



**PORT OF HOOD RIVER COMMISSION**  
**AGENDA**  
**Friday, August 27, 2021**  
**Via Remote Videoconference (Zoom)**

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**10:00 A.M.**  
**Special Meeting**

1. Call to Order
2. Approve Master Professional Services Contract and Task Order 1 with Precision Approach Engineering for Engineering Services at the Ken Jernstedt Airfield (*Michael McElwee, Page 3*)
3. Adjourn

If you have a disability that requires any special materials, services, or assistance, please contact us at (541) 386-1645 so we may arrange for appropriate accommodations.

*The chair reserves the opportunity to change the order of the items if unforeseen circumstances arise. The Commission welcomes public comment on issues not on the agenda during the public comment period. With the exception of factual questions, the Commission does not immediately discuss issues raised during public comment. The Commission will either refer concerns raised during public comment to the Executive Director for a response or will request that the issue be placed on a future meeting agenda. People distributing copies of materials as part of their testimony should bring **10 copies**. Written comment on issues of concern may be submitted to the Port Office at any time.*

# Commission Memo



Prepared by: Michael McElwee  
Date: August 27, 2021  
Re: Airport Engineer Contract

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On March 25, 2021, the Commission issued a Request for Qualifications (“RFQ”) to select an engineering firm for the Ken Jernstedt Airfield. This is standard practice due to the ongoing need for various engineering tasks related to construction and capital maintenance, and for an experienced interface with the Federal Aviation Administration (“FAA”). The FAA requires re-solicitation to select and engineering firm every five years to encourage competition.

Two responses to the RFQ were received by the May 21, 2021, deadline: Century West Engineering and Precision Approach Engineering (“PAE”). An Evaluation Committee reviewed and scored both proposals, and then met to discuss their evaluation comments and finalize their scoring sheets. In a very close final ranking, the Evaluation Committee recommended Precision Approach Engineering for the contract.

With the completion of several significant capital projects recently, it is expected that PAE’s focus will be on small-scale construction and planning projects maintenance engineering tasks in the near term. The attached Master Services Agreement allows specific engineering tasks to be scoped and then approved by the Commission through separate Task Orders. Staff is also seeking approval for an initial Task Order to provide funding for miscellaneous on-call services.

Century West is still under contract and will continue to finish up specific tasks related to the North Ramp projects, primarily COE/DSL permit requirements and FAA grant compliance.

## **RECOMMENDATIONS:**

1. Authorize Master Services Agreement with Precision Approach Engineering, Inc. for engineering services at the Ken Jernstedt Airfield.
2. Approve Task Order No. 1 to the Master Services Agreement with Precision Approach Engineering for on-call engineering services not to exceed \$30,000.

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## **PROFESSIONAL SERVICES AGREEMENT**

THIS "AGREEMENT," made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between PORT OF HOOD RIVER, an Oregon municipal corporation, hereinafter called "OWNER," and PRECISION APPROACH ENGINEERING, INC., an Oregon corporation, hereinafter called "CONSULTANT." Unless otherwise terminated or extended, the term of this AGREEMENT is five (5) years from the date above written. This AGREEMENT supersedes any prior agreement(s) or amendment(s), written or oral, between OWNER and CONSULTANT. This AGREEMENT shall be interpreted, construed, governed, and enforced in accordance with and under the laws of the State of Oregon, without regard to the principles of conflicts of law. OWNER and CONSULTANT may be referred to hereafter individually as a "Party" or collectively as the "Parties."

### **WITNESSETH:**

WHEREAS, OWNER intends to engage CONSULTANT to perform professional airport consulting and engineering services ("SERVICES") to be accomplished over the course of one or more "PROJECTS", and

WHEREAS, OWNER intends to identify specific work items, hereinafter called the "PROJECT(s)", for CONSULTANT to perform, for which CONSULTANT will provide engineering cost and time estimates for each PROJECT and said estimates, upon agreement and acceptance by OWNER in the form of a written "TASK ORDER," signed by the Parties, will be attached and become a part of this AGREEMENT, and

WHEREAS, OWNER intends to seek state agency and federal assistance for the PROJECT(s), and CONSULTANT will assist OWNER in these endeavors.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereto mutually agree as follows:

### **A. CONSULTANT'S RESPONSIBILITIES**

OWNER hereby engages CONSULTANT, and CONSULTANT accepts and agrees to perform the following SERVICES for OWNER:

1. Professional Project Assistance. Upon receipt of a written PROJECT request from OWNER, CONSULTANT will prepare a TASK ORDER, including a scope of work and associated PROJECT cost and time estimates. A TASK ORDER is effective when agreed upon, accepted, and signed by the authorized representatives of both Parties. When appropriate to the SERVICES to be performed under a signed TASK ORDER, CONSULTANT will assist OWNER in obtaining any available state agency and federal funding assistance. The TASK ORDER(s) to be issued by OWNER may include, but are not limited to, the following:

- a. Design of airfield improvements
- b. Services during construction
- c. "GENERAL CONSULTING SERVICES"

OWNER, at its sole discretion, reserves the right to accept or reject all, some, or none of the TASK ORDER(s) provided by CONSULTANT under this AGREEMENT.

2. Status of CONSULTANT and Relationship to OWNER. CONSULTANT is an independent contractor, and nothing contained herein shall be construed as constituting any relationship with OWNER other than that as an independent contractor, nor shall it be construed as creating any relationship whatsoever between OWNER and any of CONSULTANT's employees. Neither CONSULTANT nor any of CONSULTANT's employees are nor shall they be deemed employees of OWNER. CONSULTANT is not and shall not act as an agent of OWNER. All employees who assist

CONSULTANT in the performance of the SERVICES performed under this AGREEMENT shall always be under CONSULTANT's exclusive direction and control. CONSULTANT shall pay all wages, salaries and other amounts due CONSULTANT's employees in connection with the performance of the SERVICES and shall be responsible for all reports and obligations respecting such employees, including without limitation social security tax, income tax withholding, unemployment compensation, worker's compensation, employee benefits and similar matters. Further, CONSULTANT has sole authority and responsibility to employ, discharge and otherwise control CONSULTANT's employees. CONSULTANT has sole authority and responsibility as principal for CONSULTANT's agents, employees, sub-consultants and all others CONSULTANT hires to perform or assist in performing the SERVICES. OWNER's only interest is in the results to be achieved.

3. CONSULTANT'S Representations. CONSULTANT represents and covenants that:
  - a. CONSULTANT has the required authority, ability, skills and capacity to, and shall, perform the SERVICES in a manner consistent with this AGREEMENT. Further, any employees and sub-consultants of CONSULTANT employed in performing the SERVICES shall have the skill, experience and licenses required to perform the SERVICES assigned to them.
  - b. To the extent CONSULTANT deems necessary, in accordance with prudent practices, CONSULTANT has inspected the sites and all of the surrounding locations whereupon CONSULTANT may be called to perform CONSULTANT's obligations under this AGREEMENT, and is familiar with requirements of the SERVICES and accepts them for such performance.
  - c. CONSULTANT has knowledge of all legal requirements and business practices that must be followed in performing the SERVICES and the SERVICES shall be performed in conformity with such requirements and practices, including but not limited to, all applicable federal, state, and local laws, ordinances, regulations, Federal Aviation Administration ("FAA") rules and regulations, and public contract laws in the State of Oregon.
  - d. CONSULTANT is validly organized and exists in good standing under the laws of the State of Oregon, and has all the requisite powers to carry on CONSULTANT's business as now conducted or proposed to be conducted and CONSULTANT is duly qualified, registered or licensed to do business in good standing in the State of Oregon.
  - e. The execution, delivery and performance of this AGREEMENT and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action and do not and will not (a) require any further consent or approval of the board of directors or any shareholders of CONSULTANT or any other person which has not been obtained or (b) result in a breach of default under the certificate of incorporation or by-laws of CONSULTANT or any indenture or loan or credit agreement or other material agreement or instrument to which CONSULTANT is a party or by which CONSULTANT's properties and assets may be bound or affected. All such consents and approvals are in full force and effect.
4. Time is of the Essence. The SERVICES undertaken by CONSULTANT shall be completed in such a manner and in such a sequence as to assure their expeditious completion considering the purpose of this AGREEMENT. It is agreed that time is of the essence in the performance of every PROJECT request received from OWNER and every TASK ORDER.
5. Work Product. All work product of CONSULTANT prepared pursuant to this AGREEMENT, including but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall upon payment of all amounts rightfully owed by OWNER to CONSULTANT herein remain the property of OWNER under all circumstances, whether or not the SERVICES are complete. When requested by OWNER,

all work products shall be delivered to OWNER in PDF or full-size, hard copy form. Work products shall be provided to OWNER at the time of completion of any of the discrete tasks specified in the TASK ORDER(s). CONSULTANT shall maintain copies on file of any such work product involved in the SERVICES for at least five (5) years, or longer as required by law, shall make them available for OWNER's use, and shall provide such copies to OWNER upon request at commercial printing or reproduction rates.

Subject to the provisions of the Oregon Public Records Law (the "Law"), all construction documents, including, but not limited to, electronic documents prepared under this AGREEMENT are for use only with PROJECT(s) contemplated hereunder, and may not be used for any other construction related purpose or dissemination to any contractor or construction related entity without written approval of OWNER.

6. Subconsultants.

a. General. CONSULTANT is solely and fully responsible to OWNER for the performance of the SERVICES under this AGREEMENT. Use of any sub-consultant by CONSULTANT shall be listed in the scope of work on a TASK ORDER or otherwise pre-approved in writing by OWNER. CONSULTANT agrees that each and every agreement of CONSULTANT with any sub-consultants to perform SERVICES under this AGREEMENT shall be terminable without penalty.

b. Sub-Consultant Commitments. All of CONSULTANT's subcontracts in connection with the performance of the SERVICES shall be in writing and include the following provisions:

i. The subcontract/contract is immediately terminable without cause, and cost for such termination activities shall be determined according to the terms of this AGREEMENT.

ii. The sub-consultant shall carry insurance in forms and amounts satisfactory to OWNER in its sole discretion, as provided by this AGREEMENT.

iii. All warranties (express or implied) shall inure to the benefit of OWNER and its successors and assigns.

CONSULTANT shall provide OWNER with a copy of each subcontract executed with the performance of the SERVICES within seven (7) days of each subcontract's execution, if requested by OWNER.

Sub-consultants who assist CONSULTANT in the performance of the SERVICES shall at all times be under CONSULTANT's exclusive direction and control and shall be sub-consultants of CONSULTANT and not consultants of OWNER. CONSULTANT shall pay or cause each sub-consultant to pay all wages, salaries and other amounts due to CONSULTANT's sub-consultants in performance of the duties set forth in this AGREEMENT and shall be responsible for any and all reports and obligations with respect to such sub-consultants. All sub-consultants shall have the skill and experience and any license or permits required to perform the SERVICES assigned to them.

**B. OWNER'S RESPONSIBILITIES**

OWNER, agrees to the following:

1. To offer, any and all PROJECT requirements OWNER might have for professional aviation consulting and engineering assistance to CONSULTANT.
2. In the event CONSULTANT is engaged by OWNER to provide SERVICES, OWNER shall make available to CONSULTANT all technical data, including maps, surveys, property

descriptions, borings, and other information in OWNER's possession that contains pertinent information required by CONSULTANT relating to CONSULTANT's work.

3. OWNER shall provide access to the site as necessary to perform the engineering services.
4. OWNER agrees to cooperate with CONSULTANT in the approval of all plans and/or specifications. In the event OWNER disapproves of any part of CONSULTANT's plans and/or specifications, OWNER will provide timely notice of such disapproval to CONSULTANT. If CONSULTANT incurs additional drafting or other expenses due to changes, other than corrections, ordered by OWNER after the completion and approval of plans and/or specifications, CONSULTANT shall be paid for such extra expenses and services involved.

### **C. COMPENSATION FOR CONSULTING/ENGINEERING SERVICES**

OWNER will pay CONSULTANT the appropriate fee as complete compensation for all SERVICES rendered as herein agreed:

1. OWNER will pay CONSULTANT for the SERVICES performed either as a lump sum fee or on an hourly basis in accordance with the CONSULTANT's Hourly Rates, as specified in each TASK ORDER and direct non-salary expenses (as defined in section C.4 below) at actual cost for each PROJECT unless another compensation expense type is agreed upon and as established in the TASK ORDER. CONSULTANT fee and work effort will be included as part of any state agency or federal grant, and CONSULTANT fee will be reimbursed and work effort defined to the extent approved and reimbursed by any grant. Notwithstanding the foregoing, the OWNER shall pay CONSULTANT for services rendered.
2. OWNER shall pay CONSULTANT for any GENERAL CONSULTING SERVICES requested in writing by OWNER in accordance with the compensation designated in the related TASK ORDER(s), plus any direct non-salary expenses. It is understood that CONSULTANT will be compensated only for GENERAL CONSULTING SERVICES requested by OWNER in writing
3. Any amount over the estimated cost for the SERVICES as set forth in a TASK ORDER or work beyond the scope of each PROJECT will be negotiated and agreed upon between OWNER and CONSULTANT in writing in the form of a TASK ORDER amendment prepared and signed by the Parties, prior to CONSULTANT's commencement of additional work.
4. CONSULTANT's "direct non-salary expenses" are defined as costs incurred on or directly for a PROJECT, other than payroll costs. Such direct non-salary expenses shall be computed on the basis of actual purchase price for items obtained from commercial sources and on the basis of usual commercial charges for items provided by CONSULTANT. Direct non-salary expenses shall include, but are not limited to, necessary transportation costs, including mileage at the then current IRS or GSA rate per mile when personally owned vehicles are used for travel for authorized PROJECT purposes, meals and lodging, laboratory tests and analyses, equipment rental, postage, shipping, printing, binding, and copying charges.
5. CONSULTANT shall submit monthly invoices based on work completed and detailing the services provide to date. Invoices shall include a reference of the TASK ORDER under which the services were performed, a detailed description of work performed and include evidence of any reimbursable expenses in a form acceptable to OWNER. OWNER shall pay CONSULTANT for professional services performed under this AGREEMENT for services performed during monthly billing periods within 45 days of receipt of an invoice.

6. No reduction shall be made from the CONSULTANT's fee on account of penalty, liquidated damages, or other sums withheld from payment to any other party, except as otherwise provided in Section 7.e of this AGREEMENT.
7. In the event of legal or other controversies not directly caused in whole or in part by CONSULTANT's negligence, but requiring the services of CONSULTANT, OWNER shall pay CONSULTANT for services rendered in regard to such legal or other controversies, in accordance with CONSULTANT's Hourly Rates attached to an associated TASK ORDER or TASK ORDER amendment and approved by OWNER for subsequent years, accordingly, and direct non-salary expenses at actual cost.

#### **D. RESERVATIONS AND COMPLIANCE**

1. OWNER, the funding state agency, and the FAA or any of their duly authorized representatives shall have access to any books, documents, papers, and all other records which are directly pertinent to this AGREEMENT for the purpose of making audit, examination, excerpts, and transcripts. All documents shall be retained a minimum of five (5) years or as required by law. All documents produced under this AGREEMENT become the property of OWNER.

2. **Insurance.**

- a. CONSULTANT shall keep and maintain the following insurance for the duration of the AGREEMENT:

- i Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers.
- ii Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 for each claim or incident. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract.
- iii Commercial General Liability insurance including Products & Completed Operations coverage with a combined single limit, or the equivalent, of not less than \$2,000,000 per occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract.
- iv. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each' accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
- v. Umbrella/Excess Liability insurance with combined single limits/or the equivalent, of not less than \$1,000,000 for Bodily Injury and Property Damage.

- b. As evidence of the insurance coverage required by this AGREEMENT, CONSULTANT shall furnish acceptable insurance certificates to OWNER at the time CONSULTANT returns the signed AGREEMENT. The Commercial General Liability certificate shall provide that OWNER, its Commissioners, officers, agents, and employees are Additional Insureds but only with respect to CONSULTANT's SERVICES to be provided under this AGREEMENT. Endorsement CG 20 10 11 85 or its equivalent must be attached to the Certificate. The Certificate shall provide that the insurance shall not

terminate or be canceled without thirty (30) days written notice first being given to OWNER. Insuring companies or entities are subject to OWNER acceptance. If required, complete copies of the insurance policy shall be provided to OWNER. CONSULTANT shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

c. If any policy obtained by CONSULTANT is a claims-made policy, the following conditions shall apply: the policy shall provide CONSULTANT has the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than two (2) years. CONSULTANT agrees to purchase this extended insurance coverage and to keep it in effect during the reporting period. If the policy is a claims-made policy, the retroactive date of any renewal of such policy shall be not later than the date this AGREEMENT is signed by the Parties hereto. If CONSULTANT purchases a subsequent claims-made policy in place of the prior policy, the retroactive date of such subsequent policy shall be no later than the date this AGREEMENT is signed by the Parties hereto.

4. **Compliance with Laws.** In performing the SERVICES under the AGREEMENT, CONSULTANT shall comply with all applicable federal, state, and local laws, ordinances, and regulations in effect at the time the SERVICES are performed, including the public contract laws of the State of Oregon, and FAA rules and requirements, the provisions of which are hereby incorporated by reference.
5. **Dispute Resolution.** OWNER and CONSULTANT agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the provision of this Agreement or exercising their rights under the law. Excepting injunctive relief, any dispute, controversy or claim arising out of, in connection with, or relating to, this AGREEMENT or any breach or alleged breach of this AGREEMENT, shall upon request of any Party involved, be submitted to mediation in Hood River County, Oregon. If a settlement cannot be reached through mediation, the Parties agree that the dispute will be submitted to and be settled by arbitration in Hood River County, Oregon. Such arbitration shall be in accordance with the rules of the Arbitration Service of Portland then in effect. The Parties shall use a single arbitrator mutually agreeable to them. If they are unable to agree on an arbitrator, or a process to select one, either Party may apply to the Hood River County Circuit Court to appoint an arbitrator. Any award rendered by an arbitrator shall be binding on the Parties and may be entered in the Hood River County Circuit Court. The expenses of the arbitration shall be borne equally by the Parties to the arbitration, provided that each Party shall pay for and bear the cost of their respective own experts, evidence and counsel's fees. The Parties to either mediation or arbitration recognize that mediation sessions are settlement negotiations and that settlement negotiations are inadmissible in any litigation or arbitration of their dispute, to the extent allowed by law. The Parties will not subpoena or otherwise require the mediator to testify or produce records, notes, or work product in any future proceeding beyond mediation. In addition, the Parties agree that all information obtained in either the mediation or arbitration process is strictly confidential and further agree that the Party not otherwise having such information available to them other than through the mediation or arbitration process shall hold all such information in confidence.
6. **Indemnification.** CONSULTANT agrees to indemnify OWNER, its officers, and employees and will hold them harmless from, any and all claims, damages, losses, or liabilities to the extent arising out of the willful misconduct or negligent acts, errors, or omissions of CONSULTANT in the performance of this AGREEMENT.

To the extent a damages claim, legal action or damages amount is restricted or prohibited against OWNER by the terms of the Oregon Tort Claims Act (ORS 30.260 to 30.300), OWNER agrees to indemnify CONSULTANT, its officers, and employees and will hold them harmless from, any and all claims, damages, losses, or liabilities to the extent arising out of the willful misconduct or negligent acts, errors, or omissions of OWNER in the performance of this AGREEMENT.

7. **Title VI Assurances.** During the term of this AGREEMENT, CONSULTANT, for itself, its assigns, and successors in interest (collectively referred to as "CONSULTANT" for the purpose of this Section 7) agree as follows:
  - a. **COMPLIANCE WITH REGULATIONS:** CONSULTANT shall comply with all regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulation 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 AGREEMENT.
  - b. **NONDISCRIMINATION:** CONSULTANT, with regard to the SERVICES performed by CONSULTANT during the AGREEMENT, 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. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Title 49, Part 21, Section 21.5 of the Code of Federal Regulations, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the Regulation.
  - c. **SOLICITATION FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In all solicitations, either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by CONSULTANT of the CONSULTANT's obligations under this AGREEMENT and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
  - d. **INFORMATION AND REPORTS:** 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 OWNER, state agency, or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, order, and instructions. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses this information, CONSULTANT shall so certify to OWNER or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
  - e. **SANCTIONS FOR NONCOMPLIANCE:** In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this AGREEMENT, OWNER shall impose such contract sanctions as OWNER or the FAA may determine to be appropriate including, but not limited to, withholding of payments to the CONSULTANT under the AGREEMENT until CONSULTANT is in compliance herewith.

## **E. CONFIDENTIALITY**

1. During the performance of the AGREEMENT and for all time subsequent to completion of the SERVICES under this AGREEMENT, CONSULTANT agrees not to use or disclose to anyone, except as required by the performance of this AGREEMENT or by law, or as otherwise authorized by OWNER, any and all information given to CONSULTANT by

OWNER or developed by CONSULTANT as a result of the performance of this AGREEMENT. CONSULTANT agrees that if OWNER so requests, CONSULTANT will execute a confidentiality agreement in a form acceptable to OWNER and will require any employee or sub-consultant performing work under this AGREEMENT or receiving any information deemed confidential by OWNER to execute such a confidentiality agreement. Notwithstanding the foregoing, the obligations in this section will not apply to information which is: (a) publicly known; (b) already known to the recipient; (c) lawfully disclosed by a third-party; (d) independently developed by the recipient without benefit of the disclosing Party's confidential information; or (e) disclosed pursuant to legal requirement or order.

2. CONSULTANT Trade Secrets and Open Records Requests.

a. Public Records. CONSULTANT acknowledges and agrees that all documents in OWNER's possession, including documents submitted by CONSULTANT, are Subject to the provisions of the Oregon Public Records Law (the "Law"), and the Consultant acknowledges that OWNER shall abide by the Law, including honoring all proper public records requests. CONSULTANT shall be responsible for all CONSULTANTS' costs incurred in connection with any legal determination regarding the Law, including any determination made by a court pursuant to the Law. CONSULTANT is advised to contact legal counsel concerning such acts in application of the Law to CONSULTANT.

b. Confidential or Proprietary Materials. If CONSULTANT deems any document(s) which CONSULTANT submits to OWNER to be confidential, proprietary or otherwise protected from disclosure under the Law, then CONSULTANT shall appropriately label such document(s) and submit such document(s) to OWNER together with a written statement describing the material which is requested to remain protected from disclosure and the justification for such request. The request will either be approved or denied by OWNER in OWNER's discretion. OWNER will make a good faith effort to accommodate a reasonable confidentiality request if in OWNER's opinion OWNER determines the request complies with the Law.

## **F. DISADVANTAGED BUSINESS ENTERPRISE (DBE) ASSURANCES**

1. POLICY: It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this AGREEMENT.
2. DBE OBLIGATIONS: CONSULTANT agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this AGREEMENT. In this regard, CONSULTANT shall make all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform work under this AGREEMENT. CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

## **G. STANDARD OF CARE**

The standard of care applicable to CONSULTANT's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services. CONSULTANT will re-perform services not meeting this standard without additional compensation.

## H. TERMINATION OF AGREEMENT

1. Termination Not-For-Cause. In addition to any other rights provided herein, OWNER shall have the right, at any time and in its sole discretion, to terminate, not for cause, in whole or in part, this AGREEMENT and further performance of the SERVICES by delivery to CONSULTANT of written notice of termination specifying the extent of termination and the effective date of termination.
2. Termination Not-For-Cause. In addition to any other rights provided herein, CONSULTANT shall have the right, at any time and in its sole discretion, to terminate, not for cause, in whole or in part, this AGREEMENT.
3. Obligations of CONSULTANT. After receipt of a notice of termination, and unless otherwise directed by OWNER, CONSULTANT shall immediately proceed as follows:
  - i. OWNER will provide a three (3) business days notification to CONSULTANT of a stop work on the SERVICES as specified in the notice of termination;
  - ii. OWNER will provide a three (3) business days notification to CONSULTANT to terminate all agreements with sub-consultants to the extent they relate to the SERVICES terminated;
  - iii. Submit to OWNER detailed information relating to each and every sub-consultant of CONSULTANT under this AGREEMENT. This information will include sufficient detail so OWNER can immediately contact each such sub-consultant to determine the role or function of each in regard to the performance of the SERVICES and if OWNER so elects, OWNER may engage any sub-consultant for substantially the same terms as have been contracted by CONSULTANT;
  - iv. Complete performance in accordance with this AGREEMENT of all the SERVICES not terminated; and
  - v. Take any action that may be necessary, or that OWNER may direct, for the protection and preservation of the property related to this AGREEMENT that is in the possession of CONSULTANT and in which OWNER has or may acquire an interest.
4. Termination Settlement. After termination, CONSULTANT shall submit a final termination settlement proposal to OWNER in a form and with a certification prescribed by OWNER. CONSULTANT shall submit the proposal promptly, but no later than thirty (30) days from the effective date of termination, unless extended in writing by OWNER upon written request by CONSULTANT within such thirty-day period. If CONSULTANT fails to submit the proposal within the time allowed OWNER's payment obligations under this AGREEMENT shall be deemed satisfied and no further payment by OWNER to CONSULTANT shall be made.
5. Payment Upon Termination. As a result of termination without cause, OWNER shall pay CONSULTANT in accordance with the terms of this AGREEMENT for the SERVICES performed up to the termination and unpaid at termination.
6. OWNER's Claims and Costs Deductible Upon Termination. In arriving at the amount due CONSULTANT under this paragraph there shall be deducted any claim which OWNER has against CONSULTANT under this AGREEMENT.

7. Partial Termination. If the termination is partial, OWNER shall make an appropriate adjustment of the price of the SERVICES not terminated. Any request by CONSULTANT for further adjustment of prices shall be submitted in writing within thirty (30) days from the effective date of notice of partial termination or shall be deemed forever waived.

**I. CERTIFICATION OF CONSULTANT**

OWNER and CONSULTANT hereby certify that CONSULTANT has not been required, directly or indirectly, as an express implied condition in connection with obtaining or carrying out this AGREEMENT to:

1. Employ or retain, or agree to employ or obtain, any firm or persons.
2. Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

**J. SUCCESSORS AND ASSIGNS**

1. Neither party shall assign this AGREEMENT or parts hereof or its duties hereunder, but not including work products produced by CONSULTANT, without the express written consent of the other Party. In the event of dissolution, consolidation or termination of OWNER, the Parties agree that OWNER may upon a seven (7) business day notification to the CONSULTANT, assign to a successor entity any rights, obligations and functions it may have remaining under this AGREEMENT.

**K. SEVERABILITY AND SURVIVAL**

All express representations, waivers, and/or indemnifications, included in this AGREEMENT will survive its completion or termination for any reason. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**L. NOTICES**

All notices and demands that either Party may be required or may desire to serve upon the other Party shall be in writing and shall be delivered to the other Party by personal service, by facsimile transmission, or electronic mail, followed by delivery by U.S. mail of an original of the notice, by overnight courier with proof of receipt, or by certified mail, return receipt requested, postage prepaid, addressed as follows:

<u>OWNER</u>	<u>CONSULTANT</u>
PORT OF HOOD RIVER Attn: Executive Director 1000 E. Port Marina Drive Hood River, OR 97031 Phone: 541-386-1138 Fax: 541-386-1395 Email: <a href="mailto:mmcelwee@portofhoodriver.com">mmcelwee@portofhoodriver.com</a>	<b>Precision Approach Engineering, Inc.</b> Attn: Corley McFarland/President 5125 SW Hout Street Corvallis, OR 97333 Phone: 541-754-0043 Fax: 541-754-7649 Email: <a href="mailto:cmcfarland@preappinc.com">cmcfarland@preappinc.com</a>

**M. ATTORNEY FEES**

In the event that this AGREEMENT is in any suit, action, or other enforcement, the prevailing party shall be entitled to recover such sum as the court may adjudge reasonable for attorney's fees, including reasonable attorney's fees for the prevailing party allowed on appeal to a higher court or courts.

**N. FEDERAL AVIATION ADMINISTRATION CONTRACT PROVISIONS**

The additional FAA Contract Provisions attached as Exhibit A to this Agreement are made a part of this Agreement as fully and completely as if the same were fully set forth herein.

**O. AUTHORIZED SIGNER**

Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this Agreement.

**P. FORCE MAJEURE**

Neither Party to this AGREEMENT shall be liable to the other Party for delays in or failure to perform SERVICES caused by circumstances beyond its reasonable control, including but not limited to acts of God, acts of governmental authorities, strikes, riots, civil unrest, pandemic, war, lockouts extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable contemplation of either Party. For delays resulting from unanticipated material actions or inactions OWNER or third parties, CONSULTANT shall be given an appropriate time extension and shall be compensated for all costs of labor, equipment, and other direct costs CONSULTANT reasonably and necessarily incurs. Delays of more than ninety (90) calendar days shall, at the option of either Party, make this AGREEMENT subject to termination.

**Q. DESIGNATION OF REPRESENTATIVES**

OWNER hereby designates Michael McElwee, Executive Director and CONSULTANT hereby designates Corley McFarland as the persons who are authorized to represent the Parties with regard to administration of this AGREEMENT, subject to limitations, which may be agreed to by the Parties.

**R. ENTIRE AGREEMENT**

This AGREEMENT, and any subsequent, duly signed TASK ORDERS attached hereto, constitute the entire agreement between the Parties relating to the SERVICES and set forth the rights, duties, and obligations of each Party to the other. Any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT and subsequent, duly signed TASK ORDERS, are of no force and effect. This AGREEMENT may not be amended except by a writing executed by both CONSULTANT's and OWNER's authorized representatives and approved by the Port Commission.

**S. INTERPRETATION**

In this AGREEMENT the singular includes the plural and the plural includes the singular; statutes or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; references to "writing" include printing, typing, lithography, computer software and other means of reproducing word in a tangible visible form; references to articles, sections (or subdivisions of sections), exhibits, annexes, appendices or schedules shall be construed to be in this AGREEMENT unless otherwise indicated; references to agreements, exhibits, annexes, appendices hereto and other contractual instruments shall, unless otherwise indicated, be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by this

AGREEMENT; words not otherwise defined which have well-known technical or industry meanings, unless the context otherwise requires, are used in accordance with such recognized meanings; and references to persons include their respective permitted successors and assigns, and, in the case of governmental persons, persons succeeding to their respective functions and capacities.

**T. BINDING AGREEMENT**

This AGREEMENT shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.

**U. NO WAIVER**

No waiver of any provisions of this AGREEMENT shall be deemed to constitute a waiver of any other provision of the AGREEMENT, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

**V. LIMITATION ON DELEGATION**

The Parties hereto acknowledge and agree that certain powers, rights and duties conferred on or held by OWNER are inherently governmental in nature and may not be delegated by contract to CONSULTANT. Nothing in this AGREEMENT shall be construed as an unlawful delegation of the non-delegable functions and powers of OWNER, and CONSULTANT shall have no obligation to perform any non-delegable function.

IN WITNESS WHEREOF, OWNER and CONSULTANT have made and executed this AGREEMENT the day and year first above written.

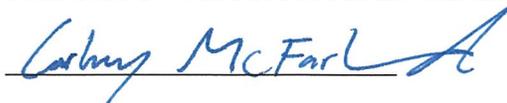
For: **PORT OF HOOD RIVER**

By: \_\_\_\_\_

Title: Executive Director

Date: \_\_\_\_\_

For: **PRECISION APPROACH ENGINEERING, INC.**

By: 

Title: President

Date: 8/19/2021



# **Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects**

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**A1 ACCESS TO RECORDS AND REPORTS**

2 CFR § 200.3332, CFR § 200.336, FAA Order 5100.38

**ACCESS TO RECORDS AND REPORTS**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized 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.

\* \* \* \* \*

**A2 AFFIRMATIVE ACTION REQUIREMENT**

41 CFR part 60-4, Executive Order 11246

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

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

**Timetables**

- Goals for minority participation for each trade: 2.9%
- Goals for female participation in each trade: 6.9%

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

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

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

4. As used in this notice and in the contract resulting from this solicitation, the “covered area” is **Port of Hood River, Hood River County, Hood River, Oregon.**

\* \* \* \* \*

### **A3 BREACH OF CONTRACT TERMS**

2 CFR § 200 Appendix II(A)

#### **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.

Owner 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. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner’s notice will identify a specific date by which the Consultant must correct the breach. Owner may proceed with termination of the contract if the Consultant fails to correct the breach by the deadline indicated in the Owner’s notice.

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

\* \* \* \* \*

#### **A4 BUY AMERICAN PREFERENCE**

Title 49 USC § 50101

#### **BUY AMERICAN PREFERENCE**

The Contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

#### **CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR TOTAL FACILITY**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter "X".

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States; or
  - b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
  - To faithfully comply with providing U.S. domestic products.
  - To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
  - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.

- d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
- e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

**Type 3 Waiver** – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “facility”. The required documentation for a Type 3 waiver is:

- a) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a Type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

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

<p style="text-align: center;"><u>8/19/2021</u></p> <p>Date</p>	<p style="text-align: center;"></p> <p>Signature</p>
<p style="text-align: center;"><u>Precision Approach Engineering Inc.</u></p> <p>Company Name</p>	<p style="text-align: center;"><u>President</u></p> <p>Title</p>

## Certificate of Buy American Compliance for Manufactured Products

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States;
  - b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
  2. To faithfully comply with providing U.S. domestic product.
  3. To furnish U.S. domestic product for any waiver request that the FAA rejects
  4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
  2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
  3. To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
  4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### Required Documentation

**Type 3 Waiver** – The cost of the item components and subcomponents produced in the United States is more that 60 percent of the cost of all components and subcomponents of the “item”. The required documentation for a Type 3 waiver is:

- a) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition

Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).

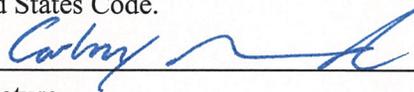
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c) Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a Type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

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

8/19/2021  
Date

  
Signature

Precision Approach Engineering Inc.  
Company Name

President  
Title

**A5 CIVIL RIGHTS - GENERAL**  
49 USC § 47123

**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.

\* \* \* \* \*

**A6 CIVIL RIGHTS – TITLE VI ASSURANCE**  
49 USC § 47123, FAA Order 1400.11

**Title VI Solicitation Notice:**

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

**Title VI Clauses for Compliance with Nondiscrimination Requirements**

The sponsor must include this contract clause in:

- 1) Every contract or agreement (unless the sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities); and
- 2) Service contracts with utility companies that are not already subject to nondiscrimination requirements.

**Compliance with Nondiscrimination 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. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by

the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

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

#### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

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

- Title VI of the Civil Rights Act of 1964 (42 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, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 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.*).

\* \* \* \* \*

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

**CLEAN AIR AND WATER POLLUTION CONTROL**

Contractor 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 Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

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

\*\*\*\*\*

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

**CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such

contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

\* \* \* \* \*

**A9 COPELAND “ANTI-KICKBACK” ACT**

2 CFR § 200, Appendix II(D), 29 CFR Parts 3 and 5

**COPELAND “ANTI-KICKBACK” ACT**

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

\* \* \* \* \*

**A10 DAVIS-BACON REQUIREMENTS**

2 CFR § 200, Appendix II(D), 29 CFR Part 5

**DAVIS-BACON REQUIREMENTS**

1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage

rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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

## 2. Withholding.

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

## 3. Payrolls and Basic Records.

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

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included

on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm) or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the

required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

#### 5. Compliance with Copeland Act Requirements.

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

#### 6. Subcontracts.

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

#### 7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

#### 8. Compliance with Davis-Bacon and Related Act Requirements.

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

#### 9. Disputes Concerning Labor Standards.

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

#### 10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

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**A11 DEBARMENT AND SUSPENSION**  
2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5

**CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT**

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

\* \* \* \* \*

**A12 DISADVANTAGED BUSINESS ENTERPRISE**  
49 CFR part 26

**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 Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

**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 30 days from the receipt of each payment the prime contractor receives from Port of Hood River. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Port of Hood River. This clause applies to both DBE and non-DBE subcontractors.

\* \* \* \* \*

**A13 DISTRACTED DRIVING**

Executive Order 13513, DOT Order 3902.10

**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 Owner encourages the Contractor 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 Contractor 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.

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**A14 ENERGY CONSERVATION REQUIREMENTS**

2 CFR § 200, Appendix II(H)

**ENERGY CONSERVATION REQUIREMENTS**

Contractor 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 6201*et seq.*).

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**A15 DRUG FREE WORKPLACE REQUIREMENTS**

49 CFR part 32, Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended)

None.

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**A16 EQUAL EMPLOYEMENT OPPORTUNITY (EEO)**

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

**EQUAL OPPORTUNITY CLAUSE**

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places,

available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

#### **STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS**

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;

- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
  - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse

the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period and the Contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by

posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items, with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally), the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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**A17 FEDERAL FAIR LABOR STANDARDS ACT 29 USC § 201, et seq**

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

The 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.

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**A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

31 USC § 1352 – Byrd Anti-Lobbying Amendment, 2 CFR part 200, Appendix II(J), 49 CFR part 20, Appendix A

**CERTIFICATION REGARDING LOBBYING**

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or

entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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**A19 PROHIBITION of SEGREGATED FACILITIES**

41 CFR § 60

**PROHIBITION OF SEGREGATED FACILITIES**

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

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

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

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**A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

29 CFR part 1910

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

\*\*\*\*\*

**A21 PROCUREMENT OF RECOVERED MATERIALS**

2 CFR § 200.322, 40 CFR part 247, Solid Waste Disposal Act

**PROCUREMENT OF RECOVERED MATERIALS**

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors

are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

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

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products).

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

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

\*\*\*\*\*

## **A22 RIGHT TO INVENTIONS**

2 CFR § 200, Appendix II(F), 37 CFR §401

### **RIGHTS TO INVENTIONS**

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

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## **A23 SEISMIC SAFETY**

49 CFR part 41

### **SEISMIC SAFETY**

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

compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

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## **A24 TAX DELINQUENCY AND FELONY CONVICTIONS**

Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76), and similar provisions in subsequent appropriations acts., DOT Order 4200.6 - Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

### **CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

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

#### **Certifications**

- 1) The applicant represents that it is ( ) is not (X) 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 applicant represents that it is ( ) is not (X) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

#### **Note**

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

#### **Term Definitions**

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

**Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

\*\*\*\*\*

## **A25 TERMINATION OF CONTRACT**

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

### **TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)**

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

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

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

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

### **TERMINATION FOR DEFAULT (PROFESSIONAL SERVICES)**

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

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

- a) **Termination by Owner:** The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Owner approved extension;
  2. Make adequate progress so as to endanger satisfactory performance of the Project; 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 Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

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

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

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

- b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Owner:
1. Defaults on its obligations under this Agreement;
  2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
  3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

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

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

\* \* \* \* \*

## **A26 TRADE RESTRICTION CERTIFICATION**

49 USC § 50104, 49 CFR part 30

### **TRADE RESTRICTION CERTIFICATION**

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

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

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

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

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

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

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

\* \* \* \* \*

## **A27 VETERAN'S PREFERENCE**

49 USC § 47112(c)

### **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.

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## TASK ORDER NO. 1

### GENERAL SERVICES AGREEMENT ENGINEERING CONSULTING SERVICES

#### PORT OF HOOD RIVER KEN JERNSTEDT AIRFIELD (4S2)

Included herein is TASK ORDER NO.1 to the Professional Services Agreement dated \_\_\_\_\_, 2021, hereinafter called CONTRACT, between PORT OF HOOD RIVER, hereinafter called OWNER, and PRECISION APPROACH ENGINEERING, INC., hereinafter called CONSULTANT.

WHEREAS, the OWNER has defined a PROJECT at Ken Jernstedt Airfield (4S2) is desirous to seek the assistance of the CONSULTANT in accordance with Section A of the CONTRACT for the PROJECT listed above, and further defined below:

- Provide miscellaneous on-call engineering consulting services as requested by the Owner. Tasks will include attending airport related meetings, provide airport, aviation and FAA related consulting for various airport related items, provide preliminary engineering services related to development and planning, scope development, project schedule development and general coordination required to initiate various upcoming projects at the Airport.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

#### A. EMPLOYMENT OF CONSULTANT

The OWNER hereby employs the CONSULTANT and the CONSULTANT accepts and agrees to perform the following engineering services to the PROJECT.

1. The OWNER hereby employs the CONSULTANT and the CONSULTANT accepts and agrees to perform the engineering services for the PROJECT as described in above.

#### B. OWNER'S RESPONSIBILITIES

1. The OWNER shall make available to CONSULTANT all technical data in OWNER's possession that contain pertinent information required by CONSULTANT relating to this work.
2. The OWNER shall pay publishing costs for the advertisement of notices, public hearings, requests for bids, and other similar items; pay for all permits and licenses that may be required by local, state, or federal authorities; and secure the necessary land, easements, rights-of-way, required for the project.
3. The OWNER shall provide access to the site as necessary to allow the performance of engineering services.
4. Other OWNER's responsibilities shall be as stated in the Professional Services Agreement.

**C. COMPENSATION FOR CONSULTING SERVICES**

The OWNER shall pay the CONSULTANT the appropriate fee as complete compensation for all services rendered as herein agreed and as stated in the PROFESSIONAL SERVICES AGREEMENT:

1. The OWNER shall pay the CONSULTANT for the ENGINEERING SERVICES attached, according to the labor rates shown in Exhibit A, attached and direct nonsalary expenses at actual cost. The maximum estimated total cost for these services is **THIRTY THOUSAND Dollars (\$30,000)**.
2. Any amount over the maximum estimated cost for the services as set forth above will be negotiated and agreed upon between the OWNER and the CONSULTANT in writing prior to beginning of additional work.
3. In the event that the engineering services are required in connection with this project beyond 2021, the Consultant's Hourly Rates shall be adjusted to conform with the CONSULTANT's standard rates as established for the subsequent years.
4. The CONSULTANT's direct nonsalary expenses are defined as the costs incurred on or directly for the PROJECT, other than payroll costs. Such direct nonsalary expenses shall be computed on the basis of actual purchase price for items obtained from commercial sources and on the basis of usual commercial charges for items provided by the CONSULTANT. Direct nonsalary expenses shall include, but not be limited to, necessary transportation costs, including mileage at the current rate per mile allowed by the IRS when automobiles are used and standard rates when aircraft are used, meals and lodging, laboratory tests and analyses, equipment rental, postage, shipping, printing, binding, and copying charges.

**D. AUTHORIZE SIGNER**

Each person signing this Amendment represents and warrants that they are duly authorized and has the legal capacity to execute and deliver this Task Order to Professional Services Agreement.

WITNESSETH that the parties hereto do mutually agree to all mutual covenants and agreements contained within the CONTRACT.

**PORT OF HOOD RIVER**

**PRECISION APPROACH ENGINEERING, INC.**

By: \_\_\_\_\_  
Michael McElwee

By: \_\_\_\_\_  
Corley McFarland, PE

Title: Executive Director

Title: President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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**CONFIDENTIAL**

**EXHIBIT A**  
**OREGON**  
**2021 STANDARD LABOR RATES**

Classification	2021 Rate
ADMIN 1	\$75.00
ADMIN 2	\$87.40
ADMIN 3	\$100.80
ADMIN 4	\$112.20
ADMIN 5	\$125.40
ADMIN 6	\$138.00
TECHNICIAN 1	\$100.60
TECHNICIAN 2	\$112.20
TECHNICIAN 3	\$125.40
TECHNICIAN 4	\$140.40
TECHNICIAN 5	\$157.20
TECHNICIAN 6	\$176.00
TECHNICIAN 7	\$195.40
ENGINEER 1	\$125.80
ENGINEER 2	\$141.20
ENGINEER 3	\$154.20
ENGINEER 4	\$170.80
ENGINEER 5	\$195.40
ENGINEER 6	\$221.80
ENGINEER 7	\$249.60
ENGINEER 8	\$278.60
ENGINEER 9	\$312.00