

**CONTRACT FOR PROFESSIONAL SERVICES
BETWEEN
CITY OF FOLEY (OWNER)
AND
VOLKERT, INC. (CONSULTANT)**

This agreement made and entered into this the _____ day of _____, 2015 by and between the City of Foley, hereafter referred to as the OWNER, and Volkert, Inc., hereafter referred to as the CONSULTANT; WITNESSETH THAT:

WHEREAS, the OWNER desires to retain the CONSULTANT to perform certain professional planning, programming, and engineering services on assignments at the Foley Municipal Airport for five (5) years from the date of this agreement;

WHEREAS, the CONSULTANT desires to perform said professional services for the OWNER;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, the parties hereto agree as follows:

The CONSULTANT shall perform consulting, planning, design, environmental, and construction observation services as described in the General Provisions attached hereto and made a part hereof as requested by the OWNER from time to time. Assignments may consist of the preparation of pre-applications and applications for federal and state funding, airport layout plan, capital improvement plan, studies, feasibility studies, benefit cost analysis, airport compliance issues, analysis engineering design, planning for runways and taxiways, runway/taxiway overlays, pavement maintenance, aircraft parking aprons, airport lighting, ILS system, NAVAIDS, weather reporting system, land acquisition, fencing, roads, fueling facilities, and terminal/hangars area improvements thereto, and other planning and design services as the OWNER may direct.

Services shall be performed in accordance with the attached General Provisions.

The OWNER and CONSULTANT shall execute a Supplemental Agreement for each assignment authorized by the OWNER. Each Supplemental Agreement will include a scope of work and fee amount and shall be made a part of the Agreement when executed by both parties.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement in duplicate as of the day and year first above written.

CITY OF FOLEY

Attest

:

Name: _____

Title: _____

Name: John E. Koniar

Title: Mayor

Federal Employer ID # (Corporation): _____

VOLKERT, INC.

Attest:

Name: Margaret Hancken

Title: Asst. Controller / Secretary

Name: David M. Webber, Sr. V.P / COO

Title: Gulf Design Region

GENERAL PROVISIONS

These General Provisions are attached and made a part of the Agreement dated the _____ day of _____, 2015 between the City of Foley (OWNER), and Volkert, Inc. (CONSULTANT).

For the scope of work described in the referenced Agreement, the Consultant shall perform professional services as hereinafter described, which shall include customary civil, structural, mechanical and electrical Consulting services. These services when performed in accordance with acceptable Consulting practice shall be the limits of the Consultant's responsibility under the Agreement.

SECTION I – BASIC SERVICES

A. Project Development Phase: After written authorization to proceed the CONSULTANT shall:

1. Consult with OWNER and state and federal government agencies as necessary to clarify and define the requirements for the project and review available data.
2. Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the types described in Section II and act as OWNER's representative in connection with such services. Either assist the OWNER in contracting for such services, or include the services in this agreement by use of a sub consultant in accordance with Section II, Special Services.
3. Prepare preliminary designs necessary to determine the type, size and scope of the improvement project based upon projected aviation activity and current airport standards.
4. Prepare preliminary cost estimates for the project.
5. Prepare preapplications for federal and/or state assistance grants for funding of the project.
6. Furnish five (5) copies of drawings, sketches, forms and reports as appropriate to the OWNER for submission to government agencies.

B. Design Phase: After written authorization to proceed the Consultant shall:

1. In consultation with the OWNER and other government agencies through conferences, meetings, or submissions of preliminary reports as appropriate, determine the extent of the project and the design criteria to be used in final design.

2. Prepare a Consultant's report in accordance with FAA criteria, which shall include but not necessarily be limited to:
 - a. An analysis and reasons for the design choices;
 - b. An analysis of the airport pavement design, when applicable;
 - c. An analysis of the manner that the work will be accomplished; and
 - d. A project cost estimate based upon the final design.
3. Advise the OWNER of needed special services not included herein and assist the OWNER in the evaluation and selection of other professionals to provide special services.
4. Prepare final design, detailed contract drawings, specifications, estimates and contract documents.
5. Submit appropriate documents to state and federal agencies for necessary approvals and permits.
6. Furnish to the OWNER fifteen (15) copies of completed drawings, specifications, reports, estimates and contract documents.

C. Bid Phase:

1. Assistance to the OWNER in securing bids, tabulation and analysis of bid results, and furnishing recommendations in connection with the award of construction contracts.
2. Assistance in preparation of application for federal assistance.
3. Assistance in preparation of formal contract documents for the award of construction contracts.

D. Construction Phase:

After written authorization to proceed, the CONSULTANT shall provide the following services:

1. Consult with and advise the OWNER and act as his representative as provided in the approved construction specifications and contract documents.
2. Make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work of contractor(s) and to determine in general if such work is proceeding in accordance with the contract documents, and provide reports as necessary to the OWNER. CONSULTANT shall not be required by this

provision to make exhaustive or continuous on-site inspections to check the quality or quantity of the construction work.

3. Review shop drawings and other submissions of the contractor for compliance with the design concepts and specification requirements.
4. Review laboratory, shop and mill test reports and prepare a tabulation or summary of laboratory test results to assist in monitoring the quality of construction.
5. Recommend to OWNER change orders and/or supplemental agreements to the construction contract incidental to existing field conditions or improvements in the project design. Prepare estimate of cost or savings from proposed order, prepare change order along with basis for recommendation, obtain unit price quotations from construction contractor for change order work, make recommendations to OWNER regarding contractor unit prices for change order work and assist the OWNER in negotiating with the contractor to arrive, if possible, at an appropriate compensation resulting from the proposed revisions. The CONSULTANT is not required by this provision to accomplish extensive design revisions and drawings resulting from a change in project scope initiated by the OWNER or major changes in design concept previously accepted by the OWNER where changes are due to causes beyond the CONSULTANT's control.
6. Advise the OWNER of needed special services and assist the OWNER in the acquisition of such services, or perform these services by use of a sub consultant in accordance with Section II, as appropriate.
7. Review partial and final payments due to contractor based upon the completed work.
8. Assist OWNER in preparing applications for partial and final payments for submission to government agencies.
9. Based on construction observation services and surveys made under special services or by others, compute final quantities or work completed by contractor on the project.
10. Make a final inspection with OWNER and government representatives of the completed work and provide a report of Consultant's recommendation regarding contractor's final earnings.
11. Prepare final project report explaining significant features of the project, such as large variances in quantities, construction time, and recommendations regarding liquidated damages.

12. Prepare "Record Drawings" based upon information provided by the contractor. Furnish two (2) hard copies of the "Record Drawings" to the OWNER.
13. The CONSULTANT shall not be responsible for the acts or omissions of any contractor, or sub, or any of the contractor's or subcontractor's agents or employees or any other persons (except CONSULTANT's own employees and agents) at the site or otherwise performing any of the contractor's work.
14. The CONSULTANT shall not be responsible to act as foreman, superintendent, safety consultant, or for the safety of the contractor's personnel.
15. The CONSULTANT shall not be responsible for construction means, methods, techniques, sequences and procedures employed by the contractor in the performance of his Contract, and shall not be responsible for the failure of any contractor to carry out work in accordance with the Contract Documents.

SECTION II – SPECIAL SERVICES

At the written request of the OWNER, the CONSULTANT shall accomplish such special services as required by the OWNER. When the CONSULTANT is requested to provide special services, such services may be provided by CONSULTANT'S own forces or through subcontracts with other professionals. However, contracts with other professionals for special services must have the written approval of the OWNER before the work is initiated. Special services which may be requested include, but are not necessarily limited to the following:

- A. Land Surveys as necessary to establish property boundaries required for property acquisition purposes or preparation of property maps.
- B. Soils and Materials Investigations including test borings, laboratory and field testing of soils and materials and related reports as required for design and construction quality control purposes.
- C. Engineering Surveys (for design and construction) to include topographic surveys, base line surveys, cross section surveys, aerial photography, etc., as required and approved by the OWNER.
- D. Construction Observation Services to be performed as described below and approved by OWNER.
 1. CONSULTANT'S Personnel at Construction Site
 - a. The CONSULTANT shall make periodic visits to the site at intervals appropriate to the various stages of construction, as the

CONSULTANT deems necessary, in order to observe the progress and quality of the various aspects of the work of the contractor.

- b. The CONSULTANT shall provide site observations during the construction phase of operations or at approved intervals by the OWNER. The furnishing of such on-site observations will not extend the CONSULTANT'S responsibilities or authority beyond the specific limits set forth in the Agreement. Such visits and observations by the CONSULTANT are not intended to be exhaustive, or to extend to every aspect of the work in progress, or to the CONSULTANT in this Agreement, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on the CONSULTANT'S exercise of professional judgment. Based on information obtained during such visits and such observations, the CONSULTANT shall endeavor to determine, in general, if such work is proceeding in accordance with the construction contract documents ("Construction Documents"), and the CONSULTANT shall keep the OWNER informed of the progress of the work. The CONSULTANT shall report promptly in writing to the OWNER any deficiencies in the work of which the CONSULTANT has direct knowledge.

2. Contractor Submittals

The CONSULTANT shall review the contractor's shop drawings and other submittals. Such review shall be only for conformance with the information given in the Contract Documents and for compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews will not extend to means, methods, techniques, sequences or procedures of construction, or to safety precautions and programs incident thereto. CONSULTANT shall report conformance of review in writing to the OWNER. CONSULTANT shall also review contractor's invoices and time schedules on behalf of OWNER.

3. Record Drawings

The CONSULTANT shall prepare and deliver to the OWNER record drawings once construction is complete and accepted by the OWNER. Such record drawings will be based on information furnished by the contractor to the CONSULTANT showing changes made during construction. The CONSULTANT is not responsible for any errors or omissions in the information provided by the contractor that is incorporated into the record drawings.

4. Contractor is Responsible for Construction Work

- a. The CONSULTANT shall not be responsible for the means, methods, techniques, sequences or procedures of construction

selected by the contractor or the safety precautions and programs incident to the work of the contractor. The CONSULTANT shall not guarantee the performance of the contractor nor be responsible for the acts, errors, omissions or the failure of the contractor to perform the construction work in accordance with the Contract Documents.

- b. The OWNER agrees to include all construction contract provisions for contractor indemnification of the OWNER and the CONSULTANT for contractor's negligence and to name the OWNER and the CONSULTANT as additional insured on applicable contractor's insurance policies.
- E. Assistance to the OWNER as expert witness in litigation arising from development or construction of project as determined acceptable by OWNER and CONSULTANT.
- F. Accomplishment of special surveys and investigations, and the preparation of special reports and drawings as may be requested or authorized in writing by the OWNER.
- G. Preparation of pre-applications and applications for federal and/or state assistance grants for funding of projects.
- H. Extra work required to revise contract documents, plans and specifications to facilitate the award of more construction contracts than anticipated under the requirements outlined in the Basic Services provisions of this agreement in the event the OWNER adopts such a construction program.
- I. Assistance to the OWNER in implementing the DBE program as requested.
- J. Perform services when required by FAA audit subsequent to completion of the project.
- K. Serve as consultant, witness or representative for the OWNER in any public hearing, public information meeting, or other administrative proceeding involving the project as determined acceptable by OWNER and CONSULTANT.
- L. Any other additional services not otherwise provided for by this agreement.

SECTION III – RESPONSIBILITIES OF THE OWNER

As a party to this Agreement, the OWNER shall:

- A. Make available for CONSULTANT'S use all record drawings, maps, soil data, etc. that are readily available to the OWNER, and the CONSULTANT shall have the right to rely upon the completeness and accuracy thereof.

- B. Designate a person to act with authority on OWNER'S behalf and respond in a timely manner to submissions by CONSULTANT providing approvals and authorizations as appropriate so that work may continue at a normal pace.
- C. Pay all costs associated with special services authorized by the OWNER, and all costs associated with obtaining bids from CONSULTANT.

SECTION IV - METHOD OF PAYMENT

The CONSULTANT's compensation for the work described herein shall be in accordance with the following.

A. Basic Services

- 1. Partial payments for basic services in connection with the project development phase and/or the design phase shall be made monthly to the CONSULTANT by the OWNER upon receipt of invoices, which shall be based upon percentages of completion of authorized services as stipulated in the Supplemental Agreement.
- 2. Partial payments for basic services in connection with the construction phase shall be made monthly to the CONSULTANT by the OWNER upon receipt of invoices, which shall be based upon the percentage of construction work completed by the construction contractor(s) as stipulated in the Supplemental Agreement.

B. Special Services

- 1. For all work associated with Special Services the CONSULTANT will be compensated a fee consisting of direct salary, plus the current ALDOT audited rate for overhead, plus out-of-pocket expenses, plus profit at ten percent (10%). Retainage will be withheld at a rate of ten percent (10%).
- 2. The OWNER will pay the CONSULTANT for special services performed by subconsultants at the actual invoice amount plus CONSULTANT's time for assisting and coordinating the subconsultant's services, calculated per Paragraph B1 above.

C. Terms and Conditions: The basis of compensation described above is based upon the following conditions:

- 1. **Basis of Compensation:**
 - a. Time charged to the project by office consulting personnel will include the time that the applicable employees are engaged in actual work on the project at the CONSULTANT's office, at the site of the project, or in travel status in connection with the project.

- b. Only the personnel needed and required to accomplish the services in keeping with the prescribed schedule shall be assigned to the project.
 - c. Charges will not be made to the project during periods of sickness, vacation or at any other times when personnel are not gainfully employed on the work.
- 2. Payment Schedule:
 - a. Invoices shall be submitted no more often than monthly, with evidence of performance as may be deemed necessary by the OWNER.
 - b. Payments shall be due and payable within 30 days after receipt of invoice.
 - c. The OWNER as purchaser of the services described herein shall pay any applicable sales tax in the manner and in the amount as required by law.
 - d. Payment shall be made payable to Volkert, Inc. and submitted to the following address: Dept. #2042, Volkert, Inc., P. O. Box 11407, Birmingham, AL 35246-2042.

SECTION V – MISCELLANEOUS

- A. Extra Work: It is mutually understood and agreed that the OWNER will compensate the CONSULTANT for services resulting from changes in the scope of a project or its design, including but not necessarily limited to, change in size, complexity, project schedules, character of construction, revisions to previously accepted studies, reports, design documents or contract documents and for preparation of documents for separate bids, when such revisions are due to causes beyond the CONSULTANT'S control and when requested or authorized by the OWNER. Compensation for such extra work when authorized by the OWNER shall be mutually agreed upon prior to beginning work.
- B. Contract Period
 - 1. All contracts, agreements, provisions and stipulations of this Agreement shall remain in full force for a period of five (5) years from the date of the Agreement, and for such periods as the contract time may be extended by mutual written agreement between the OWNER and the CONSULTANT. The CONSULTANT will under said Agreement complete those projects for which the OWNER has made formal application for federal and state grant assistance and represented therein that the CONSULTANT had been retained for necessary professional services.

2. Construction phase services for any construction project underway at the end of the contract period, or extension thereof, will be prosecuted to its completion under the terms of this Agreement.

C. Successors and Assigns

1. OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and CONSULTANT (and to the extent permitted by paragraph 2, the assigns of OWNER and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
2. Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and consultants, as CONSULTANT may deem appropriate to assist in performance of services hereunder.
3. Nothing under this Agreement shall be construed to give any right or benefits in this Agreement to anyone other than OWNER and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party.

- D. Dispute Resolution: If a dispute arises out of or relates to this Agreement or its alleged breach, the OWNER and CONSULTANT shall direct their representatives to endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the OWNER and CONSULTANT shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise, before recourse to litigation. The OWNER'S and CONSULTANT'S representatives shall attend all mediation sessions. Engaging in mediation is a condition precedent to litigation. Should mediation fail to resolve the dispute, the parties shall engage in arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise, before recourse to litigation. Arbitration is a condition precedent to litigation. Only after the parties have exhausted direct discussions, mediation, AND arbitration in accordance with the foregoing shall either of them be entitled to initiate litigation.

Should either party initiate litigation prior to engaging in direct discussions, good faith mediation, and arbitration, it shall pay all attorneys' fees and expenses and other costs incurred by the other party in responding to said litigation.

- E. Right of Entry: OWNER shall furnish right-of-way on the property for CONSULTANT to perform undisturbed the Services hereunder. CONSULTANT shall take reasonable precautions to minimize damage to the property during the course of its services. OWNER acknowledges that a certain amount of damage, wear and tear, and depreciation is likely to result from CONSULTANT'S operations on the property in furtherance of CONSULTANT'S Services under this Agreement. The cost for restoration or remediation of damaged property which may result from CONSULTANT'S operations is not included in CONSULTANT'S compensation hereunder unless explicitly stated otherwise in this Agreement. If the property is damaged during CONSULTANT'S operations and if OWNER desires CONSULTANT to restore or remediate the property to its former condition, CONSULTANT will do so for additional costs in accordance with the fee schedule referenced herein.
- F. Standard of Care: CONSULTANT shall perform its services hereunder consistent with the professional skill and care ordinarily exercised under similar conditions by similarly situated professional consultants practicing in the same field at the same time in the same or similar locality. CONSULTANT shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. No warranty, express or implied, is made or intended related to the services provided herein, and CONSULTANT guarantees no particular result.
- G. Ownership and Reuse of Documents: All Project documents including but not necessarily limited to reports, drawings, studies, findings, correspondence, specifications, survey notes, estimates, maps, computations, calculations, computer files, Computer Assisted Design and Drafting (CADD) files (electronic and hard copy), and other data, as well as any and all other documents and other materials prepared, generated, or furnished by or for CONSULTANT and/or its Subconsultant(s) for the Project pursuant to this Agreement (hereinafter referred to in this Section B. as "Documents") are instruments of service with respect to the Project, and CONSULTANT shall retain ownership and intellectual property interest therein regardless whether the Project is completed. OWNER may make and retain copies thereof for information and reference in connection with the use and/or occupancy of the Project by OWNER and others. However, such Documents are not intended for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. No representation is made that such Documents are or will be suitable for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. Any use of such Documents by OWNER or others on any project other than the project which is the subject of this Agreement is not advised and shall be done without warranty, representation, or liability to any extent whatsoever on the part of CONSULTANT.

H. Jurisdiction/Venue: It is expressly agreed and stipulated between the parties that this contract shall be deemed to have been executed in the State of Alabama. This contract shall be governed by the laws of the United States and the State of Alabama as they may apply.

I. Disclaimer of Third-Party Beneficiaries

OWNER and CONSULTANT expressly disclaim third-party beneficiaries hereunder and no one not a Party to the Agreement shall be entitled to seek enforcement against OWNER and/or CONSULTANT of any provision herein, or to otherwise seek damages from either Party for the alleged breach of any provision contained herein or purported duty or standard created or conferred hereunder. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a claim, cause of action, lien or any other damages or any relief of any kind pursuant to the terms and provisions of this Agreement.

SECTION VI – INDEMNIFICATION AND INSURANCE

- A. CONSULTANT will be liable, or not, in accordance with applicable law for any wrongs of CONSULTANT or its agents, servants or employees, or its sub-contractors. Nothing in this contract is intended to absolve CONSULTANT of any liability to OWNER which CONSULTANT may be liable under applicable law.
- B. CONSULTANT agrees that its agents, servants, employees, or its sub-contractors will possess the knowledge, training and experience appropriate to qualify them for the duties which they are to perform.
- C. CONSULTANT will indemnify and hold harmless the OWNER and its directors, officers, employees, attorneys and agents from and against any damages, losses, costs and expenses, including attorneys' fees, to the extent caused by any negligent or otherwise actionable acts or omissions of CONSULTANT or its agents, servants or employees.
- D. CONSULTANT will at its sole expense obtain and maintain the following policies of insurance, each policy of which shall waive subrogation against OWNER and its directors, officers, and employees, and provide cross-liability coverage as pertains to CONSULTANTS Commercial General Liability Coverage only:

1. Workers' Compensation and Employers' Liability

Part One: Statutory Benefits as required by Alabama Law

Part Two: employers' Liability	\$500,000 each accident
	\$500,000 each employee
	\$500,000 policy limit

2. Comprehensive [Commercial] General Liability

Coverage on an Occurrence Form with a combined single limit (Bodily Injury and Property Damage Combined) as follows:

Each occurrence	\$1,000,000
Personal and Advertising injury	\$1,000,000
Products/Completed Operations	
Aggregate	\$2,000,000
General Aggregate	\$2,000,000

Coverage to Include:

- Premises and Operations
- Personal injury and Advertising Injury
- Products/Completed Operations
- Independent Contractors
- Blanket Contractual Liability
- Broad Form Property Damage

3. Automobile Liability covering all Owned, Non-Owned and Hired Vehicles with a combined single limit (bodily injury and property damage combined) of \$1,000,000 for each accident.
4. Professional Liability (Errors and Omissions) insurance to be maintained during the term of this contract and for two years following the termination date of this policy.

Limits of Liability

Each Claim	\$1,000,000
Aggregate	\$1,000,000

A certificate of insurance evidencing the above minimum requirements must be provided to and accepted by OWNER prior to the commencement of any work on or under this contract. Each policy shall be endorsed to provide thirty (30) days' written notice of cancellation to the OWNER. The project number on which the CONSULTANT is working, or analogous identification, must be included in the description section of the certificate.

SECTION VII - MANDATORY CONTRACT PROVISIONS

A. Civil Rights Assurances

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: The CONSULTANTS shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (herein-after, "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.

2. **Nondiscrimination:** The CONSULTANT, 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 subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The CONSULTANT 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 OWNER or the Federal Aviation Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the OWNER or the Federal Aviation Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the OWNER shall impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including but not limited to:
 - a. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
 - b. Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT

shall take such action with respect to any subcontract or procurement as the OWNER or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONSULTANT becomes involved in or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the OWNER and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

B. Disadvantaged Business Enterprises

Contract Assurance (§26.13) – The CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirement of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) – The CONSULTANT agrees to pay each subconsultant under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime CONSULTANT receives from the OWNER. The CONSULTANT agrees further to return retainage payments to each subconsultant within 10 days after the subconsultant's work is satisfactorily completed and payment for retainage is received from the OWNER. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the OWNER. This clause applies to both DBE and non-DBE subconsultants.

C. Lobbying and Influencing Federal Employees

1. No Federal appropriated funds shall be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an office 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.
2. 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 CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

D. Access to Records and Reports

The CONSULTANT shall maintain an acceptable cost accounting system. The CONSULTANT agrees to provide the OWNER, the Federal Aviation Administration and the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The CONSULTANT agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

E. Breach of Contract Terms

Any violation or breach of terms of this contract on the part of the CONSULTANT or their subconsultants 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.

F. Rights to Inventions

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the OWNER under which this contract is executed.

G. Trade Restriction Clause

The CONSULTANT or subconsultant, by submission of any offer and/or execution of a contract, certifies that it:

1. 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);
2. Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or nation of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nations of a foreign country on said list;
3. Has not procured any product nor subcontracted for the supply of any produce for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a CONSULTANT or subconsultant who is unable to certify to the above. If the CONSULTANT 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 OWNER cancellation of the contract at no cost to the Government.

Further, the CONSULTANT agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The CONSULTANT may rely on the certification of a prospective subconsultant unless it has knowledge that the certification is erroneous.

The CONSULTANT shall provide immediate written notice to the OWNER if the CONSULTANT learns that its certification or that of a subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances. The subconsultant agrees to provide written notice to the CONSULTANT if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the CONSULTANT or subconsultant knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the OWNER cancellation of the contract or subcontract for default at no cost to the Government.

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 provision. The knowledge and information of a CONSULTANT is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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, United States Code, Section 1001.

H. Termination:

1. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party provided that no such termination may be affected unless the other party is given:
 - a. Not less than ten (10) calendar days written notice of intent to terminate; and

- b. An opportunity for consultation with the terminating party prior to termination.
 2. This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience provided that such termination is for good cause (such as for legal or financial reasons or major changes in the work or program requirements) and that the CONSULTANT is given:
 - a. Not less than ten (10) calendar days written notice of intent to terminate; and
 - b. An opportunity for consultation with the terminating party prior to termination.
 3. Upon receipt of a termination notice, the CONSULTANT shall promptly discontinue all services affected (unless the notice directs otherwise) and deliver or otherwise make available to the OWNER all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONSULTANT in performing this Agreement, whether completed or in process.
 4. If this Agreement is terminated by either party, the CONSULTANT shall be paid for services rendered and expenses incurred prior to the termination in addition to termination settlement costs reasonably incurred by the CONSULTANT relating to commitments, which had become firm prior to the termination. If termination of the Agreement occurs at the conclusion of one phase and prior to authorization of the OWNER to begin the next phase, payment by the OWNER of the completed phase shall be considered full compensation due the CONSULTANT. If the Agreement is terminated by the OWNER for default of the CONSULTANT the amount due the CONSULTANT may be adjusted to the extent of any additional costs incurred by the OWNER as a result of the CONSULTANT's default.

I. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

The CONSULTANT certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the CONSULTANT or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this contract.