

**CONTRACT AGREEMENT**

THE STATE OF TEXAS                    )  
   )  
 COUNTIES OF DALLAS/TARRANT    )

THIS CONTRACT dated the [REDACTED] and effective when signed by all parties, is entered into by the DALLAS-FORT WORTH INTERNATIONAL AIRPORT BOARD, a public body, established under the laws of the State of Texas and hereunto duly authorized by contract between the CITY OF DALLAS, a municipal corporation of Dallas County, Texas, and the CITY OF FORT WORTH, a municipal corporation of Tarrant County, Texas, herein called "Board", and **NAME OF CONTRACTOR a STATE OF INCORPORATION OR REGISTRATION KIND OF BUSINESS**, with offices at **ADDRESS OF CONTRACTOR** herein called "Contractor".

**WITNESSETH**

**1. CONTRACT AMOUNT**

That for and in consideration of the payments and agreement hereinafter mentioned to be made and performed by the Board, the Contractor hereby agrees with the Board to commence and complete the construction of certain improvements herein referred to as the "Work" as further defined herein as follows: **"Lounge Finish-Out at Terminal D"** Project, for the of **CONTRACT AMOUNT SPELLED IN WORDS (\$CONTRACT AMOUNT NUMERICAL)**. The actual amount due the Contractor for the Work shall be determined in accordance with the Contract Documents.

**2. COMMENCEMENT OF WORK**

The Contractor hereby agrees and binds himself to commence the construction of the Work within ten (10) calendar days of the date set forth in the written Notice to Proceed, diligently proceed with the Work, and complete the Work within the specified one hundred and eighty (180) consecutive calendar days of the date set forth in the Notice To Proceed for Substantial Completion with an additional sixty (60) consecutive calendar days for Final Completion, for a total of two hundred and forty (240) consecutive calendar days.

**3. SURETY BOND**

The Contractor agrees, that within ten (10) days after Notice of Award, and before beginning the Work, to make, execute, and deliver to the BOARD, a good and sufficient Surety Bond for the faithful performance of the terms and stipulations of the Contract, and agrees to make, execute, and deliver to the BOARD a good and sufficient Surety Bond as a guarantee that he will pay in full all bills and accounts for materials and labor used in the construction of the Work as provided by law in accordance with the BOARD's requirements set forth in "Contract". The Surety Company shall be a Surety company duly and legally authorized to do business in the State of Texas and acceptable to the BOARD.

**4. VENUE**

It is mutually agreed and understood that this agreement is made and entered into by the parties hereto in accordance with the existing laws of the State of Texas with reference to and governing all matters affecting this Contract, and the Contractor agrees to fully comply with all the provisions of the same. Venue of any action brought under this Contract shall lie in Dallas or Tarrant County exclusively.

**5. ENTIRE AGREEMENT/ORDER OF PRECEDENCE/CONFLICT**

This Contract, the documents issued hereunder, and the accompanying Special Provisions, General Provisions, Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors, Plans, Technical Specifications, Addenda, Bid Documents, any required Performance Bond and Payment Bond and any required Insurance Certificates as identified on Attachment A hereto and other instruments specifically referred to

herein constitute the entire agreement between the parties, and no prior or contemporaneous written or oral agreement exists now which can be deemed to alter the provisions hereof. If there is a conflict between any of the documents constituting the Contract, Exhibit 8 – Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors will take precedence.

**6. EXECUTION OF AGREEMENT**

EXECUTED on behalf of the DALLAS-FORT WORTH INTERNATIONAL AIRPORT BOARD as duly authorized by Resolution No. xxx-xx-xxx of said BOARD, approved on \_\_\_\_\_ specifying the payment of the consideration herein provided from the account of the Joint Airport Fund designated in said Resolution, and on behalf of **CONTRACTOR FIRM NAME** by the duly authorized officer whose name is subscribed below.

**Contractor: CONTRACTOR FIRM NAME**

\_\_\_\_\_

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title

**Approved As To Form:**

\_\_\_\_\_  
LEGAL COUNSEL TO THE DALLAS/FORT  
WORTH INTERNATIONAL AIRPORT BOARD

**Dallas/Fort Worth International Airport Board:**

\_\_\_\_\_

**ATTACHMENT A**  
**SCHEDULE OF CONTRACT PROVISIONS, PLANS,**  
**SPECIFICATIONS, ADDENDA AND OTHER ITEMS**  
**(To be Incorporated into Contract by Reference)**

Plans:

Incorporated into Contract No. 9500658 are the plans titled Lounge Finish-Out at Terminal D, prepared by \_\_\_\_,  
\_\_\_\_ issued on \_\_\_\_\_.

Specifications:

Incorporated into Contract No. 9500658 are the Technical Specifications titled Lounge Finish-Out at Terminal D,  
prepared by \_\_\_\_, \_\_\_\_ issued on \_\_\_\_\_.

Addenda:

Addendum No. 1 issued \_\_\_\_\_, 20xx.  
Addendum No. 2 issued \_\_\_\_\_, 20xx.  
Addendum No. 3 issued \_\_\_\_\_, 20xx.  
Addendum No. 4 issued \_\_\_\_\_, 20xx.

Exhibits:

Exhibit 1 – Performance Bond  
Exhibit 2 – Payment Bond  
Exhibit 3 – Request for Bid (RFB)  
Exhibit 4 – Insurance Certificates  
Exhibit 5 – Special Provisions  
Exhibit 6 – General Provisions  
Exhibit 7 – Technical Specifications & Plans  
Exhibit 8 – Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors

## Exhibit 1 – PERFORMANCE BOND

THE STATE OF TEXAS )  
COUNTY OF DALLAS AND )  
COUNTY OF TARRANT )

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_,  
of \_\_\_\_\_, hereinafter called Principal, and \_\_\_\_\_,  
a corporation organized and existing under the laws of the State of \_\_\_\_\_ and fully authorized to  
transact business in the State of Texas, as Surety, are held and firmly bound unto the Dallas/Fort Worth  
International Airport Board, acting on behalf of the Cities of Dallas and Fort Worth, municipal corporations  
organized and existing under the laws of the  
State of Texas, hereinafter called Board, in the penal sum of \_\_\_\_\_  
\_\_\_\_\_ DOLLARS  
(\$ \_\_\_\_\_) in lawful money of the United States, to be paid in Dallas County or  
Tarrant County, Texas, for the payment of which sum well and truly to be made, we hereby bind ourselves, our  
heirs, executors, administrators, and successors, jointly and severally, firmly by these presents. This Bond shall  
automatically be increased by the amount of any Change Order which increases the Contract price, but in no  
event shall a Change Order which reduces the Contract price decrease such obligations.

**THE OBLIGATION TO PAY SAME** is conditioned as follows:

Whereas, the Principal entered into a certain Contract designated as **Contract Number 9500658**, with the  
Dallas/Fort Worth International Airport Board, the Board, dated \_\_\_\_\_, a copy of which is hereto attached  
and made a part hereof, for the “**Lounge Finish-Out at Terminal D**” Project.

**NOW, THEREFORE**, if the Principal shall well, truly, and faithfully perform and fulfill all of the  
undertakings, covenants, terms, conditions, and agreements of said Contract in accordance with the plans,  
specifications, and Contract documents during the original term thereof and any extension thereof which may be  
granted by the Board, with or without notice to the Surety, and during the life of any guaranty or warranty required  
under this Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms,  
conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be  
made, notice of which modifications to the Surety being hereby waived; and, if the Principal shall repair and/or  
replace all defects due to faulty materials and workmanship that appear within a period of one (1) year from the  
date of final completion and final acceptance of the Work by Board; and, if the Principal shall fully indemnify and  
save harmless the Board from all costs and damages which Board may suffer by reason of failure to so perform  
herein and shall fully reimburse and repay Board all outlay and expense which the Board may incur in making  
good any default or deficiency, then this obligation shall be void; otherwise, it shall remain in full force and effect.

**PROVIDED FURTHER**, that if any legal action be filed upon this Bond, venue shall lie in Tarrant or Dallas  
County, State of Texas.

**AND PROVIDED FURTHER**, that the said Surety, for value received, hereby stipulates and agrees that  
no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed  
thereunder or the Specifications accompanying the same shall in anyway affect its obligation on this Bond, and it  
does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract  
or to the Work or to the Specifications.

This Bond is given pursuant to the provisions of Chapter 2253, Public Work Performance and Payment  
Bond, Texas Government Code Title 10, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent  
in Dallas or Tarrant County to whom any requisite notices may be delivered and on whom service of process may  
be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance Code, Vernon's  
Annotated Civil Statutes of the State of Texas.

**IN WITNESS WHEREOF**, this instrument is executed in two copies, each one of which shall be deemed an original, this the [redacted].

**Principal:**

\_\_\_\_\_

BY: \_\_\_\_\_

Typed Name

Title

**Surety:**

\_\_\_\_\_

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

Typed Name

Title

The Resident Agent of the Surety in Dallas or Tarrant County, Texas, for delivery of notice and service of process is:

NAME: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

**(Note: Date of Performance Bond must be date of Contract. If Resident Agent is a corporation, give a person's name.)**

**Exhibit 2 – PAYMENT BOND**

THE STATE OF TEXAS )  
COUNTY OF DALLAS AND )  
COUNTY OF TARRANT )

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_,  
of \_\_\_\_\_, hereinafter called Principal, and \_\_\_\_\_,  
a corporation organized and existing under the laws of the State of \_\_\_\_\_ and fully  
authorized to transact business in the State of Texas, as Surety, are held and firmly bound unto the  
Dallas/Fort Worth International Airport Board, acting on behalf of the Cities of Dallas and Fort Worth,  
municipal corporations organized and existing under the laws of the State of Texas, hereinafter called  
Board, in the penal sum of \_\_\_\_\_

\_\_\_\_\_ DOLLARS (\$) in lawful money of the United States, to be paid in  
Dallas County or Tarrant County, Texas, for the payment of which sum well and truly to be made, we  
hereby bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by  
these presents. This Bond shall automatically be increased by the amount of any Change Order which  
increases the Contract price, but in no event shall a Change Order which reduces the Contract price  
decrease such obligations.

**THE OBLIGATION TO PAY SAME** is conditioned as follows:

Whereas, the Principal entered into a certain Contract designated as **Contract Number 9500658** with the  
Dallas/Fort Worth International Airport Board, the Board, dated the \_\_\_\_\_, a copy of which is hereto  
attached and made a part hereof, for the "Lounge Finish-Out at Terminal D" Project.

**NOW, THEREFORE**, if the Principal shall well, truly, and faithfully perform its duties and make  
prompt payment to all persons, firms, subcontractors, corporations, and claimants supplying labor and/or  
materials in the prosecution of the Work provided for in said Contract and any and all duly authorized  
modifications of said Contract that may hereafter be made, notice of which modification to the Surety is  
hereby expressly waived, then this obligation shall be void; otherwise it shall remain in full force and effect.

**PROVIDED FURTHER**, that if any legal action be filed on this Bond, venue shall lie in Tarrant or  
Dallas County, Texas.

**AND PROVIDED FURTHER**, that the said Surety, for value received, hereby stipulates and agrees  
that no change, extension of time, alteration, or addition to Contract, or to the Work performed thereunder,  
or the Plans, Specifications, Drawings, etc., accompanying the same, shall in anyway affect its obligations  
on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition  
to the terms of the Contract, or to the Work to be performed thereunder.

This Bond is given pursuant to the provisions of Chapter 2253, Public Work Performance and  
Payment Bond, Texas Government Code Title 10, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident  
Agent in Dallas or Tarrant County to whom any requisite notices may be delivered and on whom service of  
process may be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance  
Code, Vernon's Annotated Civil Statutes of the State of Texas.

**IN WITNESS WHEREOF**, this instrument is executed in two copies, each one of which shall be deemed an original, this, the [redacted].

**Principal:**

\_\_\_\_\_

BY: \_\_\_\_\_

Typed Name

Title

**Surety:**

\_\_\_\_\_

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

Typed Name

Title

The Resident Agent of the Surety in Dallas or Tarrant County, Texas, for delivery of notice and service of process is:

NAME: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

**(Note: Date of Payment Bond must be date of Contract. If Resident Agent is a corporation, give a person's name.)**

**Exhibit 3 – Request for Bids (RFB)**



**Exhibit 4 – Insurance Certificates**  
*Insert Insurance Certificates here*

**Exhibit 5 – Special Provisions**

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**1.0 LIQUIDATED DAMAGES – CONSTRUCTION**

- A. Not Used
- B. Contractor agrees to complete the construction of the Project in accordance with the agreed upon Project Schedule, Substantial Completion Date and Final Completion Date.
- C. If Contractor fails to achieve Substantial Completion on or before the Substantial Completion Date, Contractor must pay \$2,100.00 per Day for each Day that Contractor fails to achieve Substantial Completion.
- D. Both Contractor and DFW acknowledge that it is difficult and/or impossible to ascertain the precise amount of damages resulting to DFW from Contractor's failure to achieve Substantial Completion by the Substantial Completion Date. Accordingly, DFW and Contractor agree that the amounts set forth in this Clause represent a fair and reasonable estimate of potential damages and constitute liquidated damages and not a penalty.
- E. The liquidated damages potentially assessable under this Clause apply only to Contractor's failure to meet the Substantial Completion Date and do not apply to any other breaches of the Agreement Documents by Contractor, all such breaches being the subject of separate, independent remedies under the Agreement Documents and Applicable Law. The Parties further agree, however, that, in addition to liquidated damages, DFW may exercise against Contractor any other right or remedy (other than additional damages) available under the Agreement Documents or Applicable Law for Contractor's failure to meet the Substantial Completion Date.
- F. The Parties agree that the per diem liquidated damages amount of \$1,500.00 is a reasonable forecast of per diem damages that DFW might ultimately suffer as a result of Contractor's failure to meet the Substantial Completion Date and that such liquidated damages are not disproportionate to potential actual damages.

**2.0 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 (xx%) MBE participation of the total dollar value of this Contract including any change orders and/or modifications throughout the term of this Contract/agreement. The commitment is a contractual commitment upon execution of the Contract.**

**A. GENERAL REQUIREMENTS**

- 1. 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.
- 2. 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.
- 3. 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.
- 4. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in

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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.

5. 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.
6. 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").
7. The Contractor shall maintain records, as specified in the Audit and Records Section of the Special Provisions in the Contract, showing:
  - a. Subcontract/supplier awards, including awards to MBEs;
  - b. 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**

1. 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.
2. The Contractor shall appoint a high-level official to administer and coordinate the Contractor's efforts to carry out its MBE contractual commitments.
3. 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.
4. 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**

1. 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.
  - a. 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.

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- b. 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.
  - i. 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.
- 2. 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.
- 3. A Contractor cannot require exclusive subcontracting or teaming arrangements or agreements with subcontractors.
- 4. 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.
- 5. 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.
- 6. 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:
  - a. 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);

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- b. 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);
- c. 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);
- d. 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);
- e. 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);
- f. 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);
- g. 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);
- h. 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

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- the MBE on the contract);
    - i. Whether the Contractor made efforts to assist interested MBEs in obtaining Board or Contractor-required bonding, lines of credit, insurance, etc.;
    - j. Whether the Contractor made efforts to assist interested MBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
    - k. 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);
    - l. 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
    - m. 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.
- 7. 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.
- 8. 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.
- 9. 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 75261-9428As part of the reconsideration, the Contractor will have the opportunity to provide written documentation or argument concerning the issue of good faith.
- 10. 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.
  - a. Such good faith efforts during Contract performance must include, but are not limited to:
    - i. Solicitation of MBEs that are certified in the applicable area of work or



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- specialty;
  - ii. Providing interested MBEs with adequate information about the plans, specifications, scope of work and requirements of the Contract;
  - iii. 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;
  - iv. 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
  - v. 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
- b. 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

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. MBE prime Contractors can count their self-performance toward meeting the Contract

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- Specific Goal, but only for the scope of work and at the percentage level they will self-perform.
9. 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.
  10. 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
  11. 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).
  12. 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.
  13. 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.
  14. 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.
    - a. 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.
    - b. 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.
    - c. 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.
    - d. 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.
  15. The Contractor shall use the following factors in determining whether a MBE trucking company is performing a commercially useful function:
    - a. The MBE must be responsible for the management and supervision of the entire

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- 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.
- b. The MBE must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.
  - c. 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.
  - d. 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.
  - e. 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.
  - f. 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.
16. The Contractor shall count expenditures to MBEs for materials or supplies towards the MBE goal as follows:
- a. MBE Manufacturer
    - i. 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.
    - ii. 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.
  - b. MBE Regular Dealer
    - i. 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.
    - ii. 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.
    - iii. 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

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are not regular dealers within the meaning of this paragraph.

17. 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.
18. 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.
19. The Board reserves the right to reject the participation of a certified firm for credit towards meeting the Contract goal, in its sole discretion.
20. 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.
21. The Contractor shall not count the participation of a MBE subcontractor toward the goal until the amount has been actually paid to the MBE.
22. The following expenditures to MBE firms may also count toward the MBE goal:
  - a. 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.
  - b. 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.
  - c. 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

1. 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) or the DFW Minority Supplier Development Council. Other certifications are not acceptable.
2. 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.
3. 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

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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.

4. 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.
5. 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.
6. 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>

7. 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

1. Each Contractor must submit for all solicitations, bids or proposals, completed MBE utilization forms as outlined below to be considered responsive.
  - a. 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

- b. 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

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- OR
- submitted with the best and final offer.
- c. 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.
2. 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."*
3. 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.
4. 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.
5. 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

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written request.

6. Alternative ***Compliance Plan***

- a. 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:
  - i. 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.
  - ii. 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.
  - iii. 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.
  - iv. After consultation with the Department head or a designated representative, BDDD shall establish a timetable for submittal and review of the proposed Compliance Plan.
  - v. 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.
- b. At a minimum, a proposed Compliance Plan must:
  - i. 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.
  - ii. Provide a detailed program for community outreach and support to enhance MBE opportunities.
  - iii. 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.
  - iv. Describe in detail how the bidders or proposers will make good faith efforts to meet the project goal, including work that the bidders or proposers would normally self-perform, and provide for review, reconciliation milestones and audit opportunities for BDDD.
  - v. 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

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- project goal on a phased/ package or cumulative basis.
- vi. 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.
  - vii. 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.
  - viii. 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.
  - ix. Recommend methods for supporting BDDD administration and oversight of the Compliance Plan.
  - x. 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.
  - xi. Set forth a detailed methodology for final reconciliation of participation performance, measured against the established goal and plan close out.
- c. 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

- 1. 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.
- 2. 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.
- 3. 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:
  - a. the percentage amount of retainage withheld/released;
  - b. the schedule for withholding/releasing retainage;



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- c. the phased release of retainage according to any phased completion (substantial/final) of portions of the project;
  - d. 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);
  - e. 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).
4. 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.
  5. 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.
  6. Payment by a Contractor in violation of the terms of the Contract or applicable law will constitute a material breach of this Contract.
  7. 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.
  8. 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.
  9. 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.
  10. 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.
  11. Contract Close Out: To ensure that the Contractor meets all its MBE contractual

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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.

12. 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

1. 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.
2. 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.
3. 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.
4. 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.
5. The Contractor must demonstrate good cause to terminate the MBE to the satisfaction of BDDD. Good cause includes the following circumstances:
  - a. The listed MBE subcontractor fails or refuses to execute a written Contract.
  - b. The listed MBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
  - c. The listed MBE subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness.
  - d. 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.
  - e. BDDD has determined that the listed MBE subcontractor is not a responsible Contractor.
  - f. The listed MBE subcontractor voluntarily withdraws from the project and provides

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- BDDD written notice of its withdrawal.
- g. The listed MBE subcontractor is ineligible to receive credit for the type of work required.
  - h. The MBE owner dies or becomes disabled with the result that the listed MBE subcontractor is unable to complete its work on the Contract.
  - i. 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**.
6. 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.
  7. 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.
  8. 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.
  9. 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.
  10. 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.
  11. 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

1. 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.
2. 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.
3. 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

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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.

4. 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.
5. 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.
6. 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:
  - a. withholding funds payable under this Contract, including, but not limited to, funds payable for work self-performed by the Contractor or applicable retainage;
  - b. temporarily suspending, at no cost to DFW, Contractor's performance under the Agreement/Contract;
  - c. termination of the Agreement/Contract;
  - d. 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.
7. 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.

### 3.0 INSURANCE PROVISIONS

#### A. DEFINITIONS FOR INSURANCE PROVISIONS

1. "We", "us", or "our" means the Dallas/Fort Worth International Airport Board.
2. "You" or "your" means the vendor, contractor, tenant, consultant, engineer, architect, and their agents, servants, employees, or other party to a contract with us.
3. "Contract" means the contract, purchase order, Invitation for Bid, or similar memorandum or agreement.
4. For purpose of defining Additional Insured and Waiver of Subrogation, the term "Dallas Fort Worth International Airport Board (the Board) and the Cities of Dallas and Fort Worth, Texas" (the Cities) shall also mean the elected officials, boards, officers, employees, agents and representatives of the Board and the Cities.

#### B. GENERAL REQUIREMENTS

1. You shall, at your own expense, maintain in effect not less than the following coverages and limits of insurance, which you shall maintain with insurers. If your coverage fails to comply with these requirements, you agree to amend, supplement or endorse the existing coverage to comply, at no additional cost to us, and to maintain such insurance through the end of the contract, warranty period, or other specified time period, whichever is longer. ANY deviation from the requirements outlined below requires the prior written approval of the Board's Assistant Vice President of Risk Management.
2. All required policies must be written through a company approved to transact that class of insurance business in the State of Texas, with a minimum rating of 'A -', and 'VII' by A. M. Best Company. If the rating of any insurer should fall below this standard, you shall cause the policy to be replaced promptly by an acceptable insurer.
3. All required policies, except policies for workers' compensation, professional liability and pollution liability, shall designate the below mentioned parties as "Additional Insureds".
  - a. "Dallas Fort Worth International Airport Board and the Cities of Dallas and Fort



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- a. Coverage must apply to all vehicles (owned, non-owned, or hired) operating on our site/location, or transporting our people or property off our site, except vehicles operated by you or your employee(s) commuting in personal vehicles to our parking facilities, in which case you must only carry Employer's Non-Ownership coverage, (same limit), and ensure that such vehicle(s) are personally insured.
- b. Auto pollution liability coverage is required on vehicles hauling hazardous cargo.
- c. If your operations are solely a garage (vehicle maintenance and repair), you must carry Garage Liability, instead of Business Auto Liability, but the Garage Liability must not be limited to auto liability only, and the same limit applies.

**D. ADDITIONAL LIMITS REQUIRED FOR CONTRACTS WITH OPERATIONS IN SECURE/AOA AREAS**

- 1. **Excess Liability (Secure Side)**  
**Limit Any One Occurrence/Aggregate** \$5,000,000
- 2. **Excess Liability (AOA)**  
**Limit Any One Occurrence/Aggregate** \$10,000,000
- 3. Total limits required may be satisfied through a combination of Primary and Excess/Umbrella Liability insurance policies.
- 4. Excess/Umbrella Liability coverage must follow form or be at least as broad as the underlying Primary insurance.

**E. ADDITIONAL COVERAGE AND LIMITS THAT MAY BE REQUIRED as needed for specific contracts. Note that additional limits may be required if warranted by exposure.**

- 1. **Professional Liability Insurance** (if providing a service) \$1,000,000
  - a. Your policy must cover the type of professional service you will provide in fulfilling your contract with the Board.
  - b. If the Professional Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of the contractor's first professional service to the Board.
- 2. **Pollution Liability Insurance** (if exposure to pollutants) \$1,000,000
  - a. If you have any exposure to asbestos, lead, mold, (including any work which could, if not performed properly, lead to mold or fungal contamination), petroleum products, contaminated soils, or other pollutants, you shall provide appropriate Pollution Liability or Environmental Impairment insurance.
  - b. If the Pollution Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of the contractor's first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to our contract.

**F. ADDITIONAL REQUIREMENTS**

- 1. If you are a crane/rigging operator or will hoist or move property of others in connection with our contract, you must have 'care, custody & control' exclusion deleted from your Commercial General Liability policy, or provide Rigger's Liability coverage at least equal to the highest replacement cost of materials to be hoisted or moved.
- 2. If your vehicles carry materials belonging to others in connection with our contract, you must carry Cargo Liability coverage, at least equal to the highest value of property to be carried on a single vehicle, with terminal coverage at least equal to the highest value of property at one terminal, owned or controlled by you.
- 3. If you will store, warehouse, or otherwise have custody of property belonging to others in connection with our contract, you must have Warehousemen's Liability, Bailee's Customers' Goods, Garage-Keeper's Legal Liability or equivalent coverage at least equal to the highest value of property in your custody.
- 4. If our contract calls for you to construct a structure, you must purchase and maintain "All-

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- Risk” Builders Risk insurance for the full completed value of the structure and contents, including all changes and sufficient limit to fund full and immediate reconstruction under adverse conditions. This policy shall name Dallas Fort Worth International Airport Board as Loss Payee, as their interest may appear.
5. If you transport materials, equipment, machinery or furnishings to, or store such property on, our construction site, you must carry an “All-Risk” Installation Floater with coverage at least equal to the greatest concentration of value, (including the cost of transit, installation labor and testing).
  6. If you use rented equipment or tools on our job site or premises, you must carry Rented Equipment coverage sufficient to repair or replace damaged equipment.
  7. If your work involves administration of Airport Funds, you must furnish a Third Party Fidelity Bond that must remain in effect for the term of the contract, as modified and/or extended. The Board shall be named as "Obligee".
  8. Should this Contract require the use of Subcontractors, it will be the sole responsibility of the General Contractor to either endeavor to require Subcontractors to provide and maintain the insurance limits and coverages required herein or provide said insurance coverage for the subcontractor by designating the Subcontractor as an additional insured either by a blanket additional insured endorsement, or by specific endorsement.
  9. The General Contractor shall endeavor to verify that such Subcontractors are in compliance with all contractual insurance requirements.
  10. The General Contractor shall assume all liability for those Subcontractors who do not meet the insurance requirements.
  11. Access to the Air Operations Area will not be granted without verification of insurance coverage as required.

**G. CERTIFICATION OF INSURANCE**

1. Upon execution of the contract or prior to commencement of work, whichever is first, you shall provide your contract administrator with a current insurance certificate by emailing your certificate to dfwcoi@dfwairport.com, with your contract number and business name in the subject line. Please copy your contract administrator on email submissions. You shall cause your insurance data to be kept current with DFW Board for the period of time you are liable for your product or work, but not less than through the warranty period of our contract.
2. Fax or e-mail insurance certificates to the following:  
Email: dfwcoi@dfwairport.com  
FAX: (972) 973-5651
3. You further agree, upon our oral or written request, to furnish copies of certificates of insurance, certified by an authorized representative of the insurer(s), within ten (10) days of request.
4. You shall provide to the Board's Risk Management department, at least thirty (30) days prior to cancellation, except ten (10) days for non-payment of premium of cancellation of any required coverage. You shall then arrange acceptable alternate coverage to comply with our requirements and provide an updated insurance certificate.
5. No policy submitted shall be subject to limitations, conditions or restrictions that are inconsistent with the intent of the Insurance Requirements to be fulfilled by you. The Board's decision thereon shall be final.
6. Approval, disapproval or failure to act by the Board regarding any insurance obtained by you shall not relieve you of full responsibility or liability for damages and accidents as set forth herein. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate you from liability.
7. No special payment, except when separate line item is provided, shall be made by the Board for any insurance that the Contractor may be required to carry; all are included in the Contract amount and the Contract unit prices.

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**4.0 INSPECTION OF CONSTRUCTION**

- A. The word "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- B. The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work conforms to Contract requirements. The Contractor shall maintain complete inspection records and make them available to the OWNER. The OWNER shall have the right to witness all tests performed by the Contractor. Tests performed by the Contractor are all tests to ensure compliance with the Contract document over and above the testing performed by the OWNER. The OWNER shall have the right to approve all tests including approval of test procedures and test conditions to assure compliance with the Contract Documents.
- C. The Work shall be conducted under the general observation of the OWNER and is subject to inspection and test by the OWNER at all places and at all reasonable times before Final Acceptance to ensure strict compliance with the Contract Documents. Inspections and tests by the OWNER are for the sole benefit of the OWNER and do not:
  - 1. Relieve the Contractor of responsibility for providing adequate quality control measures;
  - 2. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
  - 3. Constitute or imply acceptance; or
  - 4. Affect the continuing rights of the OWNER after acceptance of the completed work under paragraph (I) below.
- D. The presence or absence of an Authorized Representative of the OWNER does not relieve the Contractor from any Contract requirement, nor may any Contract requirements be changed without the OWNER's written authorization.
- E. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the OWNER. The OWNER's authorized Materials Testing and Inspection Laboratory will charge to the Contractor and Contractor agrees to pay any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The OWNER will perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the Specifications. The OWNER will perform all tests described and identified in the Specifications except those specifically identified to be performed by the Contractor.
- F. The Contractor shall, without charge, replace or correct work found by the OWNER not to conform to the Contract requirements unless the OWNER consents to accept the nonconforming work with an appropriate adjustment in the Contract Amount. The Contractor shall promptly segregate and remove rejected material from the premises.
- G. If the Contractor does not promptly replace or correct rejected Work, the OWNER may (1) by contract or otherwise, replace or correct the Work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.
- H. If, before Final Acceptance, the OWNER decides to examine already completed Work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the Work



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is found to meet Contract requirements, the OWNER shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time.

- I. Unless otherwise specified in the Contract, the OWNER shall accept, as promptly as practicable after completion and inspection, all work required by the Contract or that portion of the work the OWNER determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the OWNER'S rights under any warranty or guarantee.

**5.0 DIFFERING SITE CONDITIONS**

- A. The Contractor shall promptly, and before the conditions are disturbed, give written notice to the OWNER of (1) subsurface or latent physical conditions at the Site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. ("Materially" is defined as conditions causing costs not covered under unit price adjustments in excess of \$10,000.00.)
- B. The OWNER or authorized representative shall investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, an equitable adjustment shall be made under this Article and the Contract modified in writing accordingly.
- C. No request by the Contractor for an equitable adjustment to the contract under this Article shall be allowed unless the Contractor has given the written notice required; provided that the time prescribed in paragraph (a) for giving written notice may be extended by the OWNER.
- D. No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

**6.0 WARRANTY OF CONSTRUCTION**

- A. In addition to any other warranties in this Contract, the Contractor warrants, except as provided in Paragraph D. of this Article, that work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- B. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
  - 1. Obtain all warranties that would be given in normal commercial practice;
  - 2. require all warranties to be executed, in writing, for the benefit of the OWNER, if directed by the OWNER; and
  - 3. enforce all warranties for the benefit of the OWNER, if directed by the OWNER.
- C. In the event the Contractor's warranty under paragraph A. of this Article and 7.A. below has expired, the OWNER may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- D. Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of Owner furnished material or design furnished by the OWNER or for the repair of any damage that results from any defect in material or designs furnished by the OWNER.
- E. This Article shall not limit the OWNER's rights under Section 50-9, "INSPECTION OF THE

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WORK”, of this Contract with respect to latent defects, gross mistakes, or fraud.

**7.0 CORRECTION PERIOD**

- A. For a period of one (1) year from the date of Substantial Completion of the Work or a designated portion thereof, unless otherwise stated in Substantial Completion Notice(s) from OWNER, the Contractor shall remedy at the Contractor’s expense any failure to conform to the Contract requirements or any defect.
- B. The Contractor shall remedy at the Contractor’s expense any damage to real or personal property owned or controlled by the OWNER, when the damage is the result of:
  - 1. Contractor’s failure to conform to Contract requirements; or
  - 2. Any defect of equipment, material, workmanship, or design furnished.
- C. The Contractor shall restore any Work damaged in fulfilling the terms and conditions of this Article. The Contractor warranty with respect to work repaired or replaced shall run for one year from the date of repair or replacement.
- D. The OWNER shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- E. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the OWNER shall have the right to replace, remove, or otherwise remedy the failure, defect, or damage at the Contractor’s expense.

**8.0 SUPERINTENDENCE BY CONTRACTOR**

- A. The Work is located on a major operational airport. The OWNER considers the safety and unrestricted flow of the traveling public, as well as other users of the Airport, to be of the utmost importance, and therefore, to be an essential part of the Contract. Material and equipment shall be stored and the Work shall be performed with as little obstruction to pedestrian and vehicle movement as possible. Sidewalks and other areas where pedestrians move about shall remain open and usable except as designated in the Contract Documents.
- B. At all times during performance of this Contract and until the Work is completed and accepted, the Contractor shall have on the Site a competent representative who has full authority to act for the Contractor at all times when work or services are being performed. All work under this Contract shall be performed in a skillful and workmanlike manner. The OWNER may require, in writing, that the Contractor remove from the Site any employee whose behavior the OWNER deems inconsistent with the requirements of paragraph A. above, incompetent, careless, or otherwise objectionable.
- C. Public safety and convenience requirements as described in the Contract Documents shall be the direct responsibility of the Contractor. The Contractor shall be responsible for taking proper safety and health precautions to protect the Work, the workers, the public, and the property of others.
- D. For projects less than \$5 million, the Contractor may, at his option, establish an office at the work site. For projects of \$5 million or more, the Contractor is required to establish an office at the work site to conduct his day-to-day operations unless otherwise directed by the Engineer. As a minimum, the project manager, secretary and project/office engineer are to be located on site. Operations to be conducted on site are to include but not be limited to change order preparation and negotiation, shop drawing processing, schedule preparation and monitoring, preparation of and receipt of project correspondence. The project manager will be assigned to the project full time for the entire duration of the contract. A listing of emergency telephone numbers for all key

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Contractor personnel shall be provided to the OWNER.

**9.0 CONTRACTOR'S WORK FORCE**

- A. Unless otherwise required by the Contract Documents or the bidding documents, the Contractor shall, within seventy-two (72) hours after bid opening, provide to the OWNER in writing the name and location of the place of business of each proposed major subcontractor, as determined by the OWNER including those who will furnish materials or fabricated equipment. This list of major subcontractors is generally limited to first tier subcontractors and suppliers.
- B. The Contractor shall not, without the written consent of the OWNER, either substitute any subcontractor in place of the subcontractor designated in the list provided under paragraph A., or permit any subcontract to be assigned or transferred or allow any subcontract to be performed by anyone other than the subcontractor designated in paragraph A.
- C. The OWNER may reject any subcontractors which the OWNER considers unacceptable for the work. If a subcontractor is rejected, an acceptable replacement subcontractor will be provided at no additional cost to the OWNER.
- D. The value of the Work performed by the Contractor with its own employees shall not be less than twenty percent (20%) of the Contract Amount.

**10.0 SUBMITTALS**

- A. Submittals shall include Shop Drawings, Product Data and Samples as defined below:
  - 1. Shop Drawings: Drawings submitted to the OWNER by the Contractor, pursuant to the Contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, illustrations, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the Contract. The OWNER may duplicate, use, and disclose in any manner and for any purpose Shop Drawings delivered under this Contract.
  - 2. Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.
  - 3. Samples: Physical examples which illustrate materials, equipment and workmanship and establish standards by which the Work will be judged.
- B. Contractor shall coordinate all such submittals and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Submissions to the OWNER without evidence of the Contractor approval may be returned for resubmission. If required by the Specifications, the submittal shall bear the stamp and signature of a licensed professional engineer or architect. Submissions shall be made in a timely manner and in an orderly sequence so as to cause no delay to the Work.
- C. The OWNER will review and approve or take other appropriate action upon Contractor's submittals, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. The OWNER's review or approval of a specific item shall not indicate approval of an assembly of which the item is a component. The OWNER will indicate an approval or disapproval of the submittal and, if not approved as submitted, will indicate the OWNER's reasons therefore.
- D. Approval by the OWNER shall not relieve the Contractor from responsibility for any errors of omissions in such drawings or from responsibility for complying with the requirements of this Contract, except with respect to variations described and approved in accordance with E. below.

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No Shop Drawing, Product Data or Sample shall be issued for construction without the OWNER's Review Stamp affixed thereto. Any work done before OWNER approval shall be at the Contractor's risk.

- E. If any initial submittal or resubmittal shows variations from the brand name specified, the contractor shall describe such variations in writing on a separate transmittal letter at the time of submission.
- F. Contractor shall keep adequate records of submittals and approvals so that an accurate up-to date record file is maintained in his field office at all times.
- G. When certificates of compliance are provided for brand name items specified, a submittal will not be required.

**11.0 MATERIAL AND WORKMANSHIP**

- A. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, article or process that, in the judgment of the OWNER, is equal to that named in the specifications, unless otherwise specifically provided in this Contract.

**12.0 CONSTRUCTION RECORDS/DRAWINGS**

- A. The Contractor shall keep a complete and accurate record of all changes or deviations from the Contract Documents. This record set of prints of the Contract Drawings, shop drawings, and Specifications shall be kept on Site. The OWNER or its Authorized Representative shall at all times have access to review record drawings for completeness and accuracy.
- B. The OWNER may withhold twenty-five percent (25%) of progress payments or other amounts deemed appropriate by the OWNER if the Contractor fails to comply with the requirements of this Section.
- C. The Contractor shall provide to the OWNER in electronic format as prescribed by the DFW CADD Standards, one (1) complete draft record set of as- built Contract Documents. The Contractor shall provide to the OWNER one (1) complete set of record documents of Contract Drawings, and one (1) updated set of Specifications modified to reflect all changes made by Addenda, Contract Change Order, and Field Modifications, on or before the date of Substantial Completion of the Work. The OWNER or Authorized Representative shall review the changes for completeness within fifteen (15) calendar days of receipt. The Contractor shall then produce a final record set of as-built Contract Documents, in electronic format as prescribed by the DFW CADD standards, within fifteen (15) calendar days of receipt of comments from the OWNER or Authorized Representative on which the Contractor shall certify the completeness and accuracy of the Construction Record Drawings and Shop Drawings by endorsing each drawing sheet with the following statement:

**“To the best of     (Insert name of Contractor)    ’s belief and knowledge the as-built conditions shown on this drawing constitute an accurate and complete depiction of the manner in which this portion of the Work was actually installed during performance of Contract No.                     .  
                    (Insert name of Contractor)  
(Signature of Contractor’s representative and date)”**

- D. Prior to application for Final Payment, the Contractor shall deliver certified as-built Specifications and Contract and Shop Drawings to the OWNER. The as-built set shall be arranged according to

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the Contract Drawing and Specification numbering system used in the Contract Documents. The Contractor shall provide an index and cross-referenced listing of each drawing sheet in the as-built set.

- E. For a period of four years from the date of Final Acceptance, the Contractor shall be fully responsible for the accuracy and completeness of construction record drawings and shall bear all costs of damages incurred by the OWNER of any nature whatsoever due to inaccuracies or incompleteness of said as-built records, except to the extent that conditions are disturbed by subsequent construction.

**13.0 NOTICE OF LABOR DISPUTES**

- A. If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor immediately shall give notice, including all relevant information to the OWNER.
- B. The Contractor agrees to insert the substance of this Article, including this paragraph (B), in any subcontract under which a labor dispute may delay the timely performance of this Contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

**14.0 INTEREST OF PUBLIC OFFICIALS**

- A. The Contractor represents and warrants that no employee, official, or member of the OWNER is or will be pecuniarily interested or benefited directly or indirectly in this Contract. The Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any employee, official, or member of the OWNER with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of this Contract. For breach of any representation or warranty in this Article, the OWNER shall have the right to annul this Contract without liability and/or have recourse to any other remedy it may have at law.

**15.0 GOVERNING LAW**

- A. The rights, obligations, and remedies of the parties shall be governed by the laws of the State of Texas. Whenever there is no applicable state statute or decisional precedent governing the interpretation of, or disputes arising under or related to this Contract, then federal common law, including the law developed by federal board contract appeals, the United States Claims Court (formerly the Court of Claims), and the Comptroller General of the United States, shall govern. Venue for any action shall lie in Dallas County, Texas, or Tarrant County, Texas. This is the complete agreement between the parties. If any provision is found to be invalid or unenforceable, the remaining provisions shall not be impaired.

**16.0 LIMITATION OF OBLIGATION**

- A. Upon execution of the Contract for the Work, one hundred percent (100%) of the Contract Sum will be made available for payment and allotted to the Contract. Changes in the Contract amount may be made only by written Contract Change Order, approved and executed by the OWNER and the Contractor.
- B. No claims for further compensation or extensions of time, whether for delay, overhead, profit, fees, acceleration, force majeure, disruption, impact, or any other reason whatsoever, shall be made by the Contractor as a result of the change contained in such Contract Change Order, as

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payments and extensions of time specified thereunder shall constitute payment in full for the Work as altered therein; and OWNER shall never be obligated in any event to pay or reimburse Contractor in excess of the Contract amount as revised by such approved Contract Change Order.

- C. The terms and provisions of this Article entitled "Limitation of Obligation" shall control where in conflict with any other terms or provisions of the Contract, however, nothing in this Article shall be construed to deny the OWNER's unilateral right to suspend or terminate work under the applicable provisions of the Contract.

**17.0 OBLIGATION TO PERFORM FUNCTIONS**

- A. Any failure or neglect on the part of OWNER to enforce provisions herein dealing with supervision, control, inspection, testing, or acceptance and approval of the Work shall never operate to relieve Contractor from full compliance with the Contract Documents nor render OWNER liable to Contractor for money damages, extensions of time or increased compensation of any kind.

**18.0 ACCEPTANCE OF OTHER CONTRACTOR'S WORK**

- A. If any part of the Work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect the other contractor's work and promptly report in writing to the OWNER the results of said inspection prior to proceeding. The Contractor's failure to inspect and/or to report any defects shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the work, except as to defects which may develop in the other contractor's work after the execution of the Work.

**19.0 AUDIT AND RECORDS**

- A. The Contractor (and Contractor's suppliers, vendors, subcontractors, insurance agents and other agents) shall maintain and the OWNER shall have the right to examine books, records, documents, accounting procedures and practices and any other supporting evidence deemed necessary by the OWNER to substantiate compliance with the terms of this Contract, including, but not limited to, costs and charges of whatever nature related to, incurred, and/or anticipated to be incurred, in the performance of this Contract. Such right of examination shall include inspection at all reasonable times of the Contractor's office or facilities or such parts thereof as may be engaged in the performance of this Contract, and reasonable access to and cooperation by all Contractor personnel who have worked on or have knowledge related to the performance of this Contract.
- B. The OWNER and its Authorized Representative shall have the right to examine all books, records, documents, and any other data of the Contractor related to the negotiation, pricing, or performance of such Contract, including Change Orders and/or Supplemental Agreements for the purpose of evaluating the accuracy, completeness, and currentness of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with computations and projections used therein. Proprietary/Trade Secret information pertaining to this contract may not be withheld from OWNER or its Authorized Representative.
- C. The Contractor's, subcontractor's and related agent and vendor organization's documents, records and other evidence shall be subject to inspection and/or reproduction by the OWNER, its agents and Designative Representatives. Contractor, subcontractor, and related agent and vendor organizations shall provide the OWNER with retrievals of computer based records or transactions that the OWNER determines to be necessary to conduct the audit. There shall be no charge to the OWNER for reasonable user of the Contractor's or subcontractor's photocopy

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machine while conducting the audit, nor for any cost of retrieving, downloading to diskette, and/or printing any records or transactions stored in magnetic optical, microfilm, or other media. The Contractor, subcontractor, and related agent and vendor organizations shall provide all records and retrievals requested, within seven (7) calendar days. If requested, the Contractor shall submit a copy of such documents monthly for review by the OWNER.

- D. The documents, etc. described in paragraphs A. and B. shall be made available at the office of the Contractor at all reasonable times, for inspection, audit, reproduction, until the expiration of four (4) years from the date of final payment. The Contractor shall provide adequate and appropriate work space to conduct all inspections audits and reviews. The OWNER shall provide the Contractor with a reasonable advance notice of intended audit, inspections and reviews.
1. If this Contract is completely or partially terminated, the records relating to the terminated work shall be made available for a period of four (4) years from the date of final payment.
  2. Records which relate to appeals or litigation or settlement of claims arising out of the performance of this Contract shall be made available for the period of four (4) years from the date of final disposition of such appeals, litigation, or claims.
- E. The Contractor shall insert an Article containing all the provisions of this Section 19, including this paragraph, in all subcontracts hereunder except altered as necessary for the proper identification of the contracting parties and the OWNER under this Contract. The Contractor shall submit copies to the OWNER of all subcontracts and changes to subcontracts pertaining to this Contract. Failure to submit such written contracts, or to insert this Section in all subcontracts hereunder, shall be reason to exclude some or all of the related payee's costs from amounts payable to the Contractor pursuant to this Contract.
- F. In addition, where projects are funded wholly or in part by federal grants, the FAA, the Secretary of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to grants received in accordance with CFR 49, Part 18, as it may be amended from time to time.
- G. If an audit or review in accordance with this Article discloses overcharges (of any nature), by Contractor, in excess of 5% of the total contract value, the cost of the OWNER's audit shall be paid by the Contractor.

**20.0 PUBLICITY RELEASES**

- A. All publicity releases or other published information in any way concerning this Contract or the Work hereunder, which the Contractor or any of its subcontractors desires to make, shall be subject to approval by the OWNER prior to release.

**21.0 OWNER'S RIGHT OF TRANSFER**

- A. The BOARD and the Cities of Dallas and Fort Worth, reserve the right to transfer their interests herein to any other governmental body set up to, or authorized by law to operate the Airport.

**22.0 COMPOSITION OF CONTRACTOR**

- A. If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**23.0 ACCIDENT PREVENTION**

- A. The Contractor is totally responsible for the development and implementation of an on-site safety program. The Contractor's safety program is to be submitted to the Construction Manager for approval within seven (7) calendar days after Notice to Proceed (NTP).

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- B. In performing this Contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies, and equipment; and avoiding work interruptions.

**24.0 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**

- A. The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor form OSHA-174), as prescribed in Federal Standard No. 1910-1200, for all hazardous material five (5) calendar days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this contract which will involve exposure to hazardous materials or items containing these materials.
- B. "Hazardous Material," as used in this clause, is as defined in Federal Standard No. 313A, in effect on the date of this contract.
- C. Neither the requirements of this clause nor any act or failure to act by the OWNER shall relieve the Contractor of any responsibility or liability for the safety of OWNER, Tenant, Contractor, or subcontractor personnel or property.
- D. The Contractor shall comply with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- E. The OWNER'S rights in data furnished under this contract with respect to hazardous material are as follows:
1. To use, duplicate, and disclose any data to which this clause is applicable. The purpose of this right is to
    - a. Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
    - b. Obtain medical treatment for those affected by the material; and
    - c. Have others use, duplicate, and disclose the data for the OWNER for these purposes.
  2. To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph E.1. above, in precedence over any other clause of this contract providing for rights in data.
  3. That the OWNER is not precluded from using similar or identical data acquired from other sources.
  4. That the data shall not be duplicated, disclosed, or released outside the OWNER, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies:  
***"This is furnished under D-FW International Airport BOARD Contract No. \_\_\_\_\_ and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of \_\_\_\_\_."***  
***This legend shall be marked on any reproductions of this data."***  
***(End of legend)***
  5. That the Contractor shall not place the legend or any other restrictive legend on any data which the Contractor or any subcontractor previously delivered to the OWNER without limitations.
- F. The Contractor shall insert this clause, including this paragraph F., with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this contract involving hazardous material.

**25.0 SEVERABILITY**



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- A. If a provision of this Contract, or the application thereof to any person or circumstances is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of the Contract and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this Contract in the event any provision hereof is declared illegal, invalid or unenforceable.

**26.0 PROTECTION AGAINST LIENS AND ENCUMBRANCES**

- A. In order to prevent a lien, attachment or other encumbrance from being placed on the property of the OWNER, Contractor agrees to furnish during the progress of any Work hereunder, as requested from time to time, verified statements showing Contractor's total outstanding indebtedness in connection with the Work. If Contractor shall allow any indebtedness to accrue to subcontractors or others and shall fail to pay same within ten (10) calendar days after demand, then the OWNER may withhold any money due Contractor until such indebtedness is paid or apply same toward the discharge thereof.
- B. If the amount of such withheld payment or other monies due Contractor under the Agreement is insufficient to meet such costs, or if any claim against Contractor is discharged by the OWNER after final payment is made, Contractor and its surety or sureties, if any, shall promptly pay the OWNER all costs incurred thereby regardless of when such claim arose or whether such claim imposed a lien upon the Project or the real property upon which the Project is situated.
- C. In the event a lien is filed, Contractor shall remove the lien, or see that it is removed or shall furnish a bond for the full amount thereof within seven (7) calendar days of notice by the OWNER. Failure to comply with the foregoing requirements shall constitute grounds for termination of the Agreement.
- D. Notwithstanding the above, Contractor shall not at any time suffer or permit any lien, attachment or other encumbrance, whether under any laws of any state or otherwise, by any person or persons whomsoever or by reason of any claim or demand against Contractor, to be placed or remain on the property of the OWNER, including but not limited to the Work Site or other premises upon which Work is being performed and materials being furnished hereunder.
- E. The suffering or permitting of any lien, attachment or other encumbrance, whether valid or invalid, by Contractor on the property of The OWNER shall preclude, until same is removed, any and all claims or demands for payment to Contractor under this Agreement. Additionally, if any such encumbrance is not removed immediately by Contractor, the OWNER may pay such claim or demand and remove such encumbrance and may deduct the amount so paid, together with all expenses arising therefrom including attorney's fees, from any further payment to Contractor, or at the OWNER election, Contractor shall, upon demand, reimburse the OWNER for the amount paid and all expenses incurred in connection therewith. Any such payment made in good faith by the OWNER shall be binding upon Contractor.

**27.0 TITLE AND RIGHT**

- A. No provision in this Contract shall be construed as vesting Contractor with any right of property in materials used after they have been attached to or incorporated into the Work, nor materials, for which Contractor has received full or partial payment. All such materials, upon being so attached, incorporated or paid for, shall become the property of the OWNER. Any gravel, sand, stone, minerals, timber and all other materials excavated, uncovered, developed or obtained in the Work, or on any land belonging to the OWNER shall remain solely the property of the OWNER. Subject to prior written approval from the OWNER and mutual agreement on a proper credit against the price, Contractor will be permitted to use, in the performance of the Work, any such

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materials that meet the requirements of this Contract. Any objects excavated or exposed that may have historical significance shall be brought to the attention of the OWNER.

**28.0 NON-WAIVER OF RIGHTS**

- A. Waiver by either party of any breach of this Contract, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

**29.0 SURVIVAL**

- A. Neither completion of any work, nor any termination or cancellation of this Contract, shall be deemed to relieve either party of any obligations, relating to this Contract, that by their nature survive completion of the Work, including, but not limited to, all warranties and obligations of indemnity and insurance.

**30.0 BINDING ON SUCCESSORS AND ASSIGNS**

- A. This Contract shall inure to the benefit of and be binding upon the undersigned parties and entities, and their respective legal representative, successors, and assigns.

**31.0 DISCOVERY OF CONFLICTS, DISCREPANCIES, ERRORS OR OMISSIONS**

- A. In case of conflict or discrepancies, errors or omissions among the various Contract documents, the matter shall be submitted immediately by Contractor to the Construction Manager for decision, and such decision shall be final. Any Work affected by such conflicts, discrepancies, errors or omissions which is performed prior to the Construction Manager determination shall be performed at the Contractor's risk.

**32.0 INDEMNIFICATION AND HOLD HARMLESS**

- A. **THE CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITIES OF DALLAS AND FORT WORTH, THE DFW AIRPORT BOARD, AND ALL THEIR RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES, HEREIN REFERRED TO AS "INDEMNITIES" FROM AND/OR AGAINST ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES AND EXPENSES, DIRECT, OR INDIRECT OR CONSEQUENTIAL (INCLUDING BUT NOT LIMITED TO FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND COURT AND ARBITRATION COSTS) OF ANY CHARACTER, NAME, AND DESCRIPTION BROUGHT FOR OR RESULTING FROM ANY INJURIES OR DAMAGES (INCLUDING BUT NOT RESTRICTED TO DEATH) RECEIVED OR SUSTAINED BY ANY PERSONS OR PROPERTY RESULTING FROM , ARISING OUT OF, OR IN CONNECTION WITH:**
1. **THE OPERATIONS OF THE CONTRACTOR, ITS SUBCONTRACTORS, OR SUBCONTRACTORS THEREUNDER; OR**
  2. **ANY NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF CONTRACTOR OR ITS SUBCONTRACTORS OR THEIR AGENTS OR EMPLOYEES IN THE EXECUTION OF THE CONTRACT; OR**
  3. **THE FAILURE OF THE CONTRACTOR TO PROVIDE NECESSARY BARRICADES, WARNING LIGHTS, OR SIGNS; OR**
  4. **ANY NEGLIGENCE OF THE CONTRACTOR TO SAFEGUARD THE WORK; OR**
  5. **THE USE OF MATERIAL NOT CONFORMING TO THE CONTRACT REQUIREMENTS OR OTHERWISE UNACCEPTABLE OR DEFECTIVE; OR**
  6. **ANY VIOLATION OF LAW, ORDINANCE, REGULATION, OR ORDER OF ANY PUBLIC AUTHORITY HAVING JURISDICTION OVER THE WORK.**
- B. **CONTRACTOR SHALL BE REQUIRED TO PAY ANY JUDGMENT, WITH COSTS, WHICH MAY BE OBTAINED AGAINST THE INDEMNITIES GROWING OUT OF SUCH INJURY,**

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**AND/OR DAMAGE. IN ADDITION, THE CONTRACTOR AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS THE OWNER AND ALL INDEPENDENT CONTRACTORS FROM ANY WRONGS, INJURIES, DEMANDS, OR SUITS FOR DAMAGES EITHER REAL OR ASSERTED, CLAIMED AGAINST THEM, THAT MAY BE OCCASIONED BY ANY ACT, OMISSION, NEGLIGENCE, OR MISCONDUCT OF THE SAID CONTRACTOR OF ITS SUBCONTRACTORS AND THEIR AGENTS, SERVANTS, OR EMPLOYEES.**

**33.0 TERMINATION FOR CONVENIENCE**

- A. The OWNER may, whenever the interests of the OWNER so require, terminate this Contract, in whole or in part, for convenience of the OWNER. The OWNER shall give written notice of the termination to the Contractor specifying the extent of termination and effective date of termination.
1. The Contractor shall incur no further obligations in connection with the terminated work, and, on the date set in the notice of termination, the Contractor shall stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. With approval or ratification of the OWNER, the Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The OWNER may direct the Contractor to assign the Contractor's right, title, and interest under the terminated orders or subcontracts to the OWNER. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
  2. The OWNER may require the Contractor to transfer title and deliver to the OWNER in the manner and to the extent directed by the OWNER: (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated: and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the OWNER. The Contractor shall, upon direction of the OWNER, protect and preserve property in the possession of the Contractor in which the OWNER has an interest. If the OWNER does not exercise this right, the Contractor shall use its best efforts to sell such supplies and manufacturing materials. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the OWNER, credited to the price or cost of the Work, or paid in any manner directed by the OWNER.
  3. After termination, the Contractor shall submit a final termination settlement proposal to the OWNER in the form and with the certification prescribed by the OWNER. The Contractor shall submit the proposal promptly, but no later than one (1) year from the effective date of termination, unless extended in writing by the OWNER upon written request of the Contractor within this 1 year period. However, if the OWNER determines that the facts justify it, a termination settlement proposal may be received and acted on after one (1) year or any extension. If the Contractor fails to submit the proposal within the time allowed, the OWNER may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
  4. Subject to paragraph "3" above, the Contractor and the OWNER may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph "4", or paragraph "5" below, exclusive of costs shown in subparagraph "5" "b." below, may not exceed the total Contract price as reduced by 1. the amount of payments previously made and 2. the Contract price of work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount.
  5. If the parties are unable to agree on the amount of a termination settlement, the OWNER shall pay the Contractor the following amounts:
    - a. For Contract Work performed before the effective date of termination, the total

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(with duplication of any items) of:

- i. the cost of this work;
  - ii. the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subparagraph 1), above; and
  - iii. a sum, as profit on i), above, determined by the OWNER to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the OWNER shall allow no profit under this subparagraph iii), and shall reduce the settlement to reflect the indicated rate of loss.
- b. The reasonable costs of settlement of the work terminated, including:
- i. accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - ii. the termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - iii. storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

**END OF SPECIAL PROVISIONS**

**Exhibit 6 – General Provisions**

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## GENERAL PROVISIONS

### SECTION 10 - DEFINITION OF TERMS

Whenever the following terms are used in these specifications, in the contract, in any documents or other instruments pertaining to construction where these specifications govern, the intent and meaning shall be interpreted as follows:

- 10-1 ACCESS ROAD. The right-of-way, the roadway and all improvements constructed thereon connecting the airport to a public highway.
- 10-2 ADMINISTRATION BUILDING. The principal office of the Dallas-Fort Worth International Airport Board, located on the Airport site, 3200 East Airfield Drive, Dallas-Fort Worth Airport, Texas.
- 10-3 ADVERTISEMENT. A public announcement, as required by local law, inviting bids for work to be performed and/or materials to be furnished.
- 10-4 AIP. The Airport Improvement Program, a grant-in-aid program, administered by the Federal Aviation Administration.
- 10-5 AIR OPERATIONS AREA (AOA). For the purpose of these specifications, the term air operations area shall mean any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operation area shall include such paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiway, or apron.
- 10-6 AIRPORT. Airport means the Dallas/Fort Worth International Airport.
- 10-7 ASTM. The American Society for Testing and Materials.
- 10-8 AWARD. The acceptance, by the OWNER, of the successful bidder's proposal.
- 10-9 BIDDER. Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a proposal for the work contemplated.
- 10-10 BOARD. Shall mean the Dallas-Fort Worth International Airport Board (BOARD), a public body, established under the laws of the State of Texas and hereunto duly authorized by contract between the City of Dallas, a municipal corporation of Dallas County, Texas, and the City of Fort Worth, a municipal corporation of Tarrant County, Texas, or its Authorized Representatives.
- 10-11 BUILDING AREA. An area on the Airport to be used, considered, or intended to be used for airport buildings or other airport facilities or rights-of-way together with all airport buildings and facilities located thereon.
- 10-12 CALENDAR DAY. Every day shown on the calendar.
- 10-13 CHANGE ORDER. A written order to the Contractor covering changes in the plans, specifications, or proposal quantities and establishing the basis of payment and contract time adjustment, if any, for the work affected by such changes. Work covered by a change order shall be considered to be within the scope of the contract.
- 10-14 CITIES. The term "Cities" will refer to Dallas, Texas and Fort Worth, Texas.
- 10-15 CONSTRUCTION MANAGER (CM). Is the person or entity designated by the OWNER to provide construction management services during design and construction of the Work, and may include OWNER employees or firms under contract with the OWNER. The Construction Manager is an Authorized Representative of the OWNER for monitoring, coordination, and inspection of the Work.
- 10-16 CONTRACT. The written agreement covering the work to be performed. The awarded contract shall include, but is not limited to: The Contract Form; Special Provisions, General Provisions, Plans, Technical Provisions or Specifications, The Proposal; The Performance Bond; The Payment Bond; any required insurance certificates; and any addenda issued to bidders.
- 10-17 CONTRACT ITEM (PAY ITEM). A specific unit of work for which a price is provided in the contract.
- 10-18 CONTRACT TIME. The number of calendar days or working days, stated in the Contract, allowed for completion of the contract, including authorized time extensions. If a calendar date of completion is stated in the Contract, in lieu of a number of calendar or working days, the contract shall be completed by that date.
- 10-19 CONTRACTOR. The individual, partnership, firm, or corporation primarily liable for the acceptable performance of the work contracted and for the payment of all legal debts pertaining to the work who acts directly or through lawful agents or employees to complete the contract work.
- 10-20 DRAINAGE SYSTEM. The system of pipes, ditches, and structures by which surface or subsurface waters are collected and conducted from the airport area.
- 10-21 ENGINEER. The individual, partnership, firm, or corporation duly authorized by the Owner to be responsible for engineering inspection of the contract work and acting directly or through an authorized representative. May include OWNER employees or firms under contract with the OWNER.

10-22 EQUIPMENT. All machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the work.

10-23 EXTRA WORK. An item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, but which is found by the Engineer to be necessary to complete the work within the intended scope of the contract as previously modified.

10-24 FAA. The Federal Aviation Administration of the U.S. Department of Transportation. When used to designate a person, FAA shall mean the Administrator or his/her duly authorized representative.

10-25 FEDERAL SPECIFICATIONS. The Federal Specifications and Standards, Commercial Item Descriptions, and supplements, amendments, and indices thereto are prepared and issued by the General Services Administration of the Federal Government.

10-26 FORCE ACCOUNT. Force account construction work is construction that is accomplished through the use of material, equipment, labor, and supervisions provided by the Owner or by another public agency pursuant to an agreement with the Owner.

10-27 INSPECTOR. An authorized representative of the Owner or Engineer assigned to make all necessary inspections and/or tests of the work performed or being performed, or of the materials furnished or being furnished by the Contractor.

10-28 INTENTION OF TERMS. Whenever, in these specifications or on the plans, the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of the like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the Engineer is intended; and similarly, the words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Engineer, subject in each case to the final determination of the Owner.

Any reference to a specific requirement of a numbered paragraph of the contract specifications or a cited standard shall be interpreted to include all general requirements of the entire section, specification item, or cited standard that may be pertinent to such specific reference.

10-29 LABORATORY. The official testing laboratories of the Owner or such other laboratories as may be designated by the Engineer.

10-30 LIGHTING. A system of fixtures providing or controlling the light sources used on or near the airport or within the airport buildings. The field lighting includes all luminous signals, markers, floodlights, and illuminating devices used on or near the airport or to aid in the operation of aircraft landing at, taking off from, or taxiing on the airport surface.

10-31 MAJOR AND MINOR CONTRACT ITEMS. A major contract item shall be any item that is listed in the proposal, the total cost of which is equal to or greater than 20 percent of the total amount of the award contract. All other items shall be considered minor contract items.

10-32 MATERIALS. Any substance specified or required for use in the construction of the contract work.

10-33 NOTICE TO PROCEED. A written notice to the Contractor to begin the work under contract by a specified date. If applicable, the Notice to Proceed shall state the date on which the contract time begins.

10-34 OWNER. Shall mean the Dallas-Fort Worth International Airport Board (BOARD), a public body, established under the laws of the State of Texas and hereunto duly authorized by contract between the City of Dallas, a municipal corporation of Dallas County, Texas, and the City of Fort Worth, a municipal corporation of Tarrant County, Texas, or its Authorized Representatives. Authorized Representatives shall be designated in writing with specific limits of authority, and may be employees of the OWNER or employees of firms under contract (Owner's Representatives) with the OWNER to provide specific services.

For AIP contracts, the term "Sponsor" shall have the same meaning as the term "Owner".

10-35 PAVEMENT. The combined surface course, base course, and subbase course, if any, considered as a single unit.

10-36 PAYMENT BOND. The approved form of security furnished by the Contractor and his/her surety as a guaranty that he will pay in full all bills and accounts for materials and labor used in the construction of the work. Said security shall be in accordance with the provisions of Chapter 2253, Government Code.

10-37 PERFORMANCE BOND. The approved form of security furnished by the Contractor and his/her surety as a guaranty that the Contractor will complete the work in accordance with the terms of the contract, and that the Contractor will maintain the Work constructed by it in good condition for the period of time required; said security shall be in accordance with the provisions of Chapter 2253, Government Code.

10-38 PLANS. The official drawings or exact reproductions which show the location, character, dimensions and details of the airport and the work to be done and which are to be considered as a part of the contract, supplementary to the specifications.

10-39 PROPOSAL/BID FORM. The written offer of the bidder (when submitted on the approved proposal form) to perform the contemplated work and furnish the necessary materials in accordance with the provisions of the plans and specifications.

10-40 PROPOSAL GUARANTY/BID GUARANTY. The security furnished with a proposal to guarantee that the bidder will enter into a contract if his/her proposal is accepted by the Owner.

10-41 QUALITY ASSURANCE. For all tests needed to ensure specification compliance of in-place work, the Owner shall appoint, and employ, the services of an independent materials testing agency of its choosing. The payment for these services shall be borne by the Owner. The costs for any retesting, brought about by the indicated failure of performance in the initial test, shall be borne exclusively by the Contractor. The Quality Assurance tests shall be the basis for determining payment and/or adjustments to payment.

10-46 QUALITY CONTROL. All materials testing services relative to engineering and selection of design components, such as herein required for paving and concrete design mixes, as well as in-process testing, shall be performed by a duly qualified and certified materials testing agency of the Contractor's choosing. The testing shall be as necessary to comply with General Provision Section 100 - Contractor Quality Control Program. The costs of these services shall be paid directly by the Contractor.

10-47 RUNWAY. The area on the airport prepared for the landing and takeoff of aircraft.

10-48 SPECIFICATIONS. A part of the contract containing the written directions and requirements for completing the contract work. Standards for specifying materials or testing which are cited in the contract specifications by reference shall have the same force and effect as if included in the contract physically.

10-49 STRUCTURES. Airport facilities such as bridges; culverts; catch basins, inlets, retaining walls, cribbing; storm and sanitary sewer lines; water lines; underdrains; electrical ducts, manholes, handholes, lighting fixtures and bases; transformers; flexible and rigid pavements; navigational aids; buildings; vaults; and, other manmade features of the airport that may be encountered in the work and not otherwise classified herein.

10-50 SUBGRADE. The soil which forms the pavement foundation.

10-51 SUPERINTENDENT. The Contractor's executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the Owner or Engineer, and who shall supervise and direct the construction.

10-52 SUPPLEMENTAL AGREEMENT. A written agreement between the Contractor and the Owner covering: (1) work that would increase or decrease the total amount of the awarded contract, or any major contract item, by more than 25 percent, such increased or decreased work being within the scope of the originally awarded contract; or (2) work that is not within the scope of the originally awarded contract.

10-53 SURETY. The corporation, partnership, or individual, other than the Contractor, executing payment or performance bonds which are furnished to the Owner by the Contractor.

10-54 TAXIWAY. For the purpose of this document, the term taxiway means the portion of the air operations area of an airport that has been designated by competent airport authority for movement of aircraft to and from the airport's runways or aircraft parking areas.

10-55 WORK. The furnishing of all labor, materials, tools, equipment, and incidentals necessary or convenient to the Contractor's performance of all duties and obligations imposed by the contract, plans, and specifications.

10-56 WORKING DAY. A working day is any calendar day scheduled for active performance of Contract requirements.

END OF SECTION 10

## SECTION 20 - PROPOSAL REQUIREMENTS AND CONDITIONS

20-1 ADVERTISEMENT (Notice to Bidders). A copy of the advertisement is posted on the DFW website, [www.dfwairport.com](http://www.dfwairport.com).

20-2 QUALIFICATION OF BIDDERS. Upon request, the two lowest bidders shall furnish the Owner satisfactory evidence of his/her competency to perform the proposed work. Such evidence of competency, unless otherwise specified, shall consist of statements covering the bidder's past experience on similar work, a list of equipment that would be available for the work, and a list of key personnel that would be available. In addition, each bidder shall furnish the Owner satisfactory evidence of his/her financial responsibility. Such evidence of financial responsibility, unless otherwise specified, shall consist of a confidential statement or report of the bidder's financial resources and liabilities as of the last calendar year or the Contractor's last fiscal year. Such statements or reports shall be certified by a public accountant. At the time of submitting such financial statements or reports, the bidder shall further certify whether his/her financial responsibility is approximately the same as stated or reported by the public accountant. If the bidder's financial responsibility has changed, the bidder shall qualify the public accountant's statement or report to reflect his/her (bidder's) true financial condition at the time such qualified statement or report is submitted to the Owner.

If requested, the two lowest bidders shall submit "evidence of competency" and "evidence of financial responsibility" to the Owner no later than 48 hours after the opening of bids. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of such bid fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the Contract and to complete the Work contemplated therein.

20-3 CONTENTS OF PROPOSAL FORMS. The Owner shall furnish bidders with proposal forms. All papers bound with or attached to the proposal forms are necessary parts and must not be detached. The plans, specifications, and other documents designated in the proposal form shall be considered a part of the proposal whether attached or not.

20-4 ISSUANCE OF PROPOSAL FORMS. The Owner reserves the right to refuse to issue a proposal form to a prospective bidder should such bidder be in default for any of the following reasons:

- a. Failure to comply with any qualification regulations of the Owner, if such regulations are cited, or otherwise included, in the proposal as a requirement for bidding.
- b. Failure to pay, or satisfactorily settle, all bills due for labor and materials on former contracts in force (with the Owner) at the time the Owner issues the proposal to a prospective bidder.
- c. Contractor default under previous contracts with the Owner.
- d. Unsatisfactory work on previous contracts with the Owner.

20-5 INTERPRETATION OF ESTIMATED PROPOSAL QUANTITIES. For unit price contracts, an estimate of quantities of work to be done and materials to be furnished under these specifications is given in the proposal. It is the result of careful calculations and is believed to be correct. It is given only as a basis for comparison of proposals and the award of the contract. The Owner does not expressly or by implication agree that the actual quantities involved will correspond exactly therewith; nor shall the bidder plead misunderstanding or deception because of such estimates of quantities, or of the character, location, or other conditions pertaining to the work. Payment to the Contractor will be made only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications. It is understood that the quantities may be increased or decreased as hereinafter provided in the subsection titled ALTERATION OF WORK AND QUANTITIES of Section 40 without in any way invalidating the unit bid prices.

20-6 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE. The bidder is expected to carefully examine the site of the proposed work, the proposal, plans, specifications, and contract forms. He shall satisfy himself as to the character, quality, and quantities of work to be performed, materials to be furnished, and as to the requirements of the proposed contract. The submission of a proposal shall be prima facie evidence that the bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the proposed contract, plans, and specifications.

Boring logs and other records of subsurface investigations and tests are available for inspection of bidders, if applicable. It is understood and agreed that such subsurface information, whether included in the plans, specifications, or otherwise made available to the bidder, was obtained and is intended for the Owner's design and estimating purposes only. Such information has been made available for the convenience of all bidders. It is further

understood and agreed that each bidder is solely responsible for all assumptions, deductions, or conclusions which he may make or obtain from his/her examination of the boring logs and other records of subsurface investigations and tests that are furnished by the Owner.

**20-7 PREPARATION OF PROPOSAL.** The bidder shall submit his/her proposal on the forms furnished by the Owner. All blank spaces in the proposal forms must be correctly filled in where indicated for each and every item for which a quantity is given. The bidder shall state the price (written in ink or typed) both in words and numerals for which he proposes to do each pay item furnished in the proposal. In case of conflict between words and numerals, the words, unless obviously incorrect, shall govern.

In the case of any discrepancy between the proper addition and / or multiplication of the individual unit prices bid (using the stated / estimated quantities), and the bidder's total bid, as stated on the summary page, the Board's proper addition and / or multiplication of the unit prices bid (using the stated / estimated quantities) shall constitute the bid amount but prevail over the bidder's stated (and mathematically incorrect) bid total.

The bidder shall sign his/her proposal correctly and in ink. If the proposal is made by an individual, his/her name and post office address must be shown. If made by a partnership, the name and post office address of each member of the partnership must be shown. If made by a corporation, the bid shall be sealed and the person signing the proposal shall give the name of the state under the laws of which the corporation was chartered and the name, titles, and business address of the president, secretary, and the treasurer. Anyone signing a proposal as an agent shall file evidence of his/her authority to do so and that the signature is binding upon the firm or corporation.

**20-8 IRREGULAR PROPOSALS.** Proposals shall be considered irregular for the following reasons:

- a. If the proposal is on a form other than that furnished or allowed by the Owner, or if the Owner's form is altered, or if any part of the proposal form is detached..
- b. If there are unauthorized additions, conditional or alternate pay items, or irregularities of any kind which make the proposal incomplete, indefinite, or otherwise ambiguous.
- c. If the proposal does not contain a unit price for each pay item listed in the proposal, except in the case of authorized alternate pay items, for which the bidder is not required to furnish a unit price.
- d. If the proposal contains unit prices that are obviously unbalanced.
- e. If the proposal is not accompanied by the proposal guaranty specified by the Owner.

The Owner reserves the right to reject any irregular proposal and the right to waive technicalities if such waiver is in the best interest of the Owner and conforms to local laws and ordinances pertaining to the letting of construction contracts.

**20-9 BID GUARANTEE.** No Bid will be considered unless it is accompanied by a cashier's check on any State or National Bank in Dallas or Tarrant County, Texas, or acceptable Bid Bond, payable unconditionally to the Dallas-Fort Worth International Airport Board. The cashier's check or Bidder's Bond shall be five percent (5%) of the amount of the Bid. In the case of bid alternates, the Bid Bond amount shall be based on the highest total bid. The Bid Guaranty is required by the OWNER as evidence of good faith and as a guarantee that if awarded the Contract, the Bidder will execute the Contract and furnish certificates of insurance and the required bonds within ten (10) calendar days after the award of the Contract. The Bid Bond shall be conditioned that if the Bid is withdrawn after the bids have been opened or the successful Bidder refuses to enter into and execute a Contract with the OWNER under the terms of the Contract attached hereto, and deliver to the OWNER a copy of a payment bond, a performance bond, and certificates of insurance as required hereby, the successful Bidder and the surety shall become liable to the OWNER for the amount of the Bid Bond. If a Bid Bond is used, the surety thereon shall designate a resident agent in Dallas or Tarrant County, Texas, to whom requisite notices may be delivered and upon whom service of process may be had. Individual sureties will not be accepted. In the event a cashier's check is submitted along with the Bid, and the successful Bidder does not execute the Contract within fifteen (15) calendar days after award of said Contract or withdraws its Bid after Bids have been opened, the OWNER shall be entitled to the proceeds of such check. Attorneys-in-Fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

**20-10 DELIVERY OF PROPOSAL.** Each proposal submitted shall be placed in a sealed envelope plainly marked with the project number, location of airport, and name and business address of the bidder on the outside. When sent by mail, preferably registered, the sealed proposal, marked as indicated above, should be enclosed in an additional envelope. No proposal will be considered unless received at the place specified in the advertisement

before the time specified for opening all bids. Proposals received after the bid opening time shall be returned to the bidder unopened.

20-11 WITHDRAWAL OR REVISION OF PROPOSALS. A bidder may withdraw or revise (by withdrawal of one proposal and submission of another) a proposal provided that the bidder's request for withdrawal is received by the Owner in writing before the time specified for opening bids. Revised proposals must be received at the place specified in the advertisement before the time specified for opening all bids. Withdrawal by telephone or facsimile will not be permitted.

20-12 PUBLIC OPENING OF PROPOSALS. Proposals shall be opened, and read, publicly at the time and place specified in the advertisement. Bidders, their authorized agents, and other interested persons are invited to attend. Proposals that have been withdrawn (by written request) or received after the time specified for opening bids, shall be returned to the bidder unopened.

20-13 DISQUALIFICATION OF BIDDERS. A bidder shall be considered disqualified for any of the following reasons:

- a. Submitting more than one proposal from the same partnership, firm, or corporation under the same or different name.
- b. Evidence of collusion among bidders. Bidders participating in such collusion shall be disqualified as bidders for any future work of the Owner until any such participating bidder has been reinstated by the Owner as a qualified bidder.
- c. If the bidder is considered to be in "default" for any reason specified in the subsection titled ISSUANCE OF PROPOSAL FORMS of this section.
- d. Where the Bidder, any subcontractor or supplier, or the surety on any bond given, or to be given is in litigation with the Owner, or with either the Cities of Dallas or Fort Worth, or where such litigation is contemplated or imminent, in the sole opinion of the Owner.

END OF SECTION 20

## SECTION 30 - AWARD AND EXECUTION OF CONTRACT

30-1 CONSIDERATION OF PROPOSALS. After the proposals are publicly opened and read, they will be compared on the basis of price. If there is a discrepancy between the price written in words and the price written in numbers, the price written in words shall govern.

Until the award of a contract is made, the Owner reserves the right to reject a bidder's proposal for any of the following reasons:

- a. If the proposal is irregular as specified in the subsection titled IRREGULAR PROPOSALS of Section 20.
- b. If the bidder is disqualified for any of the reasons specified in the subsection titled DISQUALIFICATION OF BIDDERS of Section 20.

In addition, until the award of a contract is made, the Owner reserves the right to reject any or all proposals, waive technicalities, if such waiver is in the best interest of the Owner and is in conformance with applicable state and local laws or regulations pertaining to the letting of construction contracts; advertise for new proposals; or proceed with the work otherwise. All such actions shall promote the Owner's best interest.

30-2 AWARD OF CONTRACT. The award of a contract, if it is to be awarded, shall be made within 120 calendar days of the date specified for publicly opening proposals, unless otherwise specified herein.

Award of the contract shall be made by the Owner to the lowest responsive and responsible bidder whose proposal conforms to the cited requirements of the Owner.

30-3 CANCELLATION OF AWARD. The Owner reserves the right to cancel the award without liability to the bidder, except return of proposal guaranty, at any time before a contract has been fully executed by all parties and is approved by the Owner in accordance with the subsection titled APPROVAL OF CONTRACT of this section.

30-4 RETURN OF PROPOSAL/BID GUARANTY. As soon as the bid prices have been compared, the OWNER may, at its discretion, return the security accompanying the bids which, in its judgment, would not be considered in making the award. The Security of the three (3) lowest bidders may be retained by the OWNER until after the Contract has been awarded, executed, and bonds and insurance requirements have been submitted by the successful Bidder. The OWNER will return all cashier's check type bid guaranties as soon as practicable upon determination that bidder will not be considered in making award or upon receipt of bonds and insurance from the successful bidder.

30-5 REQUIREMENTS OF CONTRACT BONDS. Within ten (10) calendar days after notice of award (which will be delivered with execution originals of contract), the Contractor shall furnish the Owner the executed contract and a surety bond or bonds which have been fully executed by the Contractor and the surety, guaranteeing the performance of the work and the payment of all legal debts that may be incurred by reason of the Contractor's performance of the work. The surety and the form of the bond or bonds shall be acceptable to the Owner. Unless otherwise specified in this subsection, the surety bond or bonds shall be in a sum equal to the full amount of the contract.

No sureties will be accepted by the OWNER who are now in default or delinquent on any bonds or who are actively interested in any litigation against the Cities or the OWNER. All bonds shall be made on forms furnished by the OWNER, and shall be executed by not less than one corporate surety admitted to do business in the State of Texas or be listed by the U.S. Department of the Treasury as an acceptable surety. Individual sureties will not be accepted. Each bond shall be executed by the Contractor and the surety. Each surety shall designate an agent resident in Dallas or Tarrant County, Texas, to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. If a change in Resident Agent occurs, this change must be reported to the Airport Development & Engineering Department immediately.

Surety bonds shall be in accordance with applicable law. These bonds shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract Amount, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract Amount decrease such obligation.

- a. Performance Bonds are required on all contracts which exceed \$100,000.00 - A good and sufficient bond in an amount equal to the total amount of the Contract, as evidenced by the proposal tabulation, or otherwise, guaranteeing the full and faithful execution of the Work and performance

of the Contract in accordance with the Contract Documents, including any extensions thereof, for the protection of the OWNER. This bond shall provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of acceptance of the improvement by the OWNER.

- b. Payment Bonds are required on all contracts which exceed \$50,000.00 - A good and sufficient bond in an amount equal to the total amount of the contract, as evidenced by the proposed tabulation, or otherwise, guaranteeing the full and proper protection of all claimants supplying labor and material in the prosecution of the Work provided for in said Contract and for the use of each such claimant.

30-6 EXECUTION OF CONTRACT. The successful bidder shall sign (execute) the necessary agreements for entering into the contract and return such signed contract to the Owner, along with the fully executed surety bond or bonds specified in the subsection titled REQUIREMENTS OF CONTRACT BONDS of this section within ten (10) calendar days. If the contract is mailed, special handling is recommended.

30-7 APPROVAL OF CONTRACT. Upon receipt of evidence of adequate insurance coverage, the contract and contract bond or bonds that have been executed by the successful bidder, the Owner shall complete the execution of the contract in accordance with local laws or ordinances, and return the fully executed contract to the Contractor. Delivery of the fully executed contract to the Contractor shall constitute the Owner's approval to be bound by the successful bidder's proposal and the terms of the contract.

30-8 FAILURE TO EXECUTE CONTRACT. Failure of the successful bidder to execute the contract and furnish an acceptable surety bond or bonds and evidence of adequate insurance coverage within the ten (10) calendar day period specified in the subsection titled REQUIREMENTS OF CONTRACT BONDS of this section shall be just cause for cancellation of the award and forfeiture of the proposal guaranty, not as a penalty, but as liquidation of damages to the Owner. In the event the OWNER should re-advertise for bids, the defaulting Contractor shall not be eligible to bid.

END OF SECTION 30



## SECTION 40 - SCOPE OF WORK

40-1 INTENT OF CONTRACT. The intent of the contract is to provide for construction and completion, in every detail, of the work described. It is further intended that the Contractor shall furnish all necessary superintendence, labor, machinery, equipment, tools, materials, transportation and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract.

These specifications contain detailed instructions and descriptions covering the major items of construction and workmanship necessary for building and completing the various units or elements of the work. The specifications are intended to be so written that only first class material, workmanship, and finish of the best grade and quality will result. The fact that these specifications may fail to be so complete as to cover all details will not relieve the Contractor of full responsibility for providing a completed work of high quality, first class finish and appearance, and satisfactory for operation, all within the apparent intent of the Plans and Specifications.

40-2 ALTERATION OF WORK AND QUANTITIES. The Owner reserves and shall have the right to make such alterations in the work as may be necessary or desirable to complete the work originally intended in an acceptable manner. Unless otherwise specified herein, the Owner shall be and is hereby authorized to make such alterations in the work as may increase or decrease the originally awarded contract quantities, provided that the aggregate of such alterations does not change the total cost of any major contract item by more than 25 percent (total cost being based on the unit prices and estimated quantities in the awarded contract). Alterations which do not exceed the 25 percent limitation shall not invalidate the contract nor release the surety, and the Contractor agrees to accept payment for such alterations as if the altered work had been a part of the original contract. These alterations which are for work within the general scope of the contract shall be covered by "Change Orders" issued by the Owner. Change orders for altered work shall include extensions of contract time where, in the Owner's opinion, such extensions are commensurate with the amount and difficulty of added work.

40-3 OMITTED ITEMS. The Owner reserves and shall have the right to omit from the work any contract item, except major contract items. Major contract items may be omitted by a supplemental agreement. Such omission of contract items shall not invalidate any other contract provision or requirement.

Should a contract item be omitted or otherwise ordered to be non-performed, the Contractor shall be paid for all work performed toward completion of such item prior to the date of the order to omit such item. Payment for work performed shall be in accordance with the subsection titled PAYMENT FOR OMITTED ITEMS of Section 90.

40-4 EXTRA WORK. Should acceptable completion of the contract require the Contractor to perform an item of work for which no basis of payment has been provided in the original contract or previously issued change orders or supplemental agreements, the same shall be called Extra Work. Extra Work that is within the general scope of the contract shall be covered by written change order. Change orders for such extra work shall contain agreed prices for performing the change order work in accordance with the requirements specified in the order, and shall contain any adjustment to the contract time that, in the Owner's opinion, is necessary for completion of such extra work.

When determined to be in the Owner's best interest, the Owner may order the Contractor to proceed with extra work by force account as provided in the subsection titled PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK of Section 90.

Extra work that is necessary for acceptable completion of the project, but is not within the general scope of the work covered by the original contract shall be covered by a Supplemental Agreement as hereinbefore defined in the subsection titled SUPPLEMENTAL AGREEMENT of Section 10.

Any claim for payment of extra work that is not covered by written agreement (change order or supplemental agreement) shall be rejected by the Owner.

40-5 MAINTENANCE OF TRAFFIC. It is the explicit intention of the contract is that safety is the most important consideration. It is understood and agreed that the Contractor shall provide for the free and unobstructed movement of aircraft in the air operations areas of the airport with respect to his/her own operations and the operations of all his/her subcontractors as specified in the subsection titled LIMITATION OF OPERATIONS of Section 80. It is further understood and agreed that the Contractor shall provide for the uninterrupted operations of visual and

electronic signals (including power supplies thereto) used in the guidance of aircraft while operating to, from, and upon the airport as specified in the subsection titled CONTRACTOR'S RESPONSIBILITY FOR UTILITY SERVICE AND FACILITIES OF OTHERS in Section 70.

With respect to his/her own operations and the operations of all his/her subcontractors, the Contractor shall provide marking, lighting, and other acceptable means of identifying: personnel; equipment; vehicles; storage areas; and any work area or condition that may be hazardous to the operation of aircraft, fire-rescue equipment, or maintenance vehicles at the airport.

When the contract requires the maintenance of vehicular traffic on an existing road, street, or highway during the Contractor's performance of work that is otherwise provided for in the contract, plans, and specifications, the Contractor shall keep such road, street, or highway open to all traffic and shall provide such maintenance as may be required to accommodate traffic. The Contractor shall furnish erect, and maintain barricades, warning signs, flagmen, and other traffic control devices in reasonable conformity with the Manual of Uniform Traffic Control Devices for Streets and Highways (published by the United States Government Printing Office), unless otherwise specified herein. The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets or highways. Unless otherwise specified herein, the Contractor will not be required to furnish snow removal for such existing road, street, or highway.

The Contractor shall make his/her own estimate of all labor, materials, equipment, and incidentals necessary for providing the maintenance of aircraft and vehicular traffic as specified in this subsection.

The cost of maintaining the aircraft and vehicular traffic specified in this subsection shall not be measured or paid for directly, but shall be included in the various contract items.

**40-6 REMOVAL OF EXISTING STRUCTURES.** All existing structures encountered within the established lines, grades, or grading sections shall be removed by the Contractor, unless such existing structures are otherwise specified to be relocated, adjusted up or down, salvaged, abandoned in place, reused in the work or to remain in place. The cost of removing such existing structures shall not be measured or paid for directly, but shall be included in the various contract items.

Should the Contractor encounter an existing structure (above or below ground) in the work for which the disposition is not indicated on the plans, the Engineer shall be notified prior to disturbing such structure. The disposition of existing structures so encountered shall be immediately determined by the Engineer in accordance with the provisions of the contract.

Except as provided in the subsection titled RIGHTS IN AND USE OF MATERIALS FOUND IN THE WORK of this section, it is intended that all existing materials or structures that may be encountered (within the lines, grades, or grading sections established for completion of the work) shall be utilized in the work as otherwise provided for in the contract and shall remain the property of the Owner when so utilized in the work.

**40-7 RIGHTS IN AND USE OF MATERIALS FOUND IN THE WORK.** Should the Contractor encounter any material such as (but not restricted to) sand, stone, gravel, slag, or concrete slabs within the established lines, grades, or grading sections, the use of which is intended by the terms of the contract to be either embankment or waste, he may at his/her option either:

- a. Use such material in another contract item, providing such use is approved by the Owner and is in conformance with the contract specifications applicable to such use; or,
- b. Remove such material from the site, upon written approval of the Owner; or
- c. Use such material for his/her own temporary construction on site; or
- d. Use such material as intended by the terms of the contract.

Should the Contractor wish to exercise option a., b., or c., he shall request the Owner's approval in advance of such use.

Should the Owner approve the Contractor's request to exercise option a., b., or c., the Contractor shall be paid for the excavation or removal of such material at the applicable contract price. The Contractor shall replace, at his/her own expense, such removed or excavated material with an agreed equal volume of material that is acceptable for use in constructing embankment, backfills, or otherwise to the extent that such replacement material is needed to

complete the contract work. The Contractor shall not be charged for his/her use of such material so used in the work or removed from the site.

Should the Owner approve the Contractor's exercise of option a., the Contractor shall be paid, at the applicable contract price, for furnishing and installing such material in accordance with requirements of the contract item in which the material is used.

It is understood and agreed that the Contractor shall make no claim for delays by reason of his/her exercise of option a., b., or c.

The Contractor shall not excavate, remove, or otherwise disturb any material, structure, or part of a structure which is located outside the lines, grades, or grading sections established for the work, except where such excavation or removal is provided for in the contract, plans, or specifications.

40-8 FINAL CLEAN UP. Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. All brush and woods within the limits indicated shall be cut and the site shall be left in a neat and presentable condition. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily, unless the Contractor has obtained the written permission of such property owner.

**END OF SECTION 40**

## SECTION 50 - CONTROL OF WORK

50-1 **AUTHORITY OF THE ENGINEER.** The Engineer shall decide any and all questions which may arise as to the quality and acceptability of materials furnished, work performed, and as to the manner of performance and rate of progress of the work. The Engineer shall decide all questions which may arise as to the interpretation of the specifications or plans relating to the work, the fulfillment of the contract on the part of the Contractor, and the rights of different Contractors on the project. The Engineer shall determine the amount and quality of the several kinds of work performed and materials furnished which are to be paid for the under contract.

For AIP contracts, the Engineer does not have the authority to accept pavements that do not conform to FAA specification requirements.

50-2 **CONFORMITY WITH PLANS AND SPECIFICATIONS.** All work and all materials furnished shall be in reasonably close conformity with the lines, grades, grading sections, cross sections, dimensions, material requirements, and testing requirements that are specified (including specified tolerances) in the contract, plans or specifications.

If the Engineer finds the materials furnished, work performed, or the finished product not within reasonably close conformity with the plans and specifications but that the portion of the work affected will, in his/her opinion, result in a finished product having a level of safety, economy, durability, and workmanship acceptable to the owner, he will advise the owner of his/her determination that the affected work be accepted and remain in place. In this event, the Engineer will document his/her determination and recommend to the owner a basis of acceptance which will provide for an adjustment in the contract price for the affected portion of the work. The Engineer's determination and recommended contract price adjustments will be based on good engineering judgment and such tests or retests of the affected work as are, in his/her opinion, needed. Changes in the contract price shall be covered by contract modifications (change order or supplemental agreement) as applicable.

If the Engineer finds the materials furnished, work performed, or the finished product are not in reasonably close conformity with the plans and specifications and have resulted in an unacceptable finished product, the affected work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the Engineer's written orders.

All quality assurance costs associated with replacing or otherwise correcting any work item determined to be unacceptable shall be borne by the Contractor.

For the purpose of this subsection, the term "reasonably close conformity" shall not be construed as waiving the Contractor's responsibility to complete the work in accordance with the contract, plans, and specifications. The term shall not be construed as waiving the Engineer's right to insist on strict compliance with the requirements of the contract, plans, and specifications during the Contractor's prosecution of the work, when, in the Engineer's opinion, such compliance is essential to provide an acceptable finished portion of the work.

For the purpose of this subsection, the term "reasonably close conformity" is also intended to provide the Engineer with the authority to use good engineering judgment in his/her determinations as to acceptance of work that is not in strict conformity but will provide a finished product equal to or better than that intended by the requirements of the contract, plans and specifications.

If it is found that the material furnished, work performed, or the finished product is not in close conformity with the plans and specifications, the Contractor shall bear all the expenses of such recovery, exposure, observation, inspection and testing and of satisfactory reconstruction including compensation for additional professional services and retesting, and an appropriate deductive change order shall be issued.

The Engineer will not be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction of the safety precautions incident thereto.

50-3 **COORDINATION OF CONTRACT, PLANS, AND SPECIFICATIONS.** The Contract Form, Contract Special Provisions, Contract General Provisions, Plans, Technical Specifications and Provisions, and all referenced standards cited are essential parts of the Contract requirements. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Work. In case of discrepancy, calculated dimensions will govern over scaled dimensions; Contract Forms shall govern

over Contract Special Provisions, Contract Special Provisions shall govern over Contract General Provisions, Contract General Provisions shall govern over Plans, Plans shall govern over Technical Specifications and Provisions, Technical Specifications and Provisions shall govern over cited standards for materials or testing, and cited FAA advisory circulars (if applicable.)

The Contractor shall not take advantage of any apparent error or omission on the plans or specifications or in test results relating to the Work hereunder. In the event the Contractor discovers any apparent error or discrepancy, he shall immediately call upon the Owner for his/her interpretation and decision, and such decision shall be final.

50-4 COOPERATION OF CONTRACTOR. The Contractor will be supplied with one copy each of the plans and specifications. The Contractor shall have available on the work at all times one copy each of the plans and specifications. Additional copies of plans and specifications may be obtained by the Contractor for the cost of reproduction.

The Contractor shall give constant attention to the work to facilitate the progress thereof, and he shall cooperate with the Engineer and his/her inspectors and with other Contractors in every way possible. The Engineer shall allocate the work and designate the sequence of construction in case of controversy between Contractors. The Contractor shall have a competent superintendent on the work at all times who is fully authorized as his/her agent on the work. The superintendent shall be capable of reading and thoroughly understanding the plans and specifications and shall receive and fulfill instructions from the Engineer or his/her authorized representative.

50-5 COOPERATION BETWEEN CONTRACTORS. The Owner reserves the right to contract for and perform other or additional work on or near the work covered by this contract.

When separate contracts are let within the limits of any one project, each Contractor shall conduct his/her work so as not to interfere with or hinder the progress of completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with his/her contract and shall protect and save harmless the Owner from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by him because of the presence and operations of other Contractors working within the limits of the same project.

The Contractor shall arrange his/her work and shall place and dispose of the materials being used so as not to interfere with the operations of the other Contractors within the limits of the same project. He shall join his/her work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

50-6 CONSTRUCTION LAYOUT AND STAKES. When applicable, the Engineer shall establish horizontal and vertical control only. The Contractor must establish all layout required for the construction of the work. Such stakes and markings as the Engineer may set for either his/her own or the Contractor's guidance shall be preserved by the Contractor. In case of negligence on the part of the Contractor, or his/her employees, resulting in the destruction of such stakes or markings, an amount equal to the cost of replacing the same may be deducted from subsequent estimates due the Contractor at the discretion of the Engineer.

50-7 AUTOMATICALLY CONTROLLED EQUIPMENT. Whenever batching or mixing plant equipment is required to be operated automatically under the contract and a breakdown or malfunction of the automatic controls occurs, the equipment may be operated manually or by other methods for a period of 48 hours following the breakdown or malfunction, provided this method of operations will produce results which conform to all other requirements of the contract.

50-8 AUTHORITY AND DUTIES OF INSPECTORS. Inspectors employed by the Owner shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. Inspectors are not authorized to revoke, alter, or waive any provision of the contract. Inspectors are not authorized to issue instructions contrary to the plans and specifications or to act as foreman for the Contractor.

Inspectors employed by the Owner are authorized to notify the Contractor or his/her representatives of any failure of the work or materials to conform to the requirements of the contract, plans, or specifications and to reject such non-conforming materials in question until such issues can be referred to the Engineer for his/her decision. No act by the inspector on behalf of the Owner shall relieve the Contractor of its obligation to comply with all requirements of the Contract.

50-9 INSPECTION OF THE WORK. All materials and each part or detail of the work shall be subject to inspection by the Engineer. The Engineer shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection. If the Engineer requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra work; but should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at the Contractor's expense.

Any work done or materials used without supervision or inspection by an authorized representative of the owner may be ordered removed and replaced at the Contractor's expense unless the owner's representative failed to inspect after having been given reasonable notice in writing that the work was to be performed.

Should the contract work include relocation, adjustment, or any other modification to existing facilities, not the property of the (contract) owner, authorized representatives of the owners of such facilities shall have the right to inspect such work. Such inspection shall in no sense make any facility owner a party to the contract, and shall in no way interfere with the rights of the parties to this contract.

50-10 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK. All work which does not conform to the requirements of the contract, plans, and specifications will be considered unacceptable, unless otherwise determined acceptable by the Engineer as provided in the subsection titled CONFORMITY WITH PLANS AND SPECIFICATIONS of this section.

Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to the final acceptance of the work, shall be removed immediately and replaced in an acceptable manner in accordance with the provisions of the subsection titled CONTRACTOR'S RESPONSIBILITY FOR WORK of Section 70.

Work done contrary to the instructions of the Engineer, work done beyond the lines shown on the plans or as given, except as herein specified, or any extra work done without authority, will be considered as unauthorized and will not be paid for under the provisions of the contract. Work so done may be ordered removed or replaced at the Contractor's expense.

Upon failure on the part of the Contractor to comply forthwith with any order of the Engineer made under the provisions of this subsection, the Engineer will have authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs (incurred by the owner) from any monies due or to become due the Contractor.

50-11 LOAD RESTRICTIONS. The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the work. A special permit will not relieve the Contractor of liability for damage which may result from the moving of material or equipment.

The operation of equipment of such weight or so loaded as to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base, or structure before the expiration of the curing period. The Contractor shall be responsible for all damage done by his/her hauling equipment and shall correct such damage at his/her own expense.

50-12 MAINTENANCE DURING CONSTRUCTION. The Contractor shall maintain the work during construction and until the work is accepted. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces so that the work is maintained in satisfactory condition at all times. In the case of a contract for the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations.

All costs of maintenance work during construction and before the project is accepted shall be included in the unit prices bid on the various contract items, and the Contractor will not be paid an additional amount for such work.

50-13 FAILURE TO MAINTAIN THE WORK. Should the Contractor at any time fail to maintain the work as provided in the subsection titled MAINTENANCE DURING CONSTRUCTION of this section, the Engineer shall immediately notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. The time specified will give due consideration to the exigency that exists.

Should the Contractor fail to respond to the Engineer's notification, the Engineer may suspend any work necessary for the owner to correct such unsatisfactory maintenance condition, depending on the exigency that exists. Any maintenance cost incurred by the owner, shall be deducted from monies due or to become due the Contractor.

50-14 SUBSTANTIAL COMPLETION. The Date of Substantial Completion of the Work is the date the OWNER determines construction is sufficiently complete, in accordance with the Contract Documents and as defined in the Technical Specifications, so the OWNER may occupy or use the Work, or designated portion thereof, for its intended purpose, without restriction and all punch list items completed as defined in the Technical Specifications (subject to completion of minor punch list items, the absence of completion of which does not interfere with OWNER's intended use of the project, including the intended normal business operations of the project, or detract from the aesthetic appearance of the project) and: (a) all designated or required governmental certificates of occupancy and other permits, inspections and certifications for the project or such portion thereof as the case may be, have been achieved and issued to OWNER and posted for the project or such portion thereof; (b) all elements and project systems included in the Work (including, without limitation, all life safety systems) are operational and functioning as designed and scheduled in the Contract Documents; (c) all instruction of OWNER's personnel in the operation of the project systems has been completed; and (d) no liens, claims or encumbrances have been filed or are outstanding with respect to the Work.

Substantial Completion date(s), if any, are specified elsewhere in the Contract Documents.

When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the OWNER is substantially complete as defined above, the Contractor shall prepare for submission to the OWNER a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete the Work in accordance with the Contract Documents. When the OWNER determines that the Work or designated portion thereof is substantially complete, it will issue a written notice to the Contractor establishing the date of Substantial Completion. The notice shall state the responsibilities of the OWNER and the Contractor for (but not limited to) security, maintenance, heat, utilities, damage to the Work, and insurance, and shall list remaining items to be corrected or completed. The Work not fully completed or corrected shall be completed to the satisfaction of the OWNER within the time period allowed by the Contract Documents. In the event the Contractor fails to complete or correct the remaining items within the allotted time, the OWNER may complete or correct the items and deduct the cost thereof from the Contract amount.

50-15 PARTIAL OCCUPANCY. The OWNER may occupy or use any portion of the Work at any stage. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the OWNER and Contractor have, if applicable, accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period of correction of the Work and commencement of warranties required by the Contract Documents.

Immediately prior to such partial occupancy or use, the OWNER and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

The use or occupancy of a portion of the Work by OWNER or its other contractors to inspect and/or correct defective workmanship or install furniture, fixtures, or equipment or other work shall not be considered as use and occupancy. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**50-16 FINAL COMPLETION/FINAL ACCEPTANCE.** The Contractor will have sixty (60) calendar days, after Substantial Completion, to complete the Work not fully completed or corrected to the satisfaction of the OWNER. The Contractor shall give notice of Final Completion to the OWNER upon completion of all items of Work. Upon written notice of Final Completion from the Contractor that all work has been completed, the OWNER will make an inspection. If all work provided for and contemplated by the Contract Documents is found to be completed in accordance with the Contract documents, plans and specifications, such inspection shall constitute the final inspection and OWNER shall make final acceptance of the Work (Final Acceptance). The OWNER shall notify the Contractor in writing of Final Acceptance as of the date of the final inspection.

If, however, the inspection discloses that the Work, or any part thereof, is not in compliance with the Contract Documents, plans and specifications, the OWNER will give the Contractor the necessary instructions for correction of same and the Contractor shall immediately comply with and execute such instructions. Upon correction of the Work, another inspection will be made which, if the Work is corrected as instructed, shall constitute the final inspection. Once all Work is corrected as instructed and the OWNER finds the Work acceptable under the Contract Documents and the Contract fully performed, which approval shall not be unreasonably withheld, the OWNER will make the Final Acceptance and notify the Contractor in writing of this Acceptance as of the date of the final inspection.

Warranties required by the Contract shall commence on the date of Substantial Completion unless otherwise provided in the notice of Substantial Completion. Each project as a whole shall have a single warranty date. If portions of the work are completed before others, the warranty period will be extended to coincide with the project warranty date identified in the Notice of Substantial Completion.

**50-17 CLAIMS FOR ADJUSTMENT AND DISPUTES.** If for any reason the Contractor deems that additional compensation is due for work or materials not clearly provided for in the contract, plans, or specifications or previously authorized as extra work, the Contractor shall notify the Engineer in writing of his/her intention to claim such additional compensation before beginning the work on which the claim is based. If such notification is not given or the Engineer is not afforded proper opportunity by the Contractor for keeping strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the Engineer has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Contractor shall, within five (5) calendar days, submit his/her written claim to the Engineer who will present it to the owner for consideration in accordance with local laws or ordinances. Contractor will submit proposal within ten (10) days.

Nothing in this subsection shall be construed as a waiver of the Contractor's right to dispute final payment based on differences in measurements or computations.

**50-18 CONTRACTOR COST REDUCTION PROPOSALS.** The provisions of this subsection will apply only to contracts awarded to the lowest bidder pursuant to competitive bidding.

On projects with original contract amounts in excess of \$100,000, the Contractor may submit, in writing, proposals for modifying the plans, specifications or other requirements of the contract for the sole purpose of reducing the cost of construction. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, design and safety standards. This provision shall not apply unless the proposal submitted is specifically identified by the Contractor as being presented for consideration as a value engineering proposal.

Not eligible for cost reduction proposals are changes in the basic design of a pavement type, runway and taxiway lighting, visual aids, hydraulic capacity of drainage facilities, or changes in grade or alignment that reduce the geometric standards of the project.

As a minimum, the following information shall be submitted by the Contractor with each proposal:

- a. A description of both existing contract requirements for performing the work and the proposed changes, with a discussion of the comparative advantages and disadvantages of each;
- b. An itemization of the contract requirements that must be changed if the proposal is adopted;



- c. A detailed estimate of the cost of performing the work under the existing contract and under the proposed changes;
- d. A statement of the time by which a change order adopting the proposal must be issued;
- e. A statement of the effect adoption of the proposal will have on the time for completion of the contract; and
- f. The contract items of work affected by the proposed changes, including any quantity variation attributable to them.

The Contractor may withdraw, in whole or in part, any cost reduction proposal not accepted, within the period specified in the proposal. The provisions of this subsection shall not be construed to require the Engineer to consider any cost reduction proposal that may be submitted.

The Contractor shall continue to perform the work in accordance with the requirements of the contract until a change order incorporating the cost reduction proposal has been issued. If a change order has not been issued by the date upon which the Contractor's cost reduction proposal specifies that a decision should be made, or such other date as the Contractor may subsequently have requested in writing, such cost proposal shall be deemed rejected.

The Engineer shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings from the adoption of all or any part of such proposal. In determining the estimated new savings, the Engineer may disregard the contract bid prices if, in the Engineer's judgment such prices do not represent a fair measure of the value of the work to be performed or deleted.

The OWNER will not be liable for any delay in acting upon, or for any failure to act upon, any proposal submitted pursuant to this Article. The decision of the OWNER as to acceptance of any such proposal under the Contract shall be final. The submission of a proposal by the Contractor shall not in itself affect the rights or obligations of either party under the Contract.

The OWNER may accept in whole or in part any proposal submitted pursuant to this Article by issuing a Contract Change Order which will identify the proposal on which it is based. The Contract Change Order will provide for an equitable adjustment in the Contract Amount and will revise any other affected provisions of the Contract Documents. The equitable adjustment in the Contract Amount shall be established by determining the net savings resulting from the accepted change. The net savings resulting from the change shall be shared between the Contractor and the OWNER on the basis of fifty percent (50%) for the Contractor and fifty percent (50%) for the OWNER. Net savings shall be determined by deducting from the estimated gross savings, the Contractor's costs of developing and implementing the proposal (including any amount attributable to a subcontractor) and the estimated amount of increased costs to the OWNER resulting from the change, such as implementation, inspection, related items, and OWNER-furnished material. Estimated gross savings shall include Contractor's labor, material, equipment, overhead, profit, and bond. The Contract Amount shall be reduced by the sum of the OWNER's costs and share of the net savings and shall constitute full compensation to the Contractor for the cost reduction proposal and performance of the work.

Acceptance of the cost-reduction proposal and performance of the cost-reduction work shall not extend the time of completion of the contract unless specifically provided for in the change order.

**END OF SECTION 50**

## SECTION 60 - CONTROL OF MATERIALS

60-1 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS. The materials used on the work shall conform to the requirements of the contract, plans, and specifications. Unless otherwise specified, such materials that are manufactured or processed shall be new (as compared to used or reprocessed).

In order to expedite the inspection and testing of materials, the Contractor shall furnish complete statements to the Owner as to the origin, composition, and manufacture of all materials to be used in the work. Such statements shall be furnished promptly after execution of the contract but, in all cases, prior to delivery of such materials.

At the Owner's option, materials may be approved at the source of supply before delivery is stated. If it is found after trial that sources of supply for previously approved materials do not produce specified products, the Contractor shall furnish materials from other sources.

60-2 SAMPLES, TESTS, AND CITED SPECIFICATIONS. All materials used in the work shall be inspected, tested, and approved by the Owner before incorporation in the work. Any work in which untested materials are used without approval or written permission of the Owner shall be performed at the Contractor's risk. Materials found to be unacceptable and unauthorized will not be paid for and, if directed by the Owner, shall be removed at the Contractor's expense. Unless otherwise designated, quality assurance tests in accordance with the cited standard methods of AASHTO or ASTM which are current on the date of advertisement for bids will be made by and at the expense of the Owner.

Samples will be taken by a qualified representative of the Owner. All materials being used are subject to inspection, test, or rejection at any time prior to or during incorporation into the work. Copies of all tests will be furnished to the Contractor's representative at his/her request.

60-3 CERTIFICATION OF COMPLIANCE. The Owner may permit the use, prior to sampling and testing, of certain materials or assemblies when accompanied by manufacturer's certificates of compliance stating that such materials or assemblies fully comply with the requirements of the contract. The certificate shall be signed by the manufacturer. Each lot of such materials or assemblies delivered to the work must be accompanied by a certificate of compliance in which the lot is clearly identified.

Materials or assemblies used on the basis of certificates of compliance may be sampled and tested at any time and if found not to be in conformity with contract requirements will be subject to rejection whether in place or not.

The form and distribution of certificates of compliance shall be as approved by the Owner.

When a material or assembly is specified by "brand name or equal" and the Contractor elects to furnish the specified "brand name", the Contractor shall be required to furnish the manufacturer's certificate of compliance for each lot of such material or assembly delivered to the work. Such certificate of compliance shall clearly identify each lot delivered and shall certify as to:

- a. Conformance to the specified performance, testing, quality or dimensional requirements; and,
- b. Suitability of the material or assembly for the use intended in the contract work.

Should the Contractor propose to furnish an "or equal" material or assembly, he shall furnish the manufacturer's vendor data that includes detailed performance data for the specified brand name material or assembly. The Owner shall be the sole judge as to whether the proposed "or equal" is suitable for use in the work.

The Owner reserves the right to refuse permission for use of materials or assemblies on the basis of certificates of compliance.

60-4 PLANT INSPECTION. The Owner or his/her authorized representative may inspect, at its source, any specified material or assembly to be used in the work. Manufacturing plants may be inspected from time to time for the purpose of determining compliance with specified manufacturing methods or materials to be used in the work and to obtain samples required for his/her acceptance of the material or assembly.

Should the Owner conduct plant inspections, the following conditions shall exist:

- a. The Owner shall have the cooperation and assistance of the Contractor and the producer with whom he has contracted for materials.

- b. The Owner shall have full entry at all reasonable times to such parts of the plant that concern the manufacture or production of the materials being furnished.
- c. If required by the Owner, the Contractor shall arrange for adequate office or working space that may be reasonably needed for conducting plant inspections. Office or working space should be conveniently located with respect to the plant.

It is understood and agreed that the Owner shall have the right to retest any material which has been tested and approved at the source of supply after it has been delivered to the site. The Owner shall have the right to reject only material which, when retested, does not meet the requirements of the contract, plans, or specifications.

60-5 FIELD OFFICE AND LABORATORY. When specified and provided for as a contract item, the Contractor shall furnish a building for the exclusive use of the Owner as a field office and field testing laboratory. The building shall be furnished and maintained by the Contractor as specified herein and shall become property of the Contractor when the contract work is completed. Not applicable for this contract.

60-6 STORAGE OF MATERIALS. Materials shall be stored so as to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the Owner. Materials to be stored on airport property shall not create an obstruction to air navigation nor shall they interfere with the free and unobstructed movement of aircraft. Unless otherwise shown on the plans, the storage of materials and the location of the Contractor's plant and parked equipment or vehicles shall be as directed by the Owner. Private property shall not be used for storage purposes without written permission of the owner or lessee of such property. The Contractor shall make all arrangements and bear all expenses for the storage of materials on private property. Upon request, the Contractor shall furnish the Owner a copy of the property owner's permission.

All storage sites on private or airport property shall be restored to their original condition by the Contractor at his/her entire expense, except as otherwise agreed to (in writing) by the owner or lessee of the property.

60-7 UNACCEPTABLE MATERIALS. Any material or assembly that does not conform to the requirements of the contract, plans, or specifications shall be considered unacceptable and shall be rejected. The Contractor shall remove any rejected material or assembly from the site of the work, unless otherwise instructed by the Owner. Rejected material or assembly, the defects of which have been corrected by the Contractor, shall not be returned to the site of the work until such time as the Owner has approved its use in the work.

60-8 OWNER-FURNISHED MATERIALS. The Contractor shall furnish all materials required to complete the work, except those specified herein (if any) to be furnished by the Owner. Owner-furnished materials shall be made available to the Contractor at the location specified herein.

All costs of handling, including transportation from the specified location to the site of work, storage, and installing Owner-furnished materials shall be included in the price(s) bid for the contract in which such Owner-furnished material is used.

After any Owner-furnished material has been delivered to the location specified, the Contractor shall be responsible for any demurrage, damage, loss, or other deficiencies which may occur during the Contractor's handling, storage, or use of such Owner-furnished material. The Owner will deduct from any monies due or to become due the Contractor any cost incurred by the Owner in making good such loss due to the Contractor's handling, storage, or use of Owner-furnished materials.

**END OF SECTION 60**

## SECTION 70 - LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC

70-1 LAWS TO BE OBSERVED. The Contractor shall keep fully informed of all Federal and state laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the Owner and all his/her officers, agents, or servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or his/her employees.

70-2 PERMITS, LICENSES, AND TAXES. The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work.

70-2.1 The OWNER is exempt from State and Local Sales and use Taxes pursuant to Section 151.309 of the Texas State Tax Code.

However, for the Contractor to be relieved of the Sales Tax liability, the contract must be a "separated contract", i.e., costs of materials incorporated into the project must be separated from all other costs of the project. As a seller, Contractor must issue a resale certificate (must hold a sales tax permit to do this) to the supplier in lieu of the sales tax at the time of the purchase. The OWNER will issue to the Contractor an exemption certificate for the Contractor's records in substantiating materials "resold" to the OWNER by the Contractor's incorporation of said materials on the OWNER project(s).

70-3 PATENTED DEVICES, MATERIALS, AND PROCESSES. If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the patentee or Owner. The Contractor and the surety shall indemnify and save harmless the Owner, any third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner for any costs, expenses, and damages which it may be obliged to pay by reason of an infringement, at any time during the prosecution or after the completion of the work.

70-4 RESTORATION OF SURFACES DISTURBED BY OTHERS. The Owner reserves the right to authorize the construction, reconstruction, or maintenance of any public or private utility service, FAA or National Oceanic and Atmospheric Administration (NOAA) facility, or a utility service of another Government agency at any time during the progress of the work. To the extent that such construction, reconstruction, or maintenance has been coordinated with the Owner, such authorized work (by others) is indicated in the special conditions, or on the plans.

Except as described above, the Contractor shall not permit any individual, firm, or corporation to excavate or otherwise disturb such utility services or facilities located within the limits of the work without the written permission of the Owner.

Should the Owner of public or private utility service, FAA, or NOAA facility, or a utility service of another Government agency be authorized to construct, reconstruct, or maintain such utility service or facility during the progress of the work, the Contractor shall cooperate with such Owners by arranging and performing the work in this contract so as to facilitate such construction, reconstruction or maintenance by others whether or not such work by others is listed above. When ordered as extra work by the Owner, the Contractor shall make all necessary repairs to the work which are due to such authorized work by others, unless otherwise provided for in the contract, plans, or specifications. It is understood and agreed that the Contractor shall not be entitled to make any claim for damages due to such authorized work by others or for any delay to the work resulting from such authorized work.

70-5 FEDERAL AID PARTICIPATION. For AIP contracts, the United States Government has agreed to reimburse the Owner for some portion of the contract costs. Such reimbursement is made from time to time upon the Owner's (Sponsor's) request to the FAA. In consideration of the United States Government's (FAA's) agreement with the Owner, the Owner has included provisions in this contract pursuant to the requirements of the Airport Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, and the Rules and Regulations of the FAA that pertain to the work.

As required by the Act, the contract work is subject to the inspection and approval of duly authorized representatives of the Administrator, FAA, and is further subject to those provisions of the rules and regulations that are cited in the contract, plans, or specifications.

No requirement of the Act, the rules and regulations implementing the Act, or this contract shall be construed as making the Federal Government a party to the contract nor will any such requirement interfere, in any way, with the rights of either party to the contract.

**70-6 SANITARY, HEALTH, AND SAFETY PROVISIONS.** The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his/her employees as may be necessary to comply with the requirements of the state and local Board of Health, or of other bodies or tribunals having jurisdiction.

Attention is directed to Federal, state, and local laws, rules and regulations concerning construction safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions that are unsanitary, hazardous, or dangerous to his/her health or safety.

**70-7 PUBLIC CONVENIENCE AND SAFETY.** The Contractor shall control his/her operations and those of his/her subcontractors and all suppliers, to assure the least inconvenience to the traveling public. Under all circumstances, safety shall be the most important consideration.

The Contractor shall maintain the free and unobstructed movement of aircraft and vehicular traffic with respect to his/her own operations and those of his/her subcontractors and all suppliers in accordance with the subsection titled MAINTENANCE OF TRAFFIC of Section 40 hereinbefore specified and shall limit such operations for the convenience and safety of the traveling public as specified in the subsection titled LIMITATION OF OPERATIONS of Section 80 hereinafter.

**70-8 BARRICADES, WARNING SIGNS, AND HAZARD MARKINGS.** The Contractor shall furnish, erect, and maintain all barricades, warning signs, and markings for hazards necessary to protect the public and the work. When used during periods of darkness, such barricades, warning signs, and hazard markings shall be suitably illuminated.

For vehicular and pedestrian traffic, the Contractor shall furnish, erect, and maintain barricades, warning signs, lights and other traffic control devices in reasonable conformity with the Manual of Uniform Traffic Control Devices for Streets and Highways (published by the United States Government Printing Office).

When the work requires closing an air operations area of the airport or portion of such area, the Contractor shall furnish, erect, and maintain temporary markings and associated lighting conforming to the requirements of AC 150/5340-1, Marking of Paved Areas on Airports.

The Contractor shall furnish, erect, and maintain markings and associated lighting of open trenches, excavations, temporary stock piles, and his/her parked construction equipment that may be hazardous to the operation of emergency fire-rescue or maintenance vehicles on the airport in reasonable conformance to AC 150/5370-2, Operational Safety on Airports During Construction Activity.

The Contractor shall identify each motorized vehicle or piece of construction equipment in reasonable conformance to AC 150/5370-2.

The Contractor shall furnish and erect all barricades, warning signs, and markings for hazards prior to commencing work which requires such erection and shall maintain the barricades, warning signs, and markings for hazards until their dismantling is directed by the Engineer.

Open-flame type lights shall not be permitted within the air operations areas of the airport.

**70-9 USE OF EXPLOSIVES.** When the use of explosives is necessary for the prosecution of the work, the Contractor shall exercise the utmost care not to endanger life or property, including new work. The Contractor shall be responsible for all damage resulting from the use of explosives.

All explosives shall be stored in a secure manner in compliance with all laws and ordinances, and all such storage places shall be clearly marked. Where no local laws or ordinances apply, storage shall be provided satisfactory to the Engineer and, in general, not closer than 1,000 feet (300 m) from the work or from any building, road, or other place of human occupancy.

The Contractor shall notify each property Owner and public utility company having structures or facilities in proximity to the site of the work of his/her intention to use explosives. Such notice shall be given sufficiently in advance to enable them to take such steps as they may deem necessary to protect their property from injury.

The use of electrical blasting caps shall not be permitted on or within 1,000 feet (300 m) of the airport property.

**70-10 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE.** The Contractor shall be responsible for the preservation of all public and private property, and shall protect carefully from disturbance or damage all land monuments and property markers until the Owner has witnessed or otherwise referenced their location and shall not move them until directed.

The Contractor shall be responsible for all damage or injury to property of any character, during the prosecution of the work, resulting from any act, omission, neglect, or misconduct in his/her manner or method of executing the work, or at any time due to defective work or materials, and said responsibility will not be released until the project shall have been completed and accepted.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the nonexecution thereof by the Contractor, he shall restore, at his/her own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, or otherwise restoring as may be directed, or he shall make good such damage or injury in an acceptable manner.

**70-11 RESPONSIBILITY FOR DAMAGE CLAIMS. THE CONTRACTOR SHALL INDEMNIFY AND SAVE HARMLESS THE ENGINEER AND THE OWNER AND THEIR OFFICERS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER BROUGHT BECAUSE OF ANY INJURIES OR DAMAGE RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS, OR PROPERTY ON ACCOUNT OF THE OPERATIONS OF THE CONTRACTOR; OR ON ACCOUNT OF OR IN CONSEQUENCE OF ANY NEGLIGENCE IN SAFEGUARDING THE WORK; OR THROUGH USE OF UNACCEPTABLE MATERIALS IN CONSTRUCTING THE WORK; OR BECAUSE OF ANY ACT OR OMISSION, NEGLIGENCE, OR MISCONDUCT OF SAID CONTRACTOR; OR BECAUSE OF ANY CLAIMS OR AMOUNTS RECOVERED FROM ANY INFRINGEMENTS OF PATENT, TRADEMARK, OR COPYRIGHT; OR FROM ANY CLAIMS OR AMOUNTS ARISING OR RECOVERED UNDER THE "WORKMEN'S COMPENSATION ACT," OR ANY OTHER LAW, ORDINANCE, ORDER, OR DECREE. MONEY DUE THE CONTRACTOR UNDER AND BY VIRTUE OF HIS/HER CONTRACT AS MAY BE CONSIDERED NECESSARY BY THE OWNER FOR SUCH PURPOSE MAY BE RETAINED FOR THE USE OF THE OWNER OR, IN CASE NO MONEY IS DUE, HIS/HER SURETY MAY BE HELD UNTIL SUCH SUIT OR SUITS, ACTION OR ACTIONS, CLAIM OR CLAIMS FOR INJURIES OR DAMAGES AS AFORESAID SHALL HAVE BEEN SETTLED AND SUITABLE EVIDENCE TO THAT EFFECT FURNISHED TO THE OWNER, EXCEPT THAT MONEY DUE THE CONTRACTOR WILL NOT BE WITHHELD WHEN THE CONTRACTOR PRODUCES SATISFACTORY EVIDENCE THAT HE IS ADEQUATELY PROTECTED BY PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE.**

**70-12 THIRD PARTY BENEFICIARY CLAUSE.** It is specifically agreed between the parties executing the contract that it is not intended by any of the provisions of any part of the contract to create the public or any member thereof a third party beneficiary or to authorize anyone not a party to the contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the contract.

**70-13 OPENING SECTIONS OF THE WORK TO TRAFFIC.** Should it be necessary for the Contractor to complete portions of the contract work for the occupancy or use of the Owner prior to completion of the entire contract, such "phasing" of the work shall be specified herein and indicated on the plans. When so specified, the Contractor shall complete such portions of the work on or before the date specified or as otherwise specified. The Contractor shall make his/her own estimate of the difficulties involved in arranging his/her work to permit such occupancy or use by the Owner as described in the special conditions, or on the plans. Such portion of the work listed above, may be occupied by the Owner in accordance with the subsection titled **PARTIAL OCCUPANCY** of Section 50.

No portion of the work may be opened by the Contractor for public use until ordered by the Engineer in writing. Should it become necessary to open a portion of the work to public traffic on a temporary or intermittent basis, such openings shall be made when, in the opinion of the Engineer, such portion of the work is in an acceptable condition to support the intended traffic. Temporary or intermittent openings are considered to be inherent in the work and shall not constitute either acceptance of the portion of the work so opened or a waiver of any provision of the contract. Any damage to the portion of the work so opened that is not attributable to traffic which is permitted by the Owner shall be repaired by the Contractor at his/her expense.

The Contractor shall make his/her own estimate of the inherent difficulties involved in completing the work under the conditions herein described and shall not claim any added compensation by reason of delay or increased cost due to opening a portion of the contract work.

70-14 CONTRACTOR'S RESPONSIBILITY FOR WORK. Until the Owner's final written acceptance of the entire completed work, or a designated portion thereof, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part due to the action of the elements or from any other cause, whether arising from the execution or from the nonexecution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof except damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God such as earthquake, tidal wave, tornado, hurricane or other cataclysmic phenomenon of nature, or acts of the public enemy or of Government authorities.

If the work is suspended for any cause whatever, the Contractor shall be responsible for the work and shall take such precautions necessary to prevent damage to the work. The Contractor shall provide for normal drainage and shall erect necessary temporary structures, signs, or other facilities at his/her expense. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established planting, seedings, and soddings furnished under his/her contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury.

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the Improvements embraced in this contract by the Sponsor or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom which appear within a period of twelve (12) months from the date of Substantial Completion of the work, unless otherwise stated in the Substantial Completion Notice(s) from Owner.

70-15 CONTRACTOR'S RESPONSIBILITY FOR UTILITY SERVICE AND FACILITIES OF OTHERS (Revised March 2007). As provided in the subsection titled RESTORATION OF SURFACES DISTURBED BY OTHERS of this section, the Contractor shall cooperate with the provider of any public or private utility service to construct, reconstruct or maintain its utility services, facilities or structures during the progress of the Work. In addition, the Contractor shall control their operations to prevent the unscheduled interruption of such utility services or damage to such facilities or structures.

To the extent that such public or private utility services, facilities or structures are known to exist within the limits of the Work, the approximate locations have been indicated on the plans and the owners are indicated in the special conditions, or on the plans.

It is understood and agreed that the OWNER does not guarantee the accuracy or the completeness of the location information relating to existing utility services, facilities, or structures that may be shown on the plans or encountered in the Work. Any inaccuracy or omission in such information shall not relieve the Contractor of the responsibility to locate and protect such existing facilities and structures from damage or the service from unscheduled interruption.

It is further understood and agreed that the Contractor shall, upon execution of the Contract, notify the providers of all identified utility services, facilities or structures of the Contractor's plan of operations. Such notification shall be in writing addressed to the PERSON TO CONTACT as provided in the appropriate plans and specifications. A copy of each notification shall be given to the OWNER prior to commencement of work. Should additional utility services, facilities or structures be discovered during the course of the Work, the Contractor shall notify the Owner within 24 hours and the providers within two business days of the discovery.

In addition to the general written notification, it shall be the responsibility of the Contractor to keep such individual providers advised of changes in the Contractor's plan of operations that would affect such providers.

Prior to commencing the Work in the general vicinity of an existing utility service, facility or structure, the Contractor shall again notify each such provider of the Contractor's plan of operation. If, in the Contractor's opinion, the provider's assistance is needed to locate the utility service, facility or structure or if the presence of a representative of the provider is desirable to observe the work, such advice should be included in the notification. Such notification

shall be given by the most expeditious means to reach the utility provider's PERSON TO CONTACT no later than two business days prior to the Contractor's commencement of operations in such general vicinity. The Contractor shall simultaneously, and likewise in the most expeditious manner, furnish a copy of such notice or a written summary of it to the OWNER

The Contractor's failure to give the two day's notice hereinabove provided shall be cause for the OWNER to suspend the Contractor's operations in the general vicinity of a utility service, facility or structure until proper, timely notice can first be provided as required above.

Where the outside limits of an underground utility service, facility or structure have been located and staked on the ground, or otherwise identified, the Contractor shall be required to use manual, non-destructive daylighting to locate the utility visually and with certainty within twenty feet (vertically and horizontally) of such outside limits or other identification, prior to commencement of automated (heavy equipment) excavation.

Should the Contractor damage a provider's facility or structure or interrupt the operation of a utility service, by accident or otherwise, the Contractor shall immediately notify the proper authorities, including the Airport Operations Center (AOC), the OWNER's Project Manager and the utility service provider and shall take all reasonable measures to prevent further damage or interruption of service and to protect the general public. The Contractor, in such events, shall cooperate with the utility service, facility or structure provider and the OWNER continuously until such damage has been repaired and service restored to the satisfaction of the utility service, facility or structure provider.

The Contractor shall bear all costs of repair of damage to utility facilities or structures and of restoration of interrupted utility service, including, without limitation, operational impacts and costs incurred by the OWNER for response and mitigation of the incident, due to the Contractor's operations whether or not due to negligence or accident. The OWNER reserves the right to deduct such costs from any monies due or which may become due the Contractor under this Contract or under any other contract between Contractor and OWNER, or his/her surety hereunder.

70-16 FURNISHING RIGHTS-OF-WAY. The Owner will be responsible for furnishing all rights-of-way upon which the work is to be constructed in advance of the Contractor's operations.

70-17 NO WAIVER OF LEGAL RIGHTS. Upon completion of the work, the Owner will expeditiously make final inspection and notify the Contractor of final acceptance. Such final acceptance, however, shall not preclude or stop the Owner from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the Owner be precluded or stopped from recovering from the Contractor or his/her surety, or both, such overpayment as may be sustained, or by failure on the part of the Contractor to fulfill his/her obligations under the contract. A waiver on the part of the Owner of any breach of any part of the contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor, without prejudice to the terms of the contract, shall be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty and guaranty.

70-18 ENVIRONMENTAL PROTECTION. The Contractor shall comply with all Federal, state, and local laws and regulations controlling pollution of the environment. The Contractor shall 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.

70-19 ARCHAEOLOGICAL AND HISTORICAL FINDINGS. Unless otherwise specified in this subsection, the Contractor is advised that the site of the work is not within any property, district, or site, and does not contain any building, structure, or object listed in the current National Register of Historic Places published by the United States Department of Interior.

Should the Contractor encounter, during his/her operations, any building, part of a building, structure, or object which is incongruous with its surroundings, he shall immediately cease operations in that location and notify the Owner. The Owner will immediately investigate the Contractor's finding and will direct the Contractor to either resume his/her operations or to suspend operations as directed.



Should the Owner order suspension of the Contractor's operations in order to protect an archaeological or historical finding, or order the Contractor to perform extra work, such shall be covered by an appropriate contract modification (change order or supplemental agreement) as provided in the subsection titled EXTRA WORK of Section 40 and the subsection titled PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK of Section 90. If appropriate, the contract modification shall include an extension of contract time in accordance with the subsection titled DETERMINATION AND EXTENSION OF CONTRACT TIME of Section 80.

70-20 PERSONAL LIABILITY OF PUBLIC OFFICIALS. In carrying out any of the Contract provisions or in exercising any power or authority granted to it by this Contract, there shall be no liability upon any officer or employee of the Owner or the Cities of Dallas and Fort Worth (Cities), either personally or as an official or employee of the Owner or the Cities. It is understood that in such matters they act solely as agents and representatives of the Owner or the Cities.

10-42 END OF SECTION 70

## SECTION 80 - PROSECUTION AND PROGRESS

80-1 PRIVACY OF CONTRACT & ASSIGNMENT OF RIGHTS. The Owner will not recognize any subcontractor on the work. The Contractor shall at all times when work is in progress be represented either in person, by a qualified superintendent, or by other designated, qualified representative who is duly authorized to receive and execute orders of the Owner.

Should the Contractor elect to assign his/her contract, said assignment shall be concurred in by the surety, shall be presented for the consideration and approval of the Owner, and shall be consummated only on the written approval of the Owner. In case of approval, the Contractor shall file copies of all subcontracts with the Owner.

80-2 NOTICE TO PROCEED. The notice to proceed shall state the date on which it is expected the Contractor will begin the construction and from which date contract time will be charged. The Contractor shall begin the work to be performed under the contract within 10 days of the date set by the Owner in the written notice to proceed, but in any event, the Contractor shall notify the Owner at least 24 hours in advance of the time actual construction operations will begin.

80-3 PROJECT PROGRESS SCHEDULE. The Contractor shall submit a coordinated construction schedule for all work activities. The schedule shall be prepared as a network diagram in Critical Path Method (CPM), Primavera P3 or P6 format. At a minimum, it shall provide information on the sequence of work activities, interdependence of activities, milestone dates, and activity duration.

The contractor shall submit an interim schedule followed by a baseline schedule, or only a baseline schedule, depending on when the contractor starts work. Generate the baseline schedule using Primavera P3 or P6 format. The Contractor shall submit a baseline schedule within 30 days of the execution of the Contract or within 10 days after the effective date of the notice to proceed, whichever is sooner. Any revisions shall be submitted within 10 days after the initial review.

The Contractor shall maintain the work schedule and provide an update and analysis of the progress schedule on a monthly basis, or as otherwise specified in the contract. A monthly update schedule is a schedule in which only progress is updated from the prior data date to the current data date. Submission of the work schedule shall not relieve the Contractor of overall responsibility for scheduling, sequencing, and coordinating all work to comply with the requirements of the contract.

The Contractor shall be responsible for assuring all work, including all subcontractor work, is included in the schedule. The Contractor shall be responsible for assuring that all work sequences are logical and that the schedule indicates a coordinated plan.

80-4 PROGRAM MANAGEMENT SOFTWARE. The 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. The Contractor may be directed by the Owner to enter specific project related information directly into the Owner's Program Management Software in the Owner's computer system on a day-to-day basis. Some project management functions that are executed within the system the Contractor 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, the Contractor will use Owner supplied software licenses when using the Owner's system.

80-5 PROSECUTION AND PROGRESS. Unless otherwise specified, the Contractor shall submit his/her progress schedule for the Owner's approval within 10 days after the effective date of the notice to proceed. The Contractor's progress schedule, when approved by the Owner, may be used to establish major construction operations and to check on the progress of the work. The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the project in accordance with the plans and specifications within the time set forth in the proposal.

If the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the Owner's request, submit a revised schedule for completion of the work within the contract time and modify his/her operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the prosecution of the work be discontinued for any reason, the Contractor shall notify the Owner at least 24 hours in advance of resuming operations.

The Contractor shall not commence any actual construction prior to the date on which the notice to proceed is issued by the Owner.

**80-6 LIMITATION OF OPERATIONS.** When the work requires the Contractor to conduct his/her operations within an AIR OPERATIONS AREA of the Airport, the Contractor shall control his/her operations and the operations of his/her subcontractors and all suppliers so as to provide for the free and unobstructed movement of aircraft in the AIR OPERATIONS AREAS of the airport.

When the work requires the contractor to conduct his/her operations within an AIR OPERATIONS AREA of the airport, the work shall be coordinated with airport management (through the Engineer) at least 48 hours prior to commencement of such work. The Contractor shall not close an AIR OPERATIONS AREA until so authorized by the Engineer and until the necessary temporary marking and associated lighting is in place as provided in the subsection titled BARRICADES, WARNING SIGNS, AND HAZARD MARKINGS of Section 70.

When the contract work requires the Contractor to work within an AIR OPERATIONS AREA of the airport on an intermittent basis (intermittent opening and closing of the AIR OPERATIONS AREA), the Contractor shall maintain constant communications as hereinafter specified; immediately obey all instructions to vacate the AIR OPERATIONS AREA; immediately obey all instructions to resume work in such AIR OPERATIONS AREA. Failure to maintain the specified communications or to obey instructions shall be cause for suspension of the Contractor's operations in the AIR OPERATIONS AREA until the satisfactory conditions are provided. The AIR OPERATIONS AREA (AOA) cannot be closed to operating aircraft to permit the Contractor's operations on a continuous basis and will therefore be closed to aircraft operations intermittently as described in the special conditions, or on the plans.

**80-7 CHARACTER OF WORKERS, METHODS, AND EQUIPMENT.** The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the contract, plans, and specifications.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.

All equipment which is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the work shall be such that no injury to previously completed work, adjacent property, or existing airport facilities will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the work are not prescribed in the contract, the Contractor is free to use any methods or equipment that will accomplish the work in conformity with the requirements of the contract, plans, and specifications.

When the contract specifies the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Owner. If the Contractor desires to use a method or type of equipment other than specified in the contract, he may request authority from the Owner to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with contract requirements. If, after trial use of the substituted methods or equipment, the Owner determines that the work produced does not meet contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality, or take such other corrective action as the Owner may direct. No change will be made in basis of payment for the contract items involved nor in contract time as a result of authorizing a change in methods or equipment under this subsection.

80-8 TEMPORARY SUSPENSION OF THE WORK. The Owner shall have the authority to suspend the work wholly, or in part, for such period or periods as he may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for the prosecution of the work, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given or perform any or all provisions of the contract.

In the event that the Contractor is ordered by the Owner , in writing, to suspend work for some unforeseen cause not otherwise provided for in the contract and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the work during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the effective date of the Owner 's order to suspend work to the effective date of the Owner 's order to resume the work. Claims for such compensation shall be filed with the Owner within the time period stated in the Owner 's order to resume work. The Contractor shall forward his/her claim information substantiating the amount shown on the claim to the Owner for consideration in accordance with local laws or ordinances. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, for suspensions made at the request of the Contractor, or for any other delay provided for in the contract, plans, or specifications.

If it should become necessary to suspend work for an indefinite period, the Contractor shall store all materials in such manner that they will not become an obstruction nor become damaged in any way. The Contractor shall take every precaution to prevent damage or deterioration of the work performed and provide for normal drainage of the work. The Contractor shall erect temporary structures where necessary to provide for traffic on, to, or from the Airport.

80-9 DETERMINATION AND EXTENSION OF CONTRACT TIME. The number of calendar or working days allowed for completion of the Work shall be stated in the contract and shall be known as the CONTRACT TIME.

- a. CONTRACT TIME based on CALENDAR DAYS shall consist of the number of calendar days stated in the Contract counting from the date of the notice to proceed and including all Saturdays, Sundays, holidays, and nonworking days. All calendar days elapsing between the effective dates of the OWNER's orders to suspend and resume all work, due to causes not the fault of the Contractor, shall be excluded.
- b. Any claim for extension of time or additional compensation for delay (including, but not limited to, compensation for extended overhead or general conditions costs) shall be made as soon as possible in writing to the OWNER but not more than ten days after the commencement of the delay. In case of continuing delay, only one claim notice per calendar month is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work. Furthermore, within ten (10) business days after the end of each calendar month for which the Contractor (or a subcontractor at any level) has claimed a delay for which the Contractor will ultimately seek additional compensation from the OWNER, the Contractor shall submit to the OWNER a detailed and fully-supported document listing the costs claimed for the preceding calendar month by the Contractor and any impacted subcontractors, pursuant to the delay. It is understood (and the Contractor shall ensure) that these same provisions flow down to subcontractors working under the Contract. In the event that the Contractor does not comply with the requirements of this section, the Contractor shall not be entitled to any mark-up for fee (profit) on any compensation ultimately approved by the OWNER for the delay.
- c. Seasonal weather conditions shall be considered and included in the planning and scheduling of all Work influenced by high or low ambient temperatures, precipitation and/or saturated soil to ensure completion of all Work within the Contract time. Average historical climatic conditions for the proceeding ten (10) years are published by the National Oceanographic and Atmospheric Administration (NOAA) and entitled "Local Climatological Data-Dallas/Fort Worth, Texas."
- d. For planning purposes, the following shall be considered average workdays lost per month due to weather conditions:

Month	Lost Time in Workdays
January	5
February	4
March	5
April	6
May	6
June	4
July	4
August	4
September	5
October	4
November	4
December	4

- e. Contract time extensions (for calendar-day-based Contracts) for abnormal weather conditions will be granted on a day for day basis only to the extent the actual time lost during a particular month exceeds the average lost time indicated in the above table. Days on which no activity has been planned or scheduled are not considered workdays.
- F. WHEN THE CONTRACT TIME IS A SPECIFIED COMPLETION DATE, IT SHALL BE THE DATE ON WHICH ALL CONTRACT WORK SHALL BE COMPLETE ACCORDING TO THE PROPOSAL DOCUMENTS, REGARDLESS OF ACTUAL OR CLAIMED DELAYS (WEATHER RELATED OR OTHERWISE).**
- g. A time extension to the Contract will extend the Contract Time as referenced here.

80-10 FAILURE TO COMPLETE ON TIME. For each calendar day or working day, as specified in the contract, that any work remains uncompleted after the contract time (including all extensions and adjustments as provided in the subsection titled DETERMINATION AND EXTENSION OF CONTRACT TIME of this Section) the sum specified in the contract Special Provisions as liquidated damages will be deducted from any money due or to become due the Contractor or his/her surety. Such deducted sums shall not be deducted as a penalty but shall be considered as liquidation of a reasonable portion of damages that will be incurred by the Owner should the Contractor fail to complete the work in the time provided in his/her contract.

Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the Owner of any of its rights under the contract.

80-11 DEFAULT AND TERMINATION OF CONTRACT. The Contractor shall be considered in default of his/her contract and such default will be considered as cause for the Owner to terminate the contract for any of the following reasons if the Contractor:

- a. Fails to begin the work under the contract within the time specified in the "Notice to Proceed," or
- b. Fails to perform the work or fails to provide sufficient workers, equipment or materials to assure completion of work in accordance with the terms of the contract, or
- c. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
- d. Discontinues the prosecution of the work, or
- e. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- g. Allows any final judgment to stand against him unsatisfied for a period of 10 days, or
- h. Makes an assignment for the benefit of creditors, or
- i. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

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

If the Contractor or surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the Owner will have full power and authority without violating the contract, to take the prosecution of the work out of the hands of the Contractor. The Owner may appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Owner will be required for the completion of said contract in an acceptable manner.

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

80-12 TERMINATION FOR NATIONAL EMERGENCIES. The Owner shall terminate the contract or portion thereof by written notice when the Contractor is prevented from proceeding with the construction contract as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense.

When the contract, or any portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the actual number of units or items of work completed at the contract price or as mutually agreed for items of work partially completed or not started. No claims or loss of anticipated profits shall be considered.

Reimbursement for organization of the work, and other overhead expenses (when not otherwise included in the contract), and moving equipment and materials to and from the job will be considered, the intent being that an equitable settlement will be made with the Contractor.

Acceptable materials, obtained or ordered by the Contractor for the work and that are not incorporated in the work shall, at the option of the Contractor, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such points of delivery as may be designated by the Owner.

Termination of the contract or a portion thereof shall neither relieve the Contractor of his/her responsibilities for the completed work nor shall it relieve his/her surety of its obligation for and concerning any just claim arising out of the work performed.

**END OF SECTION 80**

## SECTION 90 - MEASUREMENT AND PAYMENT

90-1 MEASUREMENT OF QUANTITIES. All work completed under the contract will be measured by the Engineer, or his/her authorized representatives, using United States Customary Units of Measurement. The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures (or leave-outs) having an area of 9 square feet or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing by the Engineer.

Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions. Unless otherwise specified, all contract items which are measured by the linear foot such as electrical ducts, conduits, pipe culverts, underdrains, and similar items shall be measured parallel to the base or foundation upon which such items are placed.

In computing volumes of excavation the average end area method or other acceptable methods will be used. The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fraction of inches.

The term "ton" will mean the short ton consisting of 2,000 pounds avoirdupois. All materials which are measured or proportioned by weights shall be weighed on accurate, approved scales by competent, qualified personnel at locations designed by the Engineer. If material is shipped by rail, the car weight may be accepted provided that only the actual weight of material be paid for. However, car weights will not be acceptable for material to be passed through mixing plants. Trucks used to haul material before paid for by weight shall be weighed empty daily at such times as the Engineer directs, and each truck shall bear a plainly legible identification mark.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Engineer, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.

When requested by the Contractor and approved by the Engineer in writing, material specified to be measured by the cubic yard may be weighed, and such weights will be converted to cubic yards for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.

Bituminous materials will be measured by the gallon or ton. When measured by volume, such volumes will be measured at 60\_F (15\_C) or will be corrected to the volume at 60\_F (15\_C) using ASTM D 1250 for asphalts or ASTM D 633 for tars.

Net certified scale weights or weights based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when bituminous material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work.

When bituminous materials are shipped by truck or transport, net certified weights by volume, subject to correction for loss or foaming, may be used for computing quantities.

Cement will be measured by the ton.

Timber will be measured by the thousand feet board measure (M.F.B.M.) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

The term "lump sum" when used as an item of payment will mean complete payment for the work described in the contract.

When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the work. Special equipment ordered by the Engineer in connection with force account work will be measured as agreed in the change order or supplemental agreement authorizing such force account work as provided in the subsection titled PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK of this section.

When the standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gauge, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

Scales for weighing materials which are required to be proportioned or measured and paid for by weight shall be furnished, erected, and maintained by the Contractor, or be certified permanently installed commercial scales. Scales shall be accurate within 1/2 percent of the correct weight throughout the range of use. The Contractor shall have the scales checked under the observation of the inspector before beginning work and at such other times as requested. The intervals shall be uniform in spacing throughout the graduated or marked length of the beam or dial and shall not exceed 1/10 of 1 percent of the nominal rated capacity of the scale, but not less than 1 pound. The use of spring balances will not be permitted.

Beams, dials, platforms, and other scale equipment shall be so arranged that the operator and the inspector can safely and conveniently view them.

Scale installations shall have available 10 standard 50-pound weights for testing the weighing equipment or suitable weights and devices for other approved equipment.

Scales must be tested for accuracy and serviced before use at a new site. Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end.

Scales "overweighing" (indicating more than correct weight) will not be permitted to operate, and all materials received subsequent to the last previous correct weighing-accuracy test will be reduced by the percentage of error in excess of 1/2 of 1 percent.

In the event inspection reveals the scales have been "underweighing" (indicating less than correct weight), they shall be adjusted, and no additional payment to the Contractor will be allowed for materials previously weighed and recorded.

All costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house; and for all other items specified in this subsection, for the weighing of materials for proportioning or payment, shall be included in the Lump Sum price of the project.

When the estimated quantities for a specific portion of the work are designated as the pay quantities in the contract, they shall be the final quantities for which payment for such specific portion of the work will be made, unless the dimensions of said portions of the work shown on the plans are revised by the Engineer. If revised dimensions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the authorized changes in the dimensions.

90-2 SCOPE OF PAYMENT. The Contractor shall receive and accept compensation provided for in the contract as full payment for furnishing all materials, for performing all work under the contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof, subject to the provisions of the subsection titled NO WAIVER OF LEGAL RIGHTS of Section 70.

When the "basis of payment" subsection of a technical specification requires that the contract price (price bid) include compensation for certain work or material essential to the item, this same work or material will not also be measured for payment under any other contract item which may appear elsewhere in the contract, plans, or specifications.

90-3 COMPENSATION FOR ALTERED QUANTITIES. When the accepted quantities of work vary from the quantities in the proposal, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract price for the accepted quantities of work actually completed and accepted. No allowance, except as provided for in the subsection titled ALTERATION OF WORK AND QUANTITIES of Section 40 will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered



or claimed by the Contractor which results directly from such alterations or indirectly from his/her unbalanced allocation of overhead and profit among the contract items, or from any other cause.

90-4 PAYMENT FOR OMITTED ITEMS. As specified in the subsection titled OMITTED ITEMS of Section 40, the Engineer shall have the right to omit from the work (order nonperformance) any contract item, except major contract items, in the best interest of the Owner.

Should the Engineer omit or order nonperformance of a contract item or portion of such item from the work, the Contractor shall accept payment in full at the contract prices for any work actually completed and acceptable prior to the Engineer's order to omit or nonperform such contract item.

Acceptable materials ordered by the Contractor or delivered on the work prior to the date of the Engineer's order will be paid for at the actual cost to the Contractor and shall thereupon become the property of the Owner.

In addition to the reimbursement hereinbefore provided, the Contractor shall be reimbursed for all actual costs incurred for the purpose of performing the omitted contract item prior to the date of the Engineer's order. Such additional costs incurred by the Contractor must be directly related to the deleted contract item and shall be supported by certified statements by the Contractor as to the nature of the amount of such costs.

90-5 PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK. Extra work, performed in accordance with the subsection titled EXTRA WORK of Section 40, will be paid for at the contract prices or agreed prices specified in the change order or supplemental agreement authorizing the extra work. When the change order or supplemental agreement authorizing the extra work requires that it be done by force account, such force account shall be measured and paid for based on expended labor, equipment, and materials plus overhead and profit.

- a. Miscellaneous. No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.
- b. Comparison of Record. The Contractor and the Engineer shall compare records of the cost of force account work at the end of each day. Agreement shall be indicated by signature of the Contractor and the Engineer or their duly authorized representatives.
- c. Statement. No payment will be made for work performed on a force account basis until the Contractor has furnished the Engineer with duplicate itemized statements of the cost of such force account work detailed as follows:
  1. Name, classification, date, daily hours, total hours, rate and extension for each laborer and foreman.
  2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
  3. Quantities of materials, prices, and extensions.
  4. Transportation of materials.
  5. Cost of property damage, liability and workman's compensation insurance premiums, unemployment insurance contributions, and social security tax.

Statements shall be accompanied and supported by a receipted invoice for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were taken from his/her stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

Contractor-owned trucks, machinery and equipment will be paid at the rates agreed by CM or at the rates specified in the current issue of the Association of General Contractors (AGC) Contractor Equipment Cost Guide published by Data Quest, San Jose, CA 95131. Such payment will be only for the time actually used on such changed work and will be full compensation for the use of the trucks, machinery and equipment including fuel, lubricants, water, depreciation and similar operating expenses. For leased or rented trucks, machinery, and equipment, payment will be limited to reasonable actual and verifiable costs.

The markups for extra work and force account work for overhead and profit are limited to ten percent (10%) and five percent (5%), respectively, for work performed by prime or subcontractors.

In the event the extra work or force account work is accomplished by a subcontractor (or subcontractors), the Prime Contractor shall be limited to five percent (5%) of the work accomplished by a subcontractor (or subcontractors) as total markup to cover and compensate the Prime Contractor for overhead and profit.

Total markup for overhead and profit is limited to twenty percent (20%), distribution to be determined at the discretion of the prime contractor, subject to the limitations described above.

90-6 PARTIAL PAYMENTS. Partial payments will be made no more than once each month as the work progresses and must be requested on forms and in a format approved by the Owner, including a Prior Period Activity Report (PPAR). Requests for Payment will be prepared by the Contractor, based upon the Contractor's estimate of the value of Work performed and materials complete-in-place in accordance with the Contract plans, and specifications. The Contractor's Pay Request will be reviewed by the OWNER (and if necessary, adjusted accordingly) based upon the OWNER's estimate of the value of Work performed and materials complete-in-place in accordance with the Contract plans and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with the sub-section titled PAYMENT FOR MATERIALS ON HAND of this Section.

No partial payment will be made when the amount due the Contractor since the last estimate amounts to less than five hundred dollars.

From the total of the amount determined to be payable on a partial payment, 5 percent of such total amount will be deducted and retained by the Owner until the final payment is made. The balance (95 percent) of the amount payable, less all previous payments, shall be certified for payment.

When approximately 95 percent of the work has been completed the OWNER may, at its discretion and with the consent of the surety, prepare an estimate from which will be retained an amount not less than the estimated cost of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor. The OWNER will consider releasing retainage withheld on subcontractor's work at various stages during the Contract, at its discretion and with the consent of the surety. The Contractor will be required to make such request in writing for early release of retainage for subcontractor's that have completed their portion of the work, to be reviewed on a case by case basis. Such requests may be made with the pay request, once each month. The OWNER reserves the right to reject any such request that is not in the best interest of the OWNER. If such requests are granted the Contractor will be responsible for notifying its surety of any such reductions in retainage withheld under this Contract.

The Contractor agrees to include in its monthly invoice an amount that represents all invoices/bills for services, labor and costs incurred by its subcontractors in the current billing period.

- a. If an Owner receives a written payment request from a Contractor for an amount that is allowed to the Contractor for properly performed work or suitably stored, materials, the Owner shall pay the amount to the Contractor, less any statutory offsets, not later than the 30th day after the owner receives the request.
- b. A Contractor who receives a payment under Paragraph a. (including retainage) or otherwise from an Owner in connection with a contract to improve real property shall pay each of its subcontractors the portion of the Owner's payment, including interest, if any, that is attributable to work performed or materials suitably stored by that subcontractor if payment for stored materials is provided for in the contract, to the extent of that subcontractor's interest in the Owner's payment. The payment required by this must be made not later than the 7th day after the date the Contractor receives the Owner's payment.
- c. A subcontractor who receives a payment under Paragraph b. or otherwise from a Contractor in connection with a contract to improve real property shall pay each of its subcontractors the portion of the payment, including interest, if any, that is attributable to work performed or materials suitably stored by that subcontractor if payment for stored materials is provided for in the contract, to the extent of that subcontractor's interest in the payment. The payment required by this subsection must be made not later than the 7th day after the date the subcontractor receives the Contractor's payment.

The prime Contractor shall promptly request the release of any retainage withheld from subcontractors within seven (7) days after the subcontractor's work is satisfactorily completed and receives partial acceptance, substantial

completion or final completion/final acceptance as defined in the General Provisions of the Contract. Further, the prime Contractor shall pay the subcontractor its retainage within seven (7) days after the date the prime Contractor receives the subcontractor's retainage payment from the OWNER. The prime Contractor will request the release of subcontractor retainage in the next invoice for any subcontractor that has satisfactorily completed its work and will submit the required releases with the invoice.

A finding of non-payment may be considered as a material breach of this contract.

The OWNER may, withhold progress payments until the Contractor demonstrates timely payment of sums due subcontractors. The OWNER also reserves the right to exercise other breach of contract remedies. The presence of a "pay when paid" provision in a subcontract shall not preclude the OWNER inquiry into allegations of non-payment. The remedies for non-payment of subcontractors shall not be employed when the Contractor demonstrates that failure to pay results from a bonafide dispute with its subcontractor or supplier.

The Contractor shall incorporate this provision into all subcontracts that result from this contract.

No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in the subsection titled ACCEPTANCE AND FINAL PAYMENT of this section.

90-7 PAYMENT WITHHELD. The OWNER may withhold all or part of any payment otherwise due the Contractor if any one of the following conditions exist:

- a. Defective work or failure to execute the Work in strict accordance with the Contract Documents.
- b. Unauthorized deviations from the Contract Documents.
- c. Damage to another contractor.
- d. Work not fully completed or corrected after Substantial or Final Completion.
- e. Reasonable doubt that the Work will be completed within the Contract Time; and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.
- f. Failure to keep current as-built records at the Site as specified.
- g. Unpaid amounts owed to the OWNER for fees and charges for services or permits, assessments for damage to OWNER property, or use of OWNER facilities and services.
- h. Failure to comply with the minimum wage rate requirements as specified.
- i. Failure to comply with the requirements of Specifications regarding Project Schedule.
- j. Errors due to any cause that may be discovered in any previous progress payment.
- k. Written request from contractor's surety to withhold payment(s).

When the above reasons for withholding payment are resolved, payment will be made for amounts previously withheld.

All Work covered by progress payments shall, at the time of the payment, become the sole property of the OWNER, but this shall not be construed as relieving the Contractor from the sole responsibility for Work upon which payments have been made or the restoration of any damaged Work, or waiving the right of the OWNER to require the fulfillment of all the terms of this Contract.

Following receipt of proper certified pay requests (as may be adjusted by the Engineer or OWNER), the OWNER shall make monthly progress payments as the Work proceeds and as approved by the OWNER. A proper pay request will be submitted on the DFW Pay Request form and have all appropriate blanks filled in and all documents or information substantiating the Contractor's right to payment required by the OWNER attached. The Contractor shall sign the Contractor's Certification as outlined on the form.

If the OWNER deems a pay request to be improper or defective, the OWNER will return the pay request to the Contractor for correction(s) and resubmission. In the event portions of the pay request are withheld in accordance with this Section, the balance of the eligible charges will be processed for payment.

90-8 PAYMENT FOR MATERIALS ON HAND. Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the contract, plans, and specifications and are delivered to acceptable sites on the airport property or at other sites in the vicinity that are acceptable to the Owner. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- a. The material has been stored or stockpiled in a manner acceptable to the Engineer at or on an approved site.

- b. The Contractor has furnished the Engineer with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- c. The Contractor has furnished the Engineer with satisfactory evidence that the material and transportation costs will be paid.
- d. Title to material so stored or stockpiled shall immediately vest in the OWNER upon the OWNER's payment to the Contractor for such material.
- e. The Contractor has furnished the Owner evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work.

It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of his/her responsibility for furnishing and placing such materials in accordance with the requirements of the contract, plans, and specifications.

In no case will the amount of partial payments for materials on hand exceed the contract price for such materials or the contract price for the contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this subsection.

**90-9 ACCEPTANCE AND FINAL PAYMENT.** When the contract work has been accepted in accordance with the requirements of the subsection titled FINAL ACCEPTANCE of Section 50, the Engineer will prepare the final estimate of the items of work actually performed. The Contractor shall approve the Engineer's final estimate or advise the Engineer of his/her objections to the final estimate which are based on disputes in measurements or computations of the final quantities to be paid under the contract as amended by change order or supplemental agreement. The Contractor and the Engineer shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within 30 calendar days of the Contractor's receipt of the Engineer's final estimate. If, after such 30-day period, a dispute still exists, the Contractor may approve the Engineer's estimate under protest of the quantities in dispute, and such disputed quantities shall be considered by the Owner as a claim in accordance with the subsection titled CLAIMS FOR ADJUSTMENT AND DISPUTES of Section 50.

After the Contractor has approved, or approved under protest, the Engineer's final estimate, final payment will be processed based on the entire sum, or the undisputed sum in case of approval under protest, determined to be due the Contractor less all previous payments and all amounts to be deducted under the provisions of the contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

If the Contractor has filed a claim for additional compensation under the provisions of the subsection titled CLAIMS FOR ADJUSTMENTS AND DISPUTES of Section 50 or under the provisions of this subsection, such claims will be considered by the Owner in accordance with local laws or ordinances. Upon final adjudication of such claims, any additional payment determined to be due the Contractor will be paid pursuant to a supplemental final estimate.

Neither the Final Payment nor the remaining retained percentage shall become due until the Contractor submits to the OWNER

- a. An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the OWNER or the OWNER's property might in any way be responsible, have been paid or otherwise satisfied.
- b. Consent of surety, if any, to Final Payment.
- c. Other data establishing payment satisfaction of all such obligations, such as receipts, releases, and waivers of all liens arising out of the Contract, to the extent and in such form as may be designated by the OWNER.

Contractor shall obtain affidavits and consent from subcontractors per paragraphs a. and b. above prior to furnishing same to Owner.

If any subcontractor refuses to furnish a release or waiver required by the OWNER, the Contractor may furnish a release or waiver required by the OWNER, and a bond satisfactory to the OWNER, to indemnify the OWNER against any such lien.

If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by the issuance of Contract Change Order(s) affecting Final Completion, the OWNER shall, upon

application by the Contractor and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in the Contract, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed shall be submitted by the Contractor to the OWNER prior to certification of such payment. Such payment shall be made under the terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims.

The acceptance of Final Payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Final Application for Payment. Neither Substantial Completion nor Final Completion and Final Payment shall occur until final and complete written approval of the Work, if required, has been obtained from the OWNER's Building Inspector, the OWNER's Fire Marshall and any applicable Health Departments.

**END OF SECTION 90**

## SECTION 100 - CONTRACTOR QUALITY CONTROL PROGRAM

100-1 GENERAL. When the specifications require a Contractor Quality Control Program, the Contractor shall establish, provide, and maintain an effective Quality Control Program that details the methods and procedures that will be taken to assure that all materials and completed construction required by this contract conform to contract plans, technical specifications and other requirements, whether manufactured by the Contractor, or procured from subcontractors or vendors. Although guidelines are established and certain minimum requirements are specified herein and elsewhere in the contract technical specifications, the Contractor shall assume full responsibility for accomplishing the stated purpose.

The intent of this section is to enable the Contractor to establish a necessary level of control that will:

- a. Adequately provide for the production of acceptable quality materials.
- b. Provide sufficient information to assure both the Contractor and the Engineer that the specification requirements can be met.
- c. Allow the Contractor as much latitude as possible to develop his or her own standard of control.

The Contractor shall be prepared to discuss and present, at the preconstruction conference, his/her understanding of the quality control requirements. The Contractor shall not begin any construction or production of materials to be incorporated into the completed work until the Quality Control Program has been reviewed by the Engineer. No partial payment will be made for materials subject to specific quality control requirements until the Quality Control Program has been reviewed.

The quality control requirements contained in this section and elsewhere in the contract technical specifications are in addition to and separate from the acceptance testing requirements. Acceptance testing requirements are the responsibility of the Engineer.

### 100-2 DESCRIPTION OF PROGRAM.

- a. General Description. The Contractor shall establish a Quality Control Program to perform inspection and testing of all items of work required by the technical specifications, including those performed by subcontractors. This Quality Control Program shall ensure conformance to applicable specifications and plans with respect to materials, workmanship, construction, finish, and functional performance. The Quality Control Program shall be effective for control of all construction work performed under this Contract and shall specifically include surveillance and tests required by the technical specifications, in addition to other requirements of this section and any other activities deemed necessary by the Contractor to establish an effective level of quality control.
- b. Quality Control Program. The Contractor shall describe the Quality Control Program in a written document which shall be reviewed by the Engineer prior to the start of any production, construction, or off-site fabrication. The written Quality Control Program shall be submitted to the Engineer for review at least ten (10) calendar days before the start of construction.

The Quality Control Program shall be organized to address, as a minimum, the following items:

1. Quality control organization;
2. Project progress schedule;
3. Submittals schedule;
4. Inspection requirements;
5. Quality control testing plan;
6. Documentation of quality control activities; and
7. Requirements for corrective action when quality control and/or acceptance criteria are not met.

The Contractor is encouraged to add any additional elements to the Quality Control Program that he/she deems necessary to adequately control all production and/or construction processes required by this contract.

100-3 QUALITY CONTROL ORGANIZATION. The Contractor's Quality Control Program shall be implemented by the establishment of a separate quality control organization. An organizational chart shall be developed to show all quality control personnel and how these personnel integrate with other management/production and construction functions and personnel.

The organizational chart shall identify all quality control staff by name and function, and shall indicate the total staff required to implement all elements of the Quality Control Program, including inspection and testing for each item of work. If necessary, different technicians can be utilized for specific inspection and testing functions for different items of work. If an outside organization or independent testing laboratory is used for implementation of all or part of the Quality Control Program, the personnel assigned shall be subject to the qualification requirements of paragraph 100-03a and 100-03b. The organizational chart shall indicate which personnel are Contractor employees and which are provided by an outside organization.

The quality control organization shall consist of the following minimum personnel:

- a. Program Administrator. The Program Administrator shall be a full-time employee of the Contractor, or a consultant engaged by the Contractor. The Program Administrator shall have a minimum of 5 years of experience in airport and/or highway construction and shall have had prior quality control experience on a project of comparable size and scope as the contract. Additional qualifications for the Program Administrator shall include at least 1 of the following requirements:
  1. Professional engineer with 1 year of airport paving experience acceptable to the Engineer.
  2. Engineer-in-training with 2 years of airport paving experience acceptable to the Engineer.
  3. An individual with 3 years of highway and/or airport paving experience acceptable to the Engineer, with a Bachelor of Science Degree in Civil Engineering, Civil Engineering Technology or Construction.
  4. Construction materials technician certified at Level III by the National Institute for Certification in Engineering Technologies (NICET).
  5. Highway materials technician certified at Level III by NICET.
  6. Highway construction technician certified at Level III by NICET.
  7. A NICET certified engineering technician in Civil Engineering Technology with 5 years of highway and/or airport paving experience acceptable to the Engineer.

The Program Administrator shall have full authority to institute any and all actions necessary for the successful implementation of the Quality Control Program to ensure compliance with the contract plans and technical specifications. The Program Administrator shall report directly to a responsible officer of the construction firm. For projects less than \$5 million, The Program Administrator may supervise the Quality Control Program on more than one project provided that person can be at the job site within 2 hours after being notified of a problem. For projects \$5 million and over, the Program Administrator shall be located on site for the project duration unless otherwise directed by the Engineer.

- b. Quality Control Technicians. A sufficient number of quality control technicians necessary to adequately implement the Quality Control Program shall be provided. These personnel shall be either engineers, engineering technicians, or experienced craftsman with qualifications in the appropriate field equivalent to NICET Level II or higher construction materials technician or highway construction technician and shall have a minimum of 2 years of experience in their area of expertise. The quality control technicians shall report directly to the Program Administrator and shall perform the following functions:
  1. Inspection of all materials, construction, plant, and equipment for conformance to the technical specifications, and as required by Section 100-06.
  2. Performance of all quality control tests as required by the technical specifications and Section 100-07.

Certification at an equivalent level, by a state or nationally recognized organization will be acceptable in lieu of NICET certification.

- c. Staffing Levels. The Contractor shall provide sufficient qualified quality control personnel to monitor each work activity at all times. Where material is being produced in a plant for incorporation into the work, separate plant and field technicians shall be provided at each plant and field placement location. The scheduling and coordinating of all inspection and testing must match the type and pace of work activity. The Quality Control Program shall state where different technicians will be required for different work elements.

100-4 SUBMITTALS SCHEDULE. The Contractor shall submit a detailed listing of all submittals (e.g., mix designs, material certifications) and shop drawings required by the technical specifications. The listing can be developed in a spreadsheet format and shall include:

- a. Specification item number;
- b. Item description;
- c. Description of submittal;
- d. Specification paragraph requiring submittal; and
- e. Scheduled date of submittal.

100-5 INSPECTION REQUIREMENTS. Quality control inspection functions shall be organized to provide inspections for all definable features of work, as detailed below. All inspections shall be documented by the Contractor as specified by Section 100-07.

Inspections shall be performed daily to ensure continuing compliance with contract requirements until completion of the particular feature of work. These shall include the following minimum requirements:

- a. During plant operation for material production, quality control test results and periodic inspections shall be utilized to ensure the quality of aggregates and other mix components, and to adjust and control mix proportioning to meet the approved mix design and other requirements of the technical specifications. All equipment utilized in proportioning and mixing shall be inspected to ensure its proper operating condition. The Quality Control Program shall detail how these and other quality control functions will be accomplished and utilized.
- b. During field operations, quality control test results and periodic inspections shall be utilized to ensure the quality of all materials and workmanship. All equipment utilized in placing, finishing, and compacting shall be inspected to ensure its proper operating condition and to ensure that all such operations are in conformance to the technical specifications and are within the plan dimensions, lines, grades, and tolerances specified. The Program shall document how these and other quality control functions will be accomplished and utilized.

100-6 QUALITY CONTROL TESTING PLAN. As a part of the overall Quality Control Program, the Contractor shall implement a quality control testing plan, as required by the technical specifications. The testing plan shall include the minimum tests and test frequencies required by each technical specification Item, as well as any additional quality control tests that the Contractor deems necessary to adequately control production and/or construction processes.

The testing plan can be developed in a spreadsheet fashion and shall, as a minimum, include the following:

- a. Specification item number (e.g., P-401);
- b. Item description (e.g., Plant Mix Bituminous Pavements);
- c. Test type (e.g., gradation, grade, asphalt content);
- d. Test standard (e.g., ASTM or AASHTO test number, as applicable);
- e. Test frequency (e.g., as required by technical specifications or minimum frequency when requirements are not stated);
- f. Responsibility (e.g., plant technician); and
- g. Control requirements (e.g., target, permissible deviations).

The testing plan shall contain a statistically-based procedure of random sampling for acquiring test samples in accordance with ASTM D 3665. The Engineer shall be provided the opportunity to witness quality control sampling and testing.

All quality control test results shall be documented by the Contractor as required by Section 100-07.

100-7 DOCUMENTATION. The Contractor shall maintain current quality control records of all inspections and tests performed. These records shall include factual evidence that the required inspections or tests have been performed, including type and number of inspections or tests involved; results of inspections or tests; nature of defects, deviations, causes for rejection, etc.; proposed remedial action; and corrective actions taken.

These records must cover both conforming and defective or deficient features, and must include a statement that all supplies and materials incorporated in the work are in full compliance with the terms of the contract. Legible



copies of these records shall be furnished to the Engineer daily. The records shall cover all work placed subsequent to the previously furnished records and shall be verified and signed by the Contractor's Program Administrator.

Specific Contractor quality control records required for the contract shall include, but are not necessarily limited to, the following records:

- a. Daily Inspection Reports. Each Contractor quality control technician shall maintain a daily log of all inspections performed for both Contractor and subcontractor operations on a form acceptable to the Engineer. These technician's daily reports shall provide factual evidence that continuous quality control inspections have been performed and shall, as a minimum, include the following:
  1. Technical specification item number and description;
  2. Compliance with approved submittals;
  3. Proper storage of materials and equipment;
  4. Proper operation of all equipment;
  5. Adherence to plans and technical specifications;
  6. Review of quality control tests; and
  7. Safety inspection.

The daily inspection reports shall identify inspections conducted, results of inspections, location and nature of defects found, causes for rejection, and remedial or corrective actions taken or proposed.

The daily inspection reports shall be signed by the responsible quality control technician and the Program Administrator. The Engineer shall be provided at least one copy of each daily inspection report on the work day following the day of record.

- b. Daily Test Reports. The Contractor shall be responsible for establishing a system which will record all quality control test results. Daily test reports shall document the following information:
  1. Technical specification item number and description;
  2. Location;
  3. Date of test;
  4. Control requirements;
  5. Test results;
  6. Causes for rejection;
  7. Recommended remedial actions; and
  8. Retests.

Test results from each day's work period shall be submitted to the Engineer prior to the start of the next day's work period. When required by the technical specifications, the Contractor shall maintain statistical quality control charts. The daily test reports shall be signed by the responsible quality control technician and the Program Administrator.

**100-8 CORRECTIVE ACTION REQUIREMENTS.** The Quality Control Program shall indicate the appropriate action to be taken when a process is deemed, or believed, to be out of control (out of tolerance) and detail what action will be taken to bring the process into control. The requirements for corrective action shall include both general requirements for operation of the Quality Control Program as a whole, and for individual items of work contained in the technical specifications.

The Quality Control Program shall detail how the results of quality control inspections and tests will be used for determining the need for corrective action and shall contain clear sets of rules to gauge when a process is out of control and the type of correction to be taken to regain process control.

When applicable or required by the technical specifications, the Contractor shall establish and utilize statistical quality control charts for individual quality control tests. The requirements for corrective action shall be linked to the control charts.

**100-9 SURVEILLANCE BY THE ENGINEER.** All items of material and equipment shall be subject to surveillance by the Engineer at the point of production, manufacture or shipment to determine if the Contractor, producer, manufacturer or shipper maintains an adequate quality control system in conformance with the requirements detailed herein and the applicable technical specifications and plans. In addition, all items of materials, equipment and work in place shall be subject to surveillance by the Engineer at the site for the same purpose.

Surveillance by the Engineer does not relieve the Contractor of performing quality control inspections of either on-site or off-site Contractor's or subcontractor's work.

100-10 NONCOMPLIANCE.

- a. The Engineer will notify the Contractor of any noncompliance with any of the foregoing requirements. The Contractor shall, after receipt of such notice, immediately take corrective action. Any notice, when delivered by the Engineer or his/her authorized representative to the Contractor or his/her authorized representative at the site of the work, shall be considered sufficient notice.
- b. In cases where quality control activities do not comply with either the Contractor's Quality Control Program or the contract provisions, or where the Contractor fails to properly operate and maintain an effective Quality Control Program, as determined by the Engineer, the Engineer may:
  - (1) Order the Contractor to replace ineffective or unqualified quality control personnel or subcontractors.
  - (2) Order the Contractor to stop operations until appropriate corrective actions is taken.

END OF SECTION 100

**SECTION 110 - METHOD OF ESTIMATING PERCENTAGE OF MATERIAL  
WITHIN SPECIFICATION LIMITS (PWL)**

110-1 GENERAL. When the specifications provide for material to be sampled and tested on a statistical basis, the material will be evaluated for acceptance in accordance with this section. All test results for a lot will be analyzed statistically, using procedures to determine the total estimated percent of the lot that is within specification limits. This concept, termed percent within limits (PWL), is a statistically based evaluation method, whereby the PWL is computed on a lot basis, using the average (X) and standard deviation (Sn) of the specified number (n) of subplot tests for the lot and the specification tolerance limits (L for lower and U for upper) for the particular acceptance parameter. From these values, the respective Quality index(s) (QL for Lower Quality Index and/or QU for Upper Quality Index) is computed and the PWL for the specified n is determined from Table 1.

110-2 METHOD FOR COMPUTING PWL. The computational sequence for computing the PWL is as follows:

- a. Divide the lot into n sublots in accordance with the acceptance requirements of the specification.
- b. Locate the sampling position within the subplot in accordance with the random sampling requirements of the specification.
- c. Make a measurement at each location, or take a test portion and make the measurement on the test portion in accordance with the testing requirements of the specification.
- d. Average all subplot values within the lot to find X by using the following formula:

$$X = (x_1 + x_2 + x_3 + \dots + x_n) / n$$

Where:

X = Average of all subplot values within a lot

x<sub>1</sub>, x<sub>2</sub> = Individual subplot values

n = Number of sublots

- e. Find the standard deviation Sn by use of the following formula:

$$S_n = [(d_1^2 + d_2^2 + d_3^2 + \dots + d_n^2) / (n-1)]^{1/2}$$

Where:

Sn = standard deviation of the number of subplot values in the set

d<sub>1</sub>, d<sub>2</sub> = deviations of the individual subplot values X<sub>1</sub>, X<sub>2</sub> . . . from the average value X

that is: d<sub>1</sub> = (x<sub>1</sub> - X), d<sub>2</sub> = (x<sub>2</sub> - X) . . . d<sub>n</sub> = (x<sub>n</sub> - X)

n = number of sublots

- f. For single sided specification limits (i.e., L only), compute the Lower Quality Index QL by use of the following formula:

$$QL = (X - L) / S_n$$

Where:

L = specification lower tolerance limit

Estimate the percentage of material within limits (PWL) by entering Table 1 with QL, using the column appropriate to the total number (n) of measurements. If the value of QL falls between values shown on the table, use the next higher value of PWL.

- g. For double sided specification limits (i.e. L and U), compute the Quality Indexes QL and QU by use of the following formulas:

$$QL = (X - L) / S_n \text{ and } QU = (U - X) / S_n$$

Where:

L and U = specification lower and upper tolerance limits

Estimate the percentage of material between the lower (L) and upper (U) tolerance limits (PWL) by entering Table 1 separately with QL and QU, using the column appropriate to the total number (n) of measurements, and determining the percent of material above PL and percent of material below PU for each tolerance limit. If the values of QL fall between values shown on the table, use the next higher value of PL or PU. Determine the PWL by use of the following formula:

$$PWL = (PU + PL) - 100$$

Where:

PL = percent within lower specification limit

PU = percent within upper specification limit

## EXAMPLE OF PWL CALCULATION

**Project: Example Project**  
**Test Item: Item P-401, Lot A.**

### A. PWL Determination for Mat Density.

1. Density of four random cores taken from Lot A.

A-1 96.60  
A-2 97.55  
A-3 99.30  
A-4 98.35

n = 4

2. Calculate average density for the lot.

$$X = (x_1 + x_2 + x_3 + \dots + x_n) / n$$

$$X = (96.60 + 97.55 + 99.30 + 98.35) / 4$$

$$X = 97.95 \text{ percent density}$$

3. Calculate the standard deviation for the lot.

$$S_n = [((96.60 - 97.95)^2 + (97.55 - 97.95)^2 + (99.30 - 97.95)^2 + (98.35 - 97.95)^2) / (4 - 1)]^{1/2}$$

$$S_n = [(1.82 + 0.16 + 1.82 + 0.16) / 3]^{1/2}$$

$$S_n = 1.15$$

4. Calculate the Lower Quality Index QL for the lot. (L = 96.3)

$$QL = (X - L) / S_n$$

$$QL = (97.95 - 96.30) / 1.15$$

$$QL = 1.4384$$

5. Determine PWL by entering Table 1 with QL = 1.44 and n = 4.

$$PWL = 98$$

### B. PWL Determination for Air Voids.

1. Air Voids of four random samples taken from Lot A.

A-1 5.00  
A-2 3.74  
A-3 2.30  
A-4 3.25

2. Calculate the average air voids for the lot.

$$X = (x_1 + x_2 + x_3 \dots x_n) / n$$

$$X = (5.00 + 3.74 + 2.30 + 3.25) / 4$$

$$X = 3.57 \text{ percent}$$

3. Calculate the standard deviation  $S_n$  for the lot.

$$S_n = [((3.57 - 5.00)^2 + (3.57 - 3.74)^2 + (3.57 - 2.30)^2 + (3.57 - 3.25)^2) / (4 - 1)]^{1/2}$$

$$S_n = [(2.04 + 0.03 + 1.62 + 0.10) / 3]^{1/2}$$

$$S_n = 1.12$$

4. Calculate the Lower Quality Index QL for the lot. ( $L = 2.0$ )

$$QL = (X - L) S_n$$

$$QL = (3.57 - 2.00) / 1.12$$

$$QL = 1.3992$$

5. Determine PL by entering Table 1 with  $QL = 1.40$  and  $n = 4$ .

$$PL = 97$$

6. Calculate the Upper Quality Index QU for the lot. ( $U = 5.0$ )

$$QU = (U - X) / S_n$$

$$QU = (5.00 - 3.57) / 1.12$$

$$QU = 1.2702$$

7. Determine PU by entering Table 1 with  $QU = 1.27$  and  $n = 4$ .

$$PU = 93$$

8. Calculate Air Voids PWL

$$PWL = (PL + PU) - 100$$

$$PWL = (97 + 93) - 100 = 90$$

**TABLE 1. TABLE FOR ESTIMATING PERCENT OF LOT WITHIN LIMITS (PWL)**

Percent Within Limits (PL and PU)	Positive Values of Q (QL and QU)					
	n=3	n=4	n=5	n=6	n=7	n=8
99	1.1541	1.4700	1.6714	1.8008	1.8888	1.9520
98	1.1524	1.4400	1.6016	1.6982	1.7612	1.8053
97	1.1496	1.4100	1.5427	1.6181	1.6661	1.6993
96	1.1456	1.3800	1.4897	1.5497	1.5871	1.6127
95	1.1405	1.3500	1.4407	1.4887	1.5181	1.5381
94	1.1342	1.3200	1.3946	1.4329	1.4561	1.4716
93	1.1269	1.2900	1.3508	1.3810	1.3991	1.4112
92	1.1184	1.2600	1.3088	1.3323	1.3461	1.3554
91	1.1089	1.2300	1.2683	1.2860	1.2964	1.3032
90	1.0982	1.2000	1.2290	1.2419	1.2492	1.2541
89	1.0864	1.1700	1.1909	1.1995	1.2043	1.2075
88	1.0736	1.1400	1.1537	1.1587	1.1613	1.1630
87	1.0597	1.1100	1.1173	1.1191	1.1199	1.1204
86	1.0448	1.0800	1.0817	1.0808	1.0800	1.0794
85	1.0288	1.0500	1.0467	1.0435	1.0413	1.0399
84	1.0119	1.0200	1.0124	1.0071	1.0037	1.0015
83	0.9939	0.9900	0.9785	0.9715	0.9672	0.9643
82	0.9749	0.9600	0.9452	0.9367	0.9325	0.9281
81	0.9550	0.9300	0.9123	0.9025	0.8966	0.8928
80	0.9342	0.9000	0.8799	0.8690	0.8625	0.8583
79	0.9124	0.8700	0.8478	0.8360	0.8291	0.8245
78	0.8897	0.8400	0.8160	0.8036	0.7962	0.7915
77	0.8662	0.8100	0.7846	0.7716	0.7640	0.7590
76	0.8417	0.7800	0.7535	0.7401	0.7322	0.7271
75	0.8165	0.7500	0.7226	0.7089	0.7009	0.6958
74	0.7904	0.7200	0.6921	0.6781	0.6701	0.6649
73	0.7636	0.6900	0.6617	0.6477	0.6396	0.6344
72	0.7360	0.6600	0.6316	0.6176	0.6095	0.6044
71	0.7077	0.6300	0.6016	0.5878	0.5798	0.5747
70	0.6787	0.6000	0.5719	0.5583	0.5504	0.5454
69	0.6490	0.5700	0.5423	0.5290	0.5213	0.5164
68	0.6187	0.5400	0.5129	0.4999	0.4924	0.4877
67	0.5878	0.5100	0.4836	0.4710	0.4638	0.4592
66	0.5563	0.4800	0.4545	0.4424	0.4354	0.4310
65	0.5242	0.4500	0.4255	0.4139	0.4073	0.4031
64	0.4916	0.4200	0.3967	0.3856	0.3793	0.3753
63	0.4586	0.3900	0.3679	0.3575	0.3515	0.3477
62	0.4251	0.3600	0.3392	0.3295	0.3239	0.3203
61	0.3911	0.3300	0.3107	0.3016	0.2964	0.2931
60	0.3568	0.3000	0.2822	0.2738	0.2691	0.2660
59	0.3222	0.2700	0.2537	0.2461	0.2418	0.2391
58	0.2872	0.2400	0.2254	0.2186	0.2147	0.2122
57	0.2519	0.2100	0.1971	0.1911	0.1877	0.1855
56	0.2164	0.1800	0.1688	0.1636	0.1607	0.1592
55	0.1806	0.1500	0.1408	0.1363	0.1338	0.1322
54	0.1447	0.1200	0.1125	0.1090	0.1070	0.1057
53	0.1087	0.0900	0.0843	0.0817	0.0802	0.0792
52	0.0725	0.0600	0.0562	0.0544	0.0534	0.0528
51	0.0363	0.0300	0.0281	0.0272	0.0267	0.0264
50	0.0	0.0	0.0	0.0	0.0	0.0

**TABLE 1. TABLE FOR ESTIMATING PERCENT OF LOT WITHIN LIMITS (PWL)**

Percent Within Limits (PL and PU)	Negative Values of Q (QL and QU)					
	n=3	n=4	n=5	n=6	n=7	n=8
49	-0.0363	-0.0300	-0.0281	-0.0272	-0.0267	-0.0264
48	-0.0725	-0.0600	-0.0562	-0.0544	-0.0534	-0.0528
47	-0.1087	-0.0900	-0.0843	-0.0817	-0.0802	-0.0792
46	-0.1447	-0.1200	-0.1125	-0.1090	-0.1070	-0.1057
45	-0.1806	-0.1500	-0.1408	-0.1363	-0.1338	-0.1322
44	-0.2164	-0.1800	-0.1688	-0.1636	-0.1607	-0.1592
43	-0.2519	-0.2100	-0.1971	-0.1911	-0.1877	-0.1855
42	-0.2872	-0.2400	-0.2254	-0.2186	-0.2147	-0.2122
41	-0.3222	-0.2700	-0.2537	-0.2461	-0.2418	-0.2391
40	-0.3568	-0.3000	-0.2822	-0.2738	-0.2691	-0.2660
39	-0.3911	-0.3300	-0.3107	-0.3016	-0.2964	-0.2931
38	-0.4251	-0.3600	-0.3392	-0.3295	-0.3239	-0.3203
37	-0.4586	-0.3900	-0.3679	-0.3575	-0.3515	-0.3477
36	-0.4916	-0.4200	-0.3967	-0.3856	-0.3793	-0.3753
35	-0.5242	-0.4500	-0.4255	-0.4139	-0.4073	-0.4031
34	-0.5563	-0.4800	-0.4545	-0.4424	-0.4354	-0.4310
33	-0.5878	-0.5100	-0.4836	-0.4710	-0.4638	-0.4592
32	-0.6187	-0.5400	-0.5129	-0.4999	-0.4924	-0.4877
31	-0.6490	-0.5700	-0.5423	-0.5290	-0.5213	-0.5164
30	-0.6787	-0.6000	-0.5719	-0.5583	-0.5504	-0.5454
29	-0.7077	-0.6300	-0.6016	-0.5878	-0.5798	-0.5747
28	-0.7360	-0.6600	-0.6316	-0.6176	-0.6095	-0.6044
27	-0.7636	-0.6900	-0.6617	-0.6477	-0.6396	-0.6344
26	-0.7904	-0.7200	-0.6921	-0.6781	-0.6701	-0.6649
25	-0.8165	-0.7500	-0.7226	-0.7089	-0.7009	-0.6958
24	-0.8417	-0.7800	-0.7535	-0.7401	-0.7322	-0.7271
23	-0.8662	-0.8100	-0.7846	-0.7716	-0.7640	-0.7590
22	-0.8897	-0.8400	-0.8160	-0.8036	-0.7962	-0.7915
21	-0.9124	-0.8700	-0.8478	-0.8360	-0.8291	-0.8245
20	-0.9342	-0.9000	-0.8799	-0.8690	-0.8625	-0.8583
19	-0.9550	-0.9300	-0.9123	-0.9025	-0.8966	-0.8928
18	-0.9749	-0.9600	-0.9452	-0.9367	-0.9325	-0.9281
17	-0.9939	-0.9900	-0.9785	-0.9715	-0.9672	-0.9643
16	-1.0119	-1.0200	-1.0124	-1.0071	-1.0037	-1.0015
15	-1.0288	-1.0500	-1.0467	-1.0435	-1.0413	-1.0399
14	-1.0448	-1.0800	-1.0817	-1.0808	-1.0800	-1.0794
13	-1.0597	-1.1100	-1.1173	-1.1191	-1.1199	-1.1204
12	-1.0736	-1.1400	-1.1537	-1.1587	-1.1613	-1.1630
11	-1.0864	-1.1700	-1.1909	-1.1995	-1.2043	-1.2075
10	-1.0982	-1.2000	-1.2290	-1.2419	-1.2492	-1.2541
9	-1.1089	-1.2300	-1.2683	-1.2860	-1.2964	-1.3032
8	-1.1184	-1.2600	-1.3088	-1.3323	-1.3461	-1.3554
7	-1.1269	-1.2900	-1.3508	-1.3810	-1.3991	-1.4112
6	-1.1342	-1.3200	-1.3946	-1.4329	-1.4561	-1.4716
5	-1.1405	-1.3500	-1.4407	-1.4887	-1.5181	-1.5381
4	-1.1456	-1.3800	-1.4897	-1.5497	-1.5871	-1.6127
3	-1.1496	-1.4100	-1.5427	-1.6181	-1.6661	-1.6993
2	-1.1524	-1.4400	-1.6016	-1.6982	-1.7612	-1.8053
1	-1.1541	-1.4700	-1.6714	-1.8008	-1.8888	-1.9520

END OF SECTION 110



## 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.
- e.

**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 shall include sewage.

## 120-2.0 ENVIRONMENTAL PROVISIONS

Contractor represents, warrants, and covenants the following:

- a. Contractor will obtain and maintain all licenses, permits, exemptions, registrations and other authorizations and provide any notices not obtained or provided by the OWNER pursuant to this Contract which is required under Environmental Laws for conducting the Work and Contractor's operations at the Airport.
- b. Contractor shall comply and shall cause all its employees, agents, sub-contractors, and other third parties under Contractor's control to comply, and shall 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, Contractor 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 (dilutents).
- c. Contractor shall comply and shall cause its employees, agents, sub-contractors, and other third parties under Contractor'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. Contractor shall not cause, contribute to, or permit any Release of any Hazardous Materials, Solid Waste, or Process Water by Contractor or its employees, agents, sub-contractors, or other third parties under Contractor's control into the environment or cause, contribute to, or permit any violation of any Environmental Law.
- e. Contractor shall dispose of and cause its employees, agents, sub-contractors, or any other third party under Contractor'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 shall 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. Contractor shall advise OWNER immediately of any potential or actual non-compliance with any Environmental Law or Safety Law on Airport property by any person.
- g. Contractor shall, immediately upon receipt, provide OWNER with copies of any notice or other document issued to Contractor or its sub-contractors alleging non-compliance or investigating potential non-compliance with any Environmental Law or Safety Law at the Airport.
- h. Contractor shall 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. Contractor shall comply with the Construction Application Review Comments of D/FW Environmental Affairs Department. Contractor shall 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 Contractor 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 Contractor shall 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 the OWNER. Evidence of such design and equipment will be maintained and made available for inspection by the OWNER'S Authorized Representative.

- I. The Contractor shall 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 Contractor for inspection by the OWNER's Representative.
- m. For sites equal to or greater than 5 acres, Contractor shall 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 the OWNER prior to receiving an approved construction permit.
- n. Spills, leaks, or releases of Hazardous Material shall be reported immediately to the Airport Operations Center (AOC).
- o. Contractor shall comply with OWNER's Spill Reporting Policy, Clean Air Policy, and Hydrocarbon Spill Recovery for Airport Ramp Area.
- p. Contractor shall 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 the OWNER to the governing agency.
- r. While the OWNER may issue instructions to the Contractor concerning the placement and maintenance of erosion and sediment controls, the Contractor shall be solely responsible for complying with all requirements of the SWPPP. The SWPPP shall be reviewed periodically by Contractor for compliance and updated as needed to fit the changing requirements of the Contractor'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 Contractor's operations, including operations of Contractor's employees, agents, sub-contractors, or any other third party under Contractor's control. The OWNER may perform testing as needed and may conduct interviews of Contractor or its sub-contractors. Contractor will cooperate and will cause its employees, agents, sub-contractors, or any other third party under Contractor's control to fully cooperate in such inspection, assessment, or audit. Contractor 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 Contractor or its employee, agent, sub-contractor, or any other third party under Contractor's control, Contractor 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 Contractor does not promptly and fully remediate and restore the affected property, OWNER may, but is not required to, perform the remediation and restoration, and Contractor shall 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 Contractor of such costs.

3. Failure by Contractor or its subcontractors to comply with any Environmental Provision shall 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 BOARD 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, Contractor covenants and agrees that it shall 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. Contractor 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 Contractor 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 Contractor, the Contractor must promptly notify OWNER representatives in writing of the non-compliant notation or specification. The Contractor also certifies that a non-asbestos containing material or product of similar kind and quality will be substituted with the approval of the OWNER.

This provision reflects the mandate of the OWNER to promote the health, safety, and welfare of the general public and to establish a standard for response to asbestos within the limits of Airport authority. Contractor shall 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 course of the project, the Contractor shall immediately notify the 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 shall submit letters of certification to Contractor 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 Contractor covenants and agrees:

- a. That it shall 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 shall 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 shall at all times 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 shall advise OWNER immediately of any potential or actual non-compliance by any person with any Safety Law on Airport property.
- e. That it shall immediately upon receipt, provide OWNER with copies of any notice or other document issued to Contractor, 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 the OWNER shall relieve the Contractor of responsibility or liability for the safety of the general 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 Contractor, shall expressly survive termination of this Contract.

**END OF SECTION**

**END OF GENERAL PROVISIONS**

**Exhibit 7 – Technical Specifications & Plans**

**Exhibit 8 – Required Contract Provisions for Airport Improvement Program  
and for Obligated Sponsors**

**Non-AIP Funded**

1. **FAA Publication:** This Exhibit 8 complies with the FAA's Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors, which may be found at [http://www.faa.gov/airports/aip/procurement/federal\\_contract\\_provisions/#allContracts](http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/#allContracts). If there is a conflict between this Exhibit 8 and the FAA Provisions, the FAA Provisions control.
2. **Contractor Obligations:** Contractor:
  - a) (including all subcontractors) must insert this Exhibit 8 in each lower tier contract (e.g. subcontract or sub-agreement);
  - b) (including all subcontractors) must incorporate this Exhibit 8 by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services; and
  - c) is responsible for compliance with this Exhibit 8 by any subcontractor, lower-tier subcontractor or service provider.
3. **Conflicts:** All federal laws and regulations applicable to this Agreement/Contract take precedence over any conflicting local or state laws.
4. **Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors:** Contractor must comply with the following:
  - a) **General Civil Rights:**
    - i) The Contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.
    - ii) This provision binds the Contractor from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.
  - b) **Title VI Solicitation Notice:** Board, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that, for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
  - c) **Compliance with Regulations:** Contractor will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
  - d) **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
  - e) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
  - f) **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the

## **Exhibit 8 – Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors**

sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

- g) Sanctions for Noncompliance:** In the event of Contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- i) Withholding payments to Contractor under the contract until Contractor complies; and/or
  - ii) Cancelling, terminating, or suspending a contract, in whole or in part.
- h) Incorporation of Provisions:** The Contractor will include the provisions of the clauses entitled "Compliance with Regulations", "Non-discrimination", Solicitations for Subcontracts, including Procurements of Materials and Equipment", Information and Reports", Sanctions for Noncompliance" and "Incorporation of Provisions" in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- i) Non-Discrimination Statutes:** During the performance of this contract, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
  - 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
  - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
  - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
  - Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
  - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
  - The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes



**Exhibit 8 – Required Contract Provisions for Airport Improvement Program  
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discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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

- i) All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.
- ii) Contractor has full responsibility to monitor compliance to the referenced statute or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**k) Occupational Safety and Health Act of 1970:** All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.