

Exhibit STC
Supplemental Terms and Conditions
to the Agreement for
Construction Manager as Constructor (CMR) and Related Services for
Terminal Modernization Program
at the Capital Region International Airport
Between
Capital Region Airport Authority
And
[Construction Manager as Constructor (CMR)]

Contract No.: 19-04____

Note: The appropriate Supplemental Terms and Conditions herein shall apply to: all future CMR addendums for specific projects.

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SUPPLEMENTAL TERMS AND CONDITIONS

The Parties agree these Supplemental Terms and Conditions shall apply to and supplement the _____ Construction Services Contract ("Contract") between the **Capital Region Airport Authority** ("Airport Authority") and _____ ("Construction Manager as Constructor" or "CMR"). Capitalized terms used herein shall have the same meaning as set forth in the Contract, as well as any attachment or exhibit to the Contract. In the event of any inconsistency or ambiguity, the Parties agree the Airport Authority shall be vested with the sole discretion to interpret and decide all inconsistencies or ambiguities.

1. RIGHT TO INSPECT PLANT

The Airport Authority has the right to inspect that part of the plant, place of business, or work site of the CMR, or any subcontractor thereof of any tier, which is pertinent to the performance of the Contract.

Prior to executing the Contract, the CMR shall provide a writing to the Airport Authority certifying the following:

The federally-assisted CMR or construction contractor certifies that she or he does not maintain or provide, for his employees, any segregated facilities at any of his establishments and that she or he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor certifies that she or he will not maintain or provide, for his employees, segregated facilities at any of his establishments and that she or he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. The federally-assisted CMR or construction contractor agrees that (except where she or he has obtained identical certifications from proposed subcontractors for specific time periods) she or he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that she or he will retain such certifications in his files.

2. NON-DISCRIMINATION PRACTICES

The CMR must comply with:

- a. Titles VI and VII of the Civil Rights Act (42 U.S.C. §§ 2000d et. seq.) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles.
- b. The Age Discrimination Act of 1985 (42 U.S.C. §6101-07).
- c. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).
- d. The Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et. seq.) and its associated regulations.
- e. The Michigan Civil Rights Act (P.A. 1976 No. 453) and the Persons With Disabilities Civil Rights Act (P.A. 1976 No. 220).

The CMR must not:

- a. Refuse to recruit, hire, employ, promote or to bar or discharge from employment an individual, or discriminate against an individual in compensation, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex, or sexual orientation, religion, familial status, height or weight.
- b. Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects the employment status of an employee because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.
- c. Print or publish or cause to be printed or published a notice, application, or advertisement relating to employment by the CMR indicating a preference, limitation, specification, or discrimination based upon race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.
- d. Except as permitted by applicable state or federal law, make or use a written or oral inquiry or form of application that elicits or attempts to solicit information concerning the race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial statue, height or weight, of perspective employees. CMR also shall not make or keep a record of that information or disclose such information.
- e. Make or use a written or oral inquiry or form of application that expresses a preference, limitation or specification based on religion, race, color, creed, national origin, age, height, weight, marital status, handicap, sex, or sexual orientation.

The CMR must notify any subcontractor of the obligations relative to non-discrimination under this Contract when soliciting the subcontractor. The CMR will include the provisions of this Article in any subcontract, as well as provide the Airport Authority with a copy of any subcontract agreement.

The CMR and its subcontractors must not discriminate against minority business enterprises or women business enterprises (as defined in the Capital Region Airport Authority Procurement and Contracting Ordinance) in selecting and retaining subcontractors to perform work on this Contract.

The CMR and its subcontractors must not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of this Contract, with respect to hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.

Breach of any of the covenants in this Article may be regarded as a material breach of this Contract.

CMR acknowledges the right of the Airport Authority to sue to enforce the provisions in this Article of the Contract.

If the CMR, does not comply with the non-discrimination and affirmative action provisions of this Contract, the Airport Authority may impose sanctions, as it determines to be appropriate, including but not limited to:

- a. the withholding of payments to the CMR under this Contract until the CMR attains compliance;
- b. cancellation, termination or suspension of this Contract, in whole or in part; and/or

If the Contract is funded, in whole or in part, by federal funds:

- a. CMR's breach of the affirmative action commitments set forth in this Article constitutes a material breach of the Contract sufficient to warrant termination;
- b. CMR must provide immediate notice to the Chief Executive Officer, or his designee, when a subcontractor who was part of the CMR's affirmative action commitment is terminated or substantially displaced by a subcontractor who does not qualify as a disadvantaged business enterprise, as that term is defined in the Capital Region Airport Authority Procurement and Contracting Ordinance; and
- c. CMR must establish and implement a good faith plan and goal to eliminate the continuing effects of past discrimination, which is determined by the Airport Authority to be appropriate for that purpose, provided the Airport Authority has been authorized by the funding source to require such an affirmative action commitment from the CMR.

In the event that this Contract is or becomes subject to federal or state law which conflicts with the requirements of the Capital Region Airport Authority Procurement and Contracting Ordinance, the provisions of the federal or state law shall apply and the Contract shall be interpreted and enforced accordingly.

During the performance of this Contract, the CMR, for itself, its Subcontractors, assignees and successors in interest (hereinafter referred to as the "CMR") agrees as follows:

1.1 Compliance with Regulations. The CMR shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be

amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

1.2 Nondiscrimination. The CMR, with regard to the work performed by it during the contract, shall 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 CMR shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the CMR for Work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or Supplier shall be notified by the CMR of the CMR's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

1.4 Information and Reports. The CMR shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Airport Authority or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a CMR is in the exclusive possession of another who fails or refuses to furnish this information, the CMR shall so certify to the Airport Authority or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

1.5 Sanctions for Noncompliance. In the event of the CMR's noncompliance with the nondiscrimination provisions of this Contract, the Airport Authority shall impose such Contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the CMR under the Contract until the contractor complies; or
- b. Withholding of payments otherwise due to the CMR under any other contract between the Airport Authority and the CMR; or
- c. Cancellation, termination or suspension of the Contract, in whole or in part; or
- d. Cancellation, termination or suspension of any other contract between the Airport Authority and the CMR.

1.6 Incorporation of Provisions. The CMR shall include the provisions of paragraphs 1.1 through 1.5 above in every Subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CMR shall take such action with respect to any Subcontract or procurement as the Airport Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a CMR becomes involved in, or is threatened with, litigation with a Subcontractor or Supplier as a result of such direction, the CMR may request the Airport Authority to enter into such litigation to protect the interests of the Airport Authority and, in addition, the CMR may request the United States to enter into such litigation to protect the interests of the United States.

During the performance of this Contract, the CMR agrees as follows:

1. The CMR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CMR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CMR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The CMR will, in all solicitations or advertisements for employees placed by or on behalf of the CMR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3. The CMR will send to each labor union or representative of workers with which s/he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CMR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The CMR will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The CMR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the CMR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the CMR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedure authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The CMR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CMR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provision, including sanctions for noncompliance: *Provided, however*, that in the event a CMR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CMR may request the United States to enter into such litigation to protect the interests of the United States.

3. BUY AMERICAN PREFERENCES

3.01 The CMR shall comply with 49 U.S.C. Section 5101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product, the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

3.02 The CMR shall submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

3.03 There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building heavy construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

3.04 Certificate of Compliance Based on Total Facility (Terminal or Building Project)

By submitting a bid/proposal under this Request for Bids, the CMR certifies that the facility will be constructed of United States steel, and at least 60% of all of the components and subcomponents of manufactured goods used in the facility will be of United States origin. The cost of labor involved in final assembly at the Site is excluded from the calculation of component and subcomponent cost.

The CMR further certifies that it has listed all non-US origin materials, the costs for these manufactured goods, and the percentage of cost of non-US origin materials (excluding the cost of labor involved in final assembly at the jobsite) below unless 1) the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; 2) the FAA has issued a waiver for the product, as indicated by its inclusion in the FAA Nationwide Buy American Waivers Issued list. Components of unknown origin are considered to have been produced or manufactured outside the United States.

For those items listed below by the CMR below (or on a separate and clearly identified attachment to this bid/proposal), the CMR shall provide sufficient documentation to allow the Airport Authority to request and receive an FAA waiver for the non-US origin materials.

Product	Country of Origin	% of Total Project Cost

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature
Company Name	Title

3.05 Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building heavy construction projects such as runway or roadway construction; or equipment acquisition projects)

By submitting a bid/proposal under this Request for Bids, the CMR certifies that all steel and each manufactured good proposed for use on this project are made in the United States of 100% United States materials, unless 1) the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; 2) the FAA has issued a waiver for the product, as indicated by its inclusion in the FAA Nationwide Buy American Waivers Issued list, or 3) the item is listed by the CMR or on a separate and clearly identified attachment to this bid/proposal. For those items, the bidder or offeror will provide sufficient documentation to the sponsor to allow the sponsor to request and receive an FAA waiver for the product in advance of its use on the project. If the FAA does not issue a waiver, the CMR must use manufactured goods that meet the Buy American Preference requirement.

Product	Country of Origin	% of United States Components and Subcomponents

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature
Company Name	Title

4. **CIVIL RIGHTS ACT OF 1964, TITLE VI –
CMR CONTRACTUAL REQUIREMENTS**

4.01 During the performance of this Contract, the CMR, for itself, its assignees and successors in interest (hereinafter referred to as the "CMR") agrees as follows:

- A. **Compliance with Regulations.** The CMR shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- B. **Nondiscrimination.** The CMR, with regard to the work performed by it during the contract, shall 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 CMR shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- C. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the CMR for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CMR of the CMR's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. **Information and Reports.** The CMR shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Airport Authority or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the CMR is in the exclusive possession of another who fails or refuses to furnish this information, the CMR shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance.** In the event of the CMR's noncompliance with the nondiscrimination provisions of this Contract, the Airport Authority shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - 1. Withholding of payments to the CMR under the contract until the CMR complies, and/or
 - 2. Cancellation, termination, or suspension of the contract, in whole or in part.

F. Incorporation of Provisions. The CMR shall include the provisions of this Agreement as appropriate in every subcontract and every supplier agreement, including, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CMR shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the CMR becomes involved in or is threatened with litigation or a subcontractor or supplier as a result of such direction, the CMR may request the Airport Authority to enter into such litigation to protect the interests of the Airport Authority and, in addition, the CMR may request the United States to enter into such litigation to protect the interests of the United States.

5. AIRPORT & AIRWAY IMPROVEMENT ACT OF 1982, § 520 - GENERAL CIVIL RIGHTS PROVISIONS

5.01 The CMR assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure 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. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors 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.

6. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

6.01 No Federal appropriated funds shall be paid, by or on behalf of the CMR, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

6.02 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the CMR shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

7. ENERGY CONSERVATION REQUIREMENTS

7.01 The CMR agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163)

8. BREACH OF CONTRACT TERMS

8.01 Any violation or breach of terms of this Contract on the part of the CMR or their subcontractors may result in the suspension or termination of this Contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

9. RIGHTS TO INVENTIONS

9.01 All rights to inventions and materials generated under this Contract are subject to regulations issued by the FAA and the Airport Authority of the Federal grant under which this Contract is executed.

10. TRADE RESTRICTION CLAUSE

10.01 The CMR or subcontractor, by execution of this Contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this Section 10 are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the CMR knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Airport Authority cancellation of the Contract at no cost to the Government.

10.02 The CMR agrees that it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The CMR may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

10.03 The CMR shall provide immediate written notice to the Airport Authority if the CMR learns that its certification or that of a subcontractor was erroneous when submitted or has

become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the CMR if at any time it learns that its certification was erroneous by reason of changed circumstances.

- 10.04** This certification is a material representation of fact upon which reliance was placed when entering into this Contract. If it is later determined that the CMR or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Airport Authority cancellation of the Contract or subcontract for default at no cost to the Government.
- 10.05** Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this Section. The knowledge and information of the CMR is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 10.06** This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, US Code, Section 1001.

11. VETERAN'S PREFERENCE

- 11.01** In the employment of labor (except in executive, administrative, and supervisory positions), CMR shall give preference to Veterans of the Vietnam era, Persian Gulf Veterans, Afghanistan-Iraq War Veterans, disabled veterans, and small business concerns owned and controlled by veterans as defined in Title 49 United States Code Section 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

12. DAVIS BACON LABOR REQUIREMENTS

- 12.01** The CMR shall comply with the following and shall require the subcontractors to likewise comply with the following:

A. Minimum Wages

- 1. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.
- 2. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of this Section; also, regular contributions made

or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the CMR and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

3. Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination..
4. If the CMR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
5. In the event the CMR, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
6. The wage rate (including fringe benefits where appropriate) determined pursuant to this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
7. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CMR shall either pay the benefit as stated in the wage

determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

8. If the CMR does not make payments to a trustee or other third person, the CMR may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, that the Secretary of Labor has found, upon the written request of the CMR, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CMR to set aside in a separate account assets for the meeting of obligations under the plan or program.

B. Withholding.

1. The Federal Aviation Administration or the Airport Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the CMR under this Contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the CMR or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the CMR, Airport Authority, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and Basic Records.

1. Payrolls and basic records relating thereto shall be maintained by the CMR during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CMR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under

approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2. The CMR shall submit weekly, for each week in which any Contract work is performed, a copy of all payrolls to the Airport Authority for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under this Section. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
 - a. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the CMR or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be maintained under this Section and that such information is correct and complete;
 - (2) That each laborer and mechanic (including each helper, apprentice and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
3. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by this Section.
4. The falsification of any of the above certifications may subject the CMR or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
5. The CMR or subcontractor shall make the records required under this Section available for inspection, copying or transcription by authorized representatives of the Airport Authority, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to

interview employees during working hours on the job. If the CMR or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the CMR, Airport Authority, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and Trainees.

1. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CMR as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the CMR's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

E. Equal Employment Opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

F. Compliance With Copeland Act Requirements.

The CMR shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

G. Subcontracts.

The CMR or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

H. Contract Termination: Debarment.

A breach of the contract clauses in this Section may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

I. Compliance With Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

J. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

K. Certification of Eligibility.

1. By entering into this Contract, the CMR certifies that neither it (nor he or she) nor any person or firm who has an interest in the CMR's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
2. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
3. The penalty for making false statements is prescribed in the U.S. Criminal Code 18 U.S.C. 1001.
4. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

13. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

- A. Overtime Requirements. The CMR nor any subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall not require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph A above, the CMR and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the CMR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A above.

- C. Withholding for Unpaid Wages and Liquidated Damages. The Federal Aviation Administration or the Airport Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the CMR or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B above.
- D. Subcontractors. The CMR or subcontractor shall insert in any subcontract the clauses set forth in paragraphs A through E and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this Section.
- E. The CMR agrees and will require its subcontractor to agree to pay each Subcontractor or Supplier for the satisfactory performance of the Work no later than twenty-eight days from the receipt of payment from the Airport Authority. The CMR agrees to release Retainage to each Subcontractor and Supplier no later than twenty-right days after the Airport Authority releases Retainage to the CMR. Any delay or postponement of payment from the above referenced time frames may only occur with the prior written approval of the Airport Authority.

14. CLEAN AIR AND WATER POLLUTION CONTROL

The CMR agrees and will require its subcontractors to agree:

- A. That any facility to be used in the performance of the Contract or subcontract or to benefit from the Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- B. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;

- C. That, as a condition for the award of this Contract, the CMR or any subcontractor will notify the Airport Authority of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the Contract is under consideration to be listed on the EPA List of Violating Facilities;
- D. To include or cause to be included in any construction contract or subcontract which exceeds \$ 100,000 the aforementioned criteria and requirements.

15. **SPECIFIC TERMS AND CONDITIONS RELATED TO DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

A. **Definitions**

“Affiliation”: the Airport Authority uses the same definition as is included in the Small Business Administration (SBA) regulations, 13 CFR Part 121:

- (1) Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or
 - (ii) A third party or parties controls or has the power to control both; or
 - (iii) An identity-of-interest between or among the parties exists such that affiliation may be found.
- (2) In determining whether the affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

“Business Day”: means Monday-Friday, excluding state and federal holidays.

“Day”: means calendar day, unless otherwise stated.

“Immediate Family Member”: The father, mother, step-parent, husband, wife, son, daughter, brother, sister, step-sibling, grandmother, grandfather, grandson, granddaughter, mother-in-law or father-in-law, of the owner of a business seeking to perform on an Airport Authority contract.

“Supplier”: a firm classified as a manufacturer, regular dealer or broker.

A manufacturer operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract.

A regular dealer owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased in the usual course of business.

A broker transports materials as required under the contractual arrangement.

B. Contractors

1. All rights and obligations under this Contract are by and between the Airport Authority and the CMR. Except as may otherwise be provided in the Contract, there is no privity between Subcontractors and the Airport Authority. Subcontractors have no rights as third-party beneficiaries under this Contract. CMR must implement such measures as may be necessary to ensure that its Subcontractors are bound by all applicable provisions of this Contract.
2. With respect to any documents to be submitted to the Airport Authority, the CMR must itself abide by and ensure any and all of its Subcontractors, regardless of tier, abide by the following:
 - (a) a duly authorized Subcontractor principal must sign all documents where required to be signed by the Subcontractor and;
 - (b) a duly authorized Subcontractor principal may not sign any document to be provided to the Airport Authority in blank or where any such document is blank as to any material provision such as price, quantity or scope of services.

The above provisions and subparagraphs 3-11 herein below must be included in all of CMR's subcontracts or other agreements with Subcontractors.

3. CMR must have a written subcontract with each first-tier Subcontractor.
4. CMR must also ensure that there is a written subcontract either between either the CMR or a Subcontractor and every DBE entity for whom the CMR intends to report and utilize for credit toward the DBE participation goal in this Contract.
5. CMR must, upon request, furnish the Procurement Director or her designee with one copy of each written subcontract and any and all subsequent modifications signed by the CMR and the Subcontractor as well as all contracts to which a DBE is a party evidencing the agreement. In addition to the requirements set forth in Exhibit RSP, all subcontracts must require that
 - (i) all Subcontractor's Work be performed in strict accordance with this Contract;
 - (ii) All Subcontractors and DBEs must maintain all pertinent financial and accounting records, correspondence as well as other documents pertaining to its performance on this Contract throughout the duration of the Contract and for six years following the end of its work on this Contract. The financial and accounting

records must be maintained in accordance with generally accepted accounting principles.

(iii) Upon five business days' written notice, the Airport Authority, or its designee, has the right to examine or audit all books, records, statements, reports, supporting data or other pertinent information related to this Contract that the Airport Authority deems necessary concerning the performance of any Subcontractor. Failure by any Subcontractor to comply with a written request by the Airport Authority pursuant to this provision shall be deemed a material breach of the Contract and shall result in the immediate suspension of all payments to the CMR related to any such Subcontractor. In addition, the Airport Authority may designate any such Subcontractor as a non-responsible business on this Contract and/or a non-responsible bidder for future performance or participation on any Airport Authority contract, and may require the CMR to find a substitute Subcontractor at the CMR's expenses, or may initiate debarment proceedings pursuant to the Airport Authority's Procurement and Contracting ordinance, among other remedies at law or equity.

(iv) Upon five business days' written notice, the Airport Authority, or its designee, has the right to interview officers, employees, or other individuals related to any and all Subcontractors, regardless of tier, or any and all DBEs involved in the performance of this Contract. Failure by any Subcontractor to comply with a written request by the Airport Authority pursuant to this provision shall be deemed a material breach of the Contract and shall result in the immediate suspension of all payments to the CMR related to any such Subcontractor. In addition, the Airport Authority may designate any such Subcontractor as a non-responsible business on this Contract and/or a non-responsible bidder for future performance or participation on any Airport Authority contract, may require the CMR to find a substitute Subcontractor at the CMR's expenses or may initiate debarment proceedings pursuant to the Airport Authority's Procurement and Contracting ordinance, among other remedies at law or equity.

6. Subcontracts may contain different provisions than are provided in this Contract with respect to payments, schedules, and matters not affecting the quality, timely completion of the Work under this Contract or any DBE requirements set forth in this Contract, but only if the Airport Authority's rights are not thereby prejudiced. CMR must require each Subcontractor to enter into similar subcontracts with its Subcontractors. CMR must make available to each Subcontractor, before the execution of the subcontract, copies of this Contract, to which the Subcontractor will be bound.

7. If a subcontract provided to the Airport Authority does not comply with these requirements, the Airport Authority's failure to object is not a waiver of them, and CMR will remain liable to the Airport Authority for all damages, costs, fines, losses and claims arising out of the non-compliance.

8. Upon five business days' written notice, the Airport Authority, or its designee, has the right to examine or audit all books, records, statements, reports, supporting data or other pertinent information related to this Contract that the Airport Authority deems necessary concerning the performance of the CMR as well as any Subcontractor. Failure by the CMR to comply with a written request by the Airport Authority pursuant to this provision shall be deemed a material breach of the Contract and may result in the immediate suspension of all payments to the CMR, a designation as a non-responsible business or bidder, or debarment, among other remedies at law or equity.
9. Upon five business days' written notice, the Airport Authority, or its designee, has the right to interview any and all of the CMR's officers, employees, or other individuals involved in the performance of this Contract that the Airport Authority deems necessary concerning the performance of the CMR as well as any Subcontractor. Failure by the CMR to comply with a written request by the Airport Authority pursuant to this provision shall be deemed a material breach of the Contract and may result in the immediate suspension of all payments to the CMR, a designation as a non-responsible business or bidder, or debarment, among other remedies at law or equity.
10. CMR acknowledges that this Contract may be funded in whole or in part by federal funds for which the Airport Authority may seek reimbursement from the United States Department of Transportation/Federal Aviation Administration (USDOT/FAA). Accordingly, the Airport Authority will rely upon all statements, information and documentation provided by the CMR in seeking such reimbursement from the USDOT/FAA. Accordingly, the CMR must provide truthful and complete statements, information and documentation to the Airport Authority as one of the material uses the Airport Authority will make of the statements, information and documentation is to seek reimbursement of certain monies related to this Contract from the USDOT/FAA.
11. CMR must notify the Airport Authority's DBE Liaison within five business days upon receipt of any notification from any local, state or federal governmental entity of that entity's intent to debar the CMR. The CMR shall provide to the Airport Authority's DBE Liaison all written materials provided to the CMR by any such governmental entity which reflects the basis for any proposed debarment. The CMR is further obligated to comply with any written request from the Airport Authority for information about the matter that is the subject of the proposed debarment. Failure by the CMR to comply with a written request by the Airport Authority pursuant to this provision shall be deemed a material breach of the Contract and shall result in the immediate suspension of all payments to the CMR. In addition, the Airport Authority may designate any such CMR as a non-responsible business on this Contract and/or a non-responsible bidder for future performance or participation on any Airport Authority contract, or may initiate debarment proceedings pursuant to the Airport Authority's Procurement and Contracting ordinance, among other remedies at law or equity.

C. Subcontractors

1. Subcontractor must notify the Airport Authority's DBE Coordinator within five business days upon receipt of any notification from any local, state or federal governmental entity of that entity's intent to debar the CMR. The CMR shall provide to the Airport Authority's DBE Coordinator all written materials provided to the CMR by any such governmental entity which reflects the basis for any proposed debarment. The CMR is further obligated to comply with any written request from the Airport Authority for information about the matter that is the subject of the proposed debarment. Failure by any Subcontractor to comply with a written request by the Airport Authority pursuant to this provision shall be deemed a material breach of the Contract and shall result in the immediate suspension of all payments to the CMR related to any such Subcontractor. In addition, the Airport Authority may designate any such Subcontractor as a non-responsible business on this Contract and/or a non-responsible bidder for future performance or participation on any Airport Authority contract, and may require the CMR to find a substitute Subcontractor at the CMR's expenses, or may initiate debarment proceedings pursuant to the Airport Authority's Procurement and Contracting ordinance, among other remedies at law or equity.
2. Subcontractors acknowledge that this Contract may be funded in whole or in part by federal funds for which the Airport Authority may seek reimbursement from the United States Department of Transportation/Federal Aviation Administration (USDOT/FAA). Accordingly, the Airport Authority will rely upon all statements, information and documentation provided by the Subcontractors in seeking such reimbursement from the USDOT/FAA. Accordingly, the Subcontractor must provide truthful and complete statements, information and documentation to the Airport Authority as one of the material uses the Airport Authority will make of the statements, information and documentation is to seek reimbursement of certain monies related to this Contract from the USDOT/FAA.

D. Schedule of Values

Included in each Schedule of Values, a CMR must provide an estimate of when each Subcontractor, regardless of tier, identified on the DBE and Non-DBE Participation Plan Forms will begin work on the project.

16. SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION COMMITMENT

A. Policy and Terms

1. It is the policy of the Airport Authority that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, have the maximum opportunity to participate fully in the performance of contracts subject to 49

CFR Part 26. You must not discriminate against any person or business on the basis of race, color, national origin or sex in the performance of this Contract. You must carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation (DOT) or Federal Aviation Administration assisted contracts and take affirmative action to ensure that businesses owned by socially and economically disadvantaged individuals have full opportunity to participate.

2. Failure to carry out the commitments and policies set forth in this Article constitutes a material breach of the Contract and may result in the termination of the Contract, or such remedy as the Airport Authority deems appropriate including, but not limited to a finding of non-responsibility, assessment of liquidated damages, retainage of hold-backs, declaration of a breach of a material contract term or debarment.
3. Accordingly, the CMR commits, for this Contract, participation by DBEs at:

Contract DBE Commitment: _____

4. CMR must make good-faith efforts to obtain DBE participation in this Contract. As set forth in Section 16.E., herein entitled "Good-Faith Efforts," CMR must document that it has obtained enough DBE participation to meet the Contract DBE Participation Goal set forth above or, if unsuccessful in doing so, has made adequate Good-Faith Efforts to meet the goal. CMR must expend not less than the committed percentage of the total Contract Price (including any amendments and modifications) for Contract participation by DBEs.
5. The Contract DBE Participation applies to the total value of the Contract, inclusive of all amendments, modifications and change orders. The DBE Coordinator also has the authority to review each proposed Contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the Contract value for opportunities to increase participation of DBEs in the Contract.
6. The Contract DBE Participation Commitment may be met by CMR's status as DBE, or by joint venture with one or more DBEs, or by subcontracting a portion of the Work to one or more DBEs, or by purchasing materials used in the performance of the Contract from one or more DBEs, or by any combination of the foregoing, as further described in Supplemental Terms and Conditions Section 16 C., below, entitled "Counting DBE Participation Towards the Contract DBE Participation Goal."

B. Additional Definitions and Usage

1. The definitions set forth in the General Terms and Conditions Section of this Contract are incorporated herein by reference and shall have the same meaning and effect in this section.
2. Terms that are capitalized in this Section and not defined elsewhere in this document have the meanings set forth in 49 CFR § 26.5 or below.

3. “Area of Specialty” means the description of a DBE firm’s business has been determined by the Michigan Uniform Certification Program (“MUCP”) and for which DBE certification was sought and granted. Each DBE letter of certification contains a description of the firm’s Area of Specialty. Credit toward the Contract DBE Participation Goal is limited to the participation of firms performing within their Areas of Specialty.

<p>NOTICE: The Airport Authority does not make any representation concerning the ability of any DBE to perform work within its Area of Specialty. It is the CMR’s responsibility to determine the capability and capacity of DBE firms to satisfactorily perform the Work.</p>
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4. “Commercially Useful Function” means that every DBE must perform a distinct element of work by actually performing, managing or supervising the work. The DBE must also be responsible for the materials and supplies used to fulfill the contract, for negotiating prices, determining the quality and quantity of materials for installation, ordering the material and for paying for the materials with the DBE’s own funds. If a DBE subcontracts a significantly greater portion of the work than would be expected on the basis of normal industry practice or exceeds subletting limitation in effect, the DBE shall be presumed to not perform a commercially useful function as provided for under 49 CFR §26.55.
5. “Directory” means any directory maintained by the Airport Authority, as well as the directory maintained by MUCP, that identifies all firms eligible to participate as DBEs. Both Directories list the firm’s name, address, phone number, date of most recent certification and the type of work the firm has been certified to perform as a DBE.

Please note: the directories referenced above are provided as a courtesy for the CMR, but by no means are intended to or can relieve the CMR including of its responsibility to make good faith efforts to meet the DBE participation goal set forth in this contract. The CMR is strongly encouraged to go beyond the list of certified DBEs in these directories in its efforts to demonstrate good faith efforts and its failure to do so may count against the CMR in analyzing any request for a waiver of the DBE goal in this Contract.

6. “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern that (i) is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, 51 percent of the stock is owned by one or more such individuals; and (ii) whose management and daily operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
7. “Joint Venture” means an association between a DBE firm and one or more other firms in which property, capital, efforts, skill and knowledge are combined to carry out a single business endeavor engaged in for profit, the

DBE is responsible for a distinct, clearly defined portion of the Work of the Contract and shares in the capital contribution, control, management, risks and profit commensurate with its ownership interest in the joint venture.

C. Counting DBE Participation Toward the Contract DBE Participation Commitment

The following is intended only as a guide to assist the CMR in determining DBE participation in this Contract. This is not legal advice. Also, simply submitting the documentation in the format specified or following the necessary steps does not guarantee that the Airport Authority will agree that the CMR has adequately or correctly documented DBE participation in this Contract, whether at the bid stage or thereafter. It is the CMR's responsibility to ensure that the DBE participation is properly claimed and accounted for pursuant to 49 CFR §26.55 and that nothing herein releases or relieves the CMR from this responsibility.

1. When a DBE participates in a contract, only the value of the work actually performed by the DBE counts toward DBE goals.
 - (a) Count the entire amount of that portion of a construction contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - (b) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive, as compared with fees customarily allowed for similar services.
 - (c) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
2. When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
3. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
 - (a) A DBE 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 DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing, (where applicable), and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of 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, and the DBE credit claimed for its performance of the work and other relevant factors.

- (b) A DBE 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 DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.
 - (c) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.
 - (d) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
4. Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- (a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - (b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - (c) The DBE receives 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 DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

- (e) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. If a recipient chooses this approach, it must obtain prior written consent from the Airport Authority. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.
 - (f) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of 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 DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
5. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- (a) (i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals
 - (ii) For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or is an 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) (i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
 - (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 the 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.
 - (A) 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.
 - (B) 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 a regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph

(c) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged 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, toward DBE goals, provided you determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

6. If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in 49 C.F.R. § 26.87(i).
7. Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.
8. Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.
9. A CMR may only report and be credited for DBE work performed on this Contract and not for any other work on any other project on which the CMR and the DBE perform work together, whether or not the other work is for a third party or the Airport Authority.
10. A CMR may count the DBE participation of every level of subcontracting toward the DBE Contract participation goal. In order to count the participation of any particular DBE, each such DBE must be fully identified on the appropriate form(s).

D. Reporting Documentation

1. The following document must be provided on a monthly basis to the DBE Compliance Manager no later than the fifth business day of each month:
 - DBE and Non-DBE Subcontractor Monthly Payment Report
2. The DBE and Non-DBE Subcontractor Monthly Payment Report must have all blank spaces filled in correctly.

Please Note: Consistent with provisions in the Section Entitled “Subcontractors,” (a) a duly authorized Subcontractor principal must sign all documents where required to be signed by the Subcontractor; and (b) A duly authorized Subcontractor principal may not sign any document to be provided to the Airport Authority in blank or where any such document is blank as to any material provision such as price, quantity or scope of services. Both of these prohibitions apply with equal force to documents to be provided by DBE Subcontractors.

3. Failure to provide complete and accurate DBE and Non-DBE Subcontractor Monthly Payment and Progress Reports or the failure to provide the pay application on or before the fifth business day of each month will result in the denial of the next pay application in amount that represents twice the overall percentage of the DBE Participation Goal for the Contract until the problem is remedied. Any subsequent failures to provide complete and accurate DBE and Non-DBE Subcontractor Monthly Payment or the failure to provide the pay application on or before the fifth business day of each month will result in the denial of the next pay application in total and the Airport Authority may designate any such contractor as a non-responsible business on this Contract and/or a non-responsible bidder for future performance or participation on any Airport Authority contract, may result in the declaration of a material breach of the Contract, imposition of the liquidated damages provision of this Contract or may initiate debarment proceedings pursuant to the Airport Authority’s Procurement and Contracting ordinance, among other remedies at law or equity.

E. Good-Faith Efforts

After the award of the Contract, the CMR may request a waiver of the DBE participation commitment. In seeking such a post-award waiver, the CMR must document and establish the basis for its inability to satisfy this material contract requirement and any and all good-faith efforts related thereto. The documentation required for such a post-award waiver should, as appropriate, be consistent with the documentation requirements set forth in 49 CFR Part 26.53, Good-Faith Efforts. In addition, the CMR must submit evidence on:

1. the total dollar amount of the contract work completed to date;
2. total dollar amount paid to DBEs;
3. the total dollar amount of creditable DBE participation completed to date;
4. the DBE entities responsible for the DBE participation completed to date;
5. as to each such DBE entity responsible for the DBE participation completed to date, the percentage of the total contract amount attributable to each such entity;
6. the anticipated DBE participation percentage at contract completion; and

7. evidence that on the date the CMR became aware that it could not meet its contractual obligation for DBE participation, the CMR reviewed all remaining contract work to be performed by all entities, including work to be self-performed by the CMR, to identify other work which could be subcontracted to DBE entities.

F. Administrative Reconsideration

1. The DBE Coordinator makes the initial determination regarding CMR's good-faith efforts waiver request, in consultation with the Procurement Director. Any such determination will be based in part on his or her review of the documentation submitted by the CMR. Within five days of being informed by the Airport Authority that CMR is not responsive because it has not documented sufficient Good-Faith Efforts, or that a waiver request has been denied, CMR may request administrative reconsideration. CMR shall make this request in writing to the DBE Liaison.

The DBE Liaison will not have played any role in the DBE Coordinator's determination that CMR did not make or timely document sufficient Good-Faith Efforts.

2. As part of this reconsideration, CMR will have the opportunity to provide written documentation or argument concerning the issue of whether it met the Contract DBE Participation Commitment or made adequate good-faith efforts to do so. CMR will have the opportunity to meet in person with the DBE Liaison to discuss the issue of whether it met the Contract DBE Participation Commitment or made adequate good-faith efforts to do so. The Airport Authority will send CMR a written decision on reconsideration, explaining the basis for finding that the CMR did or did not meet the Contract DBE Participation Commitment or make adequate good-faith efforts to do so. That decision by the DBE Liaison upon a request for reconsideration will be administratively final.

Please Note: The Airport Authority reserves the right to modify this procedure when it deems appropriate. Any such modifications will be done in writing with notification to CMR.

G. DBE Substitutions

1. CMR must not make arbitrary changes to the commitments earlier certified in any of the DBE and Non-DBE subcontractor Monthly Participation Reports or Proposed Credit Forms. Further, after once entering into each DBE subcontract or other agreement, CMR may neither terminate the DBE nor reduce the scope of the work to be performed by the DBE, nor decrease the payment to the DBE, without in each instance (i) having just cause, including situations where your contract with the DBE includes termination for convenience; (ii) making Good-Faith Efforts to find another DBE subcontractor to substitute for the original DBE (these Good-Faith Efforts must be directed at finding another DBE to perform at least the same amount of Work under the Contract as the DBE that was terminated, to the

extent needed to meet the Contract DBE Participation Goal); and (iii) receiving the prior written approval of the Airport Authority in all instances.

Please Note: The CMR may not unilaterally decrease overall DBE participation in this Contract. Unilaterally decreasing the DBE participation will result in sanctions against the CMR such as being designated as a non-responsible business on this Contract and/or a non-responsible bidder for future performance or participation on any Airport Authority contract, may result in the declaration of a material breach of the Contract, imposition of the liquidated damages provision of this Contract or the initiation of debarment proceedings pursuant to the Airport Authority's Procurement and Contracting ordinance, among other remedies at law or equity.

CMR must give the DBE Coordinator reasons that justify terminating a DBE, reducing the scope of work to be performed by a DBE or decreasing the price to a DBE. The substitution procedure will be as follows:

- a. CMR must notify the DBE Coordinator immediately in writing of an apparent necessity to reduce or terminate a DBE subcontract and to propose a substitute firm for some phase of Work, if needed, in order to sustain the fulfillment of the Contract DBE Participation Goal.
- b. CMR's notification must include the specific reasons for the proposed substitution. Stated reasons that would be acceptable include any of the following examples: a committed DBE was found not to be able to perform, or not to be able to perform on time; a committed DBE was found not to be able to produce acceptable work; a committed DBE was discovered later to be not *bona fide*; a DBE committed at a given price later demands an unreasonable escalation of price; and, the Work to be performed by the DBE under your Contract with the Airport Authority is terminated or reduced.

CMR's position in these cases must be fully explained and supported with adequate documentation. Stated reasons that will not be acceptable include, but will not be limited to: a replacement firm has been recruited to perform the same work under terms more advantageous to CMR; issues about performance by the committed DBE were disputed (unless every reasonable effort has already been made to have the issues resolved or mediated satisfactorily); and a DBE has requested reasonable price escalation that may be justified due to unforeseen circumstances.

- c. CMR's notification must include the name, address and principal official of any proposed substitute DBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same DBE documentation that is required in the Post-Award context, as enumerated in the Section entitled, "Good Faith Efforts, Post-Award."

- d. The Airport Authority will evaluate the submitted documentation, and respond within 10 business days to the request for approval of a substitution after receiving all complete and accurate information. The response may be in the form of a request for more information or a request for an interview to clarify or mediate the problem. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, the Airport Authority will respond as soon as practicable.
- e. Actual substitution of a replacement DBE to fulfill the Contract DBE Participation Commitment may not be made before Airport Authority approval is given of the acceptability of the substitute DBE. A subcontract with the substitute DBE Subcontractor, which includes the required mandatory provisions for subcontracts made and entered into pursuant to this Contract, must be executed within five business days following the Airport Authority's approval, and a copy of the DBE subcontract with signatures of both parties to the agreement should be submitted immediately to the Airport Authority.
- f. The Airport Authority will not approve extra payment for escalated costs incurred by CMR when a substitution of subcontractors becomes necessary for CMR to comply with the Contract DBE Participation Goal.

H. Change Orders

Any and all change orders shall incorporate the DBE Participation Goal set forth and agreed to in the base contract, if any. Along with any change order, the CMR must submit a new Schedule of Values which includes, but is not limited to, a revised plan to meet the DBE Commitment in the Contract. The CMR shall be obligated to meet that DBE Participation Goal unless the CMR seeks and receives a prior written Good-Faith Efforts waiver from the Airport Authority, consistent with the Section entitled "Good Faith Efforts." A Good-Faith Efforts waiver, if granted, shall apply only to the specific change order for which it was sought and not prospectively for any other change order, unless specifically indicated in writing by the Airport Authority.

I. Non-Compliance

- 1. Each of the following constitutes a material breach of this Contract's DBE provisions and entitles the Airport Authority to deny a pay application, deem the CMR non-responsible, declare a default, terminate the Contract, seek debarment and/or exercise those remedies provided for in the Contract, at law or in equity:
 - a. failure to make good-faith efforts to satisfy the Contract DBE Participation Commitment CMR proposed and that was accepted by the Airport Authority;

- b. Decertification as a DBE of a CMR, Subcontractor, or supplier;
 - c. the submission of false or fraudulent information to the Airport Authority by the CMR or the omission of material information from other information provided to the Airport Authority; and/or
 - d. the submission of false or fraudulent information to the Airport Authority or the omission of material information related to a subcontractor, regardless of tier or whether subcontractor is a DBE or non-DBE where the CMR had reason to know that the information was false, fraudulent or omitted or could have learned that it was false fraudulent or omitted with the exercise of reasonable care.
2. If CMR is determined by the Airport Authority not to have been involved in any misrepresentation of the status of a decertified subcontractor or supplier, or the provision of false, fraudulent information or the omission of material information related to a Subcontractor, CMR must discharge the Subcontractor or supplier and, if possible, identify and engage a qualified DBE as its replacement pursuant to the substitution procedure set forth herein. The Airport Authority may also withhold payments due to CMR until corrective action is taken.
 3. For each one percent (or fraction thereof) of shortfall toward the Contract DBE Participation Commitment at the time this Contract is closed and in the absence of a written good-faith efforts waiver from the Airport Authority, one percent of the base bid for this contract shall be surrendered by the CMR to the Airport Authority in payment as liquidated damages, in addition to any other sanctions the Airport Authority deems appropriate such as a finding of non-responsibility, declaration of a breach of contract or debarment.

J. Record Keeping

CMR must maintain records of all relevant data with respect to the utilization of DBEs, retaining these records for a period of at least six years after Final Completion and Acceptance of the Work. CMR shall grant full access to these records to the Airport Authority or its designee, federal or state authorities in this Project, the USDOT, USDOT Office of Inspector General, the FAA, the U.S. Department of Justice or any of their duly authorized representatives or agents.

17. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (NON PROCUREMENT)

- a. Certification Regarding Debarment and Suspension (Non-Procurement) – Title 2 CFR Part 180 & Title 2 CFR Part 1200

The Contract that ultimately results from this Request for Bids is a “covered transaction” as defined by Title 2 CFR Part 180. The CMR must certify at the time they submit their Bid that neither it nor its principals are presently debarred or suspended by any Federal department or

agency from participation in this transaction. The CMR further agrees to comply with Title 2 CFR Part 1200 and Title 2 CFR Part 180, Subpart C by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”.

b. Certification Regarding Debarment and Suspension (Non-Procurement) – Title 2 CFR Part 1200 and Title 2 CFR Part 180, Subpart C

The CMR by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction” must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The CMR shall accomplish this by:

- i. Checking the System for Award Management at website: <http://www.sam.gov>
- ii. Collecting a certification statement similar to paragraph a.
- iii. Inserting a clause or condition in the covered transaction with the lower tier contract

18. TEXTING WHILE DRIVING

In accordance with Executive Order 13513 of October 1, 2009 and DOT Order 3902.10, the CMR agrees to adopt and enforce a policy that bans texting or text messaging while driving. This policy shall apply to all of CMR’s employees and Subcontractors who perform any Work related to the Contract Documents. For purposes of this policy, “texting” or “text messaging” means reading from or entering data into any handheld or other electronic device, including but not limited to SMS texting, emailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. For purposes of this policy, “driving” means operating a motor vehicle on a roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign or otherwise. Driving does not include operating a vehicle which has been pulled over off of the roadway, halting in a location where one can safely remain stationary.

19. FAA REQUIREMENTS

Non-Discrimination

- a. The CMR covenants not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or a disability that is unrelated to the individual’s ability to perform the duties of a particular job or position. The CMR shall require any and all Subcontractors to include a similar covenant on the part of any Subcontractor employed in the performance of Work. Breach of this covenant may be regarded as a material breach of the Contract Documents.
- b. As pertinent and applicable, during the performance of the Work, the CMR, and all Subcontractors, assignees and successors in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited: (1) Titles VI and VII of the Civil Rights Act (42 U.S.C. §§ 2000d et. seq.) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles; (2) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); (3) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794); (4) 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; (5) The Michigan Civil Rights Act (P.A. 1976 No. 453) and the Persons With Disabilities Civil Rights Act (P.A. 1976(b) No. 220); (6) 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); (7) 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); (8) the 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); (9) 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); (10) 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); (11) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; (12) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and (13) 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).

20. MISCELLANEOUS PROVISIONS

- a. The CMR will provide administration of the contract in collaboration with the Design Professional as described in the Contract Documents, and will be the Airport Authority’s representative during construction until the date the Design Professional issues certificate of final payment.
- b. The CMR shall review and certify all applications for of subcontractors in cooperation with the Design Professional. The CMR or Design Professional shall have authority to reject the work that does not conform to the Contract Documents and will notify each other about the rejection and copy the Airport Authority.
- c. The CMR will prepare the initial draft of change orders and construction change directives to be circulated to the Design Professional and the Airport Authority.
- d. The CMR will maintain an entire set of Contract Documents at the construction site.

- e. The CMR will collaborate with the Design Professional in conducting inspections and establishing the dates of substantial completion and final completion, and review of punchlist items for completion.
- f. The Airport Authority or CMR or Design Professional may make reasonable objections to any person or entity proposed by the subcontractors who shall propose additional or alternative entities or personnel.
- g. The CMR shall not be obligated to administer Airport Authority's own forces or persons or entities under separate contract with the Airport Authority that are not covered under CMR's obligations.
- h. Either the Design Professional or Airport Authority shall withhold payment from the CMR for any of the following: defective work not remedied; third party claims; failure of the CMR to make payment to subcontractors; reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; damage to the Airport Authority or separate contractor; evidence that the Work will not be completed on time; and repeated failure to carry out the Work in accordance with the Contract Documents.

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