

Exhibit 2: Supplemental Provisions

A. Definitions and the Application of Definitions: When used in the Contract Documents, the following capitalized terms have the following meanings:

- 1) *Allowance* means a sum of money set aside in the Contract Documents for the exclusive use of Owner for costs related to the Project it determines should be paid using Allowance monies. The use of Allowance monies is entirely within Owner’s discretion and those monies are not intended for use to pay costs for which Construction Manager is at risk (e.g. Cost of the Work and Construction Manager’s Contingency). Owner may establish one or more Allowances for the Project and may include them in any Contract Document it deems appropriate. Allowance monies may be reflected in the dollar value attributed to a particular Contract Document but will not be part of a GMP or CGMP. For instance, a CGMP Amendment executed by Owner and Construction Manager for Component 1 of the Project that contains a \$300,000 Construction Manager’s Contingency and a \$200,000 Allowance may reflect its values as follows:

Category	Value
Component Guaranteed Maximum Price	\$11,800,000 (including \$300,000 Construction Manager’s Contingency and an allocated portion of Construction Manger’s Fee)
Owner’s Allowance	\$200,000
Total Dollar Value of CGMP Amendment	\$12,000,000

- 2) *CGMP* means that portion of a CGMP Amendment that establishes the not to exceed amount payable to Construction Manager under it and includes Construction Manager’s Fee allocated to the CGMP Amendment, any Construction Manager’s Contingency and the Cost of the Work included in it, and excludes any Owner Allowance contained in the CGMP Amendment.
- 3) *Component* means a designated portion or part of the Project (and the Work associated with it) that Construction Manager proposes and Owner approves will be built in accordance with a CGMP Amendment.
- 4) *Construction Cost Budget* means the maximum monetary amount allocated to the construction of the Project and includes Construction Manager’s General Conditions and Fee, the Pre-Construction Phase Services Budget, the Cost of the Work and any Construction Manager’s Contingencies. Construction Cost Budget does not include any Owner Allowances established in the Contract Documents. The parties intend to establish the Construction Cost Budget during the first phase of Pre-Construction Phase Services.
- 5) *Construction Documents* means the Drawings, Specifications and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Amendment. Construction Documents may be listed for the Project as a whole or for Components of the Project.
- 6) *Construction Manager’s Contingency:*
 - a) means a sum included in the GMP or a CGMP which is not allocated to any item of the Cost of the Work established for Construction Manager’s use and as may be required:
 - i) for costs incurred in the Work from unforeseen causes or details that should have been anticipated by Construction Manager at the time of Owner’s approval of the GMP or a CGMP; or
 - ii) to cover any excess of the amount bid by a Subconsultant/Subcontractor over the amount for that Work in the GMP or applicable CGMP.
 - b) may be included in the GMP Amendment or in one or more CGMP Amendments, at Owner’s

discretion.

- c) is specifically intended to cover contingencies that may arise because of a GMP or CGMP provided by Construction Manager and accepted by Owner when the Design Documents for the applicable Work were not at 100% or address other potential contingencies even when the GMP or CGMP was based on 100% Construction Documents.
 - d) is intended for use to fund increases in the Cost of the Work (and no other elements of compensation under the Contract Documents) identified through the refinement, development and completion of the applicable Construction Documents or procurement of the applicable Work/Component.
 - e) will be negotiated between the parties and must reflect the risk inherent in the state of completion of the applicable Construction Documents at the time the GMP proposal or CGMP proposal is submitted.
 - f) is specifically not to be used for Construction Manager/Subconsultant/Subcontractor rework, unforeseen conditions, cost increases caused by lack of coordination or communication with Architect or Owner, to correct errors or omissions in the Construction Documents, or similar matters.
 - g) Throughout the Construction Phase, Construction Manger must maintain detailed documentation concerning its use of Contingency and must track that use accordingly to line items in the Cost of the Work to which Contingency monies were transferred. Owner may, at any time, request access to Construction Manager's Contingency file to determine if Construction Manager has been using Contingency monies appropriately under the Contract Documents. If Owner determines that Contingency monies have been misused, it will be entitled to deduct them from future progress payments, redeposit them into the applicable Construction Manager's Contingency or transfer them to any Owner Allowance existing under the Contract Documents.
 - h) Any balance in Construction Manager's Contingency remaining at the end of a CGMP (if requested by Owner) or at the end of the Project must be returned to Owner as savings.
- 7) *Day(s)* means calendar days.
- 8) *GMP* means that portion of the GMP Amendment that establishes the not to exceed amount payable to Construction Manager under it and includes Construction Manager's Fee, any Construction Manager's Contingency and the Cost of the Work, and excludes any Owner Allowance contained in the GMP Amendment.
- 9) *Modification* means (1) an Amendment to the Contract; (2) a Change Order; or (3) a Construction Change Directive.
- 10) *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.
- 11) *Project* means the new addition to the southeast corner of Terminal D that:
- a) will be approximately 3 levels and 150,000 square feet;
 - b) is an extension of Terminal D;
 - c) is expected to accommodate 4 swing gates, serving both domestic and international flights, with 2 wide body aircraft, 4 narrow body aircraft or 4 regional jets;
 - d) may include other support equipment such as: 3 Baggage Handling System (BHS) makeup units tied in to the existing BHS at Terminal D; Passenger Boarding Bridges with associated ground support

- equipment, to include preconditioned air units (PCAs), ground power units (GPUs), 400 Hz; aircraft auto-docking equipment and new jet fuel pits; and
- e) will also include the reconfiguration of an office space at the southwest corner of Terminal D.¹

12) *Subcontract(s)* means a contract or other document that is a contractual agreement between 2 Persons at any tier under Construction Manager for the provision of Work and includes, for instance: [i] a Subcontract between Construction Manager and its Subcontractor; and [ii] a Subcontract between a Construction Manager Subcontractor and its Sub-subcontractor, and so on.

13) *Subconsultant(s)/Subcontractor(s)* means a Person (whether as an independent contractor or agent), at any tier (e.g. Sub-subcontractor), that is performing Work, whether under a written Subcontract or otherwise. Each Subconsultant/Subcontractor must be lawfully licensed, if required, in the jurisdiction where the Project is located.

B. Contract Documents/Order of Precedence.

1) **Contract Documents:** The Contract is the following documents (“Contract Documents”):

- a) Amendments/Modifications to Contract (AIA Document A133-2009; Standard Form of Contract Between Owner and Construction Manager where the basis of payment is the Cost of the Work Plus Fee with a Guaranteed Maximum Price [“Contract”]);
- b) Contract;
- c) Amendments/Modifications to General Conditions (AIA Document A201-2007; General Conditions of the Contract for Construction [“General Conditions”]);
- d) General Conditions;
- e) Amendments/Modifications to Exhibits to Contract;
- f) Exhibits to Contract:
 1. Exhibit 1; Mandatory Federal Contract Provisions;
 2. Exhibit 2; Supplemental Provisions;
 3. Exhibit 3; Insurance and Bonding Requirements;
 4. Pre-Con Amendments²; and
 5. GMP Amendment or CGMP Amendments³.

2) **Order of Precedence.** If there is a conflict, the Contract Documents will take precedence in this order:

1. Exhibit 1; Mandatory Federal Contract Provisions;
2. Guaranteed Maximum Price Amendment/Component Guaranteed Maximum Price Amendments in reverse chronological order;
3. Pre-Con Amendments in reverse chronological order;
4. Exhibit 2; Supplemental Provisions; and
5. The remainder of the Contract Documents in the order listed in the Clause entitled “Contract Documents”, with the Exhibits to the Contract taking precedence sequentially by Exhibit number and Amendments/Modifications taking precedence reverse chronologically.

¹ The definition of Project is a preliminary one and ultimately depends on the Project as designed and represented in 100% issued for Construction Documents. The preliminary definition does not preclude Board from modifying the design so that it includes other infrastructure components not currently identified in the definition.

² 1 or more Pre-Con Amendments may be executed between Owner and Construction Manager and will be listed in ~~chronological~~ chronological order.

³ If Owner decides to construct the Project in Components, successive CGMP Amendments will be executed and included as Contract Documents in chronological order (CGMP Amendment No. 1 for Component No. 1, etc.).

C. Owner's Designated Representative; Limitation on Authority; Designee(s).

- 1) **Governmental Entity.** Owner is a governmental entity under Texas law and must follow Applicable Laws to take certain actions, including actions that:
 - a. are contractually binding;
 - b. modify the Contract Documents;
 - c. modify the Work;
 - d. increase/decrease the compensation payable under the Contract Documents; or
 - e. alter any other terms of the transaction embodied within the Contract Documents.
- 2) **Limited Authority.** Accordingly, Owner's Designated Representative (and other Owner representatives/designees) may not be authorized to modify the Contract Documents without Owner's legislative approval. Construction Manager is deemed to understand all legal and Owner limitations on those individuals representing the Owner under this Contract.
- 3) **Designee(s).** Owner's Designated Representative will be an authorized representative of the Owner's Procurement and Materials Management Department.

D. Provision of Information; Allocation of Risk.

- a. **General.** Owner or other Persons may furnish information; available property, boundary, easement, right-of-way, topographic and utility surveys; drawings; specifications; special data and conditions and other special investigations of the Project site, as requested by Construction Manager or required by the Contract Documents, that is reasonably necessary for the Project.
- b. **No Warranty or Representations.** Owner makes no warranties, guarantees or representations as to the accuracy, completeness, or suitability of any information provided to Construction Manager by Owner or other Persons and all such warranties, guarantees and representations are disclaimed. Construction Manager bears responsibility for and agrees it may not recover damages relating to any claim arising from any inaccuracies in such information.
- c. **Information Concerning Utilities, Facilities and Structures.** Owner does not guarantee the accuracy or the completeness of any location information relating to existing utility services, facilities or structures that may be shown on the drawings or encountered in the Work. Any inaccuracy or omission in such information will not relieve Construction Manager of the responsibility to locate and protect such existing utility services, facilities and structures from damage or the service from unscheduled interruption.
- d. **Construction Manager Responsibility.** Before commencing the Construction Phase, Construction Manager represents and warrants that it will:
 - i. carefully inspect and examine all matters, conditions, and circumstances affecting Construction Manager's proper and timely performance of the Work, including, without limitation, the Contract Documents and any other documents and information provided to it by Owner or any other Person, and fully inform itself as to all conditions and matters which may in any way affect the Work or Cost of the Work;
 - ii. visit the Project site, take field measurements, verify field conditions, satisfy itself as to the local conditions at the Project site and surroundings, the character, quality and quantities of Work to be performed, materials to be furnished, the requirements of the Contract Documents and all Applicable Laws;
 - iii. inform itself by its independent research, tests and investigations of the difficulties to be encountered and judge for itself the accessibility of the Work and all attending circumstances affecting the Work, the cost of doing the Work, or time required for its completion and obtain

all information required to make intelligent and informed decisions concerning the Project;
and

- iv. it is solely responsible for all assumptions, deductions or conclusions that it may make or obtain from its examination of any information provided by Owner or other Persons concerning the Project.

E. Component Work Provisions: The provisions in this clause will apply if Owner elects to construct the Project in Components.

- 1) If Owner decides it will construct the Project in Components, it will advise Construction Manager.
- 2) As part of the Pre-Construction Phase Services, Owner and Construction Manager will negotiate a Pre-Con Amendment that may require Construction Manager to, after working with the Architect, to propose a plan for segregating the Work into Components.
- 3) Based upon the agreed upon Component plan and upon Owner's directives, the parties will implement the plan and address construction of the Components through 1 or more of the following:
 - a) 2 or more CGMP Proposals; and
 - b) 2 or more CGMP Amendments.

These documents will address the Components to be constructed, applicable schedules and budgets, whether any Component will be subject to a Substantial Completion Date, liquidated damages and other appropriate subjects relating to the particular Component at issue.

- 4) The sum of the CGMP's in all CGMP Amendments presented to Owner must be within the Construction Cost Budget. After the agreement of the parties on a specific CGMP Amendment, during the Construction Services phase of the Project, Construction Manager will package all Work into Subcontracts and Purchase Orders that will be competitively awarded pursuant to the Contract Documents. Construction Manager will schedule the construction of each Component and the Work required by the Contract Documents to be performed and fully complete consistent with the Project Schedule. Construction Manager will be at risk to provide construction management services for all Work required for the Project within the stated cost limitations of the Construction Cost Budget, in accordance with each CGMP Amendment and within all Component and Project Substantial and Final Completion Dates.
- 5) Construction Manager agrees to complete the construction of the Component in accordance with the agreed upon CGMP Schedule, Substantial Completion Date and Final Completion Date, as applicable. Construction Manager acknowledges that failure to complete the Project or any Component within the construction time set forth in the approved schedules shall result in substantial damages to the Owner sufficient to justify the imposition of liquidated damages.
- 6) A CGMP will include an agreed upon portion of Construction Manager's General Conditions and Fee and any proposed Construction Manager's Contingency Fund which is included.
- 7) At Owner's election, the Work may be completed through multiple CGMPs which, with the final CGMP, may be rolled into one GMP.

F. Liquidated Damages: Liquidated damages applicable to the GMP Amendment or any CGMP Amendment will be established in the applicable amendment.

G. Record Documents:

- 1) **Definition:** "Record Documents" mean the Contract Documents and other materials maintained by Construction Manager that document the Project, including the postings and markings on appropriate Contract Drawings that record the as-constructed conditions of the Work and all changes made during

construction.

- 2) **Location/Access:** Construction Manager must keep a complete and accurate record of all changes or deviations from the Contract Documents. The Record Documents, including the record set of prints of the Contract Drawings, shop drawings, and Specifications must be kept on site. Owner will have access to review Record Documents for completeness and accuracy.
- 3) **Ongoing Recordation:** During the Work’s progress, Construction Manager must require the plumbing, air conditioning, heating, ventilating, elevator, and electrical Subcontractors to record on their field sets of drawings the exact locations, as installed, of all conduit, pipe, and duct lines, whether concealed or exposed, which were otherwise not installed exactly as shown in the Contract Drawings. Construction Manager must also record all drawing revisions that have been authorized by change order that affect wall or partition locations, door and window locations, and other template changes. The exact routing of conduit runs must be shown on these drawings.
- 4) **“As Built Requirements”:** Each Contract Drawing must be noted "As Built" and must bear the date and name of the Subcontractors that performed the Work. CAD files of record drawings must be updated by Construction Manager to reflect their “As Built” condition. These drawings must also be provided in the portable document format (.PDF). Where the Work was installed exactly as shown on the Construction Documents, the sheets should not be disturbed except as noted above.
- 5) **Construction Manager Review:** Construction Manager must review the completed “As-Built” drawings and ascertain that all data furnished on the drawings are accurate and truly represent the Work as it was installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, etc. are involved as part of the Work, Construction Manager must furnish true elevations and locations, all properly referenced by using the original bench mark for the Project.
- 6) **Submittal to Owner/Architect:** Construction Manager must provide to Owner in electronic format as prescribed by the DFW CADD Standards 1 complete draft set of Record Documents and the BIM for the Project (LOD 500) with complete building report attributes on or before submitting its Final Application for Payment.
- 7) **Owner/Architect Review.** Owner/Architect will review these for completeness within 15 Days of receipt and provide Construction Manager with comments.
- 8) **Final Versions.** Construction Manager must then produce a final set of Record Documents in electronic format as prescribed by the DFW CADD standards within 15 Days of receipt of comments from Owner on which Construction Manager must certify the completeness and accuracy of the Drawings and Shop Drawings by endorsing each drawing sheet with the following statement:

“To the best of Construction Manager’s knowledge and belief, the as-built conditions shown on this drawing constitute an accurate and complete depiction of the way this portion of the Work was actually installed during performance of Contract No. _____.

(Insert name of Construction Manager)

By: _____

Name: _____

Title: _____

Date: _____

(Signature of Construction Manager’s representative and date)”

- 9) **Final Record Documents/Final Pay Application.** Construction Manager may not submit its final Pay Application until it has provided to Owner the final Record Documents and all AutoCAD Drawings in a format acceptable to Owner. The final Record Documents must be arranged according to the Drawing and Specifications numbering system used in the Contract Documents. Construction Manager must provide an index and cross-referenced listing of each drawing sheet in the final Record Documents.

H. Administrative Records:

- 1) Construction Manager must maintain at the Project site, on a current basis, files and records, such as, but not limited to, the following:

- Subcontracts or Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Contract Drawings and Specifications with Addenda
- Warranties and Guarantees
- Cost Accounting Records:
- Labor Costs
- Material Costs
- Subcontractor Payment Exception Report
- Equipment Costs
- Cost Proposal Requests
- Payment Request Records
- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Purchase Orders
- Material Purchase Delivery Logs
- Technical Standards
- Design Handbooks
- "As-Built" Marked Prints (in electronic format as directed by the Project Director)
- Operating & Maintenance Instruction
- Daily Progress Reports
- Monthly Progress Reports
- Correspondence Files
- Transmittal Records
- Inspection Reports
- Bid/Award Information
- Bid Analysis and Negotiations
- Punch Lists
- EPMS Schedule and Updates
- Suspense (Tickler) Files of Outstanding Requirements
- Project Manual

- 2) These Project records must be available always to Owner, Owner's Representative and the Architect-Engineer for reference or review.

I. Warranty and Guaranty:

- a. **Construction Manager's General Warranty and Guaranty.** Construction Manager warrants to

Owner:

- i. that all Work is executed in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs, and is of the required finish and workmanship in the Contract Documents;
- ii. that, unless otherwise specified in the Contract Documents, all materials and equipment incorporated into the Work under the Contract Documents are new, free from any defect in equipment, material, or design furnished, or workmanship performed.

b. Warranty Period.

- i. Construction Manager must repair or replace all defects in materials, equipment or workmanship appearing within 1 year from the date of Substantial Completion of the Work.
- ii. If construction of the Project occurs in Components, then the warranty period for all Work performed for each Component will begin on the date of Substantial Completion of the last Component (e.g. Substantial Completion of the Project as a whole).
- iii. The warranty period for Work repaired or replaced will run for 1 year from the date of repair or replacement.

c. Events Not Affecting Warranty. Construction Manager's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or relieve Construction Manager from its obligation to perform the Work in accordance with the Contract Documents:

- i. observations by Owner;
- ii. payment of any progress payment or Final Payment by Owner;
- iii. The issuance of any Certificate of Substantial Completion;
- iv. Use or occupancy of the Work or any part of it by Owner;
- v. Any written acceptance by Owner or any failure to do so;
- vi. Any review of a Shop Drawing or Submittal; or
- vii. Any inspection or test.

d. Separate Warranties.

- i. If a piece of equipment or similar item of the Work for which the Contract Documents require a separate warranty is placed in continuous service before Substantial Completion of the component of Work in which the piece of equipment or similar item is installed, the warranty period for that equipment or similar item will not begin until Substantial Completion, regardless of any warranty agreements in place between Subcontractors or similar Persons and Construction Manager. Owner will certify the date of service commencement in the applicable Substantial Completion Certificate.
- ii. In addition to Construction Manager's warranty and duty to repair, Construction Manager expressly assumes all warranty obligations required under the Contract Documents for specific building components, systems and equipment.
- iii. Construction Manager may satisfy any such obligation by obtaining and assigning to Owner a complying warranty from a manufacturer, supplier, Subcontractor or similar Person. Where an assigned warranty is tendered and accepted by Owner that does not fully comply with the requirements of the Contract Documents, Construction Manager remains liable to Owner on all elements of the required warranty not provided by the assigned warranty.

J. Diversity (Non-Federal).

- 1) **Equal Opportunity.** In accordance with the policy statement in Owner Resolution No. 80-095, Construction Manager agrees that it will take all necessary action to ensure that, in performing Work under the Contract Documents, it and its 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.
- 2) **Non-Discrimination.** Construction Manager agrees that it will take all necessary actions to ensure that, regarding its performance under the Contract Documents, 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.

K. Minority Business Enterprise (MBE) Program:

(UPDATED 11/01/2013)

Notification is hereby given that a MBE Contract specific goal has been established for this Contract. The Contractor/vendor has committed to percent **(35 %)** MBE participation of the total dollar value of this Contract including any change orders and/or modifications throughout the term of this Contract/agreement for Construction Services. The commitment is a contractual commitment upon execution of the Contract.

Notification is hereby given that a MBE Contract specific goal has been established for this Contract. The Contractor/vendor has committed to percent (%) MBE participation of the total dollar value of this Contract including any change orders and/or modifications throughout the term of this Contract/agreement for Pre-Construction Services. The commitment is a contractual commitment upon execution of the Contract. The goal will be issued in a separate addendum,

a. GENERAL REQUIREMENTS

- i. It is the policy of the Dallas/Fort Worth International Board of Directors (“Board”) to support the growth and development of Minority Business Enterprises (“MBEs”) that can successfully compete for Airport construction 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 vendor.
- 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 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 MBE Policy and Administrative Procedures. BDDD has the mission to proactively facilitate and maximize business and capacity building opportunities for MBEs by collaborating with internal customers and implementing effective innovative programs and approaches for prime and subcontracting.
- vi. The Contractor specifically agrees to comply with all applicable provisions of the Board’s Policies and any amendments thereto. MBE and Non-MBE subcontractors also agree to comply with all applicable provisions of the Board’s MBE 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 MBEs;
 - 2. Specific efforts to identify and award such Contracts to MBEs, such as when requested copies of executed Contracts with MBEs to establish actual MBE 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 MBE contractual commitments.
- iii. The Contractor agrees to submit monthly reports of payments and subcontract and/or supplier awards to MBEs and Non-MBEs 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 be used for, among other purposes, determining MBE participation and compliance with the Policies. All Contractors may be subject to interim and post-contract MBE 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 the 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 MBE Contract specific goal or demonstrate that the Contractor has made sufficient good faith efforts to meet the specific goal. If a Contractor does not meet the MBE Contract specific goal, it shall nevertheless be eligible for award of the Contract if it can demonstrate to BDDD that it has made a good faith effort to meet the specific 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, Job-Order-Contract, 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 MBEs 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 factors 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 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 MBE good faith efforts are set forth below:
 - 1. Whether the Contractor attended any pre-bid or pre-proposal meetings to discuss subcontracting and supplier opportunities for MBE participation (acceptable documentation shall include copies of the meeting sign-in sheets with Contractor name noted as signed-in);
 - 2. Whether the Contractor advertised in general circulation, trade association, and/or MBE 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 provided written notice via email or facsimile to a reasonable number of MBEs and/or contacted a reasonable number of MBEs via telephone about the subcontracting/supplier opportunities. A "reasonable number of MBEs" is based on the number of all MBEs available in the areas of subcontracting or supplier opportunities (acceptable contact modes for solicitation shall be letters, facsimile transmissions, telephone communications and email);
 - 4. Whether the Contractor solicited the MBEs at least five (5) business days prior to bid submission, exclusive of the day the bids are opened, to allow MBEs to participate effectively. Also, whether the Contractor followed up those initial solicitations of interest by contacting MBEs at least three (3) business days prior to bid opening to determine with certainty whether the MBEs 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);
5. Whether the Contractor selected portions of the work to be performed by MBEs, in order to increase the likelihood of meeting the MBE goal including, where appropriate, breaking down the Contract into economically feasible subcontracts to facilitate MBE participation. This includes portions of the work to be performed by MBEs the Contractor would otherwise prefer to perform with its own workforce. The ability or desire of a Contractor to perform the services of a contract with its own workforce does not relieve the Contractor 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 MBEs to bid/quote);
 6. Whether the Contractor provided interested MBEs with adequate information about the plans, specifications, scope of work and requirements of the contract or adequate information about the locations of the plans, specifications, scope of work and requirements of the contract (such access shall be provided at least five (5) business days before bid date or proposal submission);
 7. Whether the Contractor fairly investigated and evaluated the interested MBEs' regarding their capabilities, not rejecting MBEs as unqualified without sound reasons based on a thorough investigation. Also, whether the Contractor provided verification, including a statement giving the Contractor's reasons for its conclusion, that it rejected each non-utilized MBE because the MBE was not qualified. Qualifications must be based on factors other than solely the amount of the MBE's bid. A Contractor may not reject a MBE as being unqualified without sound reasons based on a reasonably thorough investigation and assessment of the MBEs' capabilities and expertise. (Appropriate steps may be demonstrated with a summary matrix that identifies all bidders/proposers, evaluation criteria, assessments, conclusions and verifications);
 8. Whether the Contractor negotiated in good faith with interested MBEs, regarding price, using good business judgment and not rejecting reasonable quotes from interested MBE. Also, whether the Contractor provided written documentation why the Contractor and each of the MBEs contacted did not succeed in negotiating an agreement (Good faith negotiation shall mean scheduled meaningful discussions that demonstrably seek to find reasonable ways to utilize the MBE on the contract);
 9. Whether the Contractor made efforts to assist interested MBEs in obtaining Board or Contractor-required bonding, lines of credit, insurance, etc.;
 10. Whether the Contractor made efforts to assist interested MBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
 11. Whether the Contractor effectively used 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 MBEs (acceptable contact modes for solicitation shall be letters, facsimile transmissions, telephone communications and email, list(s) of MBEs identified, marketing brochure or flyers);
 12. Whether the Contractor, if applicable, obtained written documentation from the Board's approved Surety Support Consultant or a bona fide surety company indicating that bonding was denied prior to the MBE being rejected as a potential subcontractor for failing to obtain Contractor-required bonding. Documentation furnished by a surety company will be subject to verification by BDDD; and
 13. Whether other Contractors have attained a sufficient level of MBE participation to meet the Contract specific goal will also be taken into consideration when determining whether the Contractor has made a good faith effort.
- vii. BDDD will review not only 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 MBE 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 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 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 five (5) business days after receipt of the decision to the Reconsideration Official:
 - Executive Vice President
 - Administration & Diversity
 - DFW International Airport
 - 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 MBE utilization to which it committed at Contract award, inclusive of change orders, amendments, and modifications. If the Contractor during Contract performance must replace a MBE for any reason, it must follow the provisions herein governing the substitution of MBEs and make documented good faith efforts to meet its original MBE contractual commitment.
 - 1. Such good faith efforts during Contract performance must include, but are not limited to:
 - a. Solicitation of MBEs that are certified in the applicable area of work or specialty;
 - b. Providing interested MBEs with adequate information about the plans, specifications, scope of work and requirements of the Contract;
 - c. Fairly investigating and evaluating the interested MBEs' regarding their capabilities, not rejecting MBEs 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 MBE because the MBE was not qualified. Qualifications must be based on factors other than solely the amount of the MBEs bid;
 - d. Negotiating in good faith with interested MBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested MBEs and providing written documentation why the Contractor and any of the MBEs 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 MBEs
 - 2. A Contractor determined not to have made continuing good faith efforts to meet its MBE contractual commitments may request an 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 continuing good faith efforts in accordance with the Policies. BDDD's determination shall be final.

d. COUNTING MBE 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 solicitations or the development agreement'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 or Job-Order-Contracts 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 MBE 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 MBE will perform with its own workforce; reflect its capital contribution, control, management and profits; and for which it is at risk will be counted.
- iv. When calculating participation levels, percentages and dollar amounts for each MBE, the Contractor cannot round up in determining whether or not the total of these amounts meets or exceeds the Contract Specific goal.
- v. A MBE must be certified as a MBE 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 MBE contractual commitment a MBE that is certified during the performance of the Contract if the MBE is added to the Contract or substituted for a MBE pursuant to section herein.
- vii. The Contractor may not count toward its MBE contractual commitment the dollar value of work performed by a MBE after it has ceased to be certified.
- viii. MBE prime Contractors can count their self-performance toward meeting the Contract Specific Goal, but only for the scope of work and at the percentage level they will self-perform.
- ix. When a MBE participates in a Contract, the Contractor shall count only the value of the work actually performed by the MBE toward MBE 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 MBEs own work forces. The Contractor may count the cost of supplies and materials obtained by the MBE for the work of the Contract, including supplies purchased or equipment leased by the MBE (except supplies and equipment the MBE subcontractor purchases or leases from the prime Contractor or its affiliate).
- xii. The Contractor shall count toward the MBE goals the entire amount of fees or commissions charged by a MBE 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 an 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 MBE 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 MBE goal only if the MBE's subcontractor is itself a MBE. Work that a MBE subcontracts to a non-MBE firm does not count toward MBE goal.
- xiv. The Contractor will count expenditures to a MBE subcontractor toward the MBE goal only if the MBE is performing a commercially useful function on the Contract.
 1. A MBE 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 MBE 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 MBE 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 MBE credit claimed for its performance of the work, and other relevant factors.
2. A MBE 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 MBE participation. In determining whether a MBE is such an extra participant, the Contractor must examine, among other relevant factors, similar transaction, particularly those in which MBEs do not participate.
 3. If a MBE 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 MBE 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 MBE is presumed not to be performing a commercially useful function as provided in this section, the MBE 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 MBE trucking company is performing a commercially useful function:
1. The MBE 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 MBE goal.
 2. The MBE must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.
 3. The MBE 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 MBE may lease trucks from another MBE, including a owner-operator who is certified as a MBE. The MBE who leases trucks from another MBE shall receive credit for the total value of the transportation services the lessee MBE provides on the Contract.
 5. The MBE may also lease trucks from a non-MBE, including from an owner-operator. The MBE who leases trucks from a non-MBE is entitled to a credit only for the fee or commission it receives as a result of the lease arrangement. The MBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a MBE.
 6. For purposes of this paragraph, a lease must indicate that the MBE 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 MBE, so long as the lease gives the MBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the MBE.
- xvi. The Contractor shall count expenditures to MBEs for materials or supplies towards the MBE goal as follows:
1. MBE Manufacturer
 - a. If the materials or supplies are obtained from a MBE manufacturer, count one hundred percent (100%) of the cost of the materials or supplies towards the MBE 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. MBE Regular Dealer
 - a. If the materials or supplies are purchased from a MBE regular dealer, count sixty percent (60%) of the cost of the materials or supplies towards the MBE 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 MBE which is neither a 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 MBE 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 MBE goals.
- xviii. If a MBE 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 MBE 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 MBE 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 MBE participation where the MBE or joint venture partner performs a portion of work on the Contract and the percentage of ownership or equity of the MBE 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 MBE joint venture partner performs with its own forces toward the MBE commitment and for which it is at risk.
- xxi. The Contractor shall not count the participation of a MBE subcontractor toward the goal until the amount has been actually paid to the MBE.
- xxii. The following expenditures to MBE firms may also count toward the MBE 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 Board 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 MBEs towards the Contract goal, the MBE 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. A minority-owned Disadvantaged Business Enterprise (DBE) that is certified by the Texas Unified Certification Program may be counted towards meeting the MBE goal.
- ii. In addition to having a valid certification from one of the entities listed above, the MBE must have a place of business in the Airport’s market area at the time the firm is submitted for credit towards meeting the MBE goal, which is defined as the North Texas Commission twelve-county area of Dallas, Tarrant, Collin, Delta, Denton, Ellis, Hunt, Johnson, Kaufman, Parker, Rockwall, and Wise counties. The MBE 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 MBE Certification Certificate or letter, with all required attachments, for all MBEs 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 proposed certified firm is rejected for goal credit may request reconsideration of the rejection to BDDD in writing. The request for reconsideration must be received by 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 MBE 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 MBEs certified during the performance of the Contract towards its MBE contractual commitment once documentation confirming such certification is submitted to BDDD.
- vi. BDDD maintains a current listing of certified MBEs. Bidders and proposers must use its Directory to assist them in locating MBEs for the work required on the Contract. The MBE Directory is located at:
<https://dfw.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=dfw&XID=5886>
- vii. MBE certification does not constitute a representation or warranty as to the qualifications or capabilities of any certified firm.

f. MBE UTILIZATION FORMS AND RELATED DOCUMENTATION

- i. Each Contractor must submit for all solicitations, bids or proposals, completed MBE utilization forms as outlined below to be considered responsive.
 1. Request for Bid (RFB) for Construction Projects:
 - **Commitment to MBE Participation** must be submitted at the time of bid submission.
 - **Preliminary Schedule of Subcontractors** must be submitted at the time of bid submission.
 - **Certification Certificates**. Copies of corresponding certification certificates must be attached to the Preliminary Schedule of Subcontractors at the time of bid submission.
 - **Good Faith Effort Documentation**. If the Contractor fails to meet the MBE goal, this documentation must be submitted at the time of bid submission.
 - **Final Schedule of Subcontractors** shall be submitted within three (3) business days from the date of the bid opening or with the bid verification.
 - **Intent to Perform as a Subcontractor** A signed and executed form for each MBE subcontractor identified on the Final Schedule of Subcontractors shall be submitted at the time of bid submission.

OR

2. Request for Proposals (RFP) or Request for Qualifications (RFQ):
 - **Commitment to MBE 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 MBE 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 MBE subcontractor identified on the Final Schedule of Subcontractors shall be submitted with the best and final offer.

OR

3. Request for Price Proposal for a task/delivery order under an Indefinite Delivery Contract:
 - **Commitment to MBE Participation** must be submitted at the time of bid/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 MBE 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 MBE goal must be detailed on the **Commitment to MBE Participation** form included with the bid/proposal. This commitment includes the following:

”The Contractor must maintain the MBE participation level to which it committed at Contract award throughout the performance of the Contract. A Contractor may not terminate for convenience a MBE subcontractor (or an approved substitute MBE 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 MBE 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 MBE to fulfill its MBE 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-MBEs, and detail the preliminary and/or final percentage and dollar commitment of the Contractor to MBE participation. Only MBEs 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 MBEs must be properly certified under the guidelines of the CERTIFICATION section. Submission of the **Intent to Perform as a Subcontractor** form for each MBE shall constitute a representation by the Contractor to the Board that it believes the MBE to be certified as a MBE 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 MBE for the work described at the approximate price and percentage set forth in the **Intent to Perform as a Subcontractor** form.
- iv. If the MBE'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 MBE 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 MBEs that occur after Contract award.

- v. Except as authorized by BDDD, the Contractor shall enter into formal agreements with the MBEs 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 to 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 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 MBE 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 MBE 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

- e. and audit opportunities for BDDD.
 - f. 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.
 - g. 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.
 - h. 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 MBE commitments.
 - i. 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.
 - j. Recommend methods for supporting BDDD administration and oversight of the Compliance Plan.
 - k. 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.
 - l. 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 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 MBE contractual commitments, BDDD will review the Contractor's MBE utilization throughout the term of the Contract, including any term extensions of the original Contract period. If a Contract includes a MBE contractual commitment, the Contractor must report all MBE 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 of the payments made to the MBE as well as non-MBE 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.
 - xi. Contract Close Out: To ensure that the Contractor meets all its MBE contractual commitments, BDDD will review the Contractor's MBE 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 MBE contractual commitment, the Contractor must

report all MBE 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 MBE contractual commitment stated in its **Commitment to Minority Business Enterprise (MBE) 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 MBE at the time of Contract award, then such amendment, change order or other modification must be contemporaneously submitted to BDDD. The Contractor must make good faith efforts to meet its MBE contractual commitment. If the Contractor is unable to meet its MBE 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 MBE subcontractor with its own forces or those of an affiliate, a non-MBE or another MBE.
- v. The Contractor must demonstrate good cause to terminate the MBE to the satisfaction of BDDD. Good cause includes the following circumstances:
 - 1. The listed MBE subcontractor fails or refuses to execute a written Contract.
 - 2. The listed MBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
 - 3. The listed MBE subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness.
 - 4. The listed MBE is ineligible to work on Board 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 MBE subcontractor is not a responsible Contractor.
 - 6. The listed MBE subcontractor voluntarily withdraws from the project and provides BDDD written notice of its withdrawal.
 - 7. The listed MBE subcontractor is ineligible to receive credit for the type of work required.
 - 8. The MBE owner dies or becomes disabled with the result that the listed MBE 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 MBE it relied upon to obtain the Contract so that the Contractor can self-perform the work or substitute another MBE or non-MBE subcontractor to perform the work for which the MBE was engaged or listed on the **Final Schedule of Subcontractors**.

- vi. The Contractor must give the MBE 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 MBE 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 MBE.
- 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 MBE. 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 MBE subcontractor for any reason, the Contractor must make good faith efforts as defined herein to find a substitute MBE subcontractor for the original MBE to meet its MBE contractual commitment. Its good faith efforts shall be directed at finding another MBE to perform or provide at least the same amount of work, material or service under the Contract as the original MBE to the extent necessary to meet its MBE contractual commitment. The Contractor may also find additional MBEs and/or adjust the current/projected MBE participation to meet its MBE contractual commitment.
- ix. The Contractor must submit a **Intent to Perform as a Subcontractor** form for each proposed new MBE 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 MBE subcontractor, the Board may elect to apply Contract remedies as described in the Policies. Additionally, the Board may order the Contractor to forfeit the profits from the terminated portion of the MBE subcontract.

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 MBE Program requirements. The contractual remedies set forth in the MBE 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 MBE participation on the Contract.
- iii. BDDD is empowered to receive and investigate complaints and allegations by MBEs, 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 Program requirements.
- iv. The failure of the Contractor to meet the MBE 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 MBE firms, a finding of non-compliance could result in a denial of certification or removal of eligibility and/or suspension and debarment.

L. Program Management Software: Owner utilizes Program Management Software on its computer system, to efficiently and effectively manage construction projects. This system allows many project management functions to be conducted electronically. Construction Manager may be directed by Owner to enter specific Project related information directly into Owner's Program Management Software in Owner's computer system on a day-to-day basis. Some project management functions that are executed within the system Construction Manager may be responsible for include (but are not limited to) Potential Change Order information, Meeting Minutes, Requests for Information (RFIs), Submittal Register, Submittal Packages, Daily Details, and Daily Work Journals. Unless otherwise specified, Construction Manager will use Owner supplied software licenses when using Owner's system.

M. Environmental Protection. Construction Manager must comply with all Federal, state, and local laws and regulations controlling pollution of the environment. The Construction Manager must take necessary precautions to prevent pollution of streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

N. Section 120 – Environmental and Safety Provisions:

120-1.0 ENVIRONMENTAL DEFINITIONS

BEST MANAGEMENT PRACTICE. Shall mean schedules of activities, prohibition of practices, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

ENVIRONMENTAL IMPACT CLAIM. Shall mean any claim, suit, judgment, penalty, fine, loss, administrative proceeding, request for information, citation, notice, request, inquiry, or expense (including but not limited to any costs of investigation, study, cleanup, removal, response, remediation, transportation, disposal, restoration, monitoring, consultant's fees, contractor's fees, and attorney's fees) which arises out of, is related to, alleges, or is based on the presence, transportation, handling, treatment, storage, or actual or threatened Release, dispersal, disposal, escape, or migration of any Hazardous Material, Process Water, or Solid Waste, or any other chemical, material, irritant, pollutant, contaminant, regulated substance, or toxic substance (including but not limited to gasoline, diesel fuel, petroleum hydrocarbons, and any by-product or derivative thereof), whether solid, liquid, or gaseous in nature.

ENVIRONMENTAL LAWS. Shall mean all present and future federal, state, and local laws relating to protection of the environment, public health, and welfare, or safety, including, without limitation, all statutes, regulations, ordinances, permits, Best Management Practices, codes, orders, governmental requirements related to discharge of Process Water or other pollutants into the environment, waters of the United States, and/or waters of the State of Texas; and protection of areas of particular environmental concern, including, for example, wetlands, areas

inhabited by endangered species, and historic sites.

HAZARDOUS MATERIAL. Shall mean any substance:

- a. the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or
- b. which is or becomes defined as a hazardous waste, hazardous substance, pollutant or contaminant under any federal, state, or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Texas Water Code and/or the Texas Health and Safety Code; or
- c. the presence of which on the Airport causes or threatens to cause a nuisance upon the Airport or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Airport; or
- d. without limitation, which contains gasoline, diesel fuel, other petroleum hydrocarbons, natural gas liquids, polychlorinated biphenyls (PCBs), asbestos, lead paint, or urea formaldehyde foam insulation.

PROCESS WATER. Means water which contains Hazardous Material from any point source subject to permit requirements or subject to the Texas Pollutant Discharge Elimination System, the National Pollutant Discharge Elimination System, the Clean Water Act, or the Texas Water Code, amendments thereto, and regulations promulgated pursuant thereto.

RELEASE. Means any depositing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment or threat of release such that a release may enter the environment;

SAFETY LAWS. Means any applicable law, regulation, standard, or order of any governmental agency relating to worker safety.

SOLID WASTE. Shall have the same meaning as in the Resource Conservation and Recovery Act, the Texas Health and Safety Code, and the Texas Solid Waste Disposal Act, and will include sewage.

120-2.0 ENVIRONMENTAL PROVISIONS

Construction Manager represents, warrants, and covenants the following:

- a. Construction Manager will obtain and maintain all licenses, permits, exemptions, registrations and other authorizations and provide any notices not obtained or provided by Owner pursuant to this Contract which is required under Environmental Laws for conducting the Work and Construction Manager's operations at the Airport.
- b. Construction Manager must comply and must cause all its employees, agents, sub-contractors, and other third parties under Construction Manager's control to comply, and must include in all subcontracts a provision requiring the sub-contractor to comply and all employees or other third parties under sub-contractor's control to comply with all Environmental Laws. Not by way of limitation, but as emphasis only, Construction Manager represents, warrants, and covenants that:
 1. Paints and coatings will comply with 30 Texas Administrative Code Section 115.421 (2000), and any amendments or successor thereto.
 2. Work involving the use of cut-back asphalt will comply with the 30 Texas Administrative Code Section 115.512 (2000), and any amendments or successor thereto. Cut-back asphalt is defined as any asphaltic cement which has been liquefied by blending with petroleum solvents (diluent).
- c. Construction Manager must comply and must cause its employees, agents, sub-contractors, and other third parties under Construction Manager's control to comply with all Owner's policies, rules, regulations, and permits, including Chapter 7 of the Owner's Code of Rules and Regulations (a copy of which is attached hereto as an Exhibit), and to conduct the Work consistent with the Owner's commitments under the State Implementation Plan and the National Environmental Policy Act.
- d. Construction Manager may not cause, contribute to, or permit any Release of any Hazardous Materials, Solid Waste, or Process Water by Construction Manager or its employees, agents, sub-

- contractors, or other third parties under Construction Manager's control into the environment or cause, contribute to, or permit any violation of any Environmental Law.
- e. Construction Manager must dispose of and cause its employees, agents, sub-contractors, or any other third party under Construction Manager's control to dispose of any Solid Waste or Hazardous Materials generated or located at the Airport in compliance with Environmental Laws, and, if not sooner required by Environmental Laws or this Contract, at the termination of this Contract must remove and dispose of all Solid Wastes and Hazardous Materials not incorporated into the work in accordance with this Contract at its sole expense in a lawful and timely manner.
 - f. Construction Manager must advise OWNER immediately of any potential or actual non-compliance with any Environmental Law or Safety Law on Airport property by any person.
 - g. Construction Manager must, immediately upon receipt, provide OWNER with copies of any notice or other document issued to Construction Manager or its sub-contractors alleging non-compliance or investigating potential non-compliance with any Environmental Law or Safety Law at the Airport.
 - h. Construction Manager must not initiate the Work unless and until it has submitted a Construction Application to OWNER and a Construction Permit has been issued for the project.
 - i. Construction Manager must comply with the Construction Application Review Comments of D/FW Environmental Affairs Department. Construction Manager must submit a completed Environmental Close-Out Checklist to D/FW Environmental Affairs Department upon completion of the Work.
 - j. The OWNER will ensure that the Construction Manager is notified not to initiate Work beyond the Scope of Work described in the relevant FAA review document issued to OWNER pursuant to the National Environmental Policy Act.
 - k. The Construction Manager must use construction equipment which has been designed and equipped to prevent or control air pollution in conformance with the regulations of the federal, state, local and airport authorities including any applicable State Implementation Plan and revisions thereto as provided by Owner. Evidence of such design and equipment will be maintained and made available for inspection by Owner's Authorized Representative.
 - l. The Construction Manager must monitor collected stormwater as required by Owner's Construction Application Review and/or relevant Construction Permit and/or Environmental Close-Out Checklist to insure it meets standards for allowable discharges set by appropriate laws, rules, regulations, ordinances and permits. Records of measurements will be retained by the Construction Manager for inspection by the Owner's Representative.
 - m. For sites equal to or greater than 5 acres, Construction Manager must submit to D/FW Environmental Affairs a completed and signed original Notice of Intent for coverage under the TPDES General Permit for Storm Water Discharges From Construction Activities for submittal to the governing agency by Owner prior to receiving an approved construction permit.
 - n. Spills, leaks, or releases of Hazardous Material must be reported immediately to the Airport Operations Center (AOC).
 - o. Construction Manager must comply with Owner's Spill Reporting Policy, Clean Air Policy, and Hydrocarbon Spill Recovery for Airport Ramp Area.
 - p. Construction Manager must provide a copy of its Storm Water Pollution Prevention Plan (SWPPP) to D/FW Environmental Affairs for review and approval prior to receiving an approved construction permit and the commencement of actual clearing, grading and/or excavation activity.
 - q. Upon final stabilization of all affected Work areas as defined in accordance with the requirements of the TPDES General Permit for Storm Water Discharges From Construction Sites, the following documents must be submitted to D/FW Environmental Affairs Department:
 1. One copy of the final SWPPP, signed and certified in accordance with 30 Texas Administrative Code (TAC) 305.44, including, at a minimum, the following items: all amendments, maintenance records, and inspection reports.
 2. For sites equal to or greater than 5 acres, a completed original Notice Of Termination (NOT) of Coverage Under the TPDES General Permit for Storm Water Discharges Associated with Construction Activity, signed in accordance with 30 TAC 305.44 for submittal by Owner to the governing agency.
 - r. While Owner may issue instructions to the Construction Manager concerning the placement and maintenance of erosion and sediment controls, the Construction Manager will be solely responsible for complying with all requirements of the SWPPP. The SWPPP must be reviewed periodically by

Construction Manager for compliance and updated as needed to fit the changing requirements of the Construction Manager's Work.

1. From time to time, and in Owner's sole discretion, OWNER may conduct an inspection, assessment, and/or regulatory compliance audit of the Work and/or Construction Manager's operations, including operations of Construction Manager's employees, agents, sub-contractors, or any other third party under Construction Manager's control. The OWNER may perform testing as needed and may conduct interviews of Construction Manager or its sub-contractors. Construction Manager will cooperate and will cause its employees, agents, sub-contractors, or any other third party under Construction Manager's control to fully cooperate in such inspection, assessment, or audit. Construction Manager remains solely responsible for its environmental compliance, notwithstanding any OWNER inspection, audit, or assessment.
2. If the Airport or adjacent property are contaminated or otherwise damaged or injured by any Solid Waste or Hazardous Materials released by Construction Manager or its employee, agent, sub-contractor, or any other third party under Construction Manager's control, Construction Manager agrees to promptly undertake remediation of such contamination or damage to background levels, and to restore the affected property to its condition prior to such contamination or damage in all material respects, or to such condition that no deed recordation will be required; provided that, if Construction Manager does not promptly and fully remediate and restore the affected property, OWNER may, but is not required to, perform the remediation and restoration, and Construction Manager must reimburse OWNER for all costs associated with such contamination, remediation, and restoration, including but not limited to consultants' fees, contractor's fees, penalties, attorneys' fees, and costs of investigation and remediation, within twenty (20) days after OWNER delivers notice to Construction Manager of such costs.
3. Failure by Construction Manager or its subcontractors to comply with any Environmental Provision will be considered a default for which OWNER may exercise its remedies in accordance with Section 80-11, Default and Termination of Contract.

120-3.0 ASBESTOS-CONTAINING MATERIALS

It is the policy of the D/FW Airport Owner that all architects, engineers, consultants, general contractors, subcontractors, distributors, suppliers, and others receiving proceeds from this Contract be bound by the Owner's philosophy toward the use of asbestos within the boundaries of the D/FW Airport. Towards this end, Construction Manager covenants and agrees that it will not use or install products containing asbestos in any form as part of this Contract or subsequent addendum or Change Order.

This provision applies to all materials and/or products placed in service within the boundaries of D/FW Airport under conditions and terms of this Contract. Construction Manager accepts and assumes all responsibility and liability for asbestos-containing products and/or materials installed or provided in performance of the Work. In addition, the Construction Manager accepts and assumes responsibility and liability for all expenses related to the removal, replacement and reparation of asbestos containing materials put in place under terms of this Contract. Should non-compliance of drawings, notations, and specifications within the asbestos prohibition contained herein be discovered by or on behalf of Construction Manager, the Construction Manager must promptly notify OWNER representatives in writing of the non-compliant notation or specification. The Construction Manager also certifies that a non-asbestos containing material or product of similar kind and quality will be substituted with the approval of Owner.

This provision reflects the mandate of Owner to promote the health, safety, and welfare of the public and to establish a standard for response to asbestos within the limits of Airport authority. Construction Manager must comply with all Environmental and Safety Laws relating to asbestos-containing materials.

This provision supersedes and replaces all other references, specifications, and notations relating to asbestos-containing materials which may appear in this Contract.

If any underground transite pipe or fuel lines are encountered during the project, the Construction Manager must immediately notify Construction Manager.

Any asbestos abatement performed must be conducted in accordance with applicable Environmental and Safety Laws, as well as OWNER standards. Asbestos abatement procedures must be submitted to D/FW Environmental Affairs for review and approval prior to beginning any abatement activity. No asbestos abatement Work may proceed without written authorization from the Airport Development & Engineering Department posted in the field with the Construction Permit.

If requested, manufactures of sealants, adhesives, gasket material, piping, curing materials, and similar building materials must submit letters of certification to Construction Manager that their products are free of asbestos.

120-4.0 ENVIRONMENTAL INDEMNITY

NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER, THE CITIES OF DALLAS AND FORT WORTH, TEXAS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND COUNCILS FROM AND AGAINST, AND TO REIMBURSE SAME WITH RESPECT TO, ANY AND ALL CLAIMS, DEMANDS, PENALTIES SUITS, ACTIONS, LOSS, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, LITIGATION COSTS, EXPERT WITNESS FEES, AND EXPENSES OF INVESTIGATION AND REMEDIATION) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, FIXED OR CONTINGENT, ASSERTED AGAINST OR INCURRED BY SUCH PARTIES AT ANY TIME BY REASON OF, IN CONNECTION WITH, OR ARISING OUT OF (A) THE BREACH OF ANY REPRESENTATION OR WARRANTY SET FORTH IN THIS SECTION 100 BY CONTRACTOR OR ANY EMPLOYEES, AGENTS, SUB-CONTRACTORS, OR ANY OTHER THIRD PARTY UNDER CONTRACTOR'S CONTROL, (B) THE FAILURE OF CONTRACTOR TO PERFORM ANY OBLIGATION REQUIRED BY THIS SECTION 120 TO BE PERFORMED BY CONTRACTOR, OR (C) LOSS FROM ANY ENVIRONMENTAL IMPACT CLAIM, AS DEFINED HEREIN, CAUSED IN WHOLE OR IN PART BY OR ARISING IN WHOLE OR IN PART FROM THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS EMPLOYEES, AGENTS, SUB-CONTRACTORS, OR ANY OTHER THIRD PARTY UNDER CONTRACTOR'S CONTROL; OR (D) THE VIOLATION BY CONTRACTOR OR ITS EMPLOYEES, AGENTS, SUB-CONTRACTORS, OR ANY OTHER THIRD PARTY UNDER CONTRACTOR'S CONTROL OF ANY BOARD ENVIRONMENTAL RULE OR REGULATION, BOARD PERMIT, BOARD POLICY, OR ANY ENVIRONMENTAL LAW.

120-5.0 SAFETY PROVISIONS

The Construction Manager covenants and agrees:

- a. That it will not cause or permit any hazardous chemical (as defined in 29 C.F.R. 1910.1200) to be brought upon the Airport without the prior written consent of OWNER. Consent may be given via the submittal process as long as all such materials are outlined on the submittal.
- b. That it will make available to OWNER a Material Safety Data Sheet (MSDS) for each hazardous chemical Contractor or its sub-contractors, employees, or agents five (5) days prior to delivery of material onto the Airport.
- c. That its operations will always remain in compliance with:
 1. OWNER'S written policies and requirements governing the identification and use of hazardous chemicals;
 2. All Safety Laws.
- d. That it will advise OWNER immediately of any potential or actual non-compliance by any person with any Safety Law on Airport property.
- e. That it will immediately upon receipt, provide OWNER with copies of any notice or other document issued to Construction Manager, its sub-contractors, or agents alleging non-compliance or investigating any potential non-compliance with any Safety Law at the Airport.

Neither the requirements of this clause nor any act or failure to act by Owner will relieve the Construction Manager of responsibility or liability for the safety of the public or OWNER, tenant, contractor, or subcontractor personnel or property.

120-6.0 SURVIVAL

The provisions of this Section, including the representations, warranties, covenants and indemnities of Construction Manager, will expressly survive termination of this Contract.

O. Miscellaneous Provisions.

- 1) **PUBLIC/MEDIA OUTREACH:** DFW Airport will work with any vendor, contractor or service provider in pursuit of positive public relations, with the following restrictions:
 - a) **NAME USE:**
 - i) Use of the name of Dallas Fort Worth International Airport (“DFW Airport,” “DFW International Airport,” etc.) in any outreach to news media, social media, or in any marketing or advertising must be approved in advance by DFW Airport.
 - ii) Any use of the Airport’s name in any external communications must receive approval by authorized personnel of DFW Airport prior to publication, distribution or dissemination to the public.
 - b) The Airport departments that can approve public outreach include Corporate Communications (CC), Marketing (MKT), or International Marketing & Public Relations (IMPR), depending on the type of outreach.
 - c) **LOGO USE:**
 - i) The use of the logo (brand) owned and controlled by the Dallas-Fort Worth International Airport Board (“Airport”) must be approved for each and all uses as it is the symbol of the Airport and must remain as a set graphic standard.
 - ii) Users are required to follow the guidelines posted on the Airport website (www.dfwairport.com/brand), including:
 - (1) Do not stretch, distort, colorize, filter or attempt to change it in any way.
 - (2) Use of the logo must receive prior approval by authorized Marketing Department personnel.
 - (3) Logos may not be used on any materials deemed inappropriate by the Marketing Department.
 - d) **ENDORSEMENTS or TESTIMONIALS:** DFW Airport cannot publicly endorse a contractor, vendor or service provided other than to describe in factual terms how the Airport has contracted with the service provider. DFW Airport personnel are not permitted to endorse or provide testimonials for any contractor, vendor, supplier or service in any external communications (news media, social media, marketing or advertising) medium.
- e) **Most Favored Client.**
 - i) **Warranty and Representation.** Construction Manager represents and warrants to Owner that all components of compensation (and, if applicable, the prices, discounts, rebates, allowances and other compensation terms) set forth in the Contract Documents are equal or more favorable to the similar compensation terms (and, if applicable, the prices, discounts, rebates, allowances and other compensation arrangements) contemporaneously offered by Construction Manager to any other client within agreements for services that are similar to the Work.
 - ii) **Duty to Notify of Third-Party More Favorable Terms.** If, subsequent to the Effective Date and during the Term, Construction Manager enters into any agreement with another client that contains compensation terms that are more favorable than those comparable compensation terms contained in the Contract Documents for services that are similar to the Work, it must immediately notify Owner of such arrangements and agrees to amend the Contract Documents to include those applicable and more favorable compensation terms, as directed and agreed to by Owner.
 - iii) **Exclusions.** This Clause will not apply to compensation arrangements that fall into 1 or more of the following categories:

- (1) **Dissimilar Operating Units.** The services at issue are not provided by the same operating unit (e.g. provided by an operating unit that has no indirect Cost pools in common with the operating unit providing Work under the Contract Documents);
 - (2) **Pro Bono.** The services at issue are pro bono in nature; or
 - (3) **Lump Sum.** The services at issue are provided under agreements that are primarily lump sum in nature, unless such agreements contain compensation components like those contained in the Contract Documents that are used to calculate any lump sum amounts; or
 - (4) **Below Threshold.** The services at issue are provided under an agreement that is less than \$100,000 in value; or
 - (5) **Equitable Considerations.** Other equitable considerations exist under which Owner determines, in its sole discretion, that an amendment of the Contract Documents to adopt the more favorable, common compensation terms would not be appropriate. Construction Manager must advise Owner when it notifies it of such more favorable, common compensation terms of any facts it contends exists to negate the requirement that the Contract Documents be amended to adopt such compensation terms. Any Owner determination on this issue will be final.
- iv) **Relation Back of Compensation Changes.** If the application of this Clause results in a modification of any compensation terms under the Contract Documents, that modification will be effective as of the date Construction Manager entered into its agreement with the other client. The Parties agree that any overpayments made on Pay Applications submitted to Owner by Construction Manager will be refunded or used as a setoff on future Pay Applications.
- v) **Warranty Reporting Requirements.** On January 1 of each year during the Term, Construction Manager must provide Owner a letter, executed by an appropriate representative of Construction Manager (subject to Owner's determination and written approval), warranting and confirming that it is in compliance with this provision and that no other clients of Construction Manager are operating under agreements or other arrangements containing compensation terms that are more favorable than those compensation terms provided in the Contract Documents.
- f) **Audit; Records and Inspection Rights.**
- i) **Maintenance.**
 - (1) Construction Manager (and Construction Manager's Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves) must maintain, and Owner 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 Owner to substantiate compliance with the terms of the Contract Documents, including, but not limited to, Costs and charges of whatever nature related to, incurred and/or anticipated to be incurred in the performance of the Contract Documents.
 - (2) Such right of examination will include inspection at all reasonable times of Construction Manager's office or facilities or such parts thereof as may be engaged in the performance of the Contract Documents and cooperation by Construction Manager Personnel (including, but not limited to, cooperation in obtaining records from Construction Manager's Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves), as reasonably considered necessary by Owner's representatives to complete the audit.

ii) Examination.

(1) Scope. Owner will have the right to examine all books, records, documents, and other data of Construction Manager related to the negotiation, pricing, or performance of the Contract Documents, including Change Orders, Modifications, Amendments or similar documents, for evaluating the accuracy, completeness and currentness of the Costs or pricing data submitted or retained regarding providing Work. 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 Owner.

(2) Format; Costs; Availability.

(a) Construction Manager's (and Construction Manager'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 Owner. Construction Manager, (and Construction Manager's Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves) must provide Owner with retrievals, in the format(s), including, but not limited to, the file format(s), specified by Owner, of computer-based records or transactions that Owner determines to be necessary to conduct the audit.

(b) There will be no charge to Owner for reasonable use of photocopy machines while conducting the audit, or for any Costs of retrieving, downloading, and/or printing and delivering to Owner any records or transactions stored in magnetic, optical, microfilm, or other media.

(c) Construction Manager (and Construction Manager's 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.

(d) Owner may also request, and Construction Manager agrees to provide, monthly, categories of records subject to Owner's right to audit for review by Owner.

iii) Retention.

(1) General. All records required to be produced/made available under this Clause must be made available at any office of Construction Manager where they are located at all reasonable times, for inspection, audit or reproduction, until the expiration of 4 years from the date of final payment. Construction Manager must provide adequate and appropriate workspace to conduct all audits, inspections and reviews. If requested by Owner, computer-based retrievals and copies of selected documents and records must be delivered to Owner. Owner will provide Construction Manager with reasonable notice of intended audits, inspections and reviews.

(2) Termination. If this Contract is completely or partially terminated, the records relating to the Work terminated must be made available for a period of 2 years from the date of final payment.

(3) Litigation/Claims. Records which relate to litigation or settlement of claims arising out of the performance of this Contract must be made available for a period of 2 years from the date of final disposition of such litigation or claims.

iv) Pass-Down. Construction Manager 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 Owner, Construction Manager must submit copies to Owner of all Subcontracts and changes to Subcontracts pertaining to this Contract. 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 Construction Manager pursuant to the Contract Documents.

- v) **Audit; Overcharges.** If an audit or review, in accordance with this Article, discloses overcharges (of any nature) by Construction Manager more than 3% of the total Contract value audited, the Cost of Owner's audit will be reimbursed by Construction Manager (in addition to the amount overcharged). The amount of Owner's audit reimbursement will not exceed the value of the overcharges.

g) Conflicts.

- i) **Prohibition on Conflicts.** Construction Manager covenants that it, its Subcontractors, Construction Manager 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 Work under the Contract Documents or any Subcontract. Construction Manager further covenants that no Person having such conflicting interest will be employed by it or any Subcontractors or allowed to act as its/their representative.

ii) Prohibited Contracts/Agreements.

- (1) **Prohibition.** Other than the Work provided concerning this Contract, Construction Manager, Subcontractors, Construction Manager Personnel or Persons employed by them or acting on their behalf [including Persons that comprise Construction Manager or any Subcontractor (e.g. a joint venturer, if Construction Manager or a Subcontractor is a Joint Venture; a partner, if Construction Manager or a Subcontractor is a partnership)] are prohibited from contracting with, or providing services to:

- (a) Owner; and
- (b) Any Person doing business at the Airport.

- iii) **Waiver.** Construction Manager may seek a waiver from this Clause for it, a Subcontractor, a Construction Manager Personnel or a Person employed by them or acting on their behalf by requesting such waiver in writing setting forth in detail why Owner should grant that waiver. Owner's determination on any waiver request will be final.

h) Attorneys' Fees and Costs.

i) Recoverable Litigation Costs.

- (1) **Litigation Costs.** In any litigation filed by either Party against the other arising out of a dispute under or relating to this Contract, the prevailing Party in the litigation at trial and on appeal, if applicable, will be entitled to recover its reasonable and necessary attorneys'/paralegals' fees and litigation costs and expenses regarding such litigation (collectively, the "Litigation Costs") incurred by it that are equitable and just, as fixed by the Court in accordance with this clause. **THE USE OF THE TERM "COURT" IN THIS CLAUSE MEANS A COURT OF COMPETENT JURISDICTION AND ANY AWARD OF LITIGATION COSTS WILL BE DETERMINED BY THE JUDGE OF SUCH COURT, NOT A JURY; THIS CONSTITUTES A JURY WAIVER.** Accordingly, the prevailing Party must file and serve a post judgment motion for recovery of its Litigation Costs, the motion must comply with Texas Applicable Laws, and a hearing may be held on the motion at the Court's discretion.

(2) Litigation Costs Include Fees of In-House and Outside Counsel/Paralegals.

- (a) Recoverability.** Litigation Costs recoverable by any Party include Litigation Costs incurred by any in-house counsel/paralegals and/or outside counsel/paralegals it uses as set forth in this clause.
- (b) In-House.** If a Party is represented by in-house counsel, the attorneys' fees component of such Litigation Costs will be set at \$300/hour for attorneys who have been licensed and actively practicing 10 or more years, \$250/hour for attorneys who have been licensed and actively practicing for less than 10 years; recoverable fees for paralegals will be set at \$100/hour. Litigation Costs attributable to each attorney and paralegal will be calculated using the computed hourly billing rate times the number of hours worked on the litigation. This formula is still subject to all limitations set forth in this clause.
- (c) 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. This calculation is still subject to all limitations set forth in this clause.
- (d) 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 litigation.

ii) Prevailing Party.

- (1) Defined.** The term "prevailing Party," means: (a) that Party who obtains a final, enforceable judgment (including a dismissal) in its favor on a pleaded claim or defense that is upheld by the trial court or, in the case of an appeal, by the final appellate body that considers the appeal, and (b) in the case of a Party seeking monetary relief on one or more affirmative claims, that Party must also be awarded a final enforceable judgment in its favor of at least seventy-five percent (75%) of its pleaded damages (where such judgment is upheld by the trial court or, in the case of an appeal, by the final appellate body that considers the appeal).
- (2) 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.
- (3) 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 Contract, 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 one Party asserts numerous claims against the other and some or all those claims are successfully defended against.

iii) Allocation between Equitable and Legal Claims. In all cases where a Party is awarded a remedy in equity or at law, all Litigation Costs awarded will be consistent with this clause, equitable and just, and in reasonable proportion to the relief granted. If a Party's trial pleadings request remedies in equity and at law, and that Party seeks the recovery of Litigation Costs for both types of relief, it must reasonably, equitably, and justly 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.

- i) **Owner Code of Business Ethics.** Construction Manager agrees to provide to Construction Manager Personnel a copy of the Owner's Code of Business Ethics and to ensure that Construction Manager Personnel comply with such Code in terms of Construction Manager Personnels' interaction with employees of the Owner. Additionally, Construction Manager Personnel will comply with the terms of such Code of Business Ethics as if each were, in fact, an employee of the Owner.
- j) **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 Contract will be litigated in such courts.
- k) **State Sales and Use Taxes.** Owner qualifies for exemption from certain State and local sales and use taxes pursuant to Applicable Laws. Construction Manager may claim exemption from payment of certain applicable State taxes by complying with procedures prescribed by the State Comptroller of Public Accounts. It is Construction Manager's obligation to evaluate and utilize available procedures for gaining tax-exempt status for any portion of its Work. Owner is not obligated to compensate Construction Manager for taxes paid on items that qualify for tax exemption.
- l) **Independent Contractor.**
 - i) **Legal Relationship.** Construction Manager is an independent contractor of Owner and nothing in the Contract Documents will be deemed to constitute Construction Manager and Owner as partners, joint venturers, 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) **Subcontractors.** Nothing contained in the Contract Documents or any document in any way relating to it (including, but not limited to, Subcontracts, purchase orders, Pay Applications or similar documents) will create any contractual relationship between Owner and any of Construction Manager's Subcontractors, their Construction Manager Personnel, agents, representatives and similar Persons.
- m) **Owner Information Systems Security.** Construction Manager agrees that it, all subcontractors, Construction Manager or subcontractor personnel and any persons acting on their behalf will follow Applicable Laws concerning Owner information systems security and information technology systems and assets.
- n) **SSI.** Construction Manager agrees that it, all subcontractors, Construction Managers or subcontractor 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.
- o) **Contracting Prohibitions:**
 - i) Construction Manager verifies and agrees that:
 - (1) it does not boycott Israel; and
 - (2) it will not boycott Israel during the Contract term.
 - ii) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
 - iii) This Contract will immediately terminate for default if, during its term, Construction Manager:

- (1) boycotts Israel, effective upon the first act that constitutes a “boycott Israel” action under the definition; or
- (2) is placed on any list identifying a company that:
 - (a) contracts with or provides supplies or services to a foreign terrorist organization;
 - (b) engages in certain scrutinized business operations in Sudan, Iran or with a designated foreign terrorist organization; or
 - (c) has been complicit in the Darfur genocide during any preceding 20-month period.⁴
- iv) Construction Manager warrants to Owner that it will not be placed on any of those lists during the Contract term.

⁴ See Texas Government Code; Chapter 2252; Subchapter F; Prohibition on Contracts with Certain Companies (including Sections 2252.152 and 2252.153); Chapter 2270; Prohibition on Contracts with Companies Boycotting Israel; and Chapter 2270; Prohibition on Investing Public Money in Certain Investments (including Sections 2270.0001, 2270.0052, 2270.0102 and 2270.0152).