

**FIVE (5) YEAR MASTER GENERAL PLANNING AND ENGINEERING CONSULTANT AGREEMENT  
BETWEEN CITY OF DALTON AND KIMLEY-HORN AND ASSOCIATES, INC.  
FOR CONTINUING PROFESSIONAL SERVICES**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between CITY OF DALTON (“the Client”) and KIMLEY-HORN AND ASSOCIATES, INC. (“the Consultant”). This Agreement sets forth the terms whereby Kimley-Horn, or an affiliated company, will provide professional services on one or more projects (with respect to each engagement “the Project”) under this Five (5) Year Master General Planning and Engineering Consultant Agreement between the Client and Kimley-Horn and Associates, Inc. for Continuing Professional Services, with the specifics of each engagement to be set forth in an Individual Project Order (“IPO”). If the IPO is executed by an affiliated company of Kimley-Horn, the IPO shall incorporate the terms of this Agreement as if signed by the affiliated company.

- 1) Scope of Services and Additional Services. The Consultant will perform only the services set forth in IPOs (“the Services”). IPOs shall be in the general form shown in the attachment Exhibit “A”. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for the performance of any Additional Services an amount based upon the Consultant’s then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) Client’s Responsibilities. In addition to other responsibilities herein or imposed by law, the Client shall:
  - a) Designate in writing a person to act as the Client’s representative. Such person shall have complete authority to transmit instructions, receive information, and make or interpret the Client’s decisions.
  - b) Provide all criteria and information as to the Client’s requirements, objectives and expectations for the Project, and all standards of development, design, or construction.
  - c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as survey, engineering data, environmental information, etc., all of which the Consultant may rely upon.
  - d) Arrange for access to the project site and other property as required for the Consultant to perform services.
  - e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
  - f) Furnish approvals and permits for all government authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary.

- g) Obtain any independent accounting, legal, cost estimating and feasibility services as the Client may require.
  - h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services, or any defect or nonconformance in any aspect of the Project.
- 3) Period of Services. This Agreement and the rates of compensation in IPO's are agreed to in anticipation of conditions permitting orderly and continuous progress of the Project through completion of the Services. The Consultant shall begin work on each IPO after receipt of a fully executed copy of the IPO. The times for performance shall be extended as necessary for periods of suspension or delay resulting from circumstances the Consultant does not control. If such suspension or delay extends for more than six months, the rates of compensation shall be renegotiated.
- 4) Compensation for Services.
- a) The Consultant's compensation shall be as stated herein, unless otherwise stated in the IPO. The Client shall pay the Consultant an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
  - b) If the Consultant's compensation is on an hourly basis, estimated fees and expenses incurred by the Consultant exceeding any estimates set forth in the IPO shall be the liability of the Client.
- 5) Method of Payment.
- a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full.
  - b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
  - c) If the Client objects to any charge on an invoice submitted by the Consultant, the Client shall so advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or all such objections shall be waived, and the amount stated in the invoice shall be conclusively

- deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
- d) If the Consultant initiates legal proceedings to collect payments for services, it may recover, in addition to all amounts due and payable, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings, including the cost, determined at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
  - e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts.
- 6) Use of Documents. All documents, data, and programs prepared by the Consultant are related exclusively to the services described in the IPO and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in the IPO. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.
- 7) Intellectual Property. Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Consultant and its affiliates. If Consultant's services include providing Client with access to or a license for Consultant's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.

- 8) Opinions of Cost. Because the Consultant does not control the cost of labor, materials, equipment, or services furnished by others, methods of determining prices, or competitive bidding or market conditions, all opinions rendered as to costs, including but not limited to the costs of construction and materials, are solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from opinions of cost prepared by it. If at any time the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 9) Reserved.
- 10) Standard of Care. The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.
- 11) Access to Records. The Consultant shall maintain books, records, documents, and other evidence directly pertinent to performance on FAA Airport Improvement Program or Georgia Department of Transportation projects under this Agreement in accordance with accepted professional practice, appropriate accounting procedures and practices, and 40 CFR 30.605, 30.805, and 35.935-7. The Consultant shall also maintain the financial information and data used by the Consultant in the preparation or support of the cost submission required pursuant to 40 CFR 35.937-6(b) and a copy of the cost summary submitted to the Client. The Consultant will maintain complete records during the life of the contract and for a period of seven (7) years after completion of the contract. The Federal Aviation Administration, the Comptroller General of the United States, the Georgia Department of Transportation, and the Client, or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The Consultant will provide proper facilities for such access and inspection.
- 12) Limitation of Liability. In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, and except for the gross negligence or willful misconduct of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, that the total liability, in the aggregate of the Consultant and the Consultant's officers, directors, employees, agents, and

subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants shall not exceed twice the total compensation received by the Consultant under the IPO or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify the Consultant.

13) Insurance. The Consultant will secure and maintain such insurance as will protect it and the Client from claims under workmen's compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of their employees or of any person other than their employees, and from claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom. The Consultant will secure and maintain such insurance to the requirements stated below:

1. Commercial General Liability ("CGL") Insurance with a limit of not less than \$1,000,000 per occurrence/\$2,000,000 annual aggregate.
2. Automobile Liability insurance including owned, hired and non-owned vehicles with minimum limits of \$1,000,000 per occurrence combined single limit.
3. Workers Compensation Insurance in full compliance with the provisions of the Workers' Compensation Act of the State of Georgia in which Consultant's office is located, plus Employer's Liability, and if any portion of the Work or Services is subcontracted, the Consultant shall require each subcontractor similarly to provide Workers' Compensation and Employer's Liability Insurance.
4. Professional Liability insurance with a limit of not less than \$1,000,000 per claim/ \$2,000,000 annual aggregate or actual limits carried if greater, covering all claims arising out of or related to Consultant's Work or Services.
5. Excess/Umbrella Liability Insurance on an occurrence-based form which provides coverage in excess of, and as an umbrella to, the required primary insurance policies listed in D.1.1, D.1.2, and Employer's Liability with limits not less than \$2,000,000 per occurrence/\$4,000,000 aggregate, or actual carried limits if greater, and as an umbrella to those underlying coverages with a retained limit of not greater than \$50,000 per occurrence.

- 14) Mutual Waiver of Consequential Damages. In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 15) Construction Costs. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 16) Certifications. All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.
- 17) Dispute Resolution. Any civil action must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 18) Construction Phase Services.
- a) If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.
  - b) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
  - c) The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any

contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

- 19) Hazardous Substances. Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant shall notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 20) Assignment and Subcontracting. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Consultant and not for the benefit of any other party. Neither party shall assign, sublet or transfer any rights under or interest in this Agreement, without the written consent of the other party, provided that, the Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in this Agreement or the IPO, regardless of whether the services are proved by in-house employees, contract employees, or independent subconsultants.
- 21) Confidentiality. The Client consents to the Consultant's use and dissemination of photographs of the Project and to its use of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.
- 22) Federal Requirements for Projects Funded with AIP Funds. During the performance of this contract, the Consultant, for itself, its assignees and successors in interest agrees to the Federal requirements as shown in Exhibit "C".
- 23) Equal Employment Opportunity. The Consultant affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran or any other legally

protected status. It is the Consultant's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment.

The Consultant further agrees that on the selection of any subcontractor by them or their employees that it will not in any way discriminate against any person, company or corporation due to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran or any other legally protected status.

- 24) Immigration Reform Compliance Requirement. During the entire duration of this Agreement, the Consultant and its subcontractors and sub-consultants shall remain in compliance with Georgia Security and Immigration Compliance Act of 2007 and Georgia code § 13- 10- 91 and § 50- 36- 1, as amended.
- 25) Open Records Act. The Consultant acknowledges that all records relating to this Agreement and the services to be provided under the contract may be a public record subject to Georgia Open Records Act (O.C.G.A. §50-18-70, et. Seq.). The Consultant shall cooperate fully in responding to such request and make all records, not exempt, available for inspection and copying as provided by law.
- 26) Miscellaneous Provisions. This Agreement is to be governed by the law of the State where the Project is located. This Agreement, including Exhibits "A", "B", "C", "D", and "E" (incorporated by this reference) and each subsequently executed IPO, contain the entire and fully integrated agreement between the parties, and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. If Client requires Consultant to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Consultant or this Agreement. Any provision in this Agreement that is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions or affecting the enforceability of the provision in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision or affect the enforceability of that provision or the remainder of this Agreement.



CITY OF DALTON

KIMLEY-HORN AND ASSOCIATES, INC.

SIGNED: \_\_\_\_\_

SIGNED: *Sarah L. Shearouse*

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

PRINTED NAME: Sarah L. Shearouse

TITLE: \_\_\_\_\_

TITLE: Regional Contract Lead

DATE: \_\_\_\_\_

DATE: July 9, 2024

**EXHIBIT "A" SAMPLE INDIVIDUAL PROJECT ORDER ("IPO")**

**INDIVIDUAL PROJECT ORDER (IPO) NUMBER \_\_\_\_**

**THIS INDIVIDUAL PROJECT ORDER ("IPO")** is made this \_\_\_\_day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ ("the Client") and KIMLEY-HORN AND ASSOCIATES, INC. ("the Consultant") in accordance with the terms of the Master Agreement for General Planning and Engineering Services dated \_\_\_\_\_, which is incorporated herein by reference. The specifics of this engagement are set forth below.

**Identification of Project:**

**Project Name:**

**KH Project Manager:**

**Project Number:**

**Scope of Services:**

Kimley-Horn will provide the services specifically set forth below:

**Deliverables:**

In conjunction with the performance of the above scope, Kimley-Horn will provide the following deliverables (documents) to the Client:

**Services not Included:**

Any other services, including but not limited to the following, are not included in this agreement:

**Additional Services if required:**

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

**Information Provided by Client:**

Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

**Responsibilities of Client:**

In addition to other responsibilities set out in this Agreement, the Client shall:

**Schedule:**

Services shall commence after receipt of a fully-executed agreement. We will provide our services as expeditiously as practicable with the goal of meeting the following schedule:

**Terms of compensation:**

In return for performance of the tasks described in the above Scope of Services, the Client shall pay the Consultant the amount of \$\_\_\_\_\_, payable according to the following terms.

1. A lump sum fee applies for each task as follows.
2. All permitting, application, and similar project fees will be paid directly by the Client.

Task 1	Title of Task	\$ _____
Task 2	Title of Task	\$ _____
Task 3	Title of Task	\$ _____
Total Consultant Fee		\$ _____

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

**Other special terms of Individual Project Order:**

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in a PDF. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

\_\_\_\_ Please email all invoices to \_\_\_\_\_

\_\_\_\_ Please copy \_\_\_\_\_

ACCEPTED:

**CLIENT**

**KIMLEY-HORN AND ASSOCIATES, INC.**

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

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

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

P.E. No.: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT "B" HOURLY RATE SCHEDULE**

<b>Employee Category</b>	<b>GDOT Billing Rate</b>
Principal	<b>\$259.22</b>
Project Manager	<b>\$246.17</b>
Engineer 3	<b>\$219.35</b>
Engineer 2	<b>\$183.07</b>
Engineer 1	<b>\$153.51</b>
Designer 2	<b>\$135.14</b>
Designer 1	<b>\$116.33</b>
Tech 2	<b>\$112.62</b>
Tech 1	<b>\$104.62</b>
CADD Operator	<b>\$93.23</b>
Admin	<b>\$120.62</b>

**Updated: July 1, 2023**

Rates are subject to annual adjustment.

**EXHIBIT "C"****FEDERAL REQUIREMENTS FOR PROJECTS FUNDED WITH AIP FUNDS****1. ACCESS TO RECORDS AND REPORTS**

The Consultant must maintain an acceptable cost accounting system. The Consultant agrees to provide the Client, 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.

**Application**

Required in all contracts and subcontracts of AIP funded projects.

**Reference**

2 CFR § 200.333

2 CFR § 200.336

FAA Order 5100.38

**2. BREACH OF CONTRACT TERMS**

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

**Application**

Required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II (A). This threshold is occasionally adjusted for inflation and is now equal to \$150,000.

**Reference**

2 CFR § 200 Appendix II(A)

**3. GENERAL CIVIL RIGHTS PROVISIONS**

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 by Title VI of the Civil Rights Act of 1964.

**Application**

Required in all contracts and subcontracts.

**Reference**

49 USC § 47123

**4. CIVIL RIGHTS ACT OF 1964, TITLE VI – Consultant CONTRACTUAL REQUIREMENTS****Compliance with Nondiscrimination Requirements:**

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

- 1.1. Compliance with Regulations.** The Consultant shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- 1.2. Nondiscrimination.** The 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 subcontractors, 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 employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 1.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 1.4. Information and Reports.** The 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 Sponsor or the Federal Aviation Administration (FAA) 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 sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 1.5. Sanctions for Noncompliance.** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the Consultant under the contract until the Consultant complies, and/or
  - b. Cancellation, termination, or suspension of the contract, in whole or in part.
- 1.6. 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 sponsor or the FAA 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 subcontractor or supplier as a result of such direction, the Consultant may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

**Application**

Required in all contracts and subcontracts.

**Reference**

49 USC § 47123

FAA Order 1400.11

**5. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES**

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the “Consultant”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 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 USC § 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 USC § 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 USC § 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, subrecipients 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 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 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 nondiscrimination 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 USC 1681 et seq).

#### **Application**

Required in all contracts and subcontracts.

#### **Reference**

49 USC § 47123  
FAA Order 1400.11

### **6. CLEAN AIR AND WATER POLLUTION CONTROL**

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

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

#### **Application**

Required for all contracts and lower tier contracts that exceed \$150,000.

#### **Reference**

2 CFR § 200, Appendix II(G)

### **7. CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT**

The Consultant, 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.
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.

**Application**

This requirement applies to covered transactions, which are defined in 2 CFR part 180. AIP funded contracts are non-procurement transactions, as defined by §180.970. Covered transactions include any AIP-funded contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000. This includes contracts associated with land acquisition projects.

**Reference**

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

**8. DISADVANTAGED BUSINESS ENTERPRISES**

**Contract Assurance (§26.13)** - The Consultant or subcontractor 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 requirements 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. The DBE goal for this project over Fiscal Year (FY) 2024 is **7.28%**.

**Prompt Payment (§26.29)** - The prime Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than **60** days from the receipt of each payment the prime Consultant receives from the **Sponsor**. The prime Consultant agrees further to return retainage payments to each subcontractor within **60** 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.

**Application**

The contract assurance clause shall be incorporated verbatim. The prompt payment clause represents sample language that meets the requirements of 49 CFR Part 26.29. Recipients should refer to the language included their approved DBE program.

**Reference**

49 CFR Part 26

**9. DISTRACTED DRIVING – TEXTING WHEN DRIVING**

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 Federal Aviation Administration 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 subgrant.

In support of this initiative, the Client 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 that involve driving a motor vehicle in performance of work activities associated with the project.

**Application**

Required in all AIP funded contracts that exceed the micropurchase threshold of 2 CFR §200.67 (currently set at \$3,500).

**Reference**

Executive Order 13513

DOT Order 3902.10

**10. ENERGY CONSERVATION REQUIREMENTS**

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 USC 6201et seq).

**Application**

Required in all AIP funded contracts and lower-tier contracts.

**Reference**

2 CFR § 200, Appendix II(H)

**11. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

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

**Application**

All consultants, sub-consultants, contractors, and subcontractors employed under this federally assisted project must comply with the FLSA.

Professional Services – 29 CFR § 213 exempts employees in a bona fide executive, administrative or professional capacity. Because professional firms employ individuals that are not covered by this exemption, the sponsor’s agreement with a professional services firm must include the FLSA provision.

**Reference**

29 USC § 201, et seq

**12. FOREIGN TRADE RESTRICTION CLAUSE**

The Consultant or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Consultant or subcontractor 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 Sponsor 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 subcontractor unless it has knowledge that the certification is erroneous.

The Consultant shall provide immediate written notice to the sponsor if the Consultant learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the 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 subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor 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.

#### **Application**

Incorporate into all contracts funded by AIP.

#### **Reference**

49 CFR Part 30.13

FAA Order 5100.38

### **13. 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 officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in

connection with the making of any Federal grant and the amendment or modification of any Federal grant.

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.

**Application**

Required in all contracts and subcontracts.

**Reference**

49 CFR Part 20, Appendix A

**14. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. 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.

**Application**

Required in all contracts and subcontracts.

**Reference**

29 CFR part 1910

**15. TAX DELINQUENCY AND FELONY CONVICTIONS**

1. The Consultant certifies that it 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.
2. The Consultant certifies that it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

**Application**

Required in all contracts and subcontracts.

**Reference**

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

**16. TERMINATION OF CONTRACT**

### **Termination for Convenience**

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

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

The Client 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.

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

### **Termination for Default**

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations 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 [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 Client:** The Client 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 Client approved extension;
  2. Make adequate progress so as to endanger satisfactory performance of the Project; or
  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 Client 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.

Client 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.

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

- b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Client:
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, Client agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Client 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 Client's breach of the contract.

In the event of termination due to Client breach, the Engineer is entitled to invoice Client 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. Client agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

#### **Application**

All contracts and subcontracts in excess of \$10,000 must address termination for cause and termination for convenience by the sponsor.

#### **Reference**

2 CFR § 200 Appendix II(B)  
FAA Advisory Circular 150/5370-10, Section 80-09

### **17. VETERAN'S PREFERENCE**

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.

#### **Application**

This provision applies to all AIP funded projects that involve labor to carry out the project. This preference, which excludes executive, administrative, and supervisory positions, applies to covered veterans (as defined under § 47112(c)) only when they are readily available and qualified to accomplish the work required by the project.

#### **Reference**

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

**EXHIBIT “D” SUBCONSULTANTS**

The Consultant shall use the following subconsultants to perform services as described below for the purpose of accomplishing “the Project” as set forth in this agreement.

1. Survey – Patterson & Dewar Engineers, Inc.
2. Architecture – Hussey Gay Bell
3. Geotechnical & Materials Testing Services – 2MNext \* (WBE/DBE)
4. DBE Planning & Reporting – Taffy Phippen Consulting, LLC \* (WBE/DBE)
5. RPR/Construction Inspection – Aulick Engineering, LLC\* (WBE/DBE)
6. Land Acquisition Services – THC, Inc.
7. Brockington and Associates, Inc. \* (WBE/DBE)

\*These firms are currently registered with GDOT as a certified Disadvantaged Business Enterprise (DBE).

Any addition or removal of a subconsultant from this list shall require a written request from the Consultant to the Client. The Client shall then evaluate the request and provide the Consultant with written approval of the change in subconsultant. No changes in subconsultants shall be made without written approval of the Client.



**EXHIBIT "E" POTENTIAL PROJECTS****Scope of Services – Design/Engineering/Construction  
(as described in the Request for Qualifications (RFQ))**

The scope of work to be included in this Master Agreement may include, but is not limited to, the following:

- a. Prepare Project Funding Applications and Capital Improvements Program (CIP) Documents.
- b. Perform Design, Bidding and Negotiation, Construction Administration, and Resident Inspection Services.
- c. Assist with DBE Program Overall Goal Updates / Program Administration.
- d. Construct/Rehabilitate Airfield Drainage Systems.
- e. Construct/Rehabilitate Airfield Pavement, Lighting, and NAVAIDs/ILS Improvements.
- f. Construct/Rehabilitate Airport Buildings (Terminal / Hangars / Maintenance).
- g. Construct/Rehabilitate Airport Roadways and Parking Lots.
- h. Install/Upgrade Airport Fencing and Security Systems.
- i. Obstruction Removal
- j. Improve Runway/Taxiway Safety Areas/Object Free Areas
- k. Land Acquisition
- l. Such other airport-related engineering work as the City of Dalton may deem necessary.

**Scope of Services – Planning/Environmental  
(as described in the Request for Qualifications (RFQ))**

The scope of work to be included in this Master Agreement may include, but is not limited to, the following:

- a. Airport system/master planning
- b. Airport noise compatibility planning
- c. Environmental assessments
- d. Airport data collection/facility inventories
- e. Aviation forecasts and demand/capacity analyses
- f. Facility requirements determination
- g. Airfield modeling for capacity and delay
- h. Airport layout and terminal area plan development
- i. Compatible land-use planning in the vicinity of airports
- j. Airport site selection studies
- k. Airport financial planning and benefit cost analysis.
- l. Such other airport-related planning and environmental work as the City of Dalton may deem necessary.

**Request for Information**

*Please return this information with your signed contract; failure to provide this information could result in delay in starting your project*

**Client Identification**

Full, Legal Name of Client				
Mailing Address for Invoices				
Federal ID Number				
Contact for Billing Inquiries				
Contact's Phone and e-mail				
Client is (check one)	Owner	<input type="checkbox"/>	Agent for Owner	Unrelated to Owner

**Property Identification**

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located				
Tax Assessor's Number(s)				

**Property Owner Identification**

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address				
Owner's Phone No.				
Owner of Which Parcel #?				

**Project Funding Identification – List Funding Sources for the Project**


*Attach additional sheets if there are more than 4 parcels or more than 4 owners*