

ORDINANCE NO. 96-19

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH DELTA AIRPORT CONSULTANTS, INC. FOR PROFESSIONAL SERVICES FOR THE MEDINA MUNICIPAL AIRPORT, AND DECLARING AN EMERGENCY.

WHEREAS: The City sought proposals from qualified engineers to perform certain engineering services for the Medina Municipal Airport; and

WHEREAS: It has been determined that Delta Airport Consultants, Inc. is the most qualified based on the criteria stated in the Request for Proposal.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

SEC. 1: That the Mayor is hereby authorized and directed to enter into an agreement with Delta Airport Consultants, Inc. to perform certain engineering services for projects during the calendar years 2019-2020 at the Medina Municipal Airport.

SEC. 2: That that a copy of the Agreement is marked Exhibit A, attached hereto and incorporated herein; and is subject to the Law Director’s final approval.

SEC. 3: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

SEC. 4: That this Ordinance shall be considered an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason the process must be completed by June 30, 2019; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: June 24, 2019

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: June 25, 2019

SIGNED: Dennis Hanwell
Mayor

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN OWNER AND CONSULTANT**



ORD 96-19
**DELTA AIRPORT
CONSULTANTS, INC.**

THIS AGREEMENT is made on the 24th day of June in the year 2019, between the City of Medina, the OWNER, and DELTA AIRPORT CONSULTANTS, INC., the CONSULTANT, for Projects at the Medina Municipal Airport. The term of this agreement shall be for a period of five (5) years.

WHEREAS the OWNER sought proposals from qualified Consultants to perform certain consulting services and has determined that DELTA AIRPORT CONSULTANTS, INC. (the "CONSULTANT") is the most qualified based on the criteria stated in the Request for Proposals.

Once the specific scope of services of a Project is agreed upon between the OWNER and the CONSULTANT, the CONSULTANT shall provide the services described in an individual TASK ORDER.

The precise scope of the CONSULTANT's services, schedule, and cost shall be as stated in each TASK ORDER as authorized from time to time by the OWNER upon approval of such scope of services and the cost for such services.

As used herein, the term "Project" shall refer only to such items of work listed in this Agreement or approved TASK ORDERS at the Medina Municipal Airport.

The OWNER and CONSULTANT in consideration of their mutual covenants herein agree in respect to the performance of normal professional consulting services by CONSULTANT and the payment for those services by OWNER as set forth below.

ARTICLE 1: BASIC SERVICES

The CONSULTANT agrees to perform normal professional consulting services in connection with the Project as set forth below and contained within this Article 1.

1.1 SCHEMATIC DESIGN

The CONSULTANT shall review information provided by the OWNER and the OWNER's program, review laws, codes, and regulations applicable to the Project Scope of Services, communicate with local authorities, conduct field investigations, and review the ALP, in order to prepare a preliminary evaluation of the Project, and to identify and evaluate alternative approaches and solutions to the design and construction of the Project. Schematic Design Phase Activities shall be outlined in each respective TASK ORDER.

1.2 DESIGN DEVELOPMENT

Based on the OWNER's approval of the plan identified during the Schematic Design phase, CONSULTANT shall proceed to provide Design Development Phase Services, which may consist of preliminary layouts, geometry, grading, drainage, electrical, and phasing, as more explicitly identified in individual TASK ORDERS.

1.3 CONSTRUCTION DOCUMENTS

In the Construction Documents Phase, the CONSULTANT is to provide construction requirements, to provide a basis for competitive construction bids and to complete the final construction contract documents for the Project. Final design is to be completed in accordance with the latest Advisory Circulars and FAA Orders, as well as State and Local requirements. The CONSULTANT's tasks during the Construction Documents Phase will be identified in individual TASK ORDERS.

1.4 BIDDING PHASE

Upon receipt of the OWNER's approval of the Contract Documents and latest Opinion of the Construction Cost, the CONSULTANT shall assist the OWNER in soliciting and selecting bids for the construction of the Project. The CONSULTANT's Bidding Phase tasks, as will be more explicitly identified in each individual TASK ORDER, and may include pre-bid meetings, addenda, and bid tabulations.

1.5 CONSTRUCTION ADMINISTRATION

During the construction phase of the project, the CONSULTANT shall assist the OWNER to monitor and document progress of construction and shall act as initial interpreter of the requirements of the contract documents. Specific tasks shall be outlined in each individual TASK ORDER. Review payment requests, provide necessary quality control testing, establish necessary survey control, continually inform the OWNER on project progress and problems, conduct the final project inspection, and provide the associated certification.

1.5.1 Construction Administration – If included in the TASK ORDER, the CONSULTANT shall provide general consultation and advice to the OWNER during the construction phase of the project. The CONSULTANT shall facilitate general coordination between the OWNER, the State, and the FAA during the construction phase of the project. The CONSULTANT will assist the OWNER with the preparation and issuance of change orders, change order/supplemental agreement price/cost analysis, recommend construction specification waivers, and report to the OWNER on the Contractor's performance. The CONSULTANT shall review and process the Contractor's payment requests, review daily progress reports, and monthly construction progress reports.

The CONSULTANT is to communicate and coordinate with the OWNER on a regular basis throughout the construction phase of the project.

1.5.2 Shop Drawing Review – If included in the TASK ORDER, and in accordance with the submittal schedule, the CONSULTANT shall review the shop drawings and materials submittals that are submitted by the Contractor as required by the construction contract documents, but only for the purpose of checking for conformance with information given and the design intent expressed on the Construction Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The CONSULTANT's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by CONSULTANT, of any construction means, methods, techniques, sequences, or procedures. The CONSULTANT will prepare and maintain a submittal register identifying the submittal number, description, specification section, specification paragraph, received date, action date, and action taken. The CONSULTANT shall distribute copies of the submittals and the updated submittal register to the OWNER.

- 1.5.3 Site Visits – If included in the TASK ORDER, the CONSULTANT shall visit the construction site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the construction, and to determine, in general, if construction is being performed in accordance with the Contract Documents. However, the CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of construction. The CONSULTANT will coordinate the site visits with the OWNER. The CONSULTANT's representatives are to meet with the representatives of the OWNER to discuss the project's progress and to identify known deviations from the Contract Documents, or defects and deficiencies observed in the construction. The CONSULTANT will prepare and distribute notes from the visit.
- 1.5.4 Progress Payment Review – If included in the TASK ORDER, the CONSULTANT shall review the CONTRACTOR's request for progressive payment, and based upon said on-site observation, advise the OWNER as to the CONSULTANT's opinion of the extent of the work completed in accordance with the terms of the Construction Contract as of the date of the Contractor's payment request and issue, for processing by the OWNER, a Recommendation for Payment in the amount owed the Contractor. The issuance of Recommendation for Payment shall constitute a declaration by the CONSULTANT to the OWNER, based upon said on-site observations, review, and data accompanying the request for payment, that the Contractor's work had progressed to the point indicated; that to the best of the CONSULTANT's knowledge, information, and belief, the quality of the Contractor's work is in accordance with the Construction Contract Documents (subject to subsequent tests and review required by the Construction Contract Documents, to correction of the minor deviations from the Construction Contract Documents, and to qualifications stated in the Certificate for Payment); and that the Contractor is entitled to the amount stated. The issuing of the Recommendation for Payment by the CONSULTANT shall not represent that it has made any investigation to determine the uses made by the Contractor of sums paid to the Contractor.
- 1.5.5 The CONSULTANT shall not be responsible for the defects or omissions in the work as a result of the Contractor's, or any Subcontractor's, or any of the Contractors' or Subcontractors' employees, or that of any other persons or entities responsible for performing any of the work result as contained in the Construction Contract. The CONSULTANT shall not be responsible for the Contractors' failure to comply with the project schedule.

ARTICLE 2: SPECIAL SERVICES

If authorized by the OWNER, the CONSULTANT agrees to furnish, or obtain from others, additional professional services above the previously described Basic Services, which may include items such as:

- a. Funding applications
- b. Reimbursement requests for funding
- c. Disadvantaged Business Enterprise (DBE) Plan assistance
- d. Airport Layout Plan (ALP) revisions
- e. Property Map revisions
- f. Environmental Overview or Statements
- g. Preparation of Record Drawings
- h. Assistance with funding and coordination of other contracts
- i. Bid Alternates
- j. Resident Project Representative services during the Construction Phase with duties and responsibilities as described in Attachment "A".
- k. Planning Services

- l. Environmental Services
- m. Land Acquisition Services

Unanticipated services, which will be treated as "Special Services", may also include:

- a. Providing other services not otherwise provided for in this Agreement, including services normally furnished by the OWNER as described in Article 3, "OWNER'S RESPONSIBILITIES".
- b. Services due to changes in the project scope or design, including but not limited to, changes in size, complexity, schedule or character of construction.
- c. Revisions to studies, reports, design documents, drawings or specifications which have previously been approved by the OWNER, or when such revisions are due to causes beyond the control of the CONSULTANT.
- d. Preparation of additional design documents for alternate bids or for out-of-sequence work requested by the OWNER when not listed or described in the project scope of work.
- e. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or incomplete work of the CONTRACTOR(s), (3) acceleration of the work schedule involving services beyond normal working hours, (4) failure of the CONTRACTOR(s) to complete the work within the contract period, and (5) the CONTRACTOR(s)' default under Construction Contract.
- f. Providing services as an expert witness for the OWNER in connection with litigation or other proceedings involving the Project.
- g. Evaluating unreasonable or frivolous claim(s) submitted by CONTRACTOR(s) or others in connection with the project which require extensive services by the CONSULTANT to preclude or prepare for possible litigation, which claim(s) are beyond the CONSULTANT's control.

If included, the items above may be outlined and priced in individual TASK ORDERS.

ARTICLE 3: OWNER'S RESPONSIBILITIES

The OWNER shall:

- 3.1 Provide to the CONSULTANT all criteria, design, and construction standards and full information as to the OWNER's requirements for the Project. The CONSULTANT shall be entitled to rely on the accuracy and completeness of information furnished by the OWNER.
- 3.2 Designate in writing a person authorized to act as the OWNER's representative. The OWNER or its representative shall receive and examine documents submitted by the CONSULTANT, interpret and define OWNER's policies, and render decisions and authorization in writing promptly to prevent unreasonable delay in progress of the CONSULTANT's services.
- 3.3 Furnish to the CONSULTANT all existing drainage, survey, layout data, and prior reports available for the Project.
- 3.4 Furnish laboratory tests, air and water pollution tests, reports and inspections of samples, materials, or other items required by law or by the governmental authorities having jurisdiction over the Project.

- 3.5 Provide legal, accounting, and insurance counseling services necessary for the Project, legal review of the Contract Documents, and such auditing services as the OWNER may require to account for expenditures of sums paid to the CONTRACTOR(s) and others.
- 3.6 Furnish permits and approvals from all governmental authorities having jurisdiction over this Project and from others as may be necessary for completion of the Project.
- 3.7 Surveys, subsurface and materials testing, printing, and/or administrative services necessary for the project shall be contracted by the OWNER unless designated to be provided by the CONSULTANT in individual TASK ORDERS.
- 3.8 Furnish the services described in Sections 3.1 through 3.7 at the OWNER's expense and in such manner that the CONSULTANT may rely upon them in the performance of its services under this Agreement.
- 3.9 Obtain bids or proposals from contractors for work relating to this Project and bear all costs relating thereto.
- 3.10 Protect and preserve all survey stakes and markers placed at the Project site prior to the assumption of this responsibility by the CONTRACTOR(s) and bear all the costs of replacing stakes or markers damaged or removed during said time interval.
- 3.11 Arrange full and free access for the CONSULTANT to enter upon all property required for the performance of the CONSULTANT's services under this Agreement.
- 3.12 Give prompt written notice to the CONSULTANT whenever the OWNER observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect the CONSULTANT's performance of services under this Agreement.
- 3.13 Compensate the CONSULTANT for services rendered under this Agreement.

ARTICLE 4: GENERAL PROVISIONS

4.1 OWNERSHIP OF DOCUMENTS

Master documents, including original drawings, estimates, specifications, field notes and data are and remain the property of the CONSULTANT as instruments of service. CONSULTANT shall be deemed the authors of its Instruments of Service, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project shall not be construed as publication in derogation of CONSULTANT's reserved rights. Upon execution of this Agreement, CONSULTANT grants to OWNER non-exclusive license to use OWNER's Instruments of Services solely for purposes of constructing, using, maintaining, altering and adding to the Project, provided the OWNER substantially performs its obligation including prompt payment of all sums when due, under this Agreement. Provided the OWNER is not in default under this Agreement, the OWNER is to be provided with one digital CD-ROM set (.tif or .jpg or PDF) and one paper set of the record drawings after final acceptance. If requested by the OWNER, a digital copy of applicable drawings is to be provided by the CONSULTANT. Copies of sketches, notes, computations, and other data are to be furnished upon request. The CONSULTANT is to be released and held harmless of any subsequent liabilities resulting from revisions, extensions or enlargements of the OWNER's "originals" including computer files.

4.2 DELEGATION OF DUTIES

Neither the OWNER nor the CONSULTANT shall delegate its duties under this Agreement without the written consent of the other.

4.3 TERMINATION

This Agreement may be terminated by either party by written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party, or for the OWNER's convenience. This Agreement may also be terminated if mutually agreed upon by the OWNER and CONSULTANT. If this Agreement is terminated, the CONSULTANT shall be paid for services performed through the termination notice date.

4.4 EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the OWNER and the CONSULTANT and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and CONSULTANT.

4.5 GOVERNING LAW

Unless otherwise specified within this Agreement, this Agreement shall be governed by the laws of the location of the Project.

4.6 GENERAL

- 4.6.1 Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.
- 4.6.2 In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of subsequent breach of the same by the other party.
- 4.6.3 The CONSULTANT has not been retained or compensated to provide design or construction review services relating to the CONTRACTOR(s)' safety precautions or to means, methods, techniques, sequences, or procedures required for the CONTRACTOR(s) to perform work relating to the final or completed structure; Services excluded from this Agreement include but are not limited to design or review of any shoring, scaffolding, underpinning, temporary retainment of excavations and any erection methods and temporary bracing.
- 4.6.4 The CONSULTANT shall perform its services under this Agreement consistent with the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under the same or similar circumstances.

- 4.6.5 Any Opinion of the Construction Cost prepared by the CONSULTANT represents its judgment as a design professional and is supplied for the general guidance of the OWNER and funding agencies only. Since the CONSULTANT has no control over the cost of labor and material, or over competitive bidding or market conditions, the CONSULTANT does not guarantee the accuracy of such Opinions as compared to CONTRACTOR(s) bids or actual cost to the OWNER and shall not be held responsible in the event the CONTRACTOR's bid or the Actual Construction Cost exceed CONSULTANT's Opinion thereof.
- 4.6.6 Neither party shall be entitled to unjust enrichment or betterment as a result of errors or omissions.
- 4.6.7 In the event of a dispute arising out of or relating to this Agreement or the services to be rendered hereunder, the OWNER and CONSULTANT agree to resolve such disputes in the following manner. First, the parties agree to attempt to resolve the dispute through direct negotiations between the appropriate representatives of each party. Second, if such direct negotiations are not fully successful, the parties agree to attempt to resolve any remaining disputes by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by the parties; if the parties cannot agree upon rules and procedures, then the mediation shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Third, if the dispute or any issues remain unresolved after the above steps, the parties may institute litigation in a court of competent jurisdiction. The parties expressly agree that any dispute arising out of or related to this Agreement or the services to be rendered hereunder shall be subject to direct negotiations and mediation as described herein as a condition precedent to the litigation proceedings by either party.
- 4.6.8 OWNER and CONSULTANT shall commence all claims and causes of action, whether in contract, tort, indemnity or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement with the period specified by applicable law, but in any case not more than 5 years after the date of Substantial Completion of the Project. OWNER and CONSULTANT waive all claims and causes of action not commenced in accordance with this provision.
- 4.6.9 To the fullest extent permitted by law, OWNER agrees to limit the liability of CONSULTANT for any and all claims, losses, costs, or damages of any nature whatsoever so that the total aggregate liability of CONSULTANT shall not exceed \$50,000 or CONSULTANT's total fee for the Services performed pursuant to this Agreement, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

ARTICLE 5: SPECIAL PROVISIONS

5.1 INSURANCE AND INDEMNITY

- 5.1.1 CONSULTANT's Insurance - The CONSULTANT shall acquire and maintain statutory worker's compensation insurance coverage, commercial general liability insurance coverage, and professional liability insurance coverage.

CONSULTANT's current limits are:

General Liability	\$2,000,000 per year
Professional Liability	\$1,000,000 per claim \$1,000,000 per year

- 5.1.2 CONTRACTOR's Insurance - Prior to the commencement of the work, the OWNER shall require the CONTRACTOR to submit evidence that it has obtained, for the period of the Construction Contract and the guarantee period, commercial general liability insurance coverage (including completed operations coverage). This coverage shall provide for bodily injury and property damage arising directly or indirectly out of, or in connection with, the performance of the work under the Construction Contract, and have a limit of not less than \$2,000,000 per occurrence for all damages arising out of bodily injury, sickness or death and property damage of others including explosion, collapse, and underground exposures.
- Included in such coverage will be contractual coverage sufficiently broad to insure provision of paragraph 5.1.4 "Indemnity". The commercial general liability insurance will include as additional named insureds: the OWNER; the CONSULTANT; and each of the officers, agents, and employees. The OWNER understands that the cost of obtaining liability insurance covering the OWNER and CONSULTANT as additional insured is not an eligible cost under the AIP.
- 5.1.3 Builders Risk "All Risk" Insurance - Before commencement of the work, the OWNER will require that the CONTRACTOR submit written evidence that it has obtained for the period of the Construction Contract, Builders Risk "All Risk" Completed Value Insurance Coverage (including earthquake and flood) for any building which is the subject of the Construction Contract. Such insurance shall include as additional named insureds: the OWNER; the CONSULTANT; and each of their officers, agents, employees, and any other persons with an insurable interest as may be designated by the OWNER.
- 5.1.4 Indemnity - The OWNER will require that any CONTRACTOR performing work in connection with Drawings and Specifications produced under this Agreement, hold harmless, indemnify, and defend the OWNER and the CONSULTANT, their consultants, and each of their officers, agents, and employees from any and all liability claims, losses, or damage arising out of, or alleged to arise from, the CONTRACTOR's (or the CONTRACTOR's SUBCONTRACTOR's) negligence in the performance of the work described in the Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the CONSULTANT, their consultants, or their officers, agents, and employees.
- 5.2 The CONSULTANT will proceed to furnish consulting services on the Project promptly, without delay, after the Notice-to-Proceed has been given in writing by the OWNER.
- 5.3 The CONSULTANT agrees to conduct the services in compliance with all the requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964, Part 21 of the Regulations of the Secretary of Transportation and Executive Order No. 11246, "Equal Employment Opportunity" as supplemented in Department of Labor Regulations (41 CFR, Part 60); and agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970; and is to maintain an Affirmative Action Program, as required by regulations.
- 5.4 The CONSULTANT agrees that the OWNER, the FAA, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to the specific grant program for the purpose of making audit, examinations, excerpts, and transcriptions. The CONSULTANT shall maintain all required records for three (3) years after the OWNER makes final payment and all other pending matters are closed.

- 5.5 If any of the services outlined in this Agreement are furnished by the CONSULTANT by obtaining such services outside the CONSULTANT's organization, when requested by the OWNER the CONSULTANT shall provide proposal(s) and/or contract(s) between the person(s) or firm(s) and the CONSULTANT outlining the services to be performed and the charges for the same.
- 5.6 It is hereby understood and agreed that if the construction plans are completed in accordance with criteria and/or decisions made by the OWNER and/or the FAA and/or the State, and the said construction plans are substantially changed or revised, for any reason other than the fault of the CONSULTANT in preparing same, then the CONSULTANT shall be entitled to compensation for rendering the services necessary to complete the changes.

ARTICLE 6: SCHEDULE FOR DELIVERY OF WORK BY CONSULTANT

The CONSULTANT shall perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project, and as follows:

- 6.1 It is understood that the CONSULTANT is to proceed on the project after a Notice-to-Proceed from the OWNER. The schedule is to be outlined in each TASK ORDER once the scope of the project(s) has been clearly defined.
- 6.2 Construction progress is to be monitored by the CONSULTANT in an effort to keep the construction on schedule. The CONTRACTOR is to be notified in writing when its progress falls behind its progress schedule.
- 6.3 The CONSULTANT is to endeavor to complete the work in accordance with the schedule, however, it will not be penalized for delays beyond its control such as OWNER's requirements, review periods, testing, adverse weather, surveying, war, Acts of God, etc.

ARTICLE 7: CONSULTING CHARGES

For the CONSULTANT's Services described in this Agreement, the OWNER shall compensate the CONSULTANT as follows:

- 7.1 Compensation for the Services shall be negotiated between the OWNER and CONSULTANT prior to initiating the Services and shall be specified in the applicable TASK ORDER.
- 7.2 Monthly progress payments shall be made in proportion to services rendered and as indicated within this Agreement and shall be due and owing within thirty (30) days of the CONSULTANT's submittal of its monthly statement. Past due amounts owed shall include a charge at 1.5 percent per month. The OWNER understands that interest charges are not an eligible cost under the Airport Improvement Program (AIP).
- 7.3 If the OWNER fails to make monthly payments due the CONSULTANT, the CONSULTANT may, after giving seven (7) days written notice to the OWNER, suspend services under this Agreement.
- 7.4 No deductions shall be made from the CONSULTANT's compensation on account of penalty, liquidated damages, or other items withheld from payments to CONTRACTORS.

7.5 if the Project is delayed or if the CONSULTANT's services for the Project are delayed or suspended for more than six (6) months for reasons beyond the CONSULTANT's control, the CONSULTANT may, after giving seven (7) days written notice to the OWNER, terminate this Agreement and the OWNER shall compensate the CONSULTANT in accordance with the termination provision contained in this Agreement.

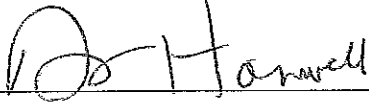
The following attachments are made a part of this Agreement:

Attachment A	Resident Project Representative
Attachment B	Mandatory Federal Contract Provisions

The parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:

City of Medina
132 N. Elmwood
Medina, Ohio 44256



Dennis Hanwell
Mayor

Date: June 25, 2019

CONSULTANT:

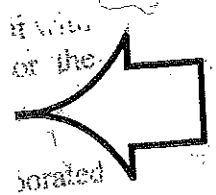
Delta Airport Consultants, Inc.
20545 Center Ridge Road #450
Cleveland, Ohio 44116-3423



Kenneth W. Moody, P.E., C.M.
Vice President

Date: 6/20/2019

Digitally signed by Kenneth W Moody
Date: 2019.06.20 14:08:42 -04'00'



LIMITATIONS OF AUTHORITY, DUTIES, AND RESPONSIBILITIES OF THE RESIDENT PROJECT REPRESENTATIVE.

1. The Resident Project Representative shall act under the direct supervision of the CONSULTANT, shall be the CONSULTANT's agent in all matters relating to on-site construction review of the CONTRACTOR(s)' work, shall communicate only with the CONSULTANT and the CONTRACTOR(s), and shall communicate with the SUBCONTRACTOR(s) only through the CONTRACTOR(s) or their authorized superintendent. The OWNER shall communicate with the Resident Project Representative only through the CONSULTANT, unless otherwise coordinated with CONSULTANT.
2. The Resident Project Representative is to periodically review and observe on-site construction activities of the CONTRACTOR(s) relating to portions of the Project designed and specified by the CONSULTANT as contained in the Construction Contract Documents.
3. Specifically omitted from the Resident Project Representative's duties are any review of the CONTRACTOR(s)' safety precautions, or the means, methods, sequences, or procedures required for the CONTRACTOR(s) to perform the work but not relating to the final or completed Project. Omitted design or review services include, but are not limited to, shoring, scaffolding, underpinning, temporary retainment of excavations, and any erection methods and temporary bracing.
4. The specific duties and responsibilities of the Resident Project Representative are enumerated as follows:
 - (a) Schedules: Review the progress schedule, schedule of Shop Drawings submissions and schedule of values prepared by CONTRACTOR(s) and consult with the CONSULTANT concerning their acceptability.
 - (b) Conferences: Attend preconstruction conferences. Arrange a schedule of progress meetings and other job conferences as required in consultation with CONSULTANT and notify those expected to attend in advance. Attend meetings and maintain and circulate copies of minutes thereof.
 - (c) Liaison:
 - (1) Serve as CONSULTANT's liaison with CONTRACTOR(s), working principally through the CONTRACTOR(s)' superintendent and assist them in understanding the intent of the Contract Documents. Assist the CONSULTANT in serving as OWNER's liaison with CONTRACTOR(s) when CONTRACTOR(s)' operations affect OWNER's on-site operations.
 - (2) As requested by CONSULTANT, assist in obtaining from OWNER additional details or information, when required at the job site for proper execution of the Work.
 - (d) Shop Drawings and Samples:
 - (1) Receive and record date of receipt of Shop Drawings and samples which have been approved by the CONSULTANT.
 - (2) Receive samples which are furnished at the site by CONTRACTOR(s) for CONSULTANT's approval and notify CONSULTANT of their availability for examination.

- (3) Advise CONSULTANT immediately of the commencement of any Work requiring a Shop Drawing or sample submission if the submission has not been approved by the CONSULTANT.
- (e) Review of Work, Rejection of Defective Work, Inspections and Tests:
- (1) Conduct on-site observations of the Work in progress to assist CONSULTANT in determining that the Project is proceeding in accordance with the Contract Documents and that completed Work is to generally conform to the intent of the Contract Documents.
 - (2) Report to CONSULTANT whenever it believes that any Work is unsatisfactory, faulty or defective, or does not conform to the intent of the Contract Documents, or does not meet the requirements of any inspections, tests, or approval required to be made; and advise CONSULTANT when it believes Work should be corrected or rejected or should be uncovered for observation, or requires special testing or inspection.
 - (3) Accompany visiting inspector representing public or other agencies having jurisdiction over the Project, record the outcome of these inspections and report to CONSULTANT.
 - (4) Monitor test results relative to specification requirements and maintain a file with test reports and certifications. Notify the CONTRACTOR(s) when it observes apparent deficiencies and report to the CONSULTANT for a final decision on the matter.
- (f) Interpretation of Contract Documents: Transmit to OWNER, CONSULTANT's clarifications and interpretations of the Contract Documents.
- (g) Modifications: Consider and evaluate CONTRACTOR(s)' suggestions for modifications in Drawings or Specifications and report them with recommendations to CONSULTANT.
- (h) Records:
- (1) Maintain, at the job site, files for correspondence, reports of job conferences, shop drawings and sample submissions, reproductions of original Contract Documents including all addenda, change orders, field orders, additional drawings issued subsequent to the execution of the Contract, CONSULTANT's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
 - (2) Keep a diary or log book recording hours on the job site, weather conditions, data relative to questions of extras or deduction, list of visiting officials, daily activities, decisions, observations in general, and specific observations in more detail, as in the case of observing test procedures. Send copies to CONSULTANT.
 - (3) Record names, addresses, and telephone numbers of CONTRACTORS, SUBCONTRACTORS, and major suppliers of equipment and materials.
 - (4) Document quantities of materials used on the Project by actual measurements and computations in the field record. Whenever weight is the basis of measurement, maintain copies of the weight tickets.
- (i) Reports:
- (1) Furnish CONSULTANT periodic reports as required of progress of the Work and CONTRACTOR(s)' compliance with the approved progress schedule of Shop Drawing submissions.

(2) Consult with CONSULTANT in advance of scheduled major tests, inspections, or start of important phases of the Work.

(j) Completion:

(1) Before CONSULTANT issues a Certificate of Substantial Completion, submit to CONSULTANT a list of observed items requiring correction.

(2) Conduct final inspection in the company of CONSULTANT, OWNER, and CONTRACTOR and prepare a final list of items to be corrected.

(3) Verify that items on final list have been corrected and make recommendations to CONSULTANT concerning acceptance.

(4) Maintain a set of working drawings, on the job site, which can be used to prepare record drawings of the project.

5. Limitations of Authority.

Except upon written instruction of CONSULTANT, Resident Project Representative:

(a) Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment.

(b) Shall not undertake any of the responsibilities of CONTRACTOR(s), SUBCONTRACTOR(s), or CONTRACTOR(s)' superintendent.

(c) Shall not expedite Work for the CONTRACTOR(s).

(d) Shall not advise on, or issue directions relative to, any aspect of the means, methods, techniques, sequences, or procedures of construction unless such is specifically called for in the Contract Documents.

(e) Shall not advise on, or issue directions as to, safety precautions and programs in connection with the Work.

(f) Shall not authorize OWNER to occupy the Project in whole or in part.

(g) Shall not participate in specialized field or laboratory tests.

(h) Is not authorized to sign change orders on behalf of the CONSULTANT, to approve or disapprove shop drawings or materials submittals on behalf of the CONSULTANT, or to issue a Recommendation for Payment on behalf of the CONSULTANT.

**ATTACHMENT B
MANDATORY FEDERAL CONTRACT PROVISIONS**



A1 ACCESS TO RECORDS AND REPORTS

(2 CFR § 200.333; 2 CFR § 200.336; FAA Order 5100.38)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor 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.

A2 AFFIRMATIVE ACTION REQUIREMENT

(41 CFR part 60-4; Executive Order 11246)

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade: 16.1%

Goals for female participation in each trade: 6.9%

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is the City of Medina, Medina County, Ohio.

A3 BREACH OF CONTRACT TERMS

(2 CFR § 200 Appendix II (A))

Any violation or breach of terms of this contract on the part of the Contractor/Consultant or its 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.

Owner will provide Contractor/Consultant written notice that describes the nature of the breach and corrective actions the Contractor/Consultant must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Contractor/Consultant must correct the breach. Owner may proceed with termination of the contract if the Contractor/Consultant fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

For all contracts that exceed the simplified acquisition threshold, presently set at \$150,000.

A4 BUY AMERICAN -- Not applicable

(49 USC § 50101)

A5 CIVIL RIGHTS - GENERAL

(49 USC § 47123)

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors 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.

A6 CIVIL RIGHTS - TITLE VI ASSURANCES

(49 USC § 47123; FAA Order 1400.11)

Title VI Solicitation Notice: The City of Medina, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, [select disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and

- certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures 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;
 - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

A7 CLEAN AIR AND WATER POLLUTION CONTROL
(2 CFR § 200 Appendix II (G))

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT
(2 CFR § 200, Appendix II (E))

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall 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.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor 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 (1) of this clause, 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 (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner 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 moneys payable on account of work performed by the contractor 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 (2) of this clause.

4. Subcontractors.

The Federal Aviation Administration (FAA) or the Owner 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 moneys payable on account of work performed by the contractor 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 (2) of this clause.

A9 COPELAND ANTI-KICKBACK ACT – Not applicable

A10 DAVIS-BACON REQUIREMENTS – Not applicable

A11 DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

(2 CFR Part 180 (Subpart C); 2 CFR part 1200; DOT Order 4200.5)

CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The successful bidder, 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 successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offerer /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

A12 DISADVANTAGED BUSINESS ENTERPRISES

(49 CFR part 26)

1. **Contract Assurance.** The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate.
2. **Prompt Payment.** The prime Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime Consultant receives from the Sponsor. The prime Contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time

frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

A13 DISTRACTED DRIVING (TEXTING WHEN DRIVING)

(Executive Order 13513; DOT Order 3902.10)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Consultant to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project.

The Consultant must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

A14 ENERGY CONSERVATION REQUIREMENTS

(2 CFR § 200, Appendix II (H))

Consultant and subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201et seq).

A15 DRUG FREE WORKPLACE REQUIREMENTS – Not applicable

A16 EQUAL EMPLOYMENT OPPORTUNITY (E.E.O.)

(2 CFR 200, Appendix II(C); 41 CFR § 60-1.4; 41 CFR § 60-4.3; Executive Order 11246)

For all contracts that exceed the simplified acquisition threshold, presently set at \$10,000.

During the performance of this contract, the Consultant (herein called "contractor") agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor 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, sexual orientation, gender identify 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 contractor 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 contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which 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 contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor 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 Contractor'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 contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures 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 Contractor 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 Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

(29 USC § 201, et seq.)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Contractor/Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor/Consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

(31 USC §1352 - Byrd Anti-Lobbying Amd, 2; CFR 200 Appendix II (I); 49 CFR part 20, Appendix A)

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

A19 PROHIBITION OF SEGREGATED FACILITIES

a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

(20 CFR part 1910)

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

A21 PROCUREMENT OF RECOVERED MATERIALS

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use of products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- a) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or,
- b) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/epawaste/conserves/tools/cpg/products/.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

A22 RIGHT TO INVENTIONS – Not applicable

A23 SEISMIC SAFETY
(49 CFR part 41)

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code

A24 TAX DELINQUENCY AND FELONY CONVICTIONS

Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76), and similar provisions in subsequent appropriations acts.

DOT Order 4200.6 - Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- a) The applicant represents that it is () is not () a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- b) The applicant represents that it is () is not () a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner

pursuant to an agreement with the authority responsible for collecting the tax liability.

A25 TERMINATION OF CONTRACT

(2 CFR § 200 Appendix II(B))

Termination for Convenience (Professional Services)

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause

Termination for Default (Professional Services)

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party seven (7) days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) **Termination by Owner:** The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Owner approved extension;
 2. Make adequate progress so as to endanger satisfactory performance of the Project;
 3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

- b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Owner:

1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

A26 TRADE RESTRICTION CERTIFICATION
(49 USC §50104; 49 CFR part 30)

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror -

- 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 as 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 included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- c. has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

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 USC Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

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 an Offeror or subcontractor:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- (3) who incorporates in the public works project any product of a foreign country on such USTR list.

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 contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The contractor may rely on the certification of a prospective

subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR unless the Offeror has knowledge that the certification is erroneous.

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

A27 VETERAN'S PREFERENCE

(49 USC § 47112(c))

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.