

DALTON MUNICIPAL AIRPORT

MASTER AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into this _____ day of _____, 2019 by and between the CITY OF DALTON, (hereinafter called the OWNER) and CROY ENGINEERING, LLC, (hereinafter called the ENGINEER) WITNESSETH that whereas the OWNER intends to contract for professional engineering services to the DALTON MUNICIPAL AIRPORT, DALTON, GEORGIA under a five (5) year General Engineering Consultant (GEC) contract (the Project).

NOW THEREFORE, the OWNER and the ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by the ENGINEER and the payment for those services by the OWNER, as set forth below.

The ENGINEER will serve as the OWNER's professional engineering representative for the Project to which this Agreement applies, and will give consultation and advice to the OWNER during the performance of their services.

ARTICLE 1: GENERAL

The ENGINEER will perform professional planning, design, construction, survey, and land acquisition services in connection with the Project as hereinafter stated. As used herein, "Services" shall include ENGINEER's services in connection with the Project. The ENGINEER will proceed with the Services applicable for this Project after receiving written authorization from OWNER to proceed.

ARTICLE 2: TASK ORDERS

Task Orders shall be used to describe the parties' mutual Agreement on the scope of services, schedule, compensation and other particulars stated therein. Task Orders shall be in the general form shown in attached Exhibit "A". Task Orders are binding only after acceptance and execution by duly authorized representatives of both parties. Each Task Order shall govern the parties' rights and obligations with respect to each assignment, but all within the framework of this Agreement.

ARTICLE 3: SCOPE OF SERVICES

ENGINEER shall provide the Services described in Section A (Scope of Services) of each Task Order. The scope for each task shall be established concurrently with schedule and compensation to be included in the Task Order and made a part of this Agreement.

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ARTICLE 4: SCHEDULE

ENGINEER shall exercise its reasonable efforts to perform those Services within the time frame set forth in Section B (Schedule) of each Task Order. The schedule for each task shall be established concurrently with scope and compensation to be included in the Task Order and made a part of this Agreement.

ARTICLE 5: COMPENSATION

OWNER shall pay ENGINEER in accordance with Section C (Compensation) of each Task Order. The fee for each task shall be established concurrently with scope and schedule to be included in the Task Order and made a part of this Agreement. Fees shall be based on the ENGINEER's hourly rate schedule included in Exhibit "B" and amended annually by mutual agreement.

ENGINEER shall periodically invoice OWNER for Services rendered. Invoices for services rendered that are funded through Federal or State programs will be due and payable within 15 days of the OWNER receiving the Federal or State funds; provided however that in the event that such funding does not occur then the OWNER shall pay ENGINEER within 180 days from the date of the Invoice. Invoices for services not funded through Federal or State programs will be payable within 15 days of receipt. OWNER shall give prompt written notice of any disputed amount and shall pay the remaining amount. If the OWNER fails to make any payment due to ENGINEER on account of their services and expenses within thirty (30) days after receipt of the ENGINEER's bill therefor, the amounts due the ENGINEER shall bear a late charge of 1% per month on the unpaid balance from said thirtieth day, and in addition the ENGINEER may, after giving seven (7) days' written notice to the OWNER, suspend services under this Agreement until it has been paid in full all amounts due them on account of their services and expenses.

If this Agreement is terminated upon the completion of the ENGINEER'S Services, progress payments to be made to the ENGINEER on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Services when the ENGINEER is being compensated on the basis of a lump sum or a percentage of construction cost, the ENGINEER shall be paid for services rendered on the basis of its reasonable estimate of the portion of such phase completed prior to termination. If this Agreement is terminated during any phase of Services when the ENGINEER is being compensated on the basis of payroll times a factor, the ENGINEER shall be paid for services rendered to the date of termination. In the event of any termination, the ENGINEER will be paid for all their reasonable expenses resulting from such termination, and for any unpaid reimbursable expenses.

If, prior to termination of this Agreement, any work designed or specified by the ENGINEER during any phase of Services is suspended in whole or in part for more than three months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in Article 15 for termination during any phase of their services.

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The payroll costs used as a basis for payment shall mean the salaries and wages paid to principals and employees engaged directly on the Project, including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical personnel, stenographers, typists and clerks; plus the cost of fringe benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto.

Reimbursable expenses shall mean the actual expenses of transportation and subsistence of principals, employees and consultants for the services incidental thereto when traveling in connection with the Project; expenses incidental to obtaining bids or proposals from contractors; expenses of furnishing and maintaining field office facilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings and Specifications, and similar Project related items; expense of computer time including an appropriate charge for previously established programs.

ARTICLE 6: AUDIT/ACCESS TO RECORDS

The ENGINEER 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 ENGINEER shall also maintain the financial information and data used by the ENGINEER 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 OWNER. The ENGINEER 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 OWNER, 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 ENGINEER will provide proper facilities for such access and inspection.

ARTICLE 7: OWNER'S RESPONSIBILITIES

OWNER shall be responsible for all matters described in Attachment Section D (Owner's Responsibilities), of each Task Order. In addition, Owner shall perform and provide the following in a timely manner so as not to delay the Services of Engineer:

- a) Provide full information as to the OWNER'S requirements for the Project.
- b) Place at Engineer's disposal all available information pertinent to the Project, including previous reports, drawings, specifications or any other data as may be reasonably required by the ENGINEER to perform its Services.
- c) Guarantee access to and make all provisions for the ENGINEER to enter upon a public and private property as required for the ENGINEER to perform their services under this Agreement.

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- d) Examine all studies, reports, sketches, estimates, Specifications, Drawings, proposals and other documents presented by the ENGINEER and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- e) Provide such legal, accounting and insurance counseling services as may be required for the Project and such auditing service as the OWNER may require ascertaining how or for what purpose any Contractor has used the moneys paid to them under the construction contract.
- f) Designate in writing a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Agreement.
- g) Give prompt written notice to ENGINEER whenever OWNER becomes aware of any development that affects the scope or timing of ENGINEER'S Services, or any defect in the Services of ENGINEER.
- h) Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- i) Advise ENGINEER of the identity and scope of services of any independent consultants retained by OWNER to provide services in regard to the project.
- j) Bear all costs incident to compliance with requirements of this Article.

ARTICLE 8: STANDARD OF CARE

ENGINEER shall perform for or furnish to OWNER professional engineering and related services in all phases of the project to which this Agreement applies as hereinafter provided. ENGINEER may employ such qualified and properly licensed sub-consultants, as ENGINEER deems necessary to assist in the performance or furnishing of professional engineering and related services hereunder. ENGINEER shall not employ any sub-consultant unacceptable to the OWNER. ENGINEER shall be responsible for such sub-consultants and related services performed under this Contract Agreement.

The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. No other warranty, express or implied, is included in this Agreement or in any Task Order, drawing, specification, report, opinion, or other instrument of service, in any form or media produced in connection with the Services.

ENGINEER shall conduct itself according to, and shall abide by, all applicable laws, rules, and regulations and OWNER'S applicable standards of business conduct, including acting ethically, honestly, and with fair dealing in a manner that does not disparage to cause damage or disrepute to the OWNER.

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ARTICLE 9: INDEMNIFICATION AND LIABILITY

Having considered the potential liabilities that may exist during the performance of the Services, the relative benefits and risks of the Project and the ENGINEER'S fee for the Services, and in consideration of the promises contained in this Agreement, OWNER and ENGINEER agree to allocate and limit such liabilities in accordance with this Article.

Engineer agrees to indemnify and hold the OWNER harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by the ENGINEER'S or its sub-consultant's negligent acts, errors, or omissions arising out of its performance of the Services. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of ENGINEER and OWNER, they shall be borne by each party in proportion to its own negligence.

The terms and conditions of this Article shall survive the completion of the Services, or any termination of this Agreement.

ARTICLE 10: INSURANCE

The ENGINEER will secure and maintain such insurance as will protect it and the OWNER 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.

In addition, the ENGINEER shall secure and maintain General Commercial Liability coverage with policy limits of not less than one million dollars for each occurrence and aggregate and Professional Liability coverage with policy amounts of not less than two million dollars for each per claim and aggregate. Said policies of insurance shall include the OWNER as additional insured, except for professional liability and workers compensation insurance. ENGINEER shall maintain said insurance coverage through the term of this contract and for a period of two years following the termination of this contract. Said insurance coverage shall include an endorsement providing that OWNER shall receive notice of any cancellation of coverage no less than thirty (30) days prior to its effective date. Said coverage shall be written on such policy forms as are acceptable to OWNER. Said coverage shall be underwritten by such insurance companies as are acceptable to OWNER. In the event that ENGINEER subcontracts with a third party sub-consultant to provide services in reference to the contract, the ENGINEER shall require said sub-consultant to comply with the insurance provisions of this Article..

ARTICLE 11: LIMITATIONS OF RESPONSIBILITY

ENGINEER shall not be responsible for (a) construction means, methods, techniques, sequences, procedure, or safety precautions and programs in connection with the Project; (b) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to ENGINEER, to fulfill contractual responsibilities to OWNER or to comply with federal, state, or local laws, regulations, and code; or (c) procuring permits, certificates, and licenses required for

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any construction unless such procurement responsibilities are specifically assigned to ENGINEER in a Task Order, except as the ENGINEER may discover, within its professional expertise and judgment, upon reasonable review of said contract services and information that said contract services and information are not reasonably accurate or adequate for the Project or does not comply with or conform with the applicable laws, codes or regulations.

ARTICLE 12: OPINIONS OF COST AND SCHEDULE

Since the ENGINEER has no control over the cost of labor, materials or equipment, or over the Contractor(s), methods of determining prices, or over competitive bidding or market conditions, its estimates of cost for the Project provided for herein are to be made on the basis of its experience and qualifications and represent its best judgment as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids or the Project construction cost will not vary from cost estimates prepared by it.

ARTICLE 13: REUSE OF DOCUMENTS

All documents including, but not limited to, Drawings and Specifications prepared by ENGINEER pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER; and OWNER shall, to the fullest extent permitted by law, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation by ENGINEER will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

ARTICLE 14: OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, engineering documents, drawings, and specifications prepared by ENGINEER and furnished to OWNER as part of the Services shall become the property of OWNER; provided, however, that ENGINEER shall have the unrestricted right to their use. ENGINEER shall retain its copyright and ownership rights in its design, drawing details, specifications, databases, computer software, and other proprietary property. Intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of ENGINEER. Any use of the engineering documents, drawings, and specifications by OWNER without the verification and adaptation by ENGINEER shall be at OWNERS liability and expense.

ARTICLE 15: TERMINATION AND SUSPENSION

This Agreement may be terminated at any time by mutual Agreement of the parties, said Agreement to be evidenced by a written termination letter or Agreement executed by both parties. Either party must provide the other party with written notice of its intent to terminate the Agreement at least thirty (30) days prior notification.

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Additionally, OWNER may terminate or suspend performance of this Agreement for OWNER'S convenience upon thirty (30) days' written notice to the ENGINEER. ENGINEER shall terminate or suspend performance of the Services on a schedule acceptable to OWNER, and OWNER shall pay ENGINEER for all the Services performed.

The provisions of this Article shall also apply to each individual Task Order, separate and apart from any other Task Orders, and without terminating or otherwise affecting this Agreement as a whole.

ARTICLE 16: DELAY IN PERFORMANCE

Neither OWNER nor ENGINEER shall be considered in default of this Agreement or any Task Order for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either OWNER or ENGINEER under this Agreement or any Task Order. ENGINEER shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances.

Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance.

ARTICLE 17: NOTICES

All notices under this Agreement shall be sent and deemed duly given when posted in first-class mail, postage prepaid to the addresses supplied in writing for such purpose by ENGINEER and OWNER. These addresses may be changed from time to time by written notice to the appropriate party and may include for this purpose e-mail addresses.

ARTICLE 18: DISPUTE RESOLUTION

In the event of a dispute between OWNER and ENGINEER arising out of or related to this Agreement, or any Task Order, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation.

Should such negotiation or mediation fail to resolve the dispute, then either party may file a civil action as may be allowed by applicable law. The parties agree that in the event that any suit or proceeding is brought in connection with this Agreement, such suit or proceeding shall be

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brought in the Superior Court of Whitfield County, Georgia and the parties shall submit to the exclusive jurisdiction of such Court and waive any and all jurisdiction, venue, and inconvenient forum objections to such Court.

ARTICLE 19: EQUAL EMPLOYMENT OPPORTUNITY

ENGINEER 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 ENGINEER'S policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment.

ENGINEER agrees that on the selection of any subcontractor by them or 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.

ARTICLE 20: WAIVERS

A waiver by either OWNER or ENGINEER of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further such breach.

ARTICLE 21: SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement or any Task Order. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 22: INTEGRATION

This Agreement, including Exhibits "A" and "B" (incorporated by this reference), and subsequently issued Task Orders (and their respective attachments, if any), represents the entire and integrated Agreement between OWNER and ENGINEER. It supersedes all prior and contemporaneous communications, representations, and Agreements, whether oral or written, relating to the subject matter of this Agreement.

ARTICLE 23: SUCCESSORS AND ASSIGNS

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The OWNER and the ENGINEER each binds itself and its partners, successors and assigns to the other party to this Agreement and to the partners, successors and assigns of such other party, in respect to all covenants of this Agreement.

ARTICLE 24: ASSIGNMENT

Neither OWNER nor ENGINEER shall assign any rights or duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, ENGINEER may assign its rights to payment without OWNER'S consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent ENGINEER from engaging independent consultants, associates, and subcontractors to assist in the performance of the Services.

ARTICLE 25: NO THIRD PARTY RIGHTS

The Services provided for in this Agreement are for the sole use and benefit of OWNER and ENGINEER. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OWNER and ENGINEER.

ARTICLE 26: GOVERNING LAW

This Agreement shall be governed by the laws of the State of Georgia.

ARTICLE 27: FEDERAL REQUIREMENTS FOR PROJECTS FUNDED WITH AIP FUNDS

During the performance of this contract, the ENGINEER, for itself, its assignee's and successors in interest (hereinafter referred to as the "ENGINEER") agrees to the Federal requirements as shown in Exhibit "C".

ARTICLE 28: IMMIGRATION REFORM COMPLIANCE REQUIREMENT

During the entire duration of this Agreement, ENGINEER 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.

ARTICLE 29: OPEN RECORDS ACT

The ENGINEER 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.). ENGINEER shall cooperate fully in responding to such request and make all records, not exempt, available for inspection and copying as provided by law.

ARTICLE 30: JURISDICTION

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The terms of this Agreement shall be construed and interpreted under, and all respective rights and duties of the parties shall be governed by, the laws of the State of Georgia.

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

OWNER:

CITY OF DALTON

ENGINEER:

CROY ENGINEERING, LLC

By: _____



GREGORY D. TEAGUE, P.E.
President

ATTEST:

ATTEST:



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Exhibit "A" Sample Task Order

TASK ORDER NUMBER _____

This Task Order is made as of this _____ day of _____, 20 __, under the terms and conditions established in the MASTER AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES (the Agreement), between CITY OF DALTON (OWNER) and CROY ENGINEERING, LLC (ENGINEER). This Task Order is made for the following purpose, consistent with the Project defined in the Agreement:

[Insert a brief description of the Project elements to which the Task Order applies]

Section A. - Scope of Services

A.1. Engineer shall perform the following Services:

A.2. The following Services are not included in this Task Order, but shall be provided as Additional Services if authorized or confirmed in writing by the Owner:

A.3. In conjunction with the performance of the foregoing Services, Engineer shall provide the following submittals/deliverables (Documents) to Owner:

Section B. - Schedule

Engineer shall perform the Services and deliver the related Documents (if any) according to the following schedule:

Section C. - Compensation

C.1. In return for the performance of the foregoing obligations, Owner shall pay to Engineer the amount of \$ _____, payable according to the following terms:

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C.2. Compensation for Additional Services (if any) shall be paid by Owner to Engineer according to the following terms:

Section D. - Owner's Responsibilities

Owner shall perform and/or provide the following in a timely manner so as not to delay the Services of Engineer. Unless otherwise provided in this Task Order, Owner shall bear all costs incident to compliance with the following:

Section E. - Other Provisions

The parties agree to the following provisions with respect to this specific Task Order:

IN WITNESS WHEREOF the parties hereto have made and executed this Task Order.

OWNER:

CITY OF DALTON

ENGINEER:

CROY ENGINEERING, LLC

By: _____

GREGORY D. TEAGUE, P.E.
President

ATTEST:

ATTEST:

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Exhibit "B" Hourly Rate Schedule

To be issued with each Task Order

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Exhibit "C"
Federal Requirements for Projects Funded with AIP Funds

1. CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS

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

- 1.1. Compliance with Regulations.** The contractor 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 contractor, 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 contractor 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 contractor 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 contractor of the contractor'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 contractor 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 contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor 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 contractor'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 contractor under the contract until the contractor complies, and/or
 - b. Cancellation, termination, or suspension of the contract, in whole or in part.
- 1.6. Incorporation of Provisions.** The contractor 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 contractor 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.

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Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor 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 CFR Part 21
AC 150/5100-15

2. AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 - GENERAL CIVIL RIGHTS PROVISIONS

The contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Application

Incorporate in all contracts funded under AIP.

Reference

Airport and Airway Improvement Act of 1982, Section 520
Title 49 47123
AC 150/5100-15, Para. 10.c.

3. DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§26.13) - 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 DOT 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 recipient deems appropriate.

Prompt Payment (§26.29) - The prime contractor 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 contractor receives from the **Sponsor**. The prime contractor agrees further to

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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

4. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

- 4.1. No Federal appropriated funds shall be paid, by or on behalf of the contractor, 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.
- 4.2. 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 contractor 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

5. ACCESS TO RECORDS AND REPORTS

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, 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 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.

Application

Incorporate into all procurement contracts that funded by AIP funds.

Reference

49 CFR Part 18.36(i)

FAA Order 5100.38

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6. BREACH OF CONTRACT TERMS

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

Application

The FAA does not prescribe the exact language to be incorporated. The above clause represents sample language that addresses the requirements of 49 CFR Part 18.36(i)(1). This provision requires grantees to incorporate administrative, contractual or legal remedies in instances where contractors violate or breach contract terms. Grantees should consult with their legal counsel to develop the appropriate clause that meets the minimum requirements of 49 CFR Part 18.36.

This provision is required in all contracts that exceed the simplified acquisition threshold, presently set at \$100,000.

Reference

49 CFR Part 18.36

7. RIGHTS TO INVENTIONS

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

Application

Incorporate into all procurement contracts that funded by AIP funds.

Reference

49 CFR Part 18.36(i)(8)

FAA Order 5100.38

8. TRADE RESTRICTION CLAUSE

The contractor 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 contractor or subcontractor who is unable to

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certify to the above. If the contractor 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 contractor 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 contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor 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 contractor 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 contractor 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 contractor 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

9. TERMINATION OF CONTRACT

- 9.1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- 9.2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- 9.3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case,

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the contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.

- 9.4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.
- 9.5. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Application

Incorporate into all procurement contracts that funded by AIP funds that exceed \$10,000.

Reference

49 CFR Part 18.36(i)(2)
FAA Order 5100.38

10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

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

Application

Incorporate into all contracts that exceed \$25,000, which funded under the AIP. Incorporate in all contracts for auditing services regardless of the contract amount.

Reference

49 CFR Part 29
FAA Order 5100.38