent to Perform as a Subcontractor** forms within ten (10) business days after receipt of the Contract executed by the Board or Notice Proceed executed by the Board. If requested, the Contractor must provide the BDDD copies of those agreements within five (5) business days of the written request.
 - vi) Alternative Compliance Plan
 - (1) When the project design is not complete or at a level of completeness allowing for final competitive pricing proposals, BDDD's may, in its sole discretion, require bidders or proposers for a construction or construction-related professional services Contract to submit a Compliance Plan in lieu of the above forms. The Compliance Plan shall be developed in accordance with the following requirements:
 - (a) BDDD may require separate goals for project professional services and for project construction services, or a project aggregate goal. The Compliance Plan may be required to address the project professional services goal and project the construction goal, only the project construction goal or any project aggregate goal in BDDD's discretion.
 - (b) The construction goal shall be expressed as a percentage of either the total amount of any lump sum construction Contract awarded to complete a project, or in the alternative, the total estimated “cost of the work” as that term is defined in any guaranteed maximum price Contract awarded to complete a project.
 - (c) The Airport department head shall provide a good faith estimate of the construction cost upon which a construction goal shall be set and the bidder or proposer must provide a refined estimate at the time of the submission of a proposed Compliance Plan, if the amount is not reflected in an executed Contract.
 - (d) After consultation with the Department head or a designated representative, BDDD shall establish a timetable for submittal and review of the proposed Compliance Plan.
 - (e) At BDDD's sole discretion, it may require submission and review of a proposed Compliance Plan during the solicitation process as a solicitation submittal requirement or after the conclusion of the solicitation process as a component of Contract negotiations and award. Failure to comply with the submittal timetable may, at BDDD's sole discretion, result in no further consideration of the proposed Compliance Plan and rejection of the proposal.
 - (2) At a minimum, a proposed Compliance Plan must:
 - (a) Comply with the Policies, including affirming that BDDD shall have prompt, full and

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- complete access to all bidder or proposer and subcontractor personnel, books and records required to monitor and assure performance of the approved Compliance Plan and acknowledging the Board's right to withhold payment in the event of non-compliance and subject the Contractor to other sanctions pursuant to the Policies.
- (b) Provide a detailed program for community outreach and support to enhance M/WBE opportunities.
 - (c) Provide a detailed program describing how the bidders or proposers will divide up the anticipated work into economically feasible units calculated to enhance M/WBE opportunities.
 - (d) Describe in detail how the bidders or proposers will make good faith efforts to meet the project goal, including work that the bidders or proposers would normally self-perform, and provide for review, reconciliation milestones and audit opportunities for BDDD.
 - (e) If the proposed Compliance Plan is based upon a phased or packaged buy out of the project construction work, the bidders or proposers will describe the process by which the bidders or proposers will address the project goal on a phased/ package or cumulative basis.
 - (f) Describe how the bidders or proposers will comply with the requirements herein as part of the subcontractor buyout of the construction work, including use of commitment forms, Schedule of Subcontractors, Intent to Perform and joint venture forms to adequately document committed participation attained.
 - (g) Contain a specific acknowledgement of the bidder's or proposer's continuing duty to meet the requirements of the Policies. The Compliance Plan must detail how the proposer will make good faith efforts to maintain its M/WBE commitments.
 - (h) Set forth how the bidders or proposers will comply with BDDD's online reporting system for tabulation of participation performance and plan administration and for monitoring and reporting progress and participation performance to BDDD.
 - (i) Recommend methods for supporting BDDD administration and oversight of the Compliance Plan.
 - (j) Set forth a detailed methodology for issuance of notice(s) of non-compliance to the bidder's or proposer's subcontractors with the Compliance Plan and a reasonable opportunity to cure.
 - (k) Set forth a detailed methodology for final reconciliation of participation performance, measured against the established goal and plan close out.
- (3) BDDD shall approve or initially reject, with comments, the proposed Compliance Plan. If the proposed Compliance Plan is rejected, the bidder or proposer may submit a revised Compliance Plan by a date set by BDDD. BDDD in its sole discretion may meet with the proposer to discuss any deficiencies that must be addressed in the revised Compliance Plan. If BDDD determines the revised Compliance Plan is insufficient to meet the requirements of the Policies, it shall notify the department head in writing of the rejection and the reasons for the rejection. BDDD's determination shall be final and result in no further consideration of the proposal or, in the event a Contract has been awarded, in withdrawal of the award for cause. In no event shall a Contract to construct a project be executed or continue without an approved Compliance Plan.

g) PAYMENT

- i) It is Board policy that all Contractor invoices submitted to it in compliance with the Contract will be paid by it within 30 days of its receipt.
- ii) All Contractors must comply with the Texas Prompt Pay Act (Chapter 2251; Texas Government Code) in paying all sums, including retainage withheld from subcontractors, to subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities, including paying such persons or entities within 10 days of receiving payment from the Board their appropriate share of such payment. No Contractor that has received payment of an undisputed amount from the Board may withhold from any subcontractor its undisputed appropriate share of such payment.
- iii) No Contractor may withhold retainage from any subcontractor at a higher percentage rate

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- than retainage is withheld by the Board from Contractor. Except for the Texas Prompt Pay Act requirement that a Contractor release retainage to a subcontractor within 10 days of that subcontractor's invoice for retainage, each Contractor must withhold/release retainage from/to each subcontractor in at least the same manner as retainage is withheld/released by the Board from/to Contractor (and must include provisions in its subcontracts ensuring this), including, but not limited to mirroring the Board's treatment of retainage withheld/released to Contractor concerning the following subjects:
- (1) the percentage amount of retainage withheld/released;
 - (2) the schedule for withholding/releasing retainage;
 - (3) the phased release of retainage according to any phased completion (substantial/final) of portions of the project;
 - (4) the optional cessation of withholding retainage prior to substantial/final completion of, or final payment for, the project (e.g. optional cessation when 50% of project is substantially complete, with an owner's right to resume withholding retainage upon the occurrence of certain events);
 - (5) the release of retainage prior to final payment, less an amount withheld to cover a percentage of the value of punch-list work required before final completion is certified (e.g. retention of 200% of the value of punch-list work pending certification of final completion).
- iv) Each Contractor must address (and implement) in its subcontracts the subject of retainage so that each subcontractor is treated by the Contractor in the same manner as Board treats Contractor. Nothing in this provision precludes a Contractor from including in its subcontracts retainage provisions that are more favorable than those contained in the Contract between Board and Contractor, including, but not limited to, provisions withholding retainage at a lesser percentage rate, releasing retainage in part/whole earlier than retainage released by Board and/or withholding less retainage than Board withholds to cover the value of punch-list work required to be completed before final completion certification.
 - v) DFW encourages all Contractors and their subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities to make payment of invoices submitted to them more expeditiously than required under the Texas Prompt Pay Act.
 - vi) Payment by a Contractor in violation of the terms of the Contract or applicable law will constitute a material breach of this Contract.
 - vii) The Board may withhold progress payments until the Contractor demonstrates compliance with the payment terms of this Contract or applicable law, including withholding progress payments solely relating to monies payable to Contractor for work it self-performs or associated retainage.
 - viii) The Board may also exercise any other rights or remedies available to it under this Contract or applicable law if Contractor fails to comply with the payment terms of this Contract or applicable law.
 - ix) In an effort to remove the obstacle of the length of time for subcontractor payments on Board procurements, the Board has an Expedited Payment Policy for eligible Contractors that may elect to voluntarily participate in. This policy is applicable if a Contractor has been awarded a multi-year Contract for construction and/or maintenance services of at least \$10,000,000 in Contract value. The Expedited Payment program requires those eligible Contractors that voluntarily participate in the program to pay their subcontractors within seven (7) calendar days after receipt of the subcontractor's invoice. The Board would then pay interest and provide other incentives to the Contractor on eligible expedited payments according to the Expedited Payment Process and Policy. The terms for Expedited Payment will be negotiated prior to the issuance of the Notice to Proceed.
 - x) To ensure that the Contractor meets all its M/WBE contractual commitments, BDDD will review the Contractor's M/WBE utilization throughout the term of the Contract, including any term extensions of the original Contract period. If a Contract includes a M/WBE contractual commitment, the Contractor must report all M/WBE payments using the BDDD's online reporting system and submit a **Pay Period Activity Report (PPAR)** (with verifying information) concurrent with the Contractor's submission of payment requests with each invoice. The information reflected on the PPAR will be utilized to provide constant monitoring

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of the payments made to the M/WBE as well as non-M/WBE subcontractors in relation to the percentage of work performed. Failure to include a required PPAR form with the invoice utilizing the Board's online reporting system will result in the invoice being returned to the Contractor.

- x) Contract Close Out: To ensure that the Contractor meets all its M/WBE contractual commitments, BDDD will review the Contractor's M/WBE utilization throughout the term of the Contract, including any term extensions of the original Contract period, prior to receiving final payment. If a Contract includes a M/WBE contractual commitment, the Contractor must report all M/WBE payments using BDDD's online reporting system and submit **Final Pay Period Activity Report** (with verifying information) concurrent with the Contractor's submission of final payment request.
 - xii) BDDD encourages all Contractors that may have a dispute with any subcontractor to attempt to resolve such dispute through appropriate formal or informal alternative dispute resolution procedures, including, but not limited to, negotiation, mediation, collaborative law, arbitration and/or conciliation, prior to seeking BDDD's assistance in resolving the dispute. If any Contractor or subcontractor does seek BDDD's assistance, it may require them to first attempt to resolve their dispute through appropriate alternative dispute resolution procedures and to provide BDDD with evidence of their good faith attempts to resolve the dispute as a condition of further assistance from BDDD.
- h) MODIFICATIONS OR SUBSTITUTIONS
- i) This Section applies to all subcontractor modifications, changes and substitutions under this Contract. The Contractor shall comply with this Section to the extent needed to achieve its M/WBE contractual commitment stated in its **Commitment to Minority/Women Business Enterprise (M/WBE) Participation** form.
 - ii) The Contractor understands that if change orders or any other Contract modifications are issued under the Contract, the Contractor has a continuing obligation to immediately inform BDDD in writing of any agreed upon increase or decrease in the scope of work of such Contract, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.
 - iii) The Contractor agrees that if change orders or other Contract modifications are issued under the Contract that include an increase in the scope of work whether by amendment, change order, force account or otherwise which increases or decreases the dollar value of the Contract, whether or not such change is within the scope of work designated for performance by a M/WBE at the time of Contract award, then such amendment, change order or other modification shall be contemporaneously submitted to BDDD. The Contractor must make good faith efforts to meet its M/WBE contractual commitment. If the Contractor is unable to meet its M/WBE contractual commitment, it must submit a **Request for Approval of Change to Final Schedule of Subcontractors**, must be approved in writing by BDDD.
 - iv) The Contractor cannot terminate or otherwise change the terms of its Final Schedule of Subcontractors prior to or after Contract award without the prior written consent of BDDD. This includes, but is not limited to, instances in which the Contractor seeks to perform work originally designated for a M/WBE subcontractor with its own forces or those of an affiliate, a non-M/WBE or another M/WBE.
 - v) The Contractor must demonstrate good cause to terminate the M/WBE to the satisfaction of BDDD. Good cause includes the following circumstances:
 - (1) The listed M/WBE subcontractor fails or refuses to execute a written Contract.
 - (2) The listed M/WBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
 - (3) The listed M/WBE subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness.
 - (4) The listed M/WBE is ineligible to work on Airport projects because of suspension and debarment proceedings pursuant to federal or state law or other applicable laws or regulations.
 - (5) BDDD has determined that the listed M/WBE subcontractor is not a responsible Contractor.

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- (6) The listed M/WBE subcontractor voluntarily withdraws from the project and provides BDDD written notice of its withdrawal.
 - (7) The listed M/WBE subcontractor is ineligible to receive to receive credit for the type of work required.
 - (8) The M/WBE owner dies or becomes disabled with the result that the listed M/WBE subcontractor is unable to complete its work on the Contract.
 - (9) Other good cause as determined in BDDD's sole discretion,
Good cause does not include where the Contractor seeks to terminate a M/WBE it relied upon to obtain the Contract so that the Contractor can self-perform the work or substitute another M/WBE or non-M/WBE subcontractor to perform the work for which the M/WBE was engaged or listed on the **Final Schedule of Subcontractors**.
 - vi) The Contractor must give the M/WBE notice in writing, with a copy to BDDD, of its intent to request to terminate and/or substitute, and the detailed reasons for the request. The Contractor and the M/WBE must attempt to negotiate a resolution of the situation, and if the negotiation is unsuccessful, the Contractor must document this effort before the Contractor seeks BDDD's approval to substitute the M/WBE.
 - vii) Contractors must meet the above criteria and process before requesting prior written approval of any material change in the ownership, control, duties, functions and responsibilities of any M/WBE. The Contractor cannot make any changes to the **Final Schedule of Subcontractors** without the prior written consent of BDDD.
 - viii) If the Contractor proposes to terminate or substitute a M/WBE subcontractor for any reason, the Contractor must make good faith efforts as defined herein to find a substitute M/WBE subcontractor for the original M/WBE to meet its M/WBE contractual commitment. Its good faith efforts shall be directed at finding another M/WBE to perform or provide at least the same amount of work, material or service under the Contract as the original M/WBE to the extent necessary to meet its M/WBE contractual commitment. The Contractor may also find additional M/WBEs and/or adjust the current/projected M/WBE participation to meet its M/WBE contractual commitment.
 - ix) The Contractor must submit an **Intent to Perform as a Subcontractor** form for each proposed new M/WBE subcontractor. BDDD will approve or disapprove the substitution based on the Contractor's documented compliance with these provisions.
 - x) All changes to the **Schedule of Subcontractors** form must be submitted for review and approval through the **Request for Approval of Change to Final Schedule of Subcontractors** form when adding, changing, or deleting any subcontractor.
 - xi) If the Contractor does not comply with these provisions relating to the modification or termination of, and/or substitution for a M/WBE subcontractor, the Board may elect to apply Contract remedies as described in the Policies.
- i) **COMPLIANCE AND ENFORCEMENT**
- i) These Compliance and Enforcement Provisions address the additional contractual remedies available to Board as a result of Contractor's failure to comply with the obligations set forth in the M/WBE Program requirements. The contractual remedies set forth in the M/WBE Program are also applicable to the Contractor's failure to comply with the Program requirements, as well as any remedies available at law or in equity. These remedies are not intended to apply to Contractor's failure to comply with other obligations under the Contract unrelated to the Program requirements or preclude Board's recovery of its actual damages for such unrelated breaches.
 - ii) The Contractor must forward all necessary documents and information during the course of performance under this Contract and to close out the Contract and must cooperate with BDDD in providing any information, including the final accounting for M/WBE participation on the Contract.
 - iii) BDDD is empowered to receive and investigate complaints and allegations by M/WBEs, third parties or Board Staff, or to initiate its own investigations, regarding Contractor's compliance with the Program requirements. If BDDD determines that an investigation is warranted, the Contractor must fully cooperate with the investigation and provide complete, truthful information to the Board concerning the investigation and Contractor's compliance with the

Exhibit 6 – M/WBE Provisions

- Program requirements.
- iv) The failure of the Contractor to meet the M/WBE contractual commitment or comply with any other aspect of the Program requirements will constitute a material breach of the Contract entitling the Board to exercise any remedy available in this Contract, the Program requirements or applicable law.
 - v) The Board may report any suspected false, fraudulent or dishonest conduct relating to the Contractor's performance of the Program requirements to the Board's Department of Audit Services or to any applicable enforcement agency, including the State Attorney General's Office and appropriate federal law enforcement authorities.
 - vi) If Contractor is in breach of any of the Program requirements, the Board may exercise any of following remedies, in addition to any other remedies available to it under this Contract or at law or in equity:
 - (1) withholding funds payable under this Contract, including, but not limited to, funds payable for work self-performed by the Contractor or applicable retainage;
 - (2) temporarily suspending, at no cost to DFW, Contractor's performance under the Agreement/Contract;
 - (3) termination of the Agreement/Contract;
 - (4) suspension/debarment, in accordance with applicable law, of Contractor for a period of time from participating in any solicitations issued by DFW for severity of breach of Contract.
 - vii) With respect to M/WBE firms, a finding of non-compliance could result in a denial of certification or removal of eligibility and/or suspension and debarment.

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

USE FORM SUBMITTED WITH SOQ