

**CITY OF PHOENIX, ARIZONA
OFFICE OF THE CITY ENGINEER
DESIGN AND CONSTRUCTION PROCUREMENT**



PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS

AVIATION DEPARTMENT

**PHOENIX SKY HARBOR INTERNATIONAL AIRPORT
TERMINAL 3 RECIRCULATION ROADWAY IMPROVEMENTS
DESIGN-BID-BUILD**

**PROJECT NO. AV14000029 - FAA
FEDERAL AID/AIP NO. _____**

**PROCUREPHX PRODUCT CATEGORY CODE 912000000
RFx 6000001674**

AGREEMENT _____



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CALL FOR BIDS

**CITY OF PHOENIX
PHOENIX SKY HARBOR INTERNATIONAL AIRPORT
TERMINAL 3 RECIRCULATION ROADWAY IMPROVEMENTS
DESIGN-BID-BUILD**

PROJECT NO. AV14000029 FAA

**PROCUREPHX PRODUCT CATEGORY CODE 912000000
RFx 6000001674**

**BIDS WILL BE DUE: TUESDAY, OCTOBER 29, 2024 AT 2:00 P.M.
SUBMITTED INTO THE DESIGN AND CONSTRUCTION PROCUREMENT BID BOX
LOCATED ON THE 1ST FLOOR LOBBY OF THE PHOENIX CITY HALL BUILDING,
200 W. WASHINGTON STREET, PHOENIX, ARIZONA, 85003**

**BIDS WILL BE READ: TUESDAY, OCTOBER 29, 2024 AT 2:00 P.M.
ON 5TH FLOOR, ROOM 5 WEST
PHOENIX CITY HALL
200 W. WASHINGTON STREET
PHOENIX, AZ 85003-1611
*All times are local Phoenix time**

SCOPE OF WORK

The City of Phoenix is seeking a qualified contractor to provide construction services for the project listed below.

This project is to alleviate reoccurring traffic congestion issues near the western end of Terminal 3 roadways. The scope of work includes, but not limited to, civil, traffic and electrical improvements such as removing the stop condition from the inner westbound curb lanes at the west end of Terminal 3 on the south side; allow for a merge condition from two inner curb lanes to one lane, and then subsequently merge this one inner lane with two outer curb lanes; modify striping on the north side of Terminal 3 at the west end to allow for two inner curb lanes entering from Sky Harbor Boulevard; add additional pavement to allow for a safer merge of the turnaround traffic with the eastbound lanes along Sky Harbor Boulevard at the Terminal 2 turnaround; install street lighting; and add fencing and bollards to maintain safety from the updated traffic patterns.

This is a federal-aid project. The prevailing basic hourly wage rates and fringe benefit payments, as determined by the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act, shall be the minimum wages paid to the described classes of laborers and mechanics employed or working on the site to perform the contract.

This project will utilize federal funds and is subject to the requirements of 49 Code of Federal Regulations Part 26 and the U.S. Department of Transportation DBE Program.

No goal has been established for this project.

The City of Phoenix, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, 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.

PRE-BID MEETING

A pre-submittal meeting will be held at 10:00 a.m. on Friday, October 11, 2024, at the Phoenix Sky Harbor International Airport Facilities & Services Building, 2nd Floor Conference Rooms A and B, located at 2515 E. Buckeye Road, Phoenix, Arizona. At this meeting, staff will discuss the scope of work, general contract issues and respond to questions from the attendees. As City staff will not be available to respond to individual inquiries regarding the project scope outside of this pre-bid meeting, it is strongly recommended that interested firms send a representative to the pre-bid meeting.

REQUEST FOR BID PACKET

On Thursday, October 3, 2024, the bid packet may be downloaded from the City of Phoenix's eProcurement site at:

<https://eprocurement.phoenix.gov/irj/portal>

(OR)

the City of Phoenix's "Solicitations" web page as. The web address is:

<https://solicitations.phoenix.gov>

Firms receiving a copy of the bid packet through any other means are strongly encouraged to download the bid packet from the City webpage.

Firms must be registered in eProcurement <https://www.phoenix.gov/finance/vendorsreg> as a vendor.

GENERAL INFORMATION

The City reserves the right to award the contract to the lowest responsible responsive bidder or all bids will be rejected, as soon as practicable after the date of opening bids.

The City of Phoenix will provide reasonable accommodations for alternate formats of the bid packet by calling Annette Perez at (602) 273-3488 or calling TTY 711. Requests will only be honored if made within the first week of the advertising period. Please allow a minimum of seven calendar days for production.

Questions pertaining to process or contract issues should be directed to the Contracts Specialist Annette Perez at (602) 273-3488 or annette.perez@phoenix.gov.

Jeffrey Barton
City Manager

Eric J. Froberg, PE
City Engineer

Published: Arizona Business Gazette
Date: October 3, 2024
Date: October 10, 2024
District: 8

INFORMATION FOR BIDDERS

1. QUESTIONS ON PLANS AND SPECIFICATIONS

Neither the Engineer nor the City of Phoenix will be held responsible for any oral instructions. Any changes to the plans and specifications will be in the form of an addendum. All addenda will be posted online within the project folder at the following website:

<https://eprocurement.phoenix.gov/irj/portal>

OR

<https://solicitations.phoenix.gov>

For additional information prior to submitting your bid, contact:

Plans, Technical/Special Provisions, Proposal or Specifications:

NAME: Annette Perez, Design and Construction Procurement
ADDRESS: 200 W. Washington Street, 5th Floor, Phoenix, AZ 85003-1611
PHONE: (602) 273-3488 E-MAIL: annette.perez@phoenix.gov

Federal Labor Standards/Davis-Bacon and related Acts contact:

Labor Compliance Office: (602) 261-8287

DBE Utilization contact:

Equal Opportunity Department: (602) 262-6790

All questions regarding the plans and specifications must be received (in writing) at a minimum seven calendar days prior to bid opening. Questions received after that time may not be given any consideration.

2. REQUEST FOR SUBSTITUTIONS

Paragraph A, B, and C of MAG Section 106.4 are deleted and the following paragraphs substituted:

- A. The Engineer will consider written request(s), by a prime bidder only, for substitution(s) which is/are considered equivalent to the item(s) specified in the Contract documents. The written request will be considered only if it is received at least twelve calendar days prior to the established bid date. Notification of acceptable substitutions will be made by addendum issued no fewer than seven calendar days prior to the established bid date. (A.R.S. 34-104)
- B. The prime bidder, at his own expense, will furnish the necessary data of substitution and validate that the physical, chemical, and operational qualities of each substitute item is such that this item will fulfill the originally specified required function.
- C. The substitution, if approved, will be authorized by a written addendum to the Contract documents and will be made available to all bidders. The bid date and the scheduled completion time will not be affected by any circumstances developing from this substitution.
- D. The request will be submitted to Design and Construction Procurement, Attention Annette Perez, 5th Floor, Phoenix City Hall, 200 W. Washington Street, Phoenix, Arizona 85003-1611 or via email to annette.perez@phoenix.gov.

3. BID BOND

Bidders must submit a properly completed proposal guarantee in the form of certified check, cashier's check or on the surety bond provided, for an amount not less than ten percent of the total bid amount included in the proposal as a guarantee that the contractor will enter into a contract to perform the proposal in accordance with the plans and specifications. Surety bonds submitted for this project will be provided by a company which has been rated "A- or better for the prior four quarters" by the A.M. Best Company. ***A bid will be deemed non-responsive if not accompanied by this guarantee.***

The surety bond will be executed solely by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona, issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1. The surety bond will not be executed by an individual surety or sureties even if the requirements of Section 7-101 are satisfied. The certified check, cashier's check, or surety bond will be returned to the contractors whose proposals are not accepted, and to the successful contractor upon the execution of a satisfactory bond and contract.

When providing a Surety Bond, ***failure to provide an "A- or better for the prior four quarters" bond will result in bid rejection.***

4. **LIST OF MAJOR SUBCONTRACTORS AND SUPPLIERS & LIST OF ALL SUBCONTRACTORS AND SUPPLIERS**

A bid will be deemed non-responsive if not accompanied by a properly completed and signed L.O.S.-1 "List of Major Subcontractors and Suppliers" form.

To assist in eliminating the practice of bid shopping on City construction projects, the Bidder shall list all Major Subcontractors and Suppliers to whom the Bidder intends to contract with that are equal to or greater than 5% of the base bid. The list of Major Subcontractors and Suppliers will be provided on the L.O.S.-1 "List of Major Subcontractors" form. Failure to properly complete and sign this form will result in bid rejection. This form is due with the bid.

If substantial evidence exists that bid shopping occurred on this project, the Bidder will be ineligible to bid on City or City-affiliated construction projects for a period of one year.

The list of All Subcontractors and Suppliers shall be provided on the L.O.S.-2 "List of All Subcontractors and Suppliers" form. This form is due five calendar days after bid opening by 5:00 p.m. All bidders will be required to submit the L.O.S.-1 form. The three lowest bidders will be required to submit the L.O.S.-2 form. If the L.O.S.-2 form is not submitted by the post-bid deadline, the Bidder will still be required to submit the document prior to award. If the Bidder fails to submit the required L.O.S.-2 form by the post-bid deadline, the Bidder's bid bond may be placed in jeopardy because the City may make a claim against the Bidder's bid bond for the cost difference between the lowest responsive and responsible Bidder's bid and the next lowest bid (and any additional costs involved in awarding the contract to the next lowest responsive and responsible bidder).

5. **BID SUBMITTAL**

The properly completed bid documents along with the ten percent bid guarantee will be submitted in a sealed envelope. The outside of the envelope will be marked as follows:

Bid of (Firm's Name, Address, and Phone Number)

**For: PSHIA Terminal 3 Recirculation Roadway Improvements Design-Bid-Build
City of Phoenix Project Number: AV14000029 - FAA**

Sealed bids will be submitted to City Hall Building, 200 W. Washington Street, First Floor, Phoenix, AZ 85003, prior to the time and date specified for bid opening.

6. **BID WITHDRAWALS**

MAG Section 102-10, Withdrawal or Revision of Proposal, is hereby deleted and the following paragraph is substituted:

"No bidder may withdraw or revise a proposal after it has been deposited with the City, except as provided in Phoenix City Code Chapter 2, Section 188. Proposals, read or unread, will not be returned to the bidders until after determination of award has been made.

7. **ADDENDA**

Acknowledge all addenda; a bid will be deemed non-responsive if all issued addenda for this project are not acknowledged in writing on Page P. -1.

The City of Phoenix will not be responsible for any oral responses or instructions made by any employees or officers of the City of Phoenix in regard to the bidding instructions, plans, drawings, specifications, or contract documents. A verbal reply to an inquiry does not constitute a modification of the Invitation for Bid (IFB). Any changes to the plans, drawings and specifications will be in the form of an addendum.

It will be the responsibility of the prospective bidder to determine, prior to the submittal of its bid, if any addenda to the project have been issued by Design and Construction Procurement. All addenda issued, will be acknowledged by bidder on Page P.-1.

All addenda (if any) will be available online from the eProcurement site at:

<https://eprocurement.phoenix.gov/irj/portal>

(OR)

The City of Phoenix's "Solicitations" webpage at:

<https://solicitations.phoenix.gov>

The contractors and/or consultants are responsible for ensuring they have all addenda and/or notifications for all projects they are submitting on. Prospective bidders are strongly encouraged to check the eProcurement website in order to ascertain if any addenda have been issued for this project.

8. **BID SUBMITTAL CHECK LIST**

All firms must be registered in the City's Vendor Management System prior to submitting a proposal. For new firms – the City will send an email to your firm with a vendor number within two days of submitting the request. The vendor number needs to be included on the cover of the bid proposal package/envelope. Information on how to register with the City is available at:

<https://www.phoenix.gov/finance/vendorsreg>

BID SUBMITTAL CHECKLIST

This checklist is provided to remind bidders of several of the required elements of the bid packages. It is not intended to be a comprehensive list of all of the contract documents. Bidders are encouraged to review all of the Bid Instructions to determine compliance therein.

- Acknowledge all addenda? (Page P.-1)
- Complete all the Bid Proposal forms? (Page P.-1 to P.- 3 and P.S.-1)
- Include your Bid Bond (rated A- or better for the prior four quarters) or Guarantee Cashier's Check? (Page S.B.-1)
- Include the Buy American Requirement Certification form, Attachment 1? (AIP Pages 51-54)
- Include the Certification Regarding Lobbying and Influencing Federal Employees form, Attachment 2? (AIP Page 55)
- Include the Rights in Data and Rights in Inventions Certification form, Attachment 3? (AIP Page 56)
- Include the Rights Trade Restriction Clause form, Attachment 4? (AIP Page 58)
- Include the Certification on Previous Contracts Subject to Equal Opportunity Clause, Attachment 5 (AIP Page 62)
- Include the Certification of Non-Segregated Facilities Certification form, Attachment 6? (AIP Page 63)
- Include the Tax Delinquency and Felony Convictions, Attachment 7? (AIP Page 64)
- Include the Certification Regarding Debarment, Suspension, Proposed Debarment and Other Responsibility Matters form, Attachment 8? (AIP Page 65)
- Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment, Attachment 9? (AIP Page 84)
- Documentation of Small Business Outreach Efforts, Columns A through D – (Form E.O.2); Form E.O.2 instructions are found on pages DBEC-4 to 6
- Include the complete List of Major Subcontractors and Suppliers form? (Page L.O.S.-1)

PLEASE DO NOT SUBMIT THE ENTIRE SPECIFICATION BOOK WHEN SUBMITTING YOUR BID. INCLUDE ONLY THE REQUIRED BIDDING DOCUMENTS

POST-BID SUBMITTAL CHECKLIST

The three lowest bidders must submit completed contracts documents listed below, no later than five calendar days after bid opening by 5:00 p.m. The documents must be submitted to Design and Construction Procurement, 5th Floor, or can be sent by email to annette.perez@phoenix.gov.

- Submit completed List of **All** Subcontractors and Suppliers form (L.O.S.-2)
- Completed Documentation of Small Business Outreach Efforts with supporting documentation – Columns E and F (Form E.O.2) – Form E.O.2 instructions and supporting documentation requirements are found on pages DBEC-4 to 6
- Completed Small Business Utilization Commitment (Form E.O.3)

- Submit Bidders Disclosure Statement? (Page B.D.S.-1 to B.D.S.-4)
- Submit Affidavit of Identity (A.O.I.-1) if you are a sole proprietor

PRIOR TO CONTRACT EXECUTION

- Contractor must provide proof of license required to perform the work.
- Verification of Experience Modification Rate (EMR) – the awarded company will be required to provide an EMR verification letter from the insurance company prior to contract execution.

9. **PERMITS**

CITY RESPONSIBILITY – The City will be responsible for City of Phoenix review and permit(s) fees for building and demolition permits. The City will also pay review fees for grading and drainage, water, sewer, and landscaping. The City will also pay for utility design fees for permanent services. The City of Phoenix Building Safety Log Number is LPRR 2405023.

CONTRACTOR RESPONSIBILITY – The Contractor will be responsible for all other permits and review fees not specifically listed above. The Contractor is responsible for the cost of water meters, water and sewer taps, fire lines and taps, and all water bills on the project meters until the project is accepted. Arrangements for construction water are the Contractor's responsibility.

The Contractor may elect to use a City fire hydrant for its source of construction water only if an existing water service connection is unavailable or inadequate. The Contractor will be required to comply with Phoenix City Code Section 37-13A.

The Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices. Copies of these permits and notices must be provided to the City's Project Manager prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit will also be provided to the Project Manager. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

10. **CONTRACT AWARD**

Contract award will be made to the responsive and responsible bidder based on the low total base bid. If unit pricing is required in the proposal, the extensions and additions will be verified to assure correctness. Award will be based on the revised total if any errors are found. Additionally, the Contractor will comply with the DBE requirements as detailed in the DBE Clause. The City expressly reserves the right to cancel this agreement without recourse or prejudice to Contractor until all parties have executed the agreement in full.

Any bidder that currently contracts with the City must be in good standing for its proposal to be considered responsive. For the purpose of this Invitation to Bid, good standing means compliance with all contractual provisions, including payment of financial obligations.

11. **CANCELLATION OF CONTRACT FOR CONFLICT OF INTEREST**

All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Phoenix pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

12. **TERMINATION FOR CONVENIENCE**

The Owner for its own convenience has the right for any reason and at any time to terminate the contract and require the Contractor to cease work hereunder. Such termination will be effective at the time and in the manner specified in the notification to the Contractor of the termination. Such termination will be without prejudice to any claims which the Owner may have against the Contractor. In the event of a termination for convenience, the Contractor will be paid only the direct value of its completed work and materials supplied as of the date of termination, and Contractor will not be entitled to anticipated profit or anticipated overhead or any other claimed damages from the Owner, Architect or the Engineer. If the City is found to have improperly terminated the Agreement for cause or default, the termination will be converted to a termination for convenience in accordance with the provisions of this Agreement.

13. **SURVEY**

The Contractor will set the construction stakes establishing lines, grades, and elevations to include necessary utilities and appurtenances and will be responsible for their conformance with plans and specifications. All construction survey is incidental to the Contractor's bid proposal. Construction staking will be done in accordance with the applicable provisions of the Public Works Design and Construction Management Division's "Standard Requirements for Staking, As-Builts, and Quantity Calculations", dated January 1, 1980. The Engineer will establish or designate a control line and benchmark of known location and elevation for use as a reference.

The Contractor will furnish the Engineer a certified set of calculations and measurements to fully support the derivation of all pay quantities. This information will be prepared by a registrant of the Arizona State Board of Technical Registration.

The Contractor will furnish the Engineer a set of "Record Drawings". Record drawings will be certified by a registrant of the Arizona State Board of Technical Registration.

14. **RECORD DRAWINGS**

The Contractor will maintain a record set of plans at the job site. These will be kept legible and current and will show all changes or work added in a contrasting, reproducible color. When the project is substantially complete, the Contractor will submit these plans to the Engineer for approval. When landscaping is included, the Contractor will submit, prior to final inspection, corrected landscape drawings showing the location of all utility services, controller, pipe, valves, and wiring. The Engineer will be the sole judge as to the acceptability of the record plans and receipt of an acceptable set is a pre-requisite for final payment.

15. **TESTINGS**

Soils backfill, pad, welding, roofing should be included in the contractor's proposal/price. Copies of all testing needed to be simultaneous sent via email or messenger to the developer.

16. **PRECONSTRUCTION CONFERENCE**

After the Contract documents are successfully completed, to include bonds, insurance, and signatures, and prior to the commencement of any work on the project, the Project Manager, will schedule a Pre-Construction Conference.

The purpose of this conference is to establish a working relationship between the Contractor, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, payment application and processing, coordination with the involved utility firms, emergency telephone numbers for all representatives involved in the course of construction, and establishment of the notice to proceed date.

Minimum attendance by the Contractor will be a responsible company/corporate official, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the Contractor's safety officer.

17. **IMMIGRATION REFORM AND CONTROL ACT**

Compliance with Federal Laws Required. Contractor understands and acknowledges the applicability of the Immigration Reform and control Act of 1986 and the Drug Free Workplace Act to him. Contractor agrees to comply with these Federal Laws in performing under this Agreement and to permit City inspection of his personnel records to verify such compliance.

18. **LEGAL WORKER REQUIREMENTS**

The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:

- A. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.
- B. A breach of a warranty under paragraph A will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
- C. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph A.

19. **CONTRACT WORKER BACKGROUND SCREENING**

Contractor agrees that all Contract Workers that Contractor allows to perform work under this Contract shall be subject to background and security checks and screening (Background Screening). Contractor must pay for the cost of all Background Screenings, unless otherwise provided in the Scope of Work. Contractor agrees that Background Screenings required by this Section is necessary to preserve and protect public health, safety, and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Contract. The City does not warrant or represent that the minimum requirements are sufficient to protect Contractor from any liability that may arise out of Contractor's work under this Contract or Contractor's failure to comply with this Section. Therefore, in addition to the Background Screening measures set forth below, Contractor and its Contract Workers shall take such other reasonable, prudent, and necessary measures to further preserve and protect public health, safety, and welfare when providing work under this Contract.

As used in this Section, "Contract Worker" means a person performing work for the City, including (1) a person or entity that has a contract with the City, (2) a worker of a person or entity that has a contract with the City, (3) a worker of a subcontractor of a person or entity that has a contract with the City, and (4) a worker of a tenant of the City. (City of Phoenix A.R. 4.45)

Legal Worker Background Check

Pursuant to Arizona Revised Statutes (A.R.S.) § 41-4401, Contractor must verify the legal Arizona worker status of each Contract Worker. Contractor must conduct and all Contract Workers must pass a background check for their real identity and legal name prior to performing any work under this Contract.

City Rights Regarding Security Inquiries

In addition to a Legal Worker Background Check, the City reserves the right to require Contractor to:

- Have a Contract Worker provide fingerprints and execute any document that is necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22 or both;
- Act on newly acquired information, whether or not the information should have been previously discovered;
- Unilaterally change its standards and criteria related to the acceptability of Contract Workers; and
- Object, at any time and for any reason, to a Contract Worker performing work under this Contract, including supervision and oversight services.

Contractor Certification

By entering into this Contract, Contractor certifies that Contractor has read the Background Screening requirements and criteria in this Section, understands them, and that all Background Screening information furnished to the City is accurate, complete, and current. A Contract Worker that is rejected for work under this Contract shall not perform any work under any other contract or engagement Contractor has with the City without the City's prior written approval.

Contractor's Contracts and Subcontracts

Contractor shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for work performed under this Contract, including supervision and oversight services.

Materiality of Background Screening Requirements and Indemnity

The Background Screening requirements of this Section are material to the City's decision to enter into this Contract. Any breach of this Section by Contractor shall be deemed a material breach of this Contract. In addition to any other indemnification provision in this Contract, Contractor shall defend, indemnify, and hold harmless the City from and against any and all claims, actions, liabilities, damages, losses, and expenses (Claims) arising out of this Background Screening Section, including the Contractor's disqualification of any Contract Worker or the City's failure to enforce this Section.

Continuing Duty and Audit

Contractor's obligation to ensure that all Contract Workers pass a Background Screening pursuant to Section shall continue throughout the entire term of this Contract. Contractor shall immediately notify the City of any change to a Contract Worker's Background Screening. Contractor shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Contractor's compliance with this Section.

20. **CONTRACT WORKER ACCESS CONTROLS AND AIRPORT SECURITY BADGE REQUIREMENTS**

Contractor shall not allow a Contract Worker to begin work under this Contract until Contractor has completed the Background Screening required by the City and the City has issued the appropriate airport security badge to the Contract Worker. The airport security badge will grant the Contract Worker unescorted access authority only to the area or areas of the Airport that the Contract Worker must enter in order to perform work under this Contract. When a Contract Worker's work in any area ends, the Contract Worker's access authority to that area ends. Any Contract Worker that attempts to enter a restricted area or sterile area, as those terms are defined below, of the Airport without proper authority is an immediate breach of this Contract.

SECURITY IDENTIFICATION DISPLAY AREA (SIDA) BADGE PROCESS

Each Contract Worker that needs unescorted access authority to a restricted or sterile area of the Airport in order to perform work under this Contract must receive a security identification display area (SIDA) badge from the Aviation Department's Public Safety and Security Division's Badging Office. Contractor must make arrangements with the City to have each Contract Worker proceed to the Badging Office for processing. The Badging Office will not issue a SIDA badge until the Contract Worker passes a fingerprint-based criminal history background check (CHRC) required by federal law (49 C.F.R. § 1542.209) and § 4-22(C) of the Phoenix City Code and passes a security threat assessment as mandated by the TSA through a security directive (49 C.F.R. § 1542.303). The Contract Worker shall comply with all requirements of and furnish all information requested by the Badging Office. Contractor shall pay for all fees associated with SIDA badging process, unless otherwise provided in the Scope of Work. Fees will be assessed according to § 4-22(D) of the Phoenix City Code. Current badging procedures and fees are available for review at <https://www.skyharbor.com/security/BadgingInformation>.

As used in this Section, "restricted area" means the secured area and SIDA area of the Airport. "Secured area" means the part of the Airport in which certain federal security measures are implemented and where airlines enplane and deplane passengers and load baggage. "SIDA area" means the secured area and other areas designated by the Aviation Department, which include air operation areas, ground transportation areas, and the Rental Car Center security doors. "Sterile area" means the part of the Airport that provides passengers access to board aircraft and is controlled by the TSA or the airline by screening of persons and property. See § 4-22 of the Phoenix City Code and Rules 05-01 and 05-09 of the Aviation Department Rules and Regulations for a complete definition of the foregoing terms

21. **RISK-BASED BACKGROUND CHECK PROCESS**

The City has established two levels of risk for Contract Worker background checks: standard risk and maximum risk. If the Scope of Work changes, the City may change the level of risk, which may require Contractor conduct additional investigations and incur additional costs in order to process a background check and obtain the required airport security badge. Contract Workers who receive a SIDA badge are exempt from a standard and maximum risk background check.

A STANDARD RISK BACKGROUND CHECK is required for all non-exempt Contract Workers performing work under this Contract.

As used in this Section, "background check" means the fact-gathering process described in City of Phoenix A.R. 4.45 that is conducted to obtain information regarding a Contract Worker's legal Arizona eligibility, criminal history, driving history, certifications, and other matters that may affect the Contract Worker's ability or fitness to perform work under this Contract.

Before any work is performed under this Contract, Contractor shall provide the City with a list of its Contract Workers.

If any dispute arises related to a background check process or criminal history check information, then Contractor and the affected Contract Worker will resolve the dispute. The City will not get involved in resolving any such dispute.

In making the determination whether information in a background check renders the Contract Worker disqualified, Contractor should be guided by the following principles and guidelines

- A. Disqualification should not be based solely on a criminal conviction, unless the conviction related to performance under this Contract.
- B. Arrests that did not result in a conviction being entered or charges being filed may not be considered.

- C. Not all criminal convictions or other negative information obtained in a background check will disqualify a Contract Worker from working under this Contract.
- D. Contractor must evaluate the relevance of the information to the work the Contract Worker will perform under this Contract.
- E. Contractor must consider the following factors in determining whether negative background information disqualifies a Contract Worker:
 - Duties of the position
 - Time, nature, and number of negative events and convictions
 - Attempts and extent of rehabilitation efforts
 - The relation between the duties of the position and the nature of the crime committed

The analysis of whether any information in a background check is a potentially disqualifying factor involves looking at the requirements of the Contract, the Scope of Work, where the work will be performed, the need for access to restricted areas, and the type of persons or places the Contract Worker will encounter. Contractor should review the background check results and determine whether the nature of the conviction or crime reported would create a risk to the City based on the Contract's requirements.

For a Contract Worker requiring a standard risk background check potentially disqualifying convictions include a record of theft, identity theft, computer fraud or abuse, burglary, arson, crimes against property, violent crimes, or other crimes involving dishonesty, or embezzlement. For a Contract Worker requiring a maximum risk background check, potentially disqualifying convictions include a record of child molestation, assault, sexual assault, crimes against a person, public indecency, drug offenses, forgery, theft, burglary, arson, crimes against property, violent crimes, crimes for financial gain, identity theft, computer fraud or abuse, and embezzlement.

If a background check shows that the disposition of an arrest is unknown, then Contractor must determine the disposition of the arrest.

Contractor will obtain a Contract Worker disclosure from each Contract Worker who will perform work under this Contract. Contractor will provide the Contract Worker disclosures to the City upon request. "Contract Worker disclosure" means an affidavit by a Contract Worker disclosing his or her prior criminal record. The Contract Worker disclosure must list all criminal convictions, including the nature of the crime, the date of the conviction, and the location where the crime and conviction occurred. The Contract Worker disclosure also grants to the City the right to review the background check results. (City of Phoenix A.R. 4.45)

In a standard risk background check, Contractor must review the results of the background check and decide if a Contract Worker should be disqualified for work under this Contract. Contractor must engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker. After Contractor has made its decisions, a list of names of qualified Contract Workers will be provided to the City.

In a maximum risk background check, Contractor must conduct the same review as in a standard risk background check. However, when submitting its list of qualified Contract Workers, Contractor must also submit the results of the background checks to the City for review. After its review, the City will either approve or deny each Contract Worker.

If the City approves a Contract Worker, then the City will notify Contractor of that fact and the Aviation Department will issue the appropriate airport security badge to the Contract Worker.

If the City denies a Contract Worker, then the City will notify Contractor of that fact and Contractor will reevaluate the Contract Worker to determine whether the person should be disqualified. If

Contractor believes there are extenuating circumstances that suggest that the Contract Worker should not be disqualified, then Contractor will discuss those circumstances with the City. The City will review the matter and its decision on disqualification is final.

The City may set up a secure folder or drop box for confidential materials related to maximum risk background checks. The City will not keep records related to maximum risk background checks after they are reviewed.

If Contractor is a sole proprietor, Contractor must submit to the City a copy of his or her own background check and a background check for all business partners, member, and employees that will work under this Contract and for whom the background check requirements of City of Phoenix A.R. 4.45 apply.

Contractor shall determine whether a Contract Worker is disqualified from performing work under this Contract.

STANDARD RISK BACKGROUND CHECK

A standard risk background check must be conducted for the term of this Contract or five years, whichever is shorter. Contractor shall conduct a standard risk background check on all Contract Workers whose work under this Contract requires:

- An airport security badge or key for access to City facilities,
- Access to sensitive information, confidential records, personal identifying information, or restricted City information, or
- Unescorted access to City facilities during normal and non-business hours.

“Personal identifying information” is defined by City of Phoenix A.R. 4.45.

Scope of the Standard Risk Background Check

The standard risk background check conducted by Contractor must be based on the real identity and legal name of the Contract Worker and include felony and misdemeanor records checks from any county in the United States, the state of Arizona, and any other jurisdiction where the Contract Worker has lived at any time in the last seven years.

MAXIMUM RISK BACKGROUND CHECK

A maximum risk background check must be conducted for the term of this Contract or five years, whichever is shorter. Contractor shall conduct a maximum risk background check on all Contract Workers whose work under this Contract requires:

- Working directly with a vulnerable adult or child under age 18,
- Any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation,
- Unescorted access to City data centers, money rooms, high-value equipment rooms,
- Access to a private residence,
- Access to Homeland Defense Bureau-identified critical infrastructure sites or facilities, or
- Responsibility or access to City-identified critical infrastructure sites, City networks or data, cyber/IT/network assets, digital or cyber assets, workstations, or servers, by either remote or direct access.

Scope of the Maximum Risk Background Check

The maximum risk background check conducted by Contractor must include the search criteria conducted under a standard risk background check in addition to a search for all felony and misdemeanor convictions (not including traffic or parking violations), a sex offender check, and a search for all outstanding warrants. Based on the Scope of Work, Contractor shall also conduct a credit check (for cash handling, accounting, and compliance positions only), driving records check

(for driving positions only), and fingerprint verification when the Contract Worker is working directly with a child under age 18 or a vulnerable adult or the work under the Contract will take the Contract Worker to a criminal justice information system (CJIS) location.

Maximum risk background checks are valid for the term of this Contract or three years, whichever is shorter.

Criminal Justice Information System (CJIS) Maximum Risk Background Check

If the Scope of Work of this Contract requires unescorted access to a CJIS location or if Contractor will have access to a CJIS infrastructure or information, then a CJIS maximum risk background check will be conducted, reviewed, and approved by the Phoenix Police Department or the Arizona Department of Public Safety.

22. **AIRPORT SECURITY BADGE HANDLING PROCEDURES**

Contractor will comply with the following airport security badge handling procedures:

Key Access Procedures. If a Contract Worker requires keyed access to enter a City facility, then a separate key will be issued and Contractor must complete a return form and submit it to the City for each key issued.

Stolen or Lost Badges or Keys. Contractor shall immediately report any lost or stolen airport security badge or key to the City. A new airport security badge application or key issue form must be completed and submitted along with payment of the applicable fee prior to issuance of a new airport security badge or key

Return of Badges or Keys. All airport security badges and keys are the property of the City and must be returned to the Badging Office within one business day after the Contract Worker's access to a City facility is no longer required under this Contract. Contractor shall collect a Contract Worker's airport security badge and all keys (1) when the Contract Worker's employment is terminated, (2) when the Contract Worker's services are no longer required at a City facility, or (3) when this Contract terminates, is cancelled, or expires, whichever occurs first.

Employee Identification and Access. Contract Workers must have an airport security badge and some form of verifiable company identification in their possession at all times while working under this Contract, unless otherwise provided in the Scope of Work. Contract Workers are strictly prohibited from entering any area of the Airport that is not authorized by the airport security badge or key issued to them by the Badging Office. The Aviation Department will determine who will have access to the Airport. Contract Workers access authority is only valid during their scheduled hours. Contractor shall provide the City with updates and changes in personnel as they occur.

Badge Fees. Contractor shall pay the airport security badge fees set forth in § 4-11(D) of the Phoenix City Code.

23. **CONTRACTOR'S BREACH**

Contractor agrees that the access control, airport security badge, and key requirements in this Section are necessary to preserve and protect public health, safety, and welfare. Therefore, Contractor shall be deemed in immediate breach of this Section upon the occurrence of any of the following:

- A Contract Worker gains access to a City facility or a restricted or secured area of the Airport without the proper airport security badge or key
- A Contract Worker uses another person's airport security badge or key to gain or attempt to gain access to a City facility or a restricted or secured area of the Airport
- A Contract Worker begins work under this Contract without passing the appropriate Background Screening and being issued the proper airport security badge or key

- A Contract Worker or Contractor submits false, incomplete, or misleading Background Screening information or submits any false, incomplete, or misleading information in an attempt to improperly obtain an airport security badge or key
- Contractor fails to collect and timely return a Contract Worker's airport security badge or key to the City within three days of the (1) date the Contract Worker's employment terminates, (2) the date the Contract Worker is assignment to another City facility, or (3) when this Contract terminates, is cancelled, or expires, whichever occurs first

24. **LIQUIDATED DAMAGES AND REMEDIES FOR BREACH**

In addition to any other remedy available to the City at law or in equity, including the right to terminate this Contract, Contractor shall be liable for and shall pay to the City a stipulated damage in the amount of \$1,000.00 for each breach of this Section and for each time a Contract Worker entered a restricted or secured area of the Airport without proper authority. Contractor agrees that the stipulated damage amount is not a penalty but is a reasonable estimate of the actual harm to the City caused by a breach and that the harm was very difficult to estimate at the time this Contract was entered into.

25. **CONTRACTOR CERTIFICATION**

Contractor certifies to the City that Contractor has read the foregoing Background Screening requirements and that all Background Screening information Contractor furnished to the City is accurate, complete, and current. Contractor further certifies to the City that Contractor has satisfied all Background Screening requirements and verified the legal worker status of each Contract Worker as required under this Section.

26. **LAWFUL PRESENCE REQUIREMENT**

Pursuant to A.R.S. §§ 1-501 and 1-502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships or limited liability companies.

27. **BUSINESS AND OPERATION LICENSES, PERMITS AND CERTIFICATIONS REQUIRED**

On or before the submission of a bid for this project, bidder must possess all federal, state, county and City licenses, permits, certifications and any other legal authorizations required by law to transact business and to perform the services set forth in this Agreement (collectively "Business Licenses"). Bidder will submit a completed Bidder's Disclosure Statement as set forth in Pages B.D.S. - 1 to B.D.S. - 4, to be submitted within 3 days of bid opening by 5 p.m. and provide the following Business License information: (i) proper State of Arizona contractor's license classification and number; (ii) City of Phoenix transaction privilege license number; (iii) federal tax identification number; and (iv) any special use or other zoning permits required for Bidder's operation and performance of the services under this Agreement. Unless provided otherwise in this solicitation, Bidder ***will be deemed non-responsive and the bid rejected if Bidder fails to possess the proper Business Licenses at the time of bid or fails to submit a substantially completed Bidder's Disclosure Statement*** as specified in this paragraph.

28. **TAX LIABILITIES; DISCLOSURE OF CONVICTIONS AND BREACH(S) OF CONTRACT**

On or before the award of the contract for this project, the successful bidder will: (i) file all applicable tax returns and will make payment for all applicable State of Arizona and Maricopa

County Transaction Taxes (ARS Sec. 41-1305) and City of Phoenix Privilege License Taxes (Phoenix City Code Sec. 14-415); (ii) disclose any civil fines, penalties or any criminal convictions, other than for traffic related offenses, for violation of federal, state, county or city laws, rules or regulations including, but not limited to, environmental, OSHA, or labor compliance laws (collectively "Laws") by Bidder, Bidder's directors, managing members, responsible corporate officers or party who will be responsible for overseeing and administering this project (collectively "Bidder"); and (iii) disclose any material breach(s) of an agreement with the City of Phoenix, any termination for cause or any litigation involving the City of Phoenix occurring within the past three calendar years. Unless provided otherwise in this solicitation, the successful bidder will be deemed non-responsible and the bid rejected for any of the following: (i) Bidder's civil or criminal conviction, other than for traffic related offenses, for a violation of Laws within the past three calendar years; (ii) liability or culpability resulting in payment of fines or penalties in the cumulative total amount of \$100,000 or greater for a violation of "Laws" within the past three calendar years; (iii) material breach of a City of Phoenix agreement, termination for cause or litigation with the City of Phoenix within the past three calendar years; and (iv) Bidder's failure to disclose the information as required by this provision. Further, after award of contract, in addition to any other remedy, Bidder's failure to remit proper taxes to the City of Phoenix may result in the City withholding payment pursuant to Phoenix City Charter Chapter XVIII, Section 14 until all delinquent taxes, interest, and penalties have been paid.

State and Local Transaction Privilege Taxes:

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden is on the person who is conducting business in Arizona and the City of Phoenix. The legal liability to remit the tax is on the person conducting business in Arizona. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes.

It is the responsibility of the prospective bidder to determine any applicable taxes. The City will review the price or offer submitted and will not deduct, add or alter pricing based on taxes.

If you have questions regarding tax liability, seek advice from a tax professional prior to submitting bid. Once your bid is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability.

If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City agrees to remit any overpayments back to the City for miscalculations on taxes included in a bid price.

For purposes of A.R.S. 42-5075(P), this contract is subject to A.R.S. Title 34.

Tax Indemnification:

Contractor will, and require the same of all subcontractors, pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor will, and require the same of all subcontractors, hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

Tax Responsibility Qualification:

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest).

Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes.

Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

29. **LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED)**

The Contractor will provide an easily accessible area to serve the construction site that is dedicated to the separation, collection and storage of materials for recycling including (at a minimum) paper, glass, plastics, metals, and designate an area specifically for construction and demolition waste recycling. The contractor must provide documentation that the materials have been taken to a Maricopa County approved recycling facility.

30. **PROTEST PROCEDURES**

Any bidder who has any objections to the awarding of a contract to any bidder by the City of Phoenix, pursuant to competitive bidding procedures, will comply with Phoenix City Code Chapter 2, Section 187." A copy of the Protest Policy is also available online at:

<https://www.phoenix.gov/streets/procurement-opportunities>

31. **UTILITY-RELATED CONSTRUCTION DELAY DAMAGES CLAIM PROCEDURES**

The following procedure is intended to provide a fair and impartial process for the settlement of construction delay claims associated with unknown or improperly located utility facilities.

The Contractor will immediately notify, in writing, the Project Engineer of any potential utility-related delay claim.

The Contractor will immediately notify the appropriate liaison of the affected utility verbally, followed by a written notification.

The Contractor will coordinate an investigation of the situation with the affected utility and the City's Project Manager. After resolution, the Contractor will provide written notification of the settlement of the claim to all affected parties.

If the affected utility makes a decision to handle negotiations for a claim, their personnel will be responsible for monitoring the project and all negotiations with the Contractor regarding the claim.

The Contractor will determine to document requirements of the affected utility for their acceptance of responsibility for the claims. The Contractor will provide four (4) copies of the required documentation to the utility involved and two (2) copies of this documentation to the Project Engineer. The Contractor will obtain written confirmation from the utility company involved of their documentation requirements.

32. **PROMPT PAYMENT (DBE)**

The City adheres to the prompt payment provisions of ARS 34-221. A prompt payment clause will be included in every City Contract or subcontract on projects funded either in whole or in part by USDOT. The City's prompt payment clause reads as follows:

- A. **Contractor Payment to Subcontractor or Supplier.** Contractor will pay to its subcontractors or material suppliers and each subcontractor will pay to its subcontractor or material supplier, within seven (7) days of receipt of each progress payment, the amounts attributable to the Contractor, subcontractor, or material supplier for work performed or materials supplied. In addition, any reduction of retainage to the Contractor must also result in a like reduction to subcontractors for their work successfully completed within 14 days of the reduction of the retainage to the Contractor. No Contract between Contractor and its Contractors, subcontractors, and material suppliers may materially alter the rights of any Contractor, subcontractor, or material supplier to receive prompt and timely payment as provided herein. Any diversion by Contractor, or any subcontractor, of payments received for work performed on a Contract, or failure to reasonably account for the application or use of such payments, constitutes sufficient grounds for City to take any one or more of the following actions: 1) withhold future payments including retainage until proper disbursement has been made; 2) refusal of all future bids or offers from the Contractor for a period not to exceed one year or 3) cancellation of the Contract.
- B. **Alternate Dispute Resolution.** If entitlement to the payment is in dispute, the parties to the dispute will submit the matter to either: a) binding arbitration, b) to some other binding alternative dispute resolution (ADR), or c) a City of Phoenix facilitated mediation process within a reasonable period of time, not to exceed fourteen (14) calendar days. Once an ADR determination has been made on any disputed claim, the determination will be implemented by the disputing parties within seven (7) calendar days of that determination.
- C. **Inspection and Audit.** The provisions of A.R.S. Section 35-214 will apply to this Agreement. City will perform the inspection and audit function specified therein and such inspection and audit may include, at City's option, sole and unfettered discretion, the prompt payment requirements contained in Paragraph 1, above.
- D. **Non-waiver.** Should City fail or delay in exercising or enforcing any right, power, privilege or remedy under this Section, such failure or delays will not be deemed a waiver, release or modification of the requirements of this Section or of any of the terms or provisions thereof.
- E. **Inclusion of this Provision in Subcontracts.** Contractor will include the provisions of these paragraphs in every subcontract, including procurement of materials and leases of equipment.
- F. **No Subcontractor Claim.** Nothing contained in this section will provide a basis for any subcontractor to assert any claim against the City of Phoenix for its administration, enforcement or waiver of the provisions of this Prompt Payment provision.

As this is a federally assisted project, it is subject to the requirements of Executive Order 11246 pertaining to Equal Employment Opportunity.

33. **CHANGE ORDERS**

Owner reserves the right to decrease adjustments made in any change order if, upon audit of Contractor's records, the audit discloses Contractor provided false or inaccurate cost and pricing data in negotiating the change order. In enforcing this provision, the parties will follow the procedure provided in the Federal Acquisition Regulation (FAR) clause 52.214-27, found in 48 CFR Part 52.

34. **ADA AND ANSI ACCESS OF PREMISES DURING CONSTRUCTION**

Contractor will maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements will include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. Contractor will be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

35. **PROJECT MANAGEMENT INFORMATION SYSTEM (UNIFIER)**

The Aviation Department requires all project related documents to be uploaded to UNIFIER. The following information provides a guideline for utilization. Any questions related to the requirements of UNIFIER should be directed to the Aviation Department Project Manager.

- A. The Contractor will be required to maintain all project records in electronic format. The City provides an Application Service Provider (ASP) web-based project management database which the Contractor will be required to utilize in the fulfillment of the contract requirements. Although this electronic platform does not fulfill this requirement in its entirety, the Contractor will be required to utilize this platform as the basis for this work. The City will provide training to the Contractor's designated staff members and will provide online access to the UNIFIER software.
- B. The Contractor can expect to use this ASP to process all primary level tri-partite contract documents related to the construction phase of the Project including but not limited to: requests for interpretation/information, potential Change Orders, Change Orders, construction meeting minutes, Submittals, Design Professional's supplemental instructions and Payment Requests.
- C. The Contractor will be required to process information into electronic digital form. In order to fulfill this requirement, the Contractor will provide all necessary equipment to perform the functions necessary to generate, convert, store, maintain, connect to web-based ASP and transfer electronic data.
- D. The Contractor will provide a computerized networked office platform with broadband internet connectivity. Wired or wireless is acceptable. This platform will function well in a web-based environment utilizing an internet browser compatible with the Aviation Department UNIFIER ASP system.

36. **PAYMENT RETENTION**

At the start of construction, ten percent of all pay requests will be retained by the City to guarantee complete performance of the contract. When the work is fifty percent complete, this amount may be reduced to five percent providing that construction progress and quality of work is acceptable to the City. Any funds, which are withheld from the Contractor, will be paid no later than sixty days after completion of the Contract and settlement of all claims.

In lieu of retention, the Contractor may provide as a substitute, an assignment of money market accounts, demand deposit accounts, or time certificates of deposit (CDs) from a bank licensed by Arizona, securities guaranteed by the United States, securities of the United States, the state of Arizona, Arizona counties, Arizona municipalities, Arizona school districts, or shares of savings and loan institutions authorized to transact business in Arizona. These securities are referred to as "Qualified Securities."

CDs assigned to the City must be maintained at the City's single servicing bank, currently Chase Bank, Arizona, in the form of time deposit receipt accounts. CDs will be assigned exclusively for the benefit of the City of Phoenix pursuant to the City's form of escrow Agreement. Escrow Agreement forms may be obtained from the Finance Department by calling (602) 262-4918.

Qualified Securities deposited in lieu of retention must be deposited into a separate account with a bank having a branch located in the City of Phoenix and be assigned exclusively for the benefit of the City of Phoenix pursuant to the City's form of escrow and/or deposit Agreement. Escrow Agreement and Deposit Agreement forms may be obtained from the Contracts Specialist.

37. **FAIR TREATMENT OF WORKERS**

The Contractor will keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. He will at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The contractor will protect and indemnify the Contracting Agency and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.

38. **CITY OF PHOENIX EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENT**

1. In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.
2. Any Contractor in performing under this contract will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and will adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, 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 further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

If the Contractor employs more than thirty-five employees, the following language will apply as the last paragraph to the clause above:

The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and will ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

3. *Documentation.* Contractor may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
4. *Monitoring.* The Equal Opportunity Department will monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

39. **WAGE DETERMINATION**

In the event that a wage determination decision of the Secretary of Labor is required for a project, (attached hereto on pages G.W.D. – 1 to 9 and made a part hereof), and has been superseded by any subsequent wage determination decision(s) published up to and including ten (10) days prior to bid opening, the most recent applicable wage decision will be incorporated by reference, and the successful bidder agrees to be bound by it, regardless of what is contained in the specifications. State or local wage rates will not apply if the state or local wage rate exceeds the corresponding Federal Wage Determination rate.

40. **WORKFORCE REPORTING REQUIREMENTS**

The contractor will submit payrolls electronically through the internet to the City of Phoenix web-based certified payroll tracking system. The City of Phoenix uses the "LCP Tracker" web-site to track the certified payroll information. Additional information regarding the use of this system is available at <https://lcptracker.com>. This requirement will also apply to every lower-tier subcontractor that is required to provide weekly certified payroll reports.

41. **PAYMENT WITHHOLDING**

Payrolls, including subcontractor's payrolls, must be submitted weekly no later than seven (7) days after each pay period ending date. Payments may be withheld in part or in full until payrolls are received and reviewed to assure compliance of the Federal Labor Standards.

Failure to clarify, when requested, discrepancies between hourly wages paid individual workers and the minimum hourly wages required by the Federal Wage Decisions contained in the Contract documents may also affect the complete or timely release of payments.

42. **LABOR COMPLIANCE PRECONSTRUCTION CONFERENCE**

On all federally assisted projects, a Labor Compliance Conference must be held after project award and prior to the established Notice to Proceed. This meeting is separate from and in addition to the pre-construction conference.

The successful bidder will schedule the conference by calling the Labor Compliance Office, (602) 261-8287. Minimum attendance will be a corporate officer, who is authorized to execute and sign documents for the firm and the payroll representative of the prime, sub and lower-tier Contractors.

43. **DBE PARTICIPATION**

This project will utilize Federal funds provided by the Federal Aviation Administration (FAA) and is subject to the requirements of 49 Code of Federal Regulations (CFR) Part 26 and the U.S. Department of Transportation DBE Program. The Contractor is required to meet the DBE program requirements and agrees to provide opportunities for the fair and full utilization of DBEs. For this business opportunity, the City has not established a race- and gender-conscious DBE participation goal.

To participate in this business opportunity as a recognized DBE, only firms certified by the City or another AZUCP member and certified in the specified scopes of work will be considered in calculating DBE participation resulting from RGN measures on this contract.

The Contractor agrees that the following will be incorporated into all subcontracts of this Contract entered into by the General Contractor:

"The contractor, subrecipient, or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor will carry out applicable requirements of 49 CFR Part 26, in the award and administration of USDOT-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 and/or any other such remedy as the City deems appropriate."

Refer to the attached Disadvantaged Business Enterprise Program Clause, pages D.B.E.C. - 1 to 9 and Disadvantaged Business Enterprise Program Reporting Forms D.B.E.F. - 1 to 3.

Failure to provide the following forms may be just cause for declaring your bid non-responsive.

- Completed Documentation of Outreach Efforts Attachment A form (Page D.B.E.F. -1)

44. **FEDERAL REQUIREMENTS COMPLIANCE**

This project will utilize federal funds provided by the Federal Aviation Administration. The Contractor will be required to meet all federal requirements as they pertain to this contract. Page A.I.P. -1 to 62 contains a listing of the minimum requirements.

Buy American Preference

The Contractor is required to comply with Buy American preferences established under Title 49 U.S.C. Section 50101. Unless otherwise formally approved by the Federal Aviation Administration, all acquired steel and manufactured products installed must be produced in the United States. Be advised that the North American Free Trade Agreement does not apply to Aviation Improvement Projects.

As a condition of bid responsiveness, Bidders must submit the appropriate Buy American certification with their proposal. Installation of equipment/material that are manufactured in the United States and for which no formal waiver exists is ineligible. While the FAA does have the authority to waive the Buy American provisions if specific conditions exist, the Contractor will not assume such a waiver is valid unless written approval is granted by the FAA. The "Buy American Requirement" certification form (Attachment 1) is due with the bid. **Failure to properly complete, sign and submit the form with bid will result in bid rejection.**

Non-Segregated Facilities

The Contractor and its subcontractors certifies that they do not maintain or provide for its employees any segregated facilities at any its establishments, and that it does not permit its employees to perform their services at any location, under its control where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The "Certification of Non-Segregated Facilities" certification form (Attachment 6) is due with the bid. **Failure to properly complete, sign and submit the form with bid will result in bid rejection.**

Lobbying and Influencing Federal Employees

No Federal appropriated funds will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the Contractor will complete and submit Standard Form-LLL, "Disclosure of Lobby activities," in accordance with its instructions. The "Affidavit By Contractor That There was No Collusion in the Selection of the Contract" certification form (Attachment 2) is due with the bid. **Failure to properly complete, sign and submit the form with bid will result in bid rejection.**

Rights to Inventions

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which the contract is executed. The "Rights in Data and Rights in Invention" certification form (Attachment 3) is due with the bid. **Failure to properly complete, sign and submit the form with bid will result in bid rejection.**

Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor and its subconsultants/subcontractors, by submission of its bid proposal certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting its bid proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Contractor or any lower tier participant is unable to certify this statement, it will attach an explanation to its bid. The "Certification Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters" form (Attachment 8) is due with the bid. ***Failure to properly complete, sign and submit the form with bid will result in bid rejection.***

Trade Restriction Clause

The "Trade Restriction Clause" form (Attachment 4) is due with the bid. ***Failure to properly complete, sign and submit the form with bid will result in bid rejection.***

Equal Employment Opportunity

The Contractor agrees that it will undertake affirmative action in conformance with 14 CFR Part 152, Subpart E, to insure that no person will on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment, contracting or leasing activities covered in 14 CFR Part 152, Subpart E. The Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. The Contractor further agrees that it will require its covered suborganizations to provide assurances to the Contractor that they similarly will undertake affirmative action and that they will require like assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.

If the Contractor is a construction contractor on the Airport, the Contractor will submit to the City of Phoenix the reports required by paragraph (e) of 14 C.F.R. § 152.415, on the same basis as stated in paragraph (e) of 14 C.F.R. § 152.415, and the Contractor will require each subcontractor to submit the reports required by paragraph (f) of 14 C.F.R. § 152.415 through the Contractor to the City of Phoenix, for transmittal by the City of Phoenix to the FAA. The "Contractors Statement on Previous Contracts subject to EEO Clause" certification form (Attachment 5) ***is due prior to contract award.***

Federal Affirmative Action Requirements

The Contractor will comply with the federal Affirmative Action requirements as provided by 14 C.F.R. Part 152, subpart E during the term of the Contract and the Contractor will require its subcontractors to also comply with the federal Affirmative Action requirements as set out above, and as may be amended. Failure of the Contractor and its subcontractors to maintain compliance during the term of the Contract, including renewal options, is a material breach and may result in termination of this Contract.

*****Due to the federal funding process, the project is anticipated to start approximately 120 days after the bid opening.*****

45. **RELEASE OF INFORMATION – ADVERTISING AND PROMOTION**

The Contractor and its subcontractors will not publish, release, disclose or announce to any member of the public, press, official body, or any other third party: (1) any information concerning this Agreement, the services, or any part thereof; or (2) any documentation or the contents thereof, without the prior written consent of the City, except as required by law. The name of any site on which services are performed will not be used in any advertising or other promotional context by Contractor and its subcontractors without the prior written consent of the City.

46. **OFF-DUTY POLICE OFFICER REQUIREMENTS**

Off-duty police officers are required for construction projects as defined in the most recent edition of the City of Phoenix Traffic Barricade Manual and TRACS permit. The Contractor must competitively procure off-duty police with vendors who are Authorized Traffic Coordinators with the City of Phoenix Police Department or Phoenix Police Department off-duty detail.

The following requirements must be included in the procurement:

1. Hourly fees charged
2. Administrative fees (administrative fees to be charged as a part of the hourly rate, not billed separately)
 - a. Pay applications requesting reimbursement for Off Duty Police hours worked will be accompanied with itemized documentation indicating officer name, date worked, hours worked, time of day worked and location.
 - b. For audit purposes, contractor's files will contain documentation from the successful off duty vendor that the above items are accounted for in the vendor's price proposal.
3. Off Duty Police needs at Phoenix Sky Harbor International Airport (boundaries include 24th Street to 143 and Air Lane Road to Old Tower Road) require that the Officers:
 - Must be City of Phoenix Police Officers with Phoenix Sky Harbor International Airport all areas badge – preference for Airport Bureau police officers
 - Have experience working in active airport environment

For all other areas at Phoenix Sky Harbor International Airport and Phoenix Deer Valley Airport, it is requested that Off Duty City of Phoenix Police be given preference over others due to their familiarity with City of Phoenix laws and procedures.

47. **PROJECT STAFFING**

- **Key Personnel:** Before starting work, Contractor must submit detailed résumés of key personnel involved in that work for City's approval (which City will not unreasonably withhold). If Contractor later desires to change key personnel involved in that work, Contractor must submit detailed résumés of the new personnel for City's approval (which City will not unreasonably withhold).
- **Qualified Staff:** Contractor must maintain an adequate and competent staff of qualified persons—as City may determine in its sole discretion—during performance of this Master Agreement. If City in its sole discretion determines that any of Contractor's staff is objectionable, Contractor must take prompt corrective action or replace that staff with new personnel, subject to City's approval.
- **Third-Party Employment Brokers:** Contractor and Subcontractors will not utilize a third party labor broker for any construction worker under this Agreement. The Contractor and Subcontractors must be the employers of record for its construction staff under this Agreement.

48. **NO ISRAEL BOYCOTT**

If this Contract is valued at \$100,000 or more and requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, or construction, then Contractor must certify and agree that it does not and will not boycott goods or services from Israel, pursuant to Title 35, Chapter 2, Article 9 of the Arizona Revised Statutes. Provided that these statutory requirements are applicable, Contractor by entering this Contract now certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services from Israel.

49. **NO FORCED LABOR OF ETHNIC UYGHURS**

If this Contract requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, goods, or construction, then pursuant to Title 35, Chapter 2, Article 10 of the Arizona Revised Statutes Contractor must certify and agree that it and any contractors, subcontractors, or suppliers it utilizes do not and will not use the forced labor of ethnic Uyghurs in the People's Republic of China or any goods or services produced by such forced labor. Provided these statutory requirements are applicable, Contractor, by entering this Contract, now certifies it is not currently engaged in, and agrees for the duration of the Contract to not engage in, (a) the use of forced labor of ethnic Uyghurs in the People's Republic of China; (b) the use of any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (c) the use of any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

50. **COMPLIANCE WITH LAWS**

Contractor must comply with all existing and subsequently enacted federal, state and local laws, ordinances and codes, all applicable ADA requirements, applicable FAA Advisory Circulars, and regulations that are, or become applicable to this Agreement, and be in general conformance with PROWAG guidance. If a subsequently enacted law imposes substantial additional costs on Contractor, a request for an amendment may be submitted pursuant to this Agreement. Contractor is also required to certify its compliance with all applicable laws and Contractor must pass along these requirements to its Subcontractors. If any of Contractor's certifications is found to be false, the City may terminate this Agreement or impose other remedies due to the false certification. See also Exhibit A, Supplemental Terms and Conditions Applicable to All Airport Agreements.

51. **HEAT MITIGATION**

Per Phoenix City Code G-7241, effective April 25, 2024, any Contractor whose employees and contract workers perform work in an outdoor environment under this contract must keep on file a written heat safety plan. The City may request a copy of this plan and documentation of all heat safety and mitigation efforts currently implemented to prevent heat-related illnesses and injuries in the workplace. The plan must also be posted where it is accessible to employees. At a minimum, the heat safety and mitigation plan and documentation required under this Provision shall include each of the following as it relates to heat safety and mitigation:

1. Availability of sanitized cool drink water free of charge at locations that are accessible to all employees and contract workers.
2. Ability to take regular and necessary breaks as needed and additional breaks for hydration.
3. Access to shaded areas and/or air conditioning.
4. Access to air conditioning in vehicles with enclosed cabs. All such vehicles must contain functioning air conditioning by no later than May 1, 2025.
5. Effective acclimatization practices to promote the physiological adaptations of employees or contract workers newly assigned or reassigned to work in an outside environment.
6. Conduct training and make it available and understandable to all employees and contract workers on heat illness and injury that focuses on the environmental and personal risk factors, prevention, how to recognize and report signs and symptoms of heat illness and injury, how to administer appropriate first aid measures and how to report heat illness and injury to emergency medical personnel.

The Contractor further agrees that this clause will be incorporated in all subcontracts with subconsultants, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the Contractor agrees to require all subcontractors, sublicensees or

sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the Contractor to ensure compliance by its subcontractors.



City of Phoenix

Disadvantaged Business Enterprise Program

DBE – Design Bid Build (DBB) Contract Clause Race & Gender-Neutral – Non-Negotiated

The City of Phoenix has shown a historical commitment to business diversity. The City of Phoenix and its partners strive to advance the economic growth of small and minority businesses through its Disadvantaged Business Enterprises (DBE) Program.

The City of Phoenix DBE Program is managed and administered by the City's Equal Opportunity Department, Contract Compliance Division. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management and technical assistance.

SECTION I. DEFINITIONS

City means the City of Phoenix for purposes of this Contract.

Arizona Unified Certification Program (AZUCP) means a consortium of government agencies organized to provide reciprocal DBE certification within Arizona pursuant to 49 Code of Federal Regulations (CFR) Part 26. The official DBE database containing eligible DBE firms certified by AZUCP can be accessed at: <https://utracs.azdot.gov>.

Arizona's Unified Transportation Registration and Certification System (AZ UTRACS) is a comprehensive internet-based business directory containing certified ACDBEs, DBEs and SBCs. The directory includes detailed firm profiles that includes capabilities and geographic locations that can be accessed at: <https://utracs.azdot.gov/Search>.

The City of Phoenix Certification and Compliance System means the web-based certification and compliance system used to track and monitor DBE and Small Business Participation. The system can be accessed at: <https://phoenix.diversitycompliance.com>.

Contract means a legally binding agreement that creates obligation between a seller to furnish supplies or services (including construction and professional services) and the buyer to pay for them.

Equal Opportunity (EO) Compliance Specialist means an Equal Opportunity Department (EOD) employee responsible for DBE Program compliance with this contract.

EOD means the City of Phoenix Equal Opportunity Department.

Joint Venture (JV) means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. The JV is limited in scope and duration to this Contract. The resources, asset, and labor of the participants must be combined in an effort to accrue profit.

Outreach Efforts means the diligent and good faith efforts demonstrated by a Submitter to solicit participation from interested and qualified DBEs and other Small Businesses. Submitter must identify and document potential business opportunities for DBEs and other Small Businesses, describe what efforts were undertaken to solicit DBE and other Small Business participation, disclose results of negotiations with DBEs and other Small Businesses, and communicate and record Submitter's selection decisions relating to DBE and Small Business participants.

Bidders List means a list created by the submitter, consisting of information about all DSMB and non-DSMB firms that bid or quote on the project. The list should include the firm's name; address; firm's DBE or non-DBE status; race and gender information for the firm's majority owner; NAICS code applicable to each scope of work the firm sought to perform in its bid; age of the firm; and the annual gross receipt of the firm.

Disadvantaged Business Enterprise (DBE) means a for-profit Small Business Concern, that has at least 51% owned and controlled by individuals or individual who are socially and economically disadvantaged, that have successfully completed the DBE certification process and have been granted DBE status by a UCP member pursuant to the criteria contained in 49 CFR Part 26.

Commercially Useful Function (CUF) means that a DBE is responsible for executing the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially



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useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or if the DBE Subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE is presumed not to be performing a Commercially Useful Function.

Goods and Services Providers are firms that provide goods and services that represent a CUF as a DBE or Small Business

Manufacturer means a firm that owns (or leases), operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer.

Regular Dealer/Supplier is a firm that owns (or leases) and operates a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business.

Broker is a firm who arrange, facilitate, or expedite transactions.

Small Business Concern (SBC) means, with respect to firms seeking to participate in contracts funded by the U.S. Department of Transportation (US DOT), a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part 121), which Small Business Concern does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b). "Small Business" and "Small Business Concern" are used interchangeably in this DBE Contract Clause.

Small Business Enterprise (SBE) means a for-profit Small Business that has been determined to meet the requirements for SBE certification with the City of Phoenix and whose certification is in force at the time of the award of business by the City. A directory of currently certified SBE firms is located at <https://phoenix.diversitycompliance.com>.

Race- and Gender-Neutral (RGN) Measures means a measure or program that is or can be used to assist all Small Businesses.

Subcontract means a contract at any tier below the prime contract, including a purchase order.

Subcontractor means a firm that holds a contract/agreement between a firm and a lower tier contractor, including a vendor under a purchase order.

Submitter means a contractor, corporation, or firm that tenders a submittal to the City to perform services requested by a solicitation or procurement. The submittal may be direct or through an authorized representative. (Submitter is inclusive of the terms: *Bidder, Offeror, Proposer, Respondent*, etc.)

Responsive Submitter means a firm that has met and submitted the solicitation requirements.

Successful Submitter means a firm that has been awarded the contract by the City to perform services or furnish supplies requested by a solicitation or procurement.

Responsible Submitter means a firm that has been selected to continue in the procurement process by the City.

Contractor means the submitting firm that was awarded the given contract with the City, to perform the work or service as specified by the contract.



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SECTION II. GENERAL REQUIREMENTS

A. Applicable Federal Regulations

This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the City must track and report DBE participation that occurs as a result of any procurement, goods/services, or other arrangement involving a DBE. For this reason, the Contractor must provide all relevant information to enable the required reporting.

B. DBE Participation

For this solicitation, the City has *not* established a race- or gender-conscious DBE participation goal. The City extends to each individual, firm, vendor, supplier, contractor, and Subcontractor an equal economic opportunity to compete for business. The City uses race- and gender-neutral measures to facilitate participation of DBEs. The City strongly *encourages* each Submitter to voluntarily subcontract with DBEs to perform a Commercially Useful Function (CUF) for the part of the work that the Contractor might otherwise perform with its own forces.

C. Counting DBE Participation

The City will count DBE participation as authorized by federal regulations. A summary of these regulations can be found at www.ecfr.gov (49 CFR Part 26.39 and Part 26.55).

D. DBE Certification

Only firms (1) certified by the City or another AZUCP member or another UCP member, and (2) contracted to perform a Commercially Useful Function (CUF) on scopes of work for which they are certified, may be considered to determine DBE participation resulting from RGN measures on this Contract.

E. Civil Rights Assurances.

As a recipient of USDOT funding, the City has agreed to abide by the assurances found in 49 CFR Parts 26. Each Contract signed by the City and the Contractor, and each Subcontract signed by the Contractor and any Subcontractor, must include the following assurance verbatim:

- a. "The contractor, sub recipient or Subcontractor must not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor must carry out applicable requirements of [49 CFR part 26](#) in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, 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.
- b. The contractor, sub recipient or Subcontractor agrees to include the above statements in any subsequent agreement or contract covered by 49 CFR, Part 26, that it enters and cause those businesses to similarly include the statement in further agreements."

F. Nondiscrimination/Equal Opportunity

The City will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Parts 26, on the basis of race, color, sex, or national origin.

In administering its DBE program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

The City further agrees to meet the nondiscrimination requirements provided in 49 CFR Part 26, §26.7 with respect to the award and performance of any agreement, contract or Subcontract.



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The City will take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered under the DBE Program.

G. DBE Open-Ended Performance Plans

Submitter must submit a DBE Open-Ended Participation Plan (OEPP).

OEPP must include a narrative of their commitment to use good faith efforts and provide details of the types of subcontracting work or services (with projected dollar amount) that the Submitter will solicit DBEs to perform. The OEPP must include an estimated time frame/schedule in which the subcontracted work to be performed by the DBE will be accomplished.

Once the contract is awarded, the City and the Contractor may agree to make written revisions to the OEPP throughout the life of the project. The City will monitor and evaluate whether the Contractor is using good faith efforts to comply with the OEPP and the schedule. The Contractor must submit a revised OEPP on an annual basis and/or at the start of every GMP (as applicable) to meet the Contractor's small business utilization commitment.

H. Required Outreach Efforts

The City has implemented outreach requirements for this contract. Specifically, each contract must:

- (1) identify small-business-participation opportunities, including Commercially Useful Functions (CUF);
- (2) actively solicit proposals from small businesses;
- (3) evaluate small-business proposals; and
- (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal.

If a Contractor fails to conduct these Outreach Efforts or fails to submit the required documentation of Contractor's Outreach Efforts as indicated, the City may determine that the Contractor is noncompliant.

SECTION III. PRE-AWARD SUBMITTAL REQUIREMENTS

A. Form EO1 - 100 – Statement of Outreach Commitment

At the time of bid submittal Submitter must sign, date, and submit a completed Form EO1 - 100 Statement of Outreach Commitment, with its initial qualifications-based submittal.

B. Form EO2 - 100 - Small Business Outreach Efforts and Bidders List

Within five (5) business days after bid submittal Submitter must complete and submit **Form EO2 – 100 Small Business Outreach Efforts and Bidders List** documenting its diligent, earnest outreach efforts for subcontracting work, as described in this clause.

Form EO2 – 100 and all supporting documentation are due to the EOD at time of initial qualifications-based submittal.

Submitter must list all DBEs and all Small Business Concerns (SBC)s contacted by the Submitter. Submitter must also provide the following minimum information to document its Outreach Efforts and Bidders List in the designated columns within Form EO2 - 100:

1. Column A - Small Business Name and Contact Information

Must list each business's full legal name and contact information, including address, phone number and email and/or fax. Submitter must inquire to obtain the following: the number of number of years in business, its range of annual gross receipts, gender of majority owner and race of majority owner.

2. Column B - Business Status (DBE, SBC, SBE)

Indicate the business status. Check all that apply, if known.

- The official DBE database containing eligible DBE and SBC firms can be accessed at: <https://utracs.azdot.gov>.



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- City of Phoenix SBE Certification Directory can be accessed at:
<https://phoenix.diversitycompliance.com>.

3. Column C - Scope(s) of Work Solicited

List the NAICS Cods and scope(s) of work solicited for which the small business was considered for participation in the proposal. The solicitation must include a description of the scope(s) of work being requested.

4. Column D - Solicitation Method

Indicate the solicitation method by which each small business was contacted for your outreach efforts and provide supporting documentation. Supporting documentation must include a copy of the actual solicitation sent to DBE. The solicitation may be in the form of letters or attachments to email, phone logs, newspapers, websites, and trade papers, outreach events, etc. If using a log as supporting documentation, it must include:

- List the Solicitation Method
- Name of Submitter's Representative
- Name of Company Contacted
- Name of Person Contacted
- Company's Contact Information Used to Reach the Company (e.g. phone number, email)
- Date and Time of Contact
- Details of the Communication

5. Column E - Selection Decision

Indicate the Submitters selection decision for each small business that responded to the solicitation.

Whether or not a firm was selected.

If not selected, provide an explanation of why the firm was not selected.

If selected, indicate the Dollar Value.

6. Column F - Method of Communication of Final Selection Outcome

The Submitter must notify the final selection outcome to all small businesses that responded. The supporting documentation for this notification may be in the form of an email, letter, or a telephone log, etc. This documentation must show the following information regarding the final selection:

- Date firm was notified of outcome
- Method used to communicate selection:
 - Email
 - Phone
 - Fax
 - Letter
 - In person

*Submitter must provide supporting documentation that shows Submitter has communicated its final selection decisions and outcomes to all DBEs and Small and/or Minority Businesses, including those not chosen to participate in this Contract.

C. Form EO3 – 100 DBE Utilization Commitment

Within five (5) day after the bid submittal, the Submitter must complete, sign, date and submit EO3 – 100 DBE Utilization Commitment, which commits the Submitter to the City as follows:

1. The firms indicated as "Selected" on Form EO2 - 100- Small Business Outreach Efforts and Bidders List, will participate in this Contract;
2. The Submitter will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the DBE contract clause;



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3. Submitter understands and agrees that any and all changes or substitutions to Subcontracts with DBEs and Small Businesses must be authorized by the EO Compliance Specialist prior to implementation; and
4. The following statement is true and correct: The proposed total participation of DBE, SBE, SBC firms on this contract will be designated on Form EO3 by the Submitter.

D. Open- Ended Participation Plan

Within five (5) business days after bid submittal, the Submitter must complete a DBE Open-Ended Participation Plan (OEPP). The OEPP must contain strategies to foster small business participation and information concerning the small businesses.

Every year on the anniversary date of the executed contract and/or at the start of every GMP (as applicable) the Contractor must provide the City with an updated OEPP detailing the Contractor's continued commitment to utilizing DBEs. The OEPP must contain updated strategies to foster small business participation and information concerning the participation of small businesses, including any changes to the initial EO2-100 and EO3-100.

E. Failure to Submit Forms EO1-100, EO2-100 and EO3-100, and the OEPP

Submittals that do not have these forms completed and signed will be deemed nonresponsive. A nonresponsive submittal will be disqualified from further evaluation.

F. Failure to Meet Outreach Requirements

The EOD Compliance Specialist will determine, in writing, whether the Submitter has satisfied all outreach requirements. If the EO Compliance Specialist determines the Submitter failed to satisfy the outreach requirements, then the EO Compliance Specialist may determine the submittal is nonresponsive. A determination of non-responsiveness *disqualifies* Submitters from further consideration for the Contract award. The City must send written notice to Submitter stating the basis for the EO Compliance Specialist's decision.

G. Administrative Reconsideration

In the event the EOD determines the Submitter failed to submit required documentation to meet the Small Business Outreach Requirements, an opportunity for reconsideration of this determination will be provided. This opportunity for reconsideration will seek to obtain clarification of documentation submitted with the bid.

Within seven (7) business days of being informed by the EOD that the Submitter is not responsive based on insufficient demonstration and/or documentation of Outreach Efforts, the Submitter may submit its written request to:

**City of Phoenix Auditor or Designee
City Auditor Department
140 N. Third Avenue
Phoenix, AZ 85003
Phone: (602) 262-6641
Fax: (602) 534-1533
TTY: 7-1-1 Friendly**

If the request for Administrative Reconsideration is not submitted within the allotted seven (7) business days, the non-responsive Submitter will not utilize the DBE Program submittal requirements as the basis for its future protest.

As part of this reconsideration process, the Submitter will have an opportunity to provide written clarification or argument concerning the issue of whether it met the Outreach Requirements or provided sufficient supporting and completed documentation of good faith efforts at the time of bid. The City Auditor or Designee will review solely the written clarification or argument, along with any document(s) originally submitted at the time of bid. No new or revised forms or supporting documentation will be reviewed for consideration.



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The City Auditor or designee will send the Submitter a written decision on the reconsideration, explaining the basis for finding that the Submitter did or did not meet the DBE Outreach Requirements. The result of the reconsideration process is not administratively appealable and cannot be escalated or included in any other protest not related to the DBE Program.

SECTION IV. POST-AWARD GENERAL REQUIREMENTS

The City has implemented outreach efforts requirements for this Contract. Specifically, the Contractor must:

- (1) identify small-business-participation opportunities, including Commercially Useful Functions (CUF);
- (2) actively solicit proposals from small and minority businesses;
- (3) evaluate small-business proposals; and
- (4) communicate selection decisions to small and minority businesses, including each rejection of a small-business proposal.

A. Subcontracting Commitment

The Small Business Subcontractors identified and accepted in the Small Business Outreach documents must have an executed contract in place prior to the performance of work. Executed contracts and all lower tier contracts must contain the required Civil Rights Assurances and Prompt Payment provisions.

The Contractor will submit to the EOD, through the City of Phoenix Certification and Compliance System, all executed contracts, purchase orders, subleases, agreements, and other arrangements formalizing agreements between Contractor and all Subcontractors, upon execution throughout the life of this contract.

The Contractor will not terminate any approved or DBE Small Business Subcontracts, nor will the Contractor alter the scope of work or reduce the Subcontract amount, without the EO Compliance Specialist's prior written approval. Any request to alter a DBE Subcontract must be submitted in writing to the EO Compliance Specialist before any change is made. If the Contractor fails to do so, the City may declare the Contractor in breach of contract.

B. Counting Small Business Participation

The Contractor may only count expenditures for certified DBE Subcontractors that perform a Commercially Useful Function (CUF), in the NAICS Codes in which it is certified or verified in, on the contract. A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for material itself. A DBE Subcontractor must perform or exercise responsibility for at least 30% of the total cost of its Subcontract value with its own workforce and equipment before its participation can be counted. DBEs must manage and control the performance of its contract and not be dependent on the prime's personnel and equipment to complete its work. Scope(s) of work not covered in the DBE firm's certification description **will not** be counted as DBE participation.

C. Commercially Useful Function (CUF) & Counting of DBE Trucking/Hauling:

49 CFR Part 26.55 Section (d) defines CUF and the counting of DBE participation Trucking/Hauling as follows:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose achieving DBE participation.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.



City of Phoenix

Disadvantaged Business Enterprise Program

- The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the value of these hauling services.

D. Counting DBE Certified Manufacturers, Suppliers, and Brokers:

49 CFR Part 26.55 Section (e) permits the counting of expenditures with DBEs for materials or supplies toward DBE participation as provided in the following:

- If the materials or supplies are obtained from a **DBE manufacturer**, count 100 % of the cost of the materials or supplies toward DBE participation.
- If the materials or supplies are purchased from a **DBE regular dealer (supplier)**, count 60% of the cost of the materials or supplies, including transportation, toward DBE participation.
- If materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, **(packager, broker, or manufacturer's rep.)** count 40% of materials or supplies (including transportation costs toward DBE participation.

If an approved DBE allows its DBE certification to expire, or the certification is revoked during the course of the Subcontract, the City will consider all work performed by the DBE under the original contract to count as DBE participation. No increased scope of work negotiated after expiration or revocation of the DBE's certification may be counted. Any work performed under a Contract extension granted by the City may not be counted as DBE participation. If a DBE's certification is lost while under contract with a Contractor, solely because the DBE exceeded the size standard during the performance of the contract, the DBE's performance may count toward the contract goal. If a DBE is decertified because it was acquired by or merged with a non-DBE, the continued performance of the now non-DBE may not count toward the contract goal. If this negatively impacts the Contractor's ability to meet the contract goal, in good faith, the Contractor is strongly encouraged to Subcontract with other DBEs.

E. DBE Substitutions

If the DBE was approved by the EOD, the EOD Compliance Specialist will consider whether or not the Contractor has exercised diligent and good-faith efforts to find another DBE replacement. The Contractor will notify the EO Compliance Specialist in writing of the necessity to substitute a DBE and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a DBE may not occur before the EO Compliance Specialist's written approval has been obtained.

F. Relief from Proposed DBE Utilization

After Contract award, the EOD will not grant relief from the proposed DBE utilization except in extraordinary circumstances. The Contractor's request to modify Small Business participation must be in writing to the EO Compliance Specialist.

Contractor's written request must set forth the amount of relief sought, evidence that demonstrates why relief is necessary, and any additional relevant information that the EO Compliance Specialist should consider. The Contractor must include with the request all documentation of Contractor's attempts to Subcontract with the DBE and any other action taken to locate and solicit a replacement Small Business.

G. Prompt Payment of Subcontractors

The prompt payment clause must be included in every contract and Subcontract.

The Contractor must promptly pay its Subcontractors, subconsultants, subconsultants or suppliers. **For projects governed by 49 CFR, Part 26 payment must be made within five (5) calendar days** after the Contractor has received payment for scope of work completed by the Subcontractor. If the Contractor diverts any payment received for a DBE's work performed on the Contract or fails to reasonably account for the application or use of the payment, the City may declare the Contractor in breach of contract.

Under the prompt-payment provisions of 49 CFR Part 26, the Contractor must ensure prompt and full payment of retentions to Subcontractors and suppliers. The Contractor must pay each Subcontractor's and supplier's retention no later than 30 days the satisfactorily completion of and scope of work, and after the City has paid



City of Phoenix

Disadvantaged Business Enterprise Program

for the scope(s) of work. If the City reduces the Contractor's retention, the Contractor must correspondingly reduce the retentions of Subcontractors and suppliers that have performed satisfactory work.

Nothing in this section prevents the Contractor from enforcing its Subcontract with a Subcontractor or supplier for defective work, late performance, and other claims arising under the Subcontract.

SECTION V. RECORDS & REPORTING REQUIREMENTS

A. Records

During performance of the Contract, the Contractor must keep all records necessary to document DBE participation. The Contractor must provide the records to the EOD within 72 hours of the EOD's request and at final completion of the Contract. The EOD will prescribe the form, manner, and content of reports. The required records include:

1. All bidders' information to include firm's name; address; DBE or other status; race and gender information for the firm's majority owner; NAICS code(s) applicable to each scope of work the firm sought to perform in its bid; age of the firm; and the annual gross receipt of the firm.
2. A complete listing of all Subcontractors and suppliers on the project.
3. Each Subcontractor's and supplier's scope performed.
4. The dollar value of all Subcontracting work, services, and procurement.
5. Copies of all executed Subcontracts, purchase orders, invoices, and Subcontractor receipts.
6. Total operating expenses and total costs of goods sales.
7. Copies of all payment documentation and Change Orders.

B. Reports

Contractor is required to file the following payment reports in the City of Phoenix Certification and Compliance System:

1. **Progress Payments:** By the 15th of ***each*** month, the Contractor must enter payment information and related supporting documentation into the City of Phoenix Certification and Compliance System.
 - a. The total of all payments received from the City during the previous month.
 - b. All payments made to Subcontractors during the previous month.
 - i. Supporting documentation to collaborate the payment amounts, which include but not limited to invoices and pay receipts.

The Contractor is responsible for ensuring that Subcontractors confirm receipt of payment in the City of Phoenix Certification and Compliance System by the end of each month.

2. **Final Payment:**

Before the City processes the Contractor's final payment and/or outstanding retention held against the Contractor, the Contractor must notate in the City of Phoenix Certification and Compliance System:

- a. The payment to each Subcontractor is considered "Final".
- b. Every Subcontractor must confirm they have received full and "Final" payment in the City of Phoenix Certification and Compliance System.

For federal reporting purposes, the Certification of Final Payment must be completed and signed by the Contractor and DBE firm(s). The Contractor is responsible for ensuring that Subcontractors confirm the receipt of full and "Final" payment in the Phoenix Contract Compliance System.



City of Phoenix

Disadvantaged Business Enterprise (DBE) Program

**FORM EO1 - 100 - STATEMENT OF OUTREACH COMMITMENT
(Due with initial submittal)**

Project Number: AV14000029 - FAA	Project Title: Phoenix Sky Harbor International Airport Terminal 3 Recirculation Roadway Improvement Design-Bid-Build
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On behalf of the Submitter, I certify under penalty of perjury that the following information is true and correct.

If selected as the Successful Submitter, the Successful Submitter will:

- 1) Fulfill all required small business outreach requirements and shall submit all required outreach efforts documentation for contracting opportunities within 30 days or a date determined by the City following contract award recommendation;
- 2) Conduct all required small business outreach and will submit all supporting documentation; and
- 3) Comply with the Race - and Gender-Neutral post-award requirements stated in the DBE Contract Clause.

Company Name: _____

Company Mailing Address: _____

Representative Name: _____

Title: _____

Email Address: _____

Phone Number: _____

Signature: _____

Date: _____

**Disadvantaged Business Enterprise (DBE) Program
Form EO2 - 200 - SMALL BUSINESS OUTREACH EFFORTS AND BIDDERS LIST**

Name of Company (Submitter):	Contract # / Project #: AV14000029 - FAA	Contract Name: Phoenix Sky Harbor International Airport Terminal 3 Recirculation Roadway Improvement Design-Bid-Build
Contact Person:	Phone #:	Email:

Successful submitter must conduct outreach efforts and submit supporting documentation of those efforts, as described in the 49 CFR Part 26, in accordance with the detailed instructions in the Contract Clauses. Successful submitter should make copies of this form as needed. **Sections A, B, and C must be completed for all businesses which includes ALL BIDDERS.**

Sections D, E, and F are required to be completed for **all DBE and SBE firms**. Supporting documentation is required for columns D and F.

(A) Small Business Name and Contact Information	(B) Business Status	(C) Scope(s) of Work Solicited	(D) Solicitation Method	(E) Selection Decision	(F) Communication Final Selection Outcome												
<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td colspan="2">Name:</td></tr> <tr><td colspan="2">Address:</td></tr> <tr> <td style="width:70%;">City, State, Zip:</td> <td style="width:30%;">Number of Employees:</td> </tr> <tr> <td>Phone Number:</td> <td>Email or Fax:</td> </tr> <tr> <td>Number of Years in Business:</td> <td>Range of Annual Gross Receipts: < \$1 million</td> </tr> <tr> <td>Gender of Majority Owner:</td> <td>Race of Majority Owner:</td> </tr> </table>	Name:		Address:		City, State, Zip:	Number of Employees:	Phone Number:	Email or Fax:	Number of Years in Business:	Range of Annual Gross Receipts: < \$1 million	Gender of Majority Owner:	Race of Majority Owner:	<input type="checkbox"/> DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified	NAICS Codes and Scope(s) of Work:	<input type="checkbox"/> E-mail Blast <input type="checkbox"/> Phone Call <input type="checkbox"/> In-Person <input type="checkbox"/> Newspaper <input type="checkbox"/> Website <input type="checkbox"/> Trade Listing <input type="checkbox"/> Outreach Event <input type="checkbox"/> Other	<input type="radio"/> Firm was selected <input type="radio"/> Firm was not selected Provide explanation of why firm NOT selected	Date Firm was Notified: <hr/> Method used to Communicate Selection: <input type="checkbox"/> Email <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Letter <input type="checkbox"/> In person
Name:																	
Address:																	
City, State, Zip:	Number of Employees:																
Phone Number:	Email or Fax:																
Number of Years in Business:	Range of Annual Gross Receipts: < \$1 million																
Gender of Majority Owner:	Race of Majority Owner:																
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Name:																	
Address:																	
City, State, Zip:	Number of Employees:																
Phone Number:	Email or Fax:																
Number of Years in Business:	Range of Annual Gross Receipts: < \$1 million																
Gender of Majority Owner:	Race of Majority Owner:																

***Firms must be notified of final selection outcome prior to submittal of columns E & F of this form.**



City of Phoenix

Disadvantaged Business Enterprise (DBE) Program

FORM EO3 - 100 - SMALL BUSINESS UTILIZATION COMMITMENT

Project Number: AV14000029 - FAA	Project Title: Phoenix Sky Harbor International Airport Terminal 3 Recirculation Roadway Improvement Design-Bid-Build
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On behalf of the Successful Submitter, I certify under the penalty of perjury that the information submitted herein is true and correct:

1. The firms indicated as "Selected" in **Form EO2 - 100 - Small Business Outreach Efforts**, will participate in this contract;
2. The Successful Submitter will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the DBE contract clause;
3. Successful Submitter understands and agrees that any and all changes or substitutions to subcontracts with DBE's and Small Businesses **must** be authorized by the Phoenix DBE Compliance Specialist prior to implementation; and
4. The following statement is true and correct:

The proposed total participation of firms on this contract will be:

DBE: _____ %

SBE: _____ %

SBC: _____ %

Company Name: _____

Company Mailing Address: _____

Representative Name: _____

Title: _____

Email Address: _____

Phone Number: _____

Signature: _____ Date: _____

SUPPLEMENTARY CONDITIONS

1. STANDARD SPECIFICATIONS AND DETAILS

Except as otherwise required in these specifications, bid preparation and construction of this project will be in accordance with all applicable Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Uniform Standard Details, latest revision, and the City of Phoenix Supplements, latest revision to the MAG Uniform Standard Specifications and Details.

2. PRECEDENCE OF CONTRACT DOCUMENTS

In case of a discrepancy or conflict, the precedence of contract documents is as follows:

1. Change Orders or Supplemental Agreements
2. Addenda
3. Contract Specifications/Special Provisions/Technical Provisions
4. The Plans
5. COP Supplement to MAG Standard Specifications and Details, latest revision
6. MAG Standard Specifications and Details, latest revision

The precedence of any Addenda falls within the category of which it represents.

3. PARTIAL PAYMENTS

The contracting agency will make a partial payment to the Contractor on the basis of an approved estimate prepared by the Engineer or the Contractor for work completed and accepted through the preceding month. The notice to proceed date, which is designated for the specific project involved, will be used as the closing date of each partial pay period. Payment will be made no later than fourteen (14) days after the work is certified and approved. City will review payment request and make recommendation of approval or denial within 7 calendar days. The contractor will attach to each monthly pay application the following documents:

- A. A completed and signed City of Phoenix Equal Opportunity Department DBE Utilization form.
- B. All current certified pay roll reports and statement of compliance (to be completed through the date of the pay application).
- C. Current record Drawings complete and current at the time of the monthly pay application. The contractor will review the most current Record Drawings with the Engineer at the time the payment application is submitted. If the Engineer determines that the Record Drawings are not complete, the Contractor will update the Record Drawings as directed, prior to re-submitting the monthly payment application.
- D. Certified quantity calculation to justify all pay quantities and amounts requested.
- E. A critical path method schedule monthly update report and compliance certificate.
- F. Failure to provide all of the completed documents as listed above will result in the Engineer returning the monthly pay application to the Contractor with no action.

4. MAG SUBSECTION 105.15(B) FINAL ACCEPTANCE

Delete this subsection and substitute the following:

B. Substantial Completion

The work may be judged substantially complete when all construction, including all applicable ADA requirements, has been completed with the possible exception of final inspection punch list work. The purpose of granting or acknowledging substantial completion is to stop Contract time. This is particularly important to the Contractor if Contract time is exhausted or nearly so and/or punch list work is anticipated to extend beyond the allotted time. Granting of substantial

completion will eliminate the possibility of incurring liquidated damages or additional liquidated damages beyond the substantial completion date, whichever case may apply.

In the event that the Engineer grants substantial completion, the Contractor will have thirty (30) days thereafter to complete punch list work, unless additional time is granted—in writing—by the Engineer. In no case will a Contractor be granted more than thirty (30) days to complete punch list work, unless there are extenuating circumstances such as delay in shipment of a specialized piece of equipment, labor strike, or other circumstances beyond the Contractor's control which would necessitate a further time extension.

C. Penalty for Failure to Complete Punch List Work Within Specified Time

In the event the Contractor fails to complete the punch list work within thirty (30) days following the Contract completion date, or in the case of specialized situations within the additional time allotted by the Engineer, the Contractor may be declared in default, and the Engineer may order the work completed by others.

In the event of default, as described herein, the Engineer will withhold from the Contractor's final payment, an amount equal to at least twice the estimated cost of the remaining work. In addition, the Engineer will withhold the retention deducted from Contract progress payments until all punch list work has been satisfactorily completed, whereupon twice the amount of the actual cost of completing the work will be deducted from the Contractor's final payment and the remaining funds, if any, including the Contract retention, will be released in accordance with the conditions set forth in Contract retention.

D. Contract Retention

This project will not be considered complete until all work has been completed, including punch list work. Under no circumstances will a Contractor receive any portion of the legally retained progress payments until the City has granted a final acceptance and/or acknowledged substantial completion. The following conditions will apply to each case:

1. Substantial Completion: The Engineer may reduce outstanding Contract retention to not less than one (1) percent of the total Contract amount, upon granting substantial completion, if the value of the punch list work is estimated to be less than one (1) percent of the total Contract.
2. Project Acceptance: Project acceptance implies that all punch list work is done and the improvements have been accepted by the City. Under these conditions, the retention will be fully released to the Contractor subject only to the signing of the standard claims affidavit and hold harmless clause required for all Contracts.
3. Final Release of Contract Retention and/or Release of More Than Ninety (90 Percent of the Contract Funds): Prior to final payment and release of monies retained and/or in the case of substantial completion where the Contractor has requested a reduction in Contract retention, the Contractor will be required to sign a claims affidavit agreeing to hold the City harmless from any and all claims arising out of the Contract.

5. DEFENSE AND INDEMNIFICATION

To the maximum extent allowed by law, including Title 34 A.R.S., Contractor ("Indemnitor") agrees to defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents and employees (and any jurisdiction or agency issuing permits for any work included in the project, and its officers, agents and employees) ("Indemnitee") from any and all claims, actions, liabilities, damages, losses or expenses, (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever ("Losses") caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees, or subcontractors (Indemnitor's Agents") arising out of or

in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered under any state's workers' compensation law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation, or court decree. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee's own negligent or willful acts or omissions. Indemnitor is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the City's award of this Contract, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work performed by Indemnitor or Indemnitor's Agents for the City of Phoenix under this Contract. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

6. CONTRACTOR'S INSURANCE

Contractor and Subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and Subcontractors. Contractor and Subcontractors must maintain that insurance until all of their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees, or Subcontractors and Contractor may purchase additional insurance as they determine necessary.

SCOPE AND LIMITS OF INSURANCE - Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a "following form" basis, and (2) all terms under each line of coverage below are met.

Commercial General Liability – Occurrence Form

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations, and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor, related to this Contract.
- Coverage must include XCU coverage.
- There must be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.
- Contractor's policies must be endorsed to provide an extension of the completed operations coverage for a period of nine years.
- Policy must not contain any restrictions of coverage with regard to operations on or near airport premises.

Automobile Liability

Bodily injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

- The policy must be endorsed to include The City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, related to this contract.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.
- Policy must not contain any restrictions of coverage with regard to operations on or near airport premises.

Worker’s Compensation and Employers’ Liability

Workers’ Compensation Statutory

Employers’ Liability

Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- Policy must contain a waiver of subrogation against the City of Phoenix.
- This requirement does not apply when a contractor or Subcontractor is exempt under A.R.S. §23-902(E), **AND** when such contractor or Subcontractor executes the appropriate sole proprietor waiver form.

Builders’ Risk Insurance

Policy provided, if determined necessary by the City, must be in an amount equal to the Total Bid amount, plus additional coverage equal to Total Bid amount for all subsequent adjustments.

- The City of Phoenix, the Contractor and Subcontractors, must be named insureds on the policy.
- Special Causes of Loss coverage must be written on a replacement cost basis and must include coverage for soft costs, flood, and earth movement.
- Policy must be maintained until whichever of the following must first occur: (1) final payment has been made; or, (2) until no person or entity, other than the City of Phoenix, has an insurable interest in the property required to be covered.
- Policy must be endorsed such that the insurance must not be canceled or lapse because of any partial use or occupancy by the City.
- Policy must provide coverage from the time any covered property becomes the responsibility of the Contractor, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.
- Policy must contain a waiver of subrogation against the City of Phoenix.

- Contractor is responsible for the payment of all policy deductibles.

Professional Liability (when required by Job Order Agreement)

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

- The policy must cover liability arising from the failure to meet the professional standards required or expected in the delivery of those services as defined in the Scope of Services of this Contract.
- Contractor warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two years beginning at the time work under this Contract is completed.
- Coverage must extend to job order types of contracts.

C. Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within five business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed or hand delivered to City of Phoenix Design and Construction Procurement 200 W. Washington Street, 5th Floor, Phoenix, AZ 85003-1611.

D. Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. Verification of Coverage

Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to Design and Construction Procurement via email at str.title34.procure@phoenix.gov. The City project number, contract number and project description must be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**

F. Subcontractors

Contractor’s certificates must include all Subcontractors as additional insureds under its policies **OR** Contractor must be responsible for ensuring and verifying that all Subcontractors have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Contractor that its Subcontractors have insurance coverage. All Subcontractors providing services included under this Contract’s Scope of

Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Contractor may, on behalf of its Subcontractors, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Contractor assumes liability for all Subcontractors with respect to this Contract.

G. Approval

Any modification or variation from the insurance requirements in this Contract must be made by the Law Department, whose decision is final. Such action will not require a formal Contract amendment, but may be made by administrative action.

7. **PERFORMANCE AND LABOR MATERIAL BOND**

Prior to the execution of the Contract, the successful bidder must provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the Contract. Each such bond will be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority will accompany the bonds. The Certificate will have been issued or updated within two years prior to the execution of the Contract. The bonds will be made payable and acceptable to the City of Phoenix. The bonds will be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds will have attached thereto a certified copy of Power of Attorney of the signing official. The Power of Attorney it will be for the total Contract amount. Personal or individual bonds are not acceptable. **Failure to comply with these provisions will be cause for rejection of the bidder's proposal.**

8. **BONDING COMPANIES**

Prior to execution of each individual Job Order Agreement, the Contractor must provide a performance bond and a payment bond, each in an amount equal to the full amount of the agreed upon cost for that Job Order.

Each such bond will be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority will accompany the bonds. The Certificate will have been issued or updated within two years prior to the execution of this Contract.

The bonds will be made payable and acceptable to the City of Phoenix.

The bonds will be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in Arizona, as by law required, and the bonds will have attached thereto a certified copy of Power of Attorney of the signing official.

If one Power of Attorney is submitted, it will be for twice the total amount required.

If two Powers of Attorney are submitted, each will be for the total amount required. Personal or individual bonds are not acceptable.

Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the Contractor will promptly furnish a copy of the bonds or will permit a copy to be made.

All bonds submitted for this Project will be provided by a company which has been rated "A- or better for the prior four quarters" by the A.M. Best Company.

9. **CONFIDENTIALITY OF PLANS & SPECIFICATIONS**

Any plans generated for this project must include the following statement in the Title Block on every page: "Per City of Phoenix City Code Chapter 2, Section 2-28, these plans are for official use only and may not be shared with others except as required to fulfill the obligations of Contractor's contract with the City of Phoenix."

10. DATA CONFIDENTIALITY

As used in the Contract, "data" means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to the Contractor or its subcontractors in the performance of this Contract.

The parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Contractor or its subcontractors in connection with the Contractor's or its subcontractor's performance of this Contract is confidential and proprietary information belonging to the City.

Except as specifically provided in this Contract, the Contractor or its subcontractors will not divulge data to any third party without prior written consent of the City. The Contractor or its subcontractors will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided the Contractor or its subcontractors have first given the required notice to the City:

- A. Data which was known to the Contractor or its subcontractors prior to its performance under this Contract unless such data was acquired in connection with work performed for the City;
- B. Data which was acquired by the Contractor or its subcontractors in its performance under this Contract and which was disclosed to the Contractor or its subcontractors by a third party, who to the best of the Contractor's or its subcontractor's knowledge and belief, had the legal right to make such disclosure and the Contractor or its subcontractors are not otherwise required to hold such data in confidence; or
- C. Data which is required to be disclosed by virtue of law, regulation, or court order, to which the Contractor or its subcontractors are subject.

In the event the Contractor or its subcontractors are required or requested to disclose data to a third party, or any other information to which the Contractor or its subcontractors became privy as a result of any other contract with the City, the Contractor will first notify the City as set forth in this section of the request or demand for the data. The Contractor or its subcontractors will give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

The Contractor, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, the Contractor or its subcontractors will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.

The Contractor or its subcontractors assume all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the Contractor, its employees, agents or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court. Contractor agrees that the requirements of this Section will be incorporated into all subcontracts entered into by Contractor. A violation of this Section may result in immediate termination of this Contract without notice.

Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times. At a minimum, Contractor must encrypt and/or password protects

electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

In the event that data collected or obtained by Contractor or its subcontractors in connection with this Contract is believed to have been compromised, Contractor or its subcontractors will immediately notify the Project Manager and City Engineer. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

Contractor agrees that the requirements of this Section will be incorporated into all subcontracts entered into by Contractor. It is further agreed that a violation of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.

The obligations of Contractor or its subcontractors under this Section will survive the termination of this Contract.

11. MATERIALS CONTAINING ASBESTOS

Materials containing asbestos and/or lead in any form are unacceptable to incorporate into the project unless formally accepted in writing by the City of Phoenix. This written approval will take place prior to the material being incorporated into the project and/or brought to the site.

Repair kits or touch-up materials, materials that include asbestos and /or lead introduced into the product at the factory or applied at the assembly plant are all unacceptable. Any and all field-applied products that are comprised of asbestos and/or lead containing materials are also unacceptable.

If asbestos and/or lead are installed without written approval by City of Phoenix, the contractor will remove these materials at his expense and dispose of these materials in accordance with all state and federal laws and pay for the supervision and reporting costs in addition to the cost to properly remove them. The Contractor is required to submit MSDS documents for newly installed materials.

During construction, if the Contractor discovered or suspected any materials containing asbestos in the field, the Contractor will inform the City of Phoenix immediately, who will be in charge of removing and disposing off all asbestos containing materials.

12. DISPOSAL OF SURPLUS MATERIAL WHICH DOES NOT CONTAIN ASBESTOS

All surplus and/or waste material may be disposed of at the Contractor's discretion subject to the following conditions:

- A. If the City landfills are used, the Contractor will pay the normal dumping fee.
- B. If private property within the City limits is used, the Contractor will obtain written permission from the property Owner and deliver a copy of this Agreement to the Engineer prior to any hauling or dumping. All disposal and grading will be in strict conformance with the City of Phoenix Grading and Drainage Ordinance. The Contractor will obtain and pay for the necessary permit(s).
- C. If the surplus material is disposed of outside the City limits, the Contractor will comply with all applicable laws/ordinances of the agency concerned and be responsible for all cost incurred.

No measurement or direct payment will be made for the hauling and disposal of surplus and/or waste material, the cost will be incidental to the cost of the project.

13. HAUL PERMIT

On any project, when the quantity of fill or excavation to be hauled exceeds 10,000 C.Y. or when the duration of the haul is for more than twenty (20) working days, the Contractor will:

- A. Obtain a written (no fee) haul permit from the Planning and Development Department.
- B. Obtain approval of the proposed haul route, number of trucks, etc., by the Street Transportation Department.

NOTE: Obtaining the haul permit and the approval by the Street Transportation Department does not release the Contractor from strict compliance with MAG Subsection 108.5, Limitation of Operations.

14. DEFINITIONS – MAJOR ITEMS

Section 101, page 8 of MAG Specifications – the definition of major item is changed to read:
Major Item: A major item is any bid item for work having an original dollar value equal to or greater than the amount shown below.

<u>Contract Amount</u>	Major Item is defined as any item equal to or greater than the following
Up to \$1 million	\$15,000 or 3%, whichever is greater
\$1 million to \$3 million	3% of the original Contract amount to a maximum of \$75,000.00
\$3 million to \$5 million	2.5% of the original Contract amount to a maximum of \$90,000.00
Over \$5 million	1.5% of the original Contract amount to a maximum of \$125,000.00

Contingency Items: Contingency items, which fall under the definition of a major item, are subject to negotiation if decreased by more than twenty (20) percent.

Contingency items will not increase more than twenty (20) percent without being subject to re-negotiation, regardless of the percentage of that item relative to the total Contract amount.

15. UNDERGROUND FACILITIES

The Contractor will make whatever investigation it deems necessary to verify the location of underground utility facilities. If such facilities are not in the location shown in the drawings, then (regardless of whether this is discovered prior to or during construction) the Contractor’s remedies, if any, pursuant to Art. 6.3, Chapter 2, Title 40, A.R.S. (A.R.S. 40-360.21 through 40-360.32, “Underground Facilities”), will be the Contractor’s sole remedy for extra work, delays, and disruption of the job, or any other claim based on the location of utility facilities. Locations of utility facilities shown on drawings furnished by the City are to be regarded as preliminary information only, subject to further investigation by the Contractor. The City does not warrant the accuracy of these locations, and the Contractor, by entering into this Contract, expressly waives and disclaims any claim or action against the City under any theory for damage resulting from location of utility facilities.

The Contractor will be responsible for obtaining all Blue Stake utility location information, and for performing all requirements as prescribed in A.R.S. 40-360.21 through .29, for all underground facilities, including those that have been installed on the current project, until the project is accepted by the City.

At least two working days prior to commencing any excavation, the Contractor will call the Blue Stake Center, between the hours of 7:00 a.m. and 4:30 p.m., Monday through Friday, for information relative to the location of buried utilities. The number to be called is as follows: Maricopa County, (602) 263-1100.

16. AUDIT AND RECORDS

Records of the Contractor's direct personnel payroll, bond expenses, and reimbursable expenses pertaining to this Project, and records of accounts between the City and Contractor will be kept on the basis of generally accepted accounting principles and must be made available to the City and its auditors for up to five years following Final Acceptance of the Project.

The City, its authorized representative, and/or any federal agency, reserves the right to audit the Contractor's records to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate the Contract Documents and any change orders.

The City reserves the right to decrease Contract price and/or payments made on this Contract and/or request reimbursement from the Contractor following final contract payment on this Contract if, upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data.

The Contractor will include a similar provision in all of its contracts with subcontractors and suppliers providing services or supplying materials under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the subcontractors' and suppliers' records to verify the accuracy of cost and pricing data.

The City reserves the right to decrease Contract price and/or payments made on this Contract and/or request reimbursement from the Contractor following final contract payment on this Contract if the above provision is not included in subcontractor and Supplier contracts, and one or more subcontractors or suppliers refuse to allow the City to audit their records to verify the accuracy and appropriateness of cost and pricing data.

If, following an audit of this Agreement, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Contractor will be liable for reimbursement of the reasonable, actual cost of the audit.

17. CHANGE ORDER REQUEST MARKUPS AND WORKSHEET

The General Contractor will conform to the following markups for change order work self-performed or performed by a subcontractor. The General Contractor will also utilize the Change Order Request Summary Worksheet (see page S.C. – 16) to summarize change order costs. The General Contractor will still submit all required backup and supplemental information, calculations, invoices, etc., required to justify and support General Contractor and subcontractor costs.

A. General Contractor Self-Performed Work and Subcontractor Work Markups

Overhead and Profit – The actual or approved costs for equipment, material, and labor will be marked up by 12%.

B. General Contractor Markups of Subcontractor Work

The General Contractor will be allowed to markup actual or approved subcontractor costs for equipment, material, and labor (excluding subcontractor overhead and profit) by 7.5%.

C. Bond

The General Contractor will be allowed to markup the cost for change order work for payment and performance bonds utilizing the same percentage used on the initial Contract and will

submit verification of this percentage, from the bonding company, with the initial change order request.

D. Insurance

The General Contractor will be allowed to markup the cost for change order work plus Bond costs for property damage/public liability insurance, utilizing the same percentage used on the initial contract. Verification, from insurance carriers, of this percentage will be submitted with the initial change order request.

E. Sales Tax

The General Contractor will be allowed to markup the cost for change order work plus Bond and Insurance costs by the current, approved sales tax multiplier.

18. CONTROL OF WORK

Add the following to Uniform Standard Specifications for Public Works Construction (MAG), Section 105.1 AUTHORIZATION OF THE ENGINEER:

The City may, at its discretion and without cause, order the Contractor in writing to stop and suspend the Work. Immediately after receiving such notice, the Contractor will discontinue advancing the work specified under this Agreement. Such suspension will not exceed one hundred and eighty (180) consecutive Days during the duration of the Project.

The Contractor may seek an adjustment of the Contract Price and Time, if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of work by City.

19. COMMENCEMENT, PROSECUTION AND PROGRESS

Add the following to Uniform Standard Specifications for Public Works Construction (MAG), Section 108.10 FORFEITURE AND DEFAULT OF CONTRACT:

City's Right to Perform and Terminate for Cause:

If the City provides the Contractor with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the Contractor fails to comply in a time frame specified, the City may have work accomplished by other sources at the Contractor's expense.

If Contractor persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Sub-consultants and/or Subcontractors, (v) prosecute the Contract Services with promptness and diligence to ensure that the Contract Services are completed by the Contract Time, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, will have the rights set forth below.

Upon the occurrence of an event set forth above, City may provide written notice to Contractor that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) Days of Contractor's receipt of such notice.

If Contractor fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to Contractor of its intent to terminate within an additional seven (7) Day period.

If Contractor, within such second seven (7) Day period, fails to cure, or reasonably commence to cure, such problem, then City may declare the Agreement terminated for default by providing written notice to Contractor of such declaration.

Upon declaring the Agreement terminated pursuant to the above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Contractor hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

In the event of such termination, Contractor will not be entitled to receive any further payments under the Contract Documents until the Work will be finally completed in accordance with the Contract Documents. At such time, the Contractor will only be entitled to be paid for Work performed and accepted by the City prior to its default.

If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Contractor will be obligated to pay the difference to City. Such costs and expense will include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the re-procurement and defense of claims arising from Contractor's default.

20. DUST CONTROL & PREVENTION

To facilitate and encourage strict compliance with the Maricopa County Air Pollution Control Regulations pertaining to fugitive dust control, Contractor will submit the following documentation to the Project Manager at the preconstruction meeting prior to conducting any earth moving or dust generating activities under the Contract.

- a. Copy of a valid Maricopa County Earth Moving [Dust Control] Permit applicable to the work or services under the Contract.
- b. Copy of the Dust Control Plan applicable to the work or services under the Contract.
- c. Documentation that all of Contractor's on-site project managers have received the Comprehensive or Basic dust control training as required by Maricopa County Rule 310 based on project disturbed acres

For construction sites where 5-acres or more are disturbed, Contractor will designate and identify to the City an individual who has completed the dust control training set forth in Section 2 above as the site Dust Control Coordinator. The Dust Control Coordinator will be present on-site all times that earth moving or dust generating activities are occurring and until all ground surfaces at the site have been stabilized.

For construction sites less than 1-acre, the Contractor will designate an individual who has completed Basic Training to be on site at all times that earth moving or dust generating activities are occurring.

Contractor will notify the City of Phoenix, Aviation Department Project Manager within twenty-four (24) hours of any inspection, Notice of Violation, or other contact by the Maricopa County Air Quality Department with it or any of its subcontractors regarding the work or services under the Contract. A copy of any written communications, notices or citations issued to Contractor or any of its subcontractors regarding the work or services under the Contract will likewise be transmitted to the Project Manager within twenty-four (24) hours.

The Contractor will prevent any dust nuisance due to construction operations in accordance with MAG Specifications, Section 104.1.3, Cleanup and Dust Control. The Contractor will use a power pick-up broom as part of the dust control effort. No separate measurement or payment will be made for cleanup or dust control, or for providing a power pick-up broom on the job.

The Contractor may be instructed by the Engineer to provide additional pavement cleaning (in parking lots, or other locations) above and beyond the normal expected cleanup and dust control required by MAG Section 104.1.3. If requested by the Engineer, the Contractor will clean the requested areas with a power pick-up broom.

Use of the power pick-up broom in the special requested areas only, will be measured and paid for on an hourly basis under the bid item, 'POWER BROOM'. The number of hours listed in the bid proposal is only an estimate. Actual hours requested for this project may vary.

Contractor agrees to indemnify and reimburse the City for any fine, penalty, fee or monetary sanction imposed on the City by Maricopa County arising out of or caused by the performance of work or services under the Contract. Contractor will remit payment of the reimbursable sum to the City within thirty (30) days of being presented with a demand for payment from the City.

21. ARCHAEOLOGICAL MONITORING AND DISCOVERIES

Archaeological monitoring may be required within the limits of the project during construction. The Contractor must coordinate all ground disturbing work with the archaeologist(s) and provide a current work schedule to facilitate the archaeologist's investigation and monitoring of all ground disturbing work within the area(s) of interest. When archaeological materials are discovered, the Contractor must stop work immediately within a 10-meter zone of the discovery, secure the area, and immediately notify the on-site archaeologist(s) who must then contact the City Archaeology Office (602-495-0901) or the Street Transportation Environmental Section at 602-534-3747, who will coordinate with the City Archaeology Office. The Contractor must not recommence work in the area of discovery until directed in writing by the City Archaeology Office.

If suspected archaeological materials are discovered during construction without an archaeologist present, the Contractor must stop work immediately within a 10-meter zone of the discovery, secure the area, and immediately notify the City Archaeology Office (602-495-0901). The Contractor must not recommence work in the area of discovery until directed in writing by the City Archaeology Office.

In 1990, the Arizona legislature amended two state laws (Arizona Antiquities Act & State Historic Preservation Act) that protect human burials and associated artifacts on both private and state land. As specified in these laws and rephrased below:

1) A person shall not knowingly excavate in or upon any historic or prehistoric archaeological site, except when acting as a duly authorized agent of an institution or corporation organized for scientific, research or land use planning purposes. [Arizona Revised Statute §41-841(A) - Archaeological Discoveries] Any person, institution or corporation violating any provision of this article is guilty of a class 2 misdemeanor. [A.R.S. §41-846 - Violation]

2) A person who knowingly excavates in violation of A.R.S. §41-841 is guilty of a class 5 felony pursuant to Arizona Criminal Code- Title 13. A second or subsequent violation under this subsection is a class 3 felony. [A.R.S. §13-707 - Excavating Certain Sites].

A class 5 felony carries potential penalties of up to two years in prison. If a City of Phoenix (City) project may impact historic or pre-historic archaeological resources, the guidelines described above must be adhered to. Therefore, no subsurface disturbance activities related to this without having an archaeological consultant on-site prior to and during this project's ground disturbance activities.

The City of Phoenix Office of the City Engineer is requesting that the Project Archaeological Requirements Acknowledgment Form is completed for all City sponsored or managed projects involving ground subsurface disturbance activities in areas that may include archaeological resources, as determined by the City of Phoenix Archaeology Office (CAO). If archaeological monitoring is required on a project, a City Archaeological Monitoring Acknowledgment form will be provided for your review and signature. The guidelines and the provisions in the Terms and Conditions of the Archaeological Monitoring Form must be followed as prescribed on the form and referenced above in this section. Penalties for non-compliance are detailed on the Archaeological

Monitoring Form. Failure to comply with the requirements of this acknowledgment form and the City contract may constitute a breach of contract.

22. LABOR COMPLIANCE

Davis Bacon and Related Acts. The prevailing basic hourly wage rates and fringes benefit payments, as determined by the Secretary of Labor pursuant to the provisions of the Davis Bacon Act, will be the minimum wages paid to the described classes of laborers and mechanics employed, or working on the site, to perform the Contract.

A Labor Standards Conference must be held prior to the start of construction. The Contractor will schedule the conference by calling the Labor Compliance Office at (602) 261-8287. Minimum attendance will be a corporate officer, who is authorized to execute and sign documents for the firm, and the payroll representative(s) responsible for preparing, reviewing and certifying weekly payroll reports. This requirement applies to all prime, sub and lower-tiered contractors expected to perform work on the project.

Payrolls, including subcontractor's payrolls, must be submitted weekly no later than seven days after each pay period ending date. The Contractor will upon request, clarify discrepancies between hourly wages paid individual workers and the minimum hourly wages required by the applicable federal wage decision for the project. Failure to provide payrolls or clarification of discrepancies may affect the timely release of payments and cause the withholding payment to the Contractor in accordance with Title 29, CFR Part 5.

29 CFR Parts 3, 5 and Wage Decision included in Labor Compliance (pages C.F.R. – 1 to 50 and G.W.D. – 1 to 9).

23. COMPLIANCE WITH FEDERAL LAWS

Contractor will comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs on Contractor, a request for an amendment may be submitted. Contractor is also required to certify its compliance with specified laws and in some cases Contractor will pass along these requirements to its subcontractors. If any of Contractor's certifications is found to be false, the City may terminate this Contract or impose other remedies due to the false certification. If there is a conflict in interpretation between provisions in this Contract and stated Federal Provisions, the Federal Provisions will prevail.

SUPPLEMENTAL TERMS AND CONDITIONS TO ALL AIRPORT AGREEMENTS

1. Definitions

1.1 "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, and/or Phoenix Goodyear Airport, according to the context of the contract.

1.2 "Contract" means all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions, and other documents, however denominated, that grant or convey a right or privilege on an Airport and to which this Exhibit is attached.

1.3 "Contractor" means all lessees, sublessees, licensees, permittees, consultants, concessionaires and other persons, firms, or corporations exercising a right or privilege on an Airport pursuant to a Contract and includes Contractor's heirs, personal representatives, successors, and assigns.

1.4 "Premises" means the area of an Airport occupied or used by Contractor pursuant to a Contract.

2. Federal Aviation Administration (FAA) Grant Assurances

2.1 Title VI of the Civil Rights Act of 1964 – Compliance with Nondiscrimination Requirements – 49 U.S.C. § 47123 and FAA Order 1400.11

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

1. Compliance with Regulations. 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, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age or disability 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 Contractor of the Contractor's obligations under this Contract and 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 and 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 City of Phoenix 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 City of Phoenix or the Federal Aviation Administration, as appropriate, and will set forth what efforts it Contractor has made to obtain the information.

5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City of Phoenix will impose such Contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

(i) Withholding payments to the Contractor under the Contract until Contractor complies, and/or

(ii) Cancelling, terminating, or suspending this 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. Contractor will take action with respect to any subcontract or procurement as the City of Phoenix or the Federal Aviation Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the City of Phoenix to enter into any litigation to protect the interests of the City of Phoenix. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

2.2. Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

The following clauses will be included in deeds, licenses, leases, permits, or similar

instruments entered into by the City pursuant to the provisions of the Airport Improvement Program grant assurances:

A. Contractor for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Contract for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits or similar documents, in the event of a breach of any of the above Nondiscrimination covenants, the City of Phoenix will have the right to terminate this Contract and to enter, re-enter and repossess said lands and facilities thereon, and hold the same as if this Contract had never been made or issued.

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the City of Phoenix will have the right to enter or re-enter the lands and facilities thereon, and the above-described lands and facilities will there upon revert to and vest in and become the absolute property of the City of Phoenix and its assigns.

2.3 CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the City pursuant to the provisions of the Airport Improvement Program grant assurances.

A. The grantee, licensee, permittee or as appropriate, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or

under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the grantee, licensee, lessee, permittee, or similarly situated person will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

B. With respect to licenses, leases, permits, or other similar documents, in the event of breach of any of the above Non-discrimination covenants, the City will have the right to terminate the license, permit, or other similar documents, and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said license, permit, or other similar documents had never been made or issued.

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the City will there upon revert to and vest in and become the absolute property of the City and its assigns.

2.4. General Civil Rights Provisions (49 U.S.C. § 47123) Used for Contracts, Lease Agreements, and Transfer Agreements

A. General Civil Rights Provisions: In all its activities within the scope of its airport program, Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by title VI of the Civil Rights Act of 1964.

1. Specific Clause that Is Used for General Contract Agreements:

The above provision binds Contractor and subcontractors from the bid solicitation period through the completion of this Contract.

2. Specific Clause that Is Used for Lease Agreements or Transfer Agreements:

If Contractor transfers its obligation to another, the transferee is obligated in the same manner as Contractor.

The above provision obligates Contractor for the period during which the property is owned, used or possessed by Contract and the City of Phoenix remains obligated to the Federal Aviation Administration.

2.5 Economic Nondiscrimination – 49 U.S.C. § 47107

In any Contract under which a right or privilege on the Airport is granted to a Contractor to conduct or to engage in any aeronautical activity for furnishing services to the public, Contractor shall:

A. Furnish its services on a reasonable, and not unjustly discriminatory basis to all users of the Airport, and

B. Charge reasonable, and not unjustly discriminatory prices for each unit or services, provided that Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith without liability therefor or, at the election of the City of Phoenix or the United States shall have the right to judicially enforce said requirement.

2.6 Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 26

A. Contract Assurance (§ 26.13). To the extent that this Contract is covered by 49 C.F.R. Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation (DOT) regulations at 49 C.F.R. Part 26.

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, 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.

Contractor agrees to include the foregoing statement in any subsequent contract that it enters into and cause those businesses to similarly include the statement in further agreements.

B. Prompt Payment (§ 26.29). Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract not later

than seven (7) days from the receipt of each payment Contractor receives from City of Phoenix. Contractor agrees further to return retainage payments to each subcontractor within seven (7) 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 City of Phoenix. This clause applies to both DBE and non-DBE subcontractors.

2.7 Airport Concessions Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 23

Contract Assurance (§ 23.9). To the extent that this Contract is a concession agreement subject to the requirements of the U.S. Department of Transportation's regulations, 49 C.F.R. Part 23, the Concessionaire or Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 C.F.R. Part 23. The concessionaire or Contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. Part 23 that it enters into and cause those businesses to similarly include the statements in further agreements.

2.8 Miscellaneous

A. Contractor agrees that it will undertake an affirmative action plan in conformance with 14 C.F.R. Part 152, Subpart E (Nondiscrimination in Airport Aid Program), to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment, contracting, or leasing activities covered in 14 C.F.R. Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations as required by 14 C.F.R. Part 152, Subpart E.

B. City of Phoenix reserves the right to further develop, improve, repair, and alter the Airport and all roadways, parking areas, terminal facilities, landing areas, and taxiways, as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations, and additions.

C. The City of Phoenix reserves the right, but is not obligated to Contractor, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Contractor in this regard.

D. Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation, or maintenance of the Airport. If the FAA or its successors require modifications or changes in the Contract as a condition to obtaining funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications and changes as part of this Contract.

E. This Contract is subordinate to the reserved right of the City of Phoenix and its successors and assigns to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft through the airspace or in landing at, taking off from, or operating at an Airport.

F. Contractor agrees to comply with the notification and review requirements, as required by 14 C.F.R. Part 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace), if future construction of a structure is planned for the Premises or a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1 (Notice of Proposed Construction or Alteration) and provide documentation showing compliance with the federal requirements. After the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself and its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree on the Premises above the mean sea level elevation for (1) Phoenix Sky Harbor International Airport, 1,134 feet, (2) Phoenix Goodyear Airport, 968 feet, and (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and remove the offending structure or cut the offending tree at Contractor's expense.

G. Contractor, by accepting this Contract, covenants for itself and its successors and assigns, that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard to air navigation. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and abate the interference at Contractor's expense.

H. Contractor agrees that nothing in this Contract may be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) (No exclusive rights at certain facilities).

I. This Contract is subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation, and

taking-over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

J. If this Contract involves construction, Contractor shall carry out the project in accordance with FAA airport design, construction, and equipment standards and specifications current on the date of project approval.

K. Contractor is encouraged to use fuel and energy conservation practices.

3. Immigration Reform and Control Act of 1986 (IRCA)

Contractor agrees that IRCA (Public Law 99-603) applies to it. Contractor shall comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify its compliance.

4. Conflict of Interest

Contractor agrees that the City of Phoenix may cancel this Contract pursuant to Arizona Revised Statutes (A.R.S.) § 38-511 (Cancellation of political subdivision and state contracts).

5. Legal Worker Requirements

The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A) (Verification of employment eligibility; E-Verify program). Therefore, Contractor agrees that:

A. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214(A).

B. A breach of warranty under paragraph A above shall be deemed a material breach of this Contract and is subject to penalties up to and including termination of the Agreement.

C. The City of Phoenix retains the legal right to inspect the papers of Contractor or its subcontractor employees who work on this Contract to ensure that Contractor or its subcontractors are complying with the warranty under paragraph A above.

6. City of Phoenix Equal Employment Opportunity Requirement

6.1 If Contractor is by this Contract a supplier to or lessee of the City, then the requirements of the Phoenix City Code, Chapter 18, Article V applies, including the agreement that:

“Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The supplier and/or lessee shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, 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 supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.”

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

If the supplier/lessee employs more than 35 employees, the following language shall be included as the last paragraph to the clause above:

“The supplier/lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.”

6.2 Documentation. Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

6.3 Monitoring. The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this Section 3 as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site

compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

7. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Contract, Contractor, for itself, its assignees, and successors 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 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- 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 § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (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 (42 USC § 12101, *et seq.*) (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) 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 (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. 74087 (2005)];
- 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).

8. Contractor Requirements for the Mitigation of Heat-Related Illnesses and Injuries in the Workplace, Phoenix City Code Sec. 18-411

Any contractor whose employees and contract workers perform work in an outdoor environment under this contract must keep on file a written heat safety plan. The city may request a copy of this plan and documentation of all heat safety and mitigation efforts currently implemented to prevent heat-related illnesses and injuries in the workplace. The plan must also be posted where it is accessible to employees. At a minimum, the heat safety and mitigation plan and documentation required under this provision shall include each of the following as it relates to heat safety and mitigation:

- A.** Availability of sanitized cool drinking water free of charge at locations that are accessible to all employees and contract workers.
- B.** Ability to take regular and necessary breaks as needed and additional breaks for hydration.
- C.** Access to shaded areas and/or air conditioning.
- D.** Access to air conditioning in vehicles with enclosed cabs. All such vehicles must contain functioning air conditioning by no later than May 1, 2025.
- E.** Effective acclimatization practices to promote the physiological adaptations of employees or contract workers newly assigned or reassigned to work in an outside environment.
- F.** Conduct training and make it available and understandable to all employees and contract workers on heat illness and injury that focuses on the environmental and personal risk factors, prevention, how to recognize and report signs

and symptoms of heat illness and injury, how to administer appropriate first aid measures and how to report heat illness and injury to emergency medical personnel.

G. The contractor further agrees that this clause will be incorporated in all subcontracts with subcontractors, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the contractor agrees to require all subcontractors, sublicensees or sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the contractor to ensure compliance by its subcontractors.

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Revised 5/22/2024

COMPLIANCE WITH ENVIRONMENTAL LAWS

Contractor shall, at Contractor's expense, comply with all current and future Environmental Laws to the extent that they apply to Contractor's use or occupancy of the Premises or the Airport. If Contractor has any question about its obligations under this Exhibit, then Contractor may contact the City of Phoenix Aviation Department's Planning and Environmental Division for information, but not legal advice.

1. Definitions

1.1 *Airport* means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, or Phoenix Goodyear Airport according to the context of this Contract.

1.2 *Contract* means the lease, license, permit, or other agreement to which this Exhibit is attached.

1.3 *Contractor* means each person and entity that is a named party to this Contract.

1.4 *Contractor's Agents* means all persons under Contractor's direction or control, including Contractor's officers, managers, employees, heirs, personal representatives, invitees, volunteers, guests, successors, and assigns.

1.5 *Premises* means the area of the Airport or other City-owned property used or occupied by Contractor pursuant to this Contract or where Contractor causes or contributes to a Release of a Regulated Substance.

1.6 *Environmental Laws* means all current and future federal, state, and local laws, rules, regulations, and ordinances as clarified by advisory circulars or guidance documents, promulgated to protect the public health or the environment, including the following, as they may hereafter be amended or supplemented:

A. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9628, as amended by the Superfund Amendment and Reauthorization Act of 1986 (SARA), Pub. Law No. 99-499.

B. Solid Waste Disposal Act (SWDA), 42 U.S.C. §§ 6901-6992k, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), Pub. Law No. 94-580, including the Regulations of Underground Storage Tanks, 42 U.S.C. §§ 6991-6991m.

C. Toxic Substances Control Act of 1976 (TSCA), 15 U.S.C. §§ 2601-2629.

D. Public Health Service Act, 42 U.S.C., Chapter 6A, and Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f-300j-27, and the amendments thereto.

- E. Federal Water Pollution Control Act of 1948 (FWPCA), as amended by the Clean Water Act, 33 U.S.C. §§ 1251-1388.
- F. Clean Air Act, 42 U.S.C. §§ 7401-7515.
- G. Title 49 of the Arizona Revised Statutes, A.R.S. §§ 49-101 to 49-1408, including the Arizona Environmental Quality Act, A.R.S. §§ 49-101 to 49-192.01.
- H. Arizona Comprehensive Air Quality Act, A.R.S. §§ 49-401 to 49-593.
- I. Arizona Solid Waste Management Act, A.R.S. §§ 49-701 to 49-881.
- J. Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901 to 49-973.
- K. Arizona Underground Storage Tank Regulation Act, A.R.S. §§ 49-1001 to 49-1093.
- L. Occupational Safety and Health Act of 1970, Pub. Law No. 91-596, as amended by 29 U.S.C. §§ 651-678.
- M. Chapter 28 and Chapter 32C of the Phoenix City Code and City of Phoenix Aviation Department Rule and Regulations, including R&R 01-02 (Storm Water Enforcement).
- N. National Environmental Policy Act (NEPA), Pub. Law. No. 91-190, and all FAA-approved NEPA documents.
- O. Endangered Species Act, 16 U.S.C. §§ 1531-1544.
- P. Arizona Antiquities Act, A.R.S. §§ 41-841 to 41-847.
- Q. Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712.
- R. AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit); AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit); and AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit).
- S. Interstate Conveyance Sanitation, 21 C.F.R. Part 1250.
- T. Maricopa County Air Quality Department Rule 310 (Fugitive Dust from Dust-Generating Operations) and Rule 310.01 (Fugitive Dust from Non-Traditional Sources of Fugitive Dust).

U. All current and future federal, state, and local laws, rules, regulations, and ordinances promulgated under the foregoing Environmental Laws that provide for the protection of the public health or the environment, including the ambient air, groundwater, surface water, land use, and substrata soils.

1.7 *Regulated Substances* means:

A. The substances identified or listed as a hazardous substance, pollutant, hazardous material, and petroleum in CERCLA; Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101-5128; RCRA; Arizona Regulation of Underground Storage Tanks; Clean Air Act; and all rules and regulations promulgated to implement these Environmental Laws.

B. The substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or hazardous, special, or solid waste in the Arizona Environmental Quality Act, including the Water Quality Assurance Revolving Fund Act (WQARF), A.R.S. §§ 49-281 to 49-298; Arizona Comprehensive Air Quality Act; Arizona Solid Waste Management Act; Arizona Underground Storage Tank Regulation Act; Arizona Management of Special Waste Act; Arizona Hazardous Waste Management Act; and all rules and regulations promulgated to implement these Environmental Laws.

C. All substances, materials, and wastes that are or hereafter become regulated or that are classified as hazardous or toxic under any Environmental Law, including building materials that may contain any hazardous substance and its disturbance is subject to any Environmental Law. If a building material, including pavements and paint, will be disturbed by Contractor and the building material is not unpainted wood, metal, or glass, then Contractor shall employ an Asbestos Hazard Emergency Response Act (AHERA)-certified inspector, who shall comply with advance survey and testing requirements and the following rules, as applicable:

(i) 40 C.F.R. Part 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart M (National Emission Standards for Asbestos)).

(ii) Maricopa County Air Pollution Control Regulations: National Emission Standard for Asbestos Regulation III Maricopa County Air Quality Department (MCAQD) Rule 370, § 301.9 - subpart M

(iii) To the extent required by Environmental Law, NESHAP Notification Form and Delivery Requirement. A NESHAP Notification Form shall be completed and postmarked or delivered to the MCAQD Asbestos NESHAP Coordinator at least ten (10) days before disturbing any building material even if no asbestos is present.

(iv) 29 C.F.R. Part 1926 (OSHA Safety and Health Regulations for Construction).

(v) RCRA waste determination and proper handling, transport, and disposal.

1.8 *Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing of a Regulated Substance.

2. Compliance

2.1 Contractor shall not cause or allow any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, Released on or under, or transported to or from the Premises by Contractor or Contractor's Agents in a manner that constitutes or would foreseeably result in a violation of any Environmental Law or that would give rise to liability under any Environmental Law.

2.2 Contractor may remediate any Release of a Regulated Substance under Chapter 28 of the Phoenix City Code (the City's pretreatment ordinances), under such other ordinances as may be promulgated by the City, and applicable Environmental Laws, including the Clean Water Act to the extent it applies.

2.3 Contractor (Indemnitor) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials, (elected and appointed), agents, and employees (Indemnitee) from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses, including interest, penalties, and reasonable attorney fees, expert witness fees, and reasonable expenses of investigation and remedial work, (including investigations and remediation by engineers, environmental consultants, and similar technical personnel) asserted against or imposed upon or incurred by Indemnitee arising in connection with, or resulting from, any violation of Environmental Law, including any use, generation, storage, spill, Release, discharge, or disposal of any Hazardous Substance that is now or comes to be located on, at, about, or under the Premises or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as "Losses") to the extent that such Losses are caused by the fault of Indemnitor or its officers, officials, members, managers, agents, employees, contractors, volunteers, tenants, subtenants, invitees, or licensees (collectively, "Indemnitor's Parties"). Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever occurs first. Indemnitor's duty to defend exists whenever it is alleged that either the Indemnitor and/or one or more of the Indemnitor's Parties, or both, is/are liable, regardless of whether they are ultimately found liable. As used in the section, (a) Hazardous Substance are the Regulated Substances and other substances defined as toxic or hazardous substances, pollutants, or wastes by any Environmental Law and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" has the meaning prescribed above; (c) "Fault" means those nonculpable acts and omissions giving rise to strict liability under any Environmental Law pertaining to Hazardous Substances, as well as culpable conduct (negligence or willful misconduct). In consideration of the award of this Contract, Indemnitor agrees to waive all rights of subrogation against the City and its officers, officials, (elected and appointed), agents,

and employees for losses arising out of or related to this Contract. The obligations of Indemnitor under this provision shall survive the expiration or earlier termination of this Contract.

2.4 To the extent Contractor or Contractor's Agents Release any Regulated Substance in violation of Environmental Law on or under the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises, then Contractor shall, at its expense, promptly take all actions that are necessary or appropriate to remediate the Release and mitigate any threat to the public health or the environment consistent with Environmental Law. Subject to the City's prior written consent, Contractor shall undertake all remedial actions that are necessary to return the contaminated area to the condition that existed immediately prior to the Release or, if such prior condition is unknown, to such condition as is acceptable to the governmental agency with jurisdiction. Contractor shall undertake its remedial actions under this Section 2.4 without regard to the potential liability of Contractor or any other person. However, remedial actions undertaken by Contractor shall not impair Contractor's rights, if any, to seek contribution or indemnity from any other responsible party.

2.5 Contractor shall, at its expense, prepare all tests, reports, and studies and provide all information to any appropriate governmental agency that is required pursuant to any Environmental Law as a result of Contractor's use or occupancy of the Premises. Contractor's obligation includes any requirement under Environmental Law for a site characterization, site assessment, and/or remediation plan that may be necessary due to any actual or potential Releases of a Regulated Substances by Contractor or Contractor's Agents on, under, or from the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises during the Term of this Contract and during the time Contractor has possession of the Premises. Contractor shall, at its expense, promptly (A) provide all information requested by the City related to the applicability of the Environmental Laws to the Premises, (B) respond to any governmental investigation pursuant to Environmental Laws regarding the Premises, and (3) respond to any claim of liability by third parties that relate to any Release of a Regulated Substance by the Contractor or Contractor's Agents on the Premises or the Airport.

2.6 After giving Contractor at least thirty (30) days prior notice, the City may inspect and copy all of Contractor's records, test results, studies, and other documents, not protected by attorney-client privilege, regarding environmental conditions related to the use, storage, or treatment of any Regulated Substance on, under, or from the Premises.

2.7 Contractor shall promptly notify the City in writing upon the occurrence of any of the following:

A. Contractor receives any correspondence or communication from any governmental agency regarding the application or enforcement of any Environmental Law to the Premises or to Contractor's use or occupancy of the Premises.

B. There is any change in Contractor's activities on the Premises that changes or may change Contractor's or the City's obligations or liabilities under any Environmental Law.

C. Any person or entity asserts any claim or any other event occurs for which Contractor may incur an obligation under this Exhibit.

2.8 Contractor shall, at its expense, obtain and comply with all permits and approvals that are, or may become, required as result of Contractor's use or occupancy of the Premises.

2.9 Contractor shall include the provisions of this Exhibit in all agreements and contracts by which it grants a right or privilege to any person or entity under this Contract.

2.10 Contractor shall obtain and maintain compliance with all applicable financial responsibility requirements of all Environmental Laws regarding the ownership or operation of any underground storage tank or other device used to treat or store a Regulated Substance and upon request present evidence thereof to the City.

2.11 Contractor shall take reasonable precautions to prevent persons not acting under Contractor's or Airport's authority, direction, or control from conducting any activity on the Premises that may result in the Release of a Regulated Substance on, under, or from the Premises or to the air, groundwater, or surface waters on or adjacent to the Premises. Contractor shall exercise due care with respect to any Regulated Substance that is located on the Premises as a result of any action of any person who is not under Contractor's authority, direction, or control.

2.12 Contractor shall use its best efforts to minimize its production of a waste stream that includes Regulated Substances, and Contractor shall minimize the storage of Regulated Substances on, in, and around the Premises.

3. Breach and Termination

Subject to the terms and conditions of this Section, Contractor's failure to comply with any requirement or obligation of this Exhibit or any applicable Environmental Law is a default under this Contract. Contractor's failure to cure its default after being provided with notice thereof and a reasonable opportunity to cure, as provided in this Contract, shall constitute a material breach of this Contract. Upon a breach that is not timely cured as provided in this Contract, the City may pursue any and all remedies available under this Contract and all applicable federal, state, and local laws, including the following:

3.1 Without termination of this Contract, the City may enforce all its rights and remedies under this Contract, including, without limitation, any or all the following:

A. The right to file an action or proceeding seeking to recover rent, fees, and other amounts due and that become due under this Contract.

B. The right to recover interest at the rate of 18% per annum on all accrued, but unpaid, rents, fees, and other amounts due calculated from the date the amount was due pursuant to § 4-7 of the Phoenix City Code.

C. The right to file an action or proceeding seeking to recover possession of the Premises.

D. The right to make payments and to perform obligations required of Contractor under this Contract and to be reimbursed by Contractor for the costs thereof, including all attorney fees, expert fees, and other cost incurred by the City.

E. The City may terminate this Contract.

F. The City may exercise the right of “self-help” or similar remedy in order to minimize any damage, expense, penalty, and related fees or costs arising out of or related to the violation of any Environmental Law related to the Premises.

G. By exercising its rights under this Section, the City does not, and may not be construed as, releasing Contractor from any obligation it would otherwise have under this Exhibit or any applicable Environmental Law.

H. The covenants of this Exhibit shall survive the termination of this Contract.

If this Contract does not require Contractor to perform any activity on the Airport or other City-owned property, then the following stormwater provisions do not apply to Contractor or this Contract.

4. AZPDES Stormwater General Permit and Phoenix City Code Chapter 32C Compliance

4.1 Contractor shall comply with the City’s AZPDES Stormwater General Permit and Aviation Department R&R 01-02 (Storm Water Enforcement). Except for discharges on Indian land, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality (ADEQ) through the Arizona Pollutant Discharge Elimination System (AZPDES) program. An AZPDES permit is required for any point source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants to either a municipal separate storm sewer system (MS4) or to waters of the United States, AZPDES permits are required for stormwater discharges.

4.2 The City and Contractor are required to obtain AZPDES permit coverage as required by AZPDES regulations and to the extent that covered stormwater is discharged from the Premises. Coverage under the AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit) is required for stormwater discharges generated by construction activities. Coverage under the AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit) is required for certain applications of

pesticides. Coverage under the AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit) is required for stormwater discharges generated by facilities and operations engaged in certain industrial activities. Among these industries are those engaged in certain activities within the air transportation and associated activities.

4.3 The City has obtained coverage under the AZPDES Multi-Sector General Permit for its air transportation facilities at the Airports. The City has adopted Stormwater Quality Protection ordinances (Phoenix City Code §§ 32C-1 to 32C-111) and has in place an Aviation Department Stormwater Enforcement Procedures and Civil Penalty Policy (Aviation Stormwater Policy), both of which were developed to comply with Environmental Laws governing stormwater pollution.

4.4 The City adopted the Aviation Stormwater Policy to achieve compliance with the AZPDES program requirements by the Aviation Department and its contractors and permittees. Contractor is subject to the Aviation Stormwater Policy as a condition to its use or occupancy of the Premises or any part of the Airports. The City has the right to monitor Contractor's activities on the Premises and the Airport and enforce Contractor's compliance with the Aviation Stormwater Policy. The City will provide reasonable advance notice to the Contractor ahead of monitoring and audit activities.

4.5 Contractor shall comply with the Aviation Stormwater Policy and shall implement, at its expense, all requirements of the Airports' Stormwater Pollution Prevention Plans (SWPPP) and City ordinances that pertain to Contractor's operations and activities on the Premises and the Airports to the extent the operations and activities have a potential to release pollutants to stormwater. Contractor shall use its best efforts to meet all deadlines that are established by applicable Environmental Laws and the Aviation Stormwater Policy. Contractor agrees that time is of the essence in the implementation of all City permit requirements.

4.6 Contractor's compliance with the AZPDES Permit Program set forth in 18 A.A.C. Chapter 9, Article 9 (R18-9-A901 to R18-9-A909); Chapter 32C of the Phoenix City Code; and the Aviation Stormwater Policy is a material requirement and condition of this Contract. If Contractor fails to comply with the foregoing and the City is exposed to any civil or criminal fine, penalty, sanction, or remediation cost, then the City may, in addition to all other remedies available under this Contract and applicable law, terminate this Contract.

4.7 AZPDES Construction General Permit. If Contractor decides to perform construction activities at the Premises or the Airports, Contractor shall, prior to commencing any such construction activity, obtain stormwater discharge authorization from ADEQ under an AZPDES Construction General Permit. Contractor must obtain that authorization by preparing a SWPPP and filing for AZPDES Construction General Permit coverage in coordination with the City's manager assigned to the project. The City may consult with and assist Contractor with filing for AZPDES Construction General Permit coverage. Contractor shall work with the City's project manager to develop pollution

controls (e.g., best management practices, control measures, and schedules and procedures) for the SWPPP. Contractor is solely responsible for implementing the pollution controls and paying for all costs related to its compliance with its AZPDES Construction General Permit obligations.

4.8 AZPDES Multi-Sector General Permit.

A. If Contractor activities performed at the Premises are under AZDPES Multi-Sector General Permit, the Contractor shall, prior to using, occupying, or commencing any operation or activity on the Premises or the Airports, obtain stormwater discharge authorization from ADEQ under an AZPDES Multi-Sector General Permit. Contractor shall obtain that authorization as a “co-permittee” with the City. As a co-permittee, Contractor shall do all the following:

(i) Provide the City with a copy of Contractor’s written Authorization to Discharge that Contractor receives from ADEQ.

(ii) Implement the Airports’ SWPPP, including all best management practices, control measures, schedules, and procedures that apply to the Contractor’s use or occupancy of the Premises or the Airports.

B. In connection with its coverage under the AZPDES Multi-Sector General Permit, the City has developed a SWPPP for the Airports to minimize the contact of stormwater and other precipitation event water with Significant Materials (as that term is defined in the Section 32C-101 of the Phoenix City Code) generated, stored, handled, used, or otherwise located on the Premises or the Airports. The City shall provide a copy of the SWPPP, including best management practices, control measures, schedules, and procedures, to Contractor, who shall implement that portion of the SWPPP applicable to its use or occupancy of the Premises or the Airports.

C. To the extent allowed by applicable Environmental Laws, Contractor may ask to be removed as a co-permittee from coverage under the AZPDES Multi-Sector General Permit when this Contract expires or is terminated, Contractor vacates the Premises, Contractor fails to comply with the all AZPDES Multi-Sector General Permit requirements, or Contractor decides it does not want to be covered as a co-permittee. Contractor shall not be relieved of its obligation to comply with the requirements of the AZPDES Permit Program with regard to its use or occupancy of the Premises or the Airports, and Contractor shall not be excused from any obligation or indemnification incurred and owed to City prior to Contractor being removed as a co-permittee because Contractor failed to fulfill an obligation of a co-permittee.

4.9 Pollution Controls.

A. City reserves the right to impose upon Contractor any best management practices, control measures, schedules, procedures, and any other action reasonably necessary to ensure the City's ability to comply with its AZPDES Permit Program requirements or applicable City ordinances. However, except in Extreme Emergency Conditions (as that term is defined below), Contractor shall have thirty (30)

days from the City's notice imposing such pollution control measures and any other requirement to notify the City in writing if Contractor objects to any action Contractor is being directed by the City to undertake. If Contractor does not provide a timely objection, then Contractor will be deemed to have consented to the implementation of the pollution control measures or other requirements. If Contractor provides the City with timely notice of its objections, then the City and Contractor shall negotiate a prompt resolution of their differences. If a resolution is not reached within thirty (30) days, then the City's decision resolving the matter shall control. Contractor warrants that it will not serve a written notice of objections for purposes of delay or to avoid compliance with AZPDES Permit Program requirements or applicable City ordinances.

B. *Extreme Emergency Conditions* means all the following:

(i) Conditions that immediately impact the waters of the United States (e.g., Salt River) that result from an emergency, such as a fire, Release of a Regulated Substance, or explosion, that requires the responsible party or parties to immediately begin appropriate response activities independent of City's direction or oversight.

(ii) A catastrophic event that requires Contractor to close its business in the Premises. Contractor must implement pollution control measures before it reopens.

(iii) A collapse of the stormwater system or any other event that prevents the City from performing its obligations under the City's permit due to lack of capacity.

4.10 Covenant of Good Faith. City and Contractor shall act in good faith to implement any requirement imposed on them pursuant to the AZPDES Permit Program. The City and Contractor agree that close cooperation is necessary to ensure compliance with all AZPDES Multi-Sector General Permit requirements and to promote safety and minimize costs. The City and Contractor agree to a candid exchange of information necessary to coordinate a stormwater management and monitoring plan.

Revised May 2022
2321602

SPECIAL PROVISIONS

PHOENIX SKY HARBOR INTERNATIONAL AIRPORT

1.1 Airfield Driver's License

1.1.1 All personnel operating a motor vehicle within the secured areas of Phoenix Sky Harbor Airport will have a valid airfield driver's license issued by the Phoenix Aviation Department/Operations Division. To qualify for a license, personnel must possess a current valid state driver's license. Individuals must also complete an airfield driver's permit application form, attend an airfield driver's training seminar, and successfully pass a written exam. Applicants must pre-register to attend a class. Contact the Phoenix Aviation Department's Operations Division (602) 273-2036 to make the necessary arrangement.

1.1.2 Exception: Drivers in vehicles without an airfield driver's license may be escorted by a driver in a vehicle with an airfield driver's license. Example: Material supplier vehicle with drivers without an airfield driver's license will be escorted to and from the construction site within the secured area by the Contractor's supplied escort vehicle of which the driver has a valid airfield driver's license. Maximum convoy length will not exceed three vehicles plus the one escort vehicle (total of four). All escorted vehicles must be in the immediate control of the vehicle conducting the escort.

1.2 Security Badges

1.2.1 All construction personnel assigned to the project requiring access to the airport's restricted areas, except for escorted, in-transit material supplies, will apply for an airport security badge. The airport badge must be worn on their outermost garment above the waist at all times while in the restricted areas of the airport. The Contractor and the Subcontractor can apply for these items by contacting the Phoenix Aviation Department Operations Division at (602) 273-2036. A photo identification badge will be made for each employee. Employees will be subject to a federally mandated background check, Criminal History Records Check and Security Threat Assessment, and must pass the security training before a badge can be issued to the applicant. All companies must first establish and maintain at least one Authorized Signer to authorize the issuance of airport security badges for their respective employees. Construction companies need to take into consideration that there is a processing period from the time badge applications are submitted to when the airport security badge is issued. For example, it takes a minimum of seven (7) days for background checks to clear pending all requirements have been met. The total badge fee is \$89. This includes a \$27 fee per person for a criminal history records check, a \$7 fee for a Security Threat Assessment, a \$5 fee for the security badge itself and a \$50 badge control fee that will be returned to the individual or company that paid for it upon return of the badge to the Aviation Department. Fees may be subject to change.

As a general rule, employees working the project for more than seven (7) days may not be escorted and must process for their own airport security badge. All pertinent information regarding the airport's badging process (badge applications, fees, identification, documents, etc.) can be obtained at skyharbor.com/badging.

1.2.2 The Contractor is responsible for obtaining a written 10-year employment history from all employees applying for airport security badges. The Contractor must verify and document in writing the most recent 5 years of the employee's 10-year employment history. The contracting company must complete the employment verifications for an employee prior to signing the employee's badge application form. In addition, the Contractor must retain this past 10-year verification on file in the Contractor's office.

1.2.3 Attendance at a security-training seminar is mandatory prior to the issuance of security badges. All security badge applicants must attend a 2-hour SDA (Security Display Area) training class. Applicants must be pre-registered to attend a class. Contact the Phoenix Aviation Department's Operations Division at (602) 273-2036 to make the necessary arrangements.

1.3 Aircraft Safety

1.3.1 The Contractor will be required to coordinate his work so as to satisfy clearance requirements for arrival and departure of aircraft, and in compliance with FAA Advisory Circulars AC 150/5300-13, AC 150/5370-2, and the Special Safety Requirements concerning operational safety on airports during construction activity.

1.3.2 A high degree of care is necessary to control debris and dust so as not to collect onto aircraft or to accumulate on aprons, taxiways and runways, and not be a visual obstruction nuisance. The Contractor will take whatever steps, procedures, or measures required to prevent loose material from blowing onto aircraft or onto the airfield. The dust control measures will be maintained at all times during the construction of the Project, to the satisfaction of the Aviation Department. The Contractor's Representative will be aware that the construction area is subject to jet blast that is equivalent to wind velocities of 75 to 90 miles per hour.

1.3.3 The Contractor will be charged the aggregate cost of any cleanup/repairs performed by others from the dust/debris leaving the work area.

1.4 Red Obstruction Lights

1.4.1 The Contractor will provide red obstruction lights and a 3 foot square flag with alternating 1 foot square orange and white checkers for all stationary cranes erected on the construction site. All movable cranes will be equipped with red obstruction lights and a 3 foot square flag with alternating 1 foot square orange and white checkers during working hours. This requirement may be waived when the boom is lowered and the crane is not in use. The Aviation Department will issue Local Notice to Airmen on obstruction lighting and the Contractor will notify the Project Architect/Engineer if any relocation takes place. The Aviation Department Airside Operations Division, (602) 273-2008, must be notified no later than 48 hours prior to erecting the crane, so that a Notice to Airmen (NOTAM) may be issued in a timely manner. Equipment may be required to be removed from the air operations area at night at the discretion of the Aviation Operations Division.

1.5 Yellow Warning Lights For Vehicles

1.5.1 The Contractor will provide yellow-warning lights at all times during work hours, and checkered flags during daylight hours for all vehicles on the construction site.

1.6 Safety & Security Non-Conformance Contract Adjustment (Deductions)

1.6.1 Due to the safety and security precautions necessary at Phoenix Sky Harbor International Airport, failure of the Contractor to adhere to the prescribed requirements has consequences that may jeopardize health, welfare and the lives of customers and employees at Sky Harbor. Therefore, if the Contractor is found to be in non-compliance with the security, airfield and badging/licensing requirements, the Aviation Department may issue Safety & Security Non-Conformance Contract Adjustment (Deductions). Appeals to the Safety & Security Non-Conformance Contract Adjustment (Deductions) can be made within four (4) days of the incident by writing to the Airports Civil Engineer (Project Manager) in charge of the Project. The appeal would need to state why the Safety & Security Non-Conformance Contract Adjustment (Deductions) circumstance is unwarranted. A final decision by the Project Manager will then be made.

1.6.2 Safety & Security Non-Conformance Contract Adjustment (Deductions) Schedule:

1. Runway Incursion	\$15,000.00
2. Active Taxiway Incursion	\$10,000.00
3. Runway/Taxiway Safety Area	\$ 1,000.00
4. Security Non-Compliance	

First Offense	\$ 1,000.00
Second Offense	\$ 5,000.00
Each Additional Offense	\$15,000.00

5. Badging/Licensing Non-Compliance
Fine same as 4
6. Aviation Department has the option to issue warnings on first offense, if the incident is justified.
7. Individuals involved in a non-compliance violation may be required to surrender their security badge and airfield driver's license pending investigation of the matter.

1.7 Disposal of Surplus Material

- 1.7.1 All surplus and/or waste material must be disposed of off the Airport property at the Contractor's discretion, subject to the following conditions:
- 1.7.2 If the City landfills are used, the Contractor will pay the normal dumping fee.
- 1.7.3 If private property within the City limits is used, the Contractor will obtain written permission from the property owner and deliver a copy of this agreement to the City prior to any hauling dumping. If the surplus material is disposed of outside City limits, the Contractor will comply with all applicable laws/ordinances of the agency concerned and be responsible for all costs incurred.

1.8 Contractor's Parking

- 1.8.1 The Contractor's employees will not be permitted to park their personal vehicles in the Airport parking garages or other parking areas intended for passenger and other airport users.
- 1.8.2 A limited number of parking cards will be made available for the Contractor to purchase and use. These parking cards will be paid for on a monthly basis and are available at the sole discretion of the Aviation Parking Coordinator.

1.9 Agreement Contingency and Allowance

- 1.9.1 A General Contingency Allowance is provided for the purpose of encumbering funds to cover possible additional work. The amount of the allowance item is determined by the Project Manager and is not subjected to individual bid pricing. All bidders will incorporate the amount pre-entered in the bid proposal and will reflect the same in the total amount bid for this Project. This allowance item provides estimated funding to cover unforeseen conditions that may be encountered and correspond to extra work needed to complete the project per plan. Unforeseen extra work, if any, will be approved by the Project Manager.
- 1.9.2 It will be understood that this allowance is an estimate only and is based on the history of similar projects. It will not be utilized without the Project Manager's approval. It is further understood that authorized extra work, if any, may be less than the allowance item.

1.10 Site Security

- 1.10.1 The Contractor will contact the Airport Security Coordinator (602) 273-2036 fifteen (15) calendar days before the start of construction to submit the necessary airport security information for all vehicles and personnel that will be required inside the airport security fence during construction. Vehicle logo requirements (including vehicles with magnetic company logos) and current registration vehicle tags also apply. The Contractor will also be required to submit a letter of verification received from the City, or the City sponsor, identifying the Contractor, its involvement in the project, and length of time of Agreement. New company information manual can be provided to the Contractor prior to submission of paperwork so that all paperwork is ready. This New Company Information Manual can be obtained in the Security Badging Office.

1.11 Vehicle Traffic Regulations (including vehicles with magnetic company logos)

- 1.11.1 The following will be considered major streets: AIR LANE (north of ARFF No. 29) and SKY HARBOR BLVD. (north of ARFF No. 19)
- 1.11.2 All traffic and/or traffic control devices on this project will be provided, maintained and/or controlled as specified in the City of Phoenix Traffic Barricade Manual MUTCD, latest revision.
- 1.11.3 Permission to restrict City streets will be requested as specified in Section III of the Traffic Barricade Manual.
- 1.11.4 Unless otherwise provided in the following “Aircraft Traffic Regulations,” all traffic on this Project will be regulated as specified in Section IV of the Traffic Barricade Manual. Non-peak hours at Phoenix Sky Harbor International Airport are 11:00 p.m. to 5:00 a.m. for lane restrictions. Contractor needs to coordinate closely with Aviation airside operation.
- 1.11.5 No deviation to the “Aircraft Traffic Regulations” will be allowed or implemented unless submitted to the City for review and approval two (2) weeks prior to proposed Work.
- 1.11.6 The Contractor will submit Traffic Control Plans to the Engineer for approval for all work affecting City Streets.

1.12 Aircraft Traffic Regulations

- 1.12.1 Special Regulations for Aircraft Traffic: Aircraft traffic will continue to use existing runways, aprons, and taxiways of the Airport during the times that work under this contract is being performed. The Contractor will at all times so conduct his work as to create no hindrance, hazard, or obstacle to aircraft using the airport, and must, at all times, conduct the work in conformance with the requirements of the Airport Director, and FAA Control Tower, or their authorized representative.
- 1.12.2 Proposed haul routes across aircraft movement areas will require controlled crossings with radio equipped flagmen at each side of the controlled crossing, in accordance with Aviation Department details and requirements.

1.13 Asbestos/Lead Based Paint Identification and Remediation

- 1.13.1 Asbestos and lead based paint identification and/or remediation will be performed by the City of Phoenix unless otherwise indicated by an authorized City of Phoenix representative. Prior to starting Work, the Contractor should obtain a copy of the asbestos and lead based paint survey of the affected area, and contact the City of Phoenix Aviation Environmental Division Manager prior to the disturbance of any building materials that contain or potentially contain asbestos or lead based paint. Building materials that could potentially contain asbestos include any materials that are not wood, metal or glass. Any building materials that will be disturbed during renovation or demolition projects that have not been previously inspected will be inspected by an Asbestos Hazard Emergency Response Act (AHERA) certified building inspector approved by the City of Phoenix. Any asbestos and lead based paint remediation activities will be conducted by contractors licensed to perform asbestos and lead based paint remedial activities and will be approved by the City of Phoenix. All asbestos and lead based paint inspection and remedial work will be performed in compliance with all applicable local, state and federal regulations regarding asbestos, lead based paint and general construction.

**FEDERAL CONTRACT PROVISIONS
FOR AIRPORT IMPROVEMENT PROGRAM CONSTRUCTION PROJECTS**

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II.	Title VI of the Civil Rights Act of 1964 – Compliance with Nondiscrimination Requirements -- 42 U.S.C. § 47123 and FAA Order 1400.11	4	
III.	General Civil Rights Provisions – 49 U.S.C. § 47123	6	
IV.	Lobbying and Influencing Federal Employees – 31 U.S.C. § 1352; 49 C.F.R. Part 20, Appendix A; 2 C.F.R. Part 200, Appendix II(I)	7	Attachment 2
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XII.	Davis Bacon Requirements - 2 CFR Part 200, Appendix II(D), 29 CFR Part 5, 49 USC § 47112(b), 40 USC §§ 3141-3144, 3146, and 3147	11	
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Please Note: Attachments are located at end of this Exhibit.

ADDITIONAL FEDERAL CONTRACT PROVISIONS FOR AIRPORT IMPROVEMENT PROGRAM CONSTRUCTION PROJECTS

The Contractor is required to comply with all of the following federal contract provisions as applicable to this Contract.

I. Buy American Preference, 49 U.S.C. § 50101

The Contractor certifies that its bid/offer is in compliance with 49 USC § 50101, BABA and other related Made in America Laws,¹ U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, 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.

The bidder or offeror must complete and submit the certification of compliance with FAA's Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/City will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA's Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

Type of Certification is Based on Type of Project

There are two types of FAA Buy American certifications:

Construction Projects involving the replacement, rehabilitation, reconstruction of airfield surfaces such as on runways, taxiways, taxilanes, aprons, roadways, parking lots, etc. See [Attachment 1](#) to complete the Certificate of compliance to FAA Buy American Preference Based on Construction Projects, if applicable.

Equipment and Buildings Projects involving and including the acquisition of equipment such as snow removal equipment, navigational aids, wind cones, and the construction of buildings such as hangars, terminal development, lighting vaults, aircraft rescue & firefighting buildings, etc. See [Attachment 1](#) to complete the Certificate of Compliance with FAA Buy American Preference Based on Equipment/Building Projects, if applicable.

¹ Per Executive Order 14005 "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

See [Attachment 1](#).

II. Title VI of the Civil Rights Act of 1964 – Compliance with Nondiscrimination Requirements – 49 U.S.C. § 47123 and FAA Order 1400.11

Title VI Solicitation Notice.

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders and offerors that it will affirmatively ensure that, in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

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 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 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- 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 § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987 (PL 100-259) (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 (42 USC § 12101, et seq) (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) 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 (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. 74087 (2005)];
- 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).

Nondiscrimination Requirements/Title VI Clauses for Compliance

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 incorporated herein 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 (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability 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 C.F.R. 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 City or the Federal Aviation Administration and Authorities 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 City 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 the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City will impose such Contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including:

- a. Withholding payments to the Contractor under the Contract until the Contractor complies and/or
- b. Cancelling, terminating, or suspending the Contract, in whole or in part.

6. Incorporation of Provisions. The Contractor will include the provisions of paragraphs 1 through 6 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 City 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 City to enter into any litigation to protect the interests of the City. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

III. General Civil Rights Provisions -- 49 U.S.C. § 47123

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

1. Specific Clause that is Used in General Contract Agreements.

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the Contract.

2. Specific Clause that is used for Lease Agreements or Transfer Agreements.

If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor.

The above provision obligates the Contractor for the period during which the property is owned, used or possessed by the Contractor and the airport remains obligated to the Federal Aviation Administration.

IV. Lobbying and Influencing Federal Employees – 31 U.S.C. § 1352; 49 C.F.R. Part 20, Appendix A; 2 C.F.R. Part 200, Appx. II(I)

See [Attachment 2](#).

V. Access to Records and Reports – 2 C.F.R. §§ 200.334, 200.337 and FAA Order 5100.38

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the City, the FAA, 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 that are directly pertinent to this 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.

VI. Disadvantaged Business Enterprises – 49 C.F.R. Part 26

Solicitation Language (Solicitations that include a Contract Goal)

Bid Information Submitted as a matter of responsiveness:

The City's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR § 26.53.

As a condition of responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the City's project goal
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

Bid Information submitted as a matter of responsibility:

The City's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR § 26.53.

As a condition of responsibility, every Bidder or Offeror must submit the following information on the forms provided herein within five days after bid opening.

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the City's project goal;
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder

when a non-DBE subcontractor was selected over a DBE for work on the contract.

Solicitation Language (Race/Gender Neutral Means)

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the City to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The City encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

Prime Contracts (Contracts Covered by a DBE Program)

Contract Assurance (49 CFR § 26.13)

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the the City 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 (49 CFR § 26.29)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven days, not to exceed 30 days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within seven days, not to exceed 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 City. This clause applies to both DBE and non-DBE subcontractors.

Termination of DBE Subcontracts (49 CFR § 26.53(f))

The prime contractor must not terminate a DBE subcontractor listed in response to RFx 6000001674, without prior written consent of the City. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent from

the City. Unless the City consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The City may provide such written consent only if the City agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

Before transmitting to the City its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the City, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the City and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the City should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the City may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

VII. Breach of Contract Terms – 2 C.F.R. Part 200, Appx. II(A)

Any violation or breach of the terms of this Contract by the Contractor 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 Contract.

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

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

VIII. Right to Inventions – 2 CFR Part 200, Appx. II(F) and 37 CFR § 401

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the City 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.

See [Attachment 3](#).

IX. Trade Restriction Certification – 49 U.S.C. § 50104; 49 C.F.R. Part 30

See [Attachment 4](#).

X. Intentionally Omitted

XI. Veteran’s Preference – 49 U.S.C. § 47112(c)

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. § 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.

XII. Davis-Bacon Requirements – 2 CFR Part 200, Appendix II(D), 29 CFR Part 5, 49 USC § 47112(b), 40 U.S.C. §§ 3141 – 3144, 3146 and 3147

The provisions below are to be incorporated into all construction contracts and subcontracts that exceed \$2000 and include funding from the AIP.

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 § 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 Administration of the Wage and Hour Division, 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 the 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 the City, 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 records which 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 the City, 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 <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification> 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 the City, 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 the City).

(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) That 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) That 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) That 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 the City, 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, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, 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 Office of Apprenticeship Training, Employer and Labor Services 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 Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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 §§ 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 § 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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Title 29 —Labor

Subtitle A —Office of the Secretary of Labor

Part 5 Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non construction Contracts Subject to the Contract Work Hours and Safety Standards Act)

Subpart A Davis-Bacon and Related Acts Provisions and Procedures

§ 5.1 Purpose and scope.

§ 5.2 Definitions.

§§ 5.3-5.4 *[Reserved]*

§ 5.5 Contract provisions and related matters.

§ 5.6 Enforcement.

§ 5.7 Reports to the Secretary of Labor.

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

§ 5.9 Suspension of funds.

§ 5.10 Restitution, criminal action.

§ 5.11 Disputes concerning payment of wages.

§ 5.12 Debarment proceedings.

§ 5.13 Rulings and interpretations.

§ 5.14 Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

§ 5.16 *[Reserved]*

§ 5.17 *[Reserved]*

§ 5.18 Remedies for retaliation.

Subpart B Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

§ 5.20 Scope and significance of this subpart.

§ 5.21 *[Reserved]*

§ 5.22 Effect of the Davis-Bacon fringe benefits provisions.

§ 5.23 The statutory provisions.

§ 5.24 The basic hourly rate of pay.

§ 5.25 Rate of contribution or cost for fringe benefits.

§ 5.26 “* * * contribution irrevocably made * * * to a trustee or to a third person”.

§ 5.27 “* * * fund, plan, or program”.

§ 5.28 Unfunded plans.

§ 5.29 Specific fringe benefits.

§ 5.30 Types of wage determinations.

§ 5.31 Meeting wage determination obligations.

§ 5.32 Overtime payments.

§ 5.33 Administrative expenses of a contractor or subcontractor.

Subpart C Severability

§ 5.40 Severability

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Authority: 5 U.S.C. 301; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 28 U.S.C. 2461 note; 40 U.S.C. 3141 et seq.; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 et seq.; Secretary's Order No. 01-2014, 79 FR 77527; and the laws referenced by § 5.1(a).

Source: 48 FR 19541, Apr. 29, 1983, unless otherwise noted.

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures Source: 48 FR 19540, Apr. 29, 1983, unless otherwise noted.

Editorial Note: Nomenclature changes to subpart A of part 5 appear at 61 FR 19984, May 3, 1996.

§ 5.1 Purpose and scope.

- (a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 (64 Stat. 1267, as amended, 5 U.S.C. appendix) and the Copeland Act (48 Stat. 948; 18 U.S.C. 874; 40 U.S.C. 3145) in order to coordinate the administration and enforcement of labor standards provisions contained in the Davis-Bacon Act (46 Stat. 1494, as amended; 40 U.S.C. 3141 et seq.) and its related statutes (“Related Acts”).

- (1) A listing of laws requiring Davis-Bacon labor standards provisions can be found at www.dol.gov/agencies/whd/government-contracts or its successor website. [Reserved]

- (2) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its Related Acts.

(b)

Act and its Related Acts.

[88 FR 57731, Aug. 23, 2023]

29 CFR 5.1(b) (enhanced display)

29 CFR 5.2

§ 5.2 Definitions.

Administrator. The term “Administrator” means the Administrator of the Wage and Hour Division, U.S. Department of Labor, or authorized representative.

Agency. The term “agency” means any Federal, State, or local government agency or instrumentality, or other similar entity, that enters into a contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to a project subject to the Davis-Bacon labor standards, as defined in this section.

- (1) **Federal agency.** The term “Federal agency” means an agency or instrumentality of the United States or the District of Columbia, as defined in this section, that enters into a contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to a project subject to the Davis-Bacon labor standards.

(2) [Reserved]

Agency Head. The term “Agency Head” means the principal official of an agency and includes those persons duly authorized to act on behalf of the Agency Head.

Apprentice and helper. The terms “apprentice” and “helper” are defined as follows:

(1) “Apprentice” means:

(i) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship; or

(ii) A person in the 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 Office of Apprenticeship or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) These provisions do not apply to apprentices and trainees employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(3) A distinct classification of helper will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A “helper” classification will be added to wage determinations pursuant to § 5.5(a)(1)(iii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

Building or work. The term “building or work” generally includes construction activities of all types, as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The term includes, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, solar panels, wind turbines, broadband installation, installation of electric car chargers, plants, highways,

29 CFR 5.2 “Building or work” (enhanced display)

29 CFR 5.2 “Construction, prosecution, completion, or repair”

parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The term “building or work” also includes a portion of a building or work, or the installation (where appropriate) of equipment or components into a building or work.

Construction, prosecution, completion, or repair. The term “construction, prosecution, completion, or repair” means the following:

(1) These terms include all types of work done—

- (i) On a particular building or work at the site of the work, as defined in this section, by laborers and mechanics employed by a contractor or subcontractor, or
 - (ii) In the construction or development of a project under a development statute.
- (2) These terms include, without limitation (except as specified in this definition):
- (i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated offsite;
 - (ii) Painting and decorating;
 - (iii) Manufacturing or furnishing of materials, articles, supplies or equipment, but only if such work is done by laborers or mechanics
- (A) Employed by a contractor or subcontractor, as defined in this section, on the site of the work, as defined in this section, or
 - (B) In the construction or development of a project under a development statute; (iv) “Covered transportation,” defined as any of the following activities:
 - (A) Transportation that takes place entirely within a location meeting the definition of “site of the work” in this section;
 - (B) Transportation of one or more “significant portion(s)” of the building or work between a “secondary construction site” as defined in this section and a “primary construction site” as defined in this section;
 - (C) Transportation between an “adjacent or virtually adjacent dedicated support site” as defined in this section and a “primary construction site” or “secondary construction site” as defined in this section;
 - (D) “Onsite activities essential or incidental to offsite transportation,” defined as activities conducted by a truck driver or truck driver's assistant on the site of the work that are essential or incidental to the transportation of materials or supplies to or from the site of the work, such as loading, unloading, or waiting for materials to be loaded or unloaded, but only where the driver or driver's assistant's time spent on the site of the work is not *de minimis*; and
 - (E) Any transportation and related activities, whether on or off the site of the work, by laborers and mechanics employed in the construction or development of the project under a development statute.
 - (v) Demolition and/or removal, under any of the following circumstances:

29 CFR 5.2 “Construction, prosecution, completion, or repair” (2)(v) (enhanced display)

**29 CFR 5.2 “Construction, prosecution, completion, or repair”
(2)(v)(A)**

- (A) Where the demolition and/or removal activities themselves constitute construction, alteration, and/or repair of an existing building or work. Examples of such activities include the removal of asbestos, paint, components, systems, or parts from a facility that will not be demolished; as well as contracts for hazardous waste removal, land recycling, or reclamation that involve substantial earth moving, removal of contaminated soil, recontouring surfaces, and/or habitat restoration.

(B) Where subsequent construction covered in whole or in part by the labor standards in this part is contemplated at the site of the demolition or removal, either as part of the same contract or as part of a future contract. In determining whether covered construction is contemplated within the meaning of this provision, relevant factors include, but are not limited to, the existence of engineering or architectural plans or surveys of the site; the allocation of, or an application for, Federal funds; contract negotiations or bid solicitations; the stated intent of the relevant government officials; and the disposition of the site after demolition.

(C) Where otherwise required by statute.

- (3) Except for transportation that constitutes “covered transportation” as defined in this section, construction, prosecution, completion, or repair does not include the transportation of materials or supplies to or from the site of the work.

Contract. The term “contract” means any prime contract which is subject wholly or in part to the labor standards provisions of any of the laws referenced by § 5.1 and any subcontract of any tier thereunder, let under the prime contract. With the exception of work performed under a development statute, the terms contract and subcontract do not include agreements with employers that meet the definition of a material supplier under this section.

Contracting officer. The term “contracting officer” means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of an agency, sponsor, owner, applicant, or other similar entity.

Contractor. The term “contractor” means any individual or other legal entity that enters into or is awarded a contract that is subject wholly or in part to the labor standards provisions of any of the laws referenced by § 5.1, including any prime contract or subcontract of any tier under a covered prime contract. In addition, the term contractor includes any surety that is completing performance for a defaulted contractor pursuant to a performance bond. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers or joint employers for purposes of the labor standards provisions of any of the laws referenced by § 5.1. A State or local government is not regarded as a contractor or subcontractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under development statutes or other statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these workers according to Davis-Bacon labor standards. The term “contractor” does not include an entity that is a material supplier, except if the entity is performing work under a development statute.

Davis-Bacon labor standards. The term “Davis-Bacon labor standards” as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes referenced in § 5.1, and the regulations in this part and in parts 1 and 3 of this subtitle.

29 CFR 5.2 “Davis-Bacon labor standards” (enhanced display)

29 CFR 5.2 “Development statute”

Development statute. The term “development statute” includes the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, and any other Davis-Bacon Related Act that requires payment of prevailing wages under the Davis-Bacon labor standards to all laborers and mechanics employed in the development of a project

and for which the Administrator determines that the statute's language and/or legislative history reflected clear congressional intent to apply a coverage standard different from the Davis-Bacon Act itself.

Employed. Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by assistance from the United States through loan, grant, loan guarantee or insurance, or otherwise, is “employed” regardless of any contractual relationship alleged to exist between the contractor and such person.

Laborer or mechanic. The term “laborer or mechanic” includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term “laborer” or “mechanic” includes apprentices, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchpersons or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics. Forepersons who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

Material supplier. The term “material supplier” is defined as follows:

- (1) A material supplier is an entity meeting all of the following criteria:
 - (i) Its only obligations for work on the contract or project are the delivery of materials, articles, supplies, or equipment, which may include pickup of the same in addition to, but not exclusive of, delivery, and which may also include activities incidental to such delivery and pickup, such as loading, unloading, or waiting for materials to be loaded or unloaded; and
 - (ii) Its facility or facilities that manufactures the materials, articles, supplies, or equipment used for the contract or project:
 - (A) Is not located on, or does not itself constitute, the project or contract's primary construction site or secondary construction site as defined in this section; and
 - (B) Either was established before opening of bids on the contract or project, or is not dedicated exclusively, or nearly so, to the performance of the contract or project.
- (2) If an entity, in addition to being engaged in the activities specified in paragraph (1)(i) of this definition, also engages in other construction, prosecution, completion, or repair work at the site of the work, it is not a material supplier.

Prime contractor. The term “prime contractor” means any person or entity that enters into a contract with an agency. For the purposes of the labor standards provisions of any of the laws referenced by § 5.1, the term prime contractor also includes the controlling shareholders or members of any entity holding a prime contract, the joint venturers or partners in any joint venture or partnership holding a prime contract, and any contractor (e.g., a general contractor) that has been delegated the responsibility for overseeing all

29 CFR 5.2 “Prime contractor” (enhanced display)

29 CFR 5.2 “Public building or public work”

or substantially all of the construction anticipated by the prime contract. For the purposes of the provisions in §§ 5.5 and 5.9, any such related entities holding different prime contracts are considered to be the same prime contractor.

Public building or public work. The term “public building or public work” includes a building or work, the construction, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency. The construction, prosecution, completion, or repair of a portion of a building or work, or the installation (where appropriate) of equipment or components into a building or work, may still be considered a public building or work, even where the entire building or work is not owned, leased by, or to be used by a Federal agency, as long as the construction, prosecution, completion, or repair of that portion of the building or work, or the installation (where appropriate) of equipment or components into that building or work, is carried on by authority of or with funds of a Federal agency to serve the interest of the general public.

Secretary. The term “Secretary” includes the Secretary of Labor, and their authorized representative.

Site of the work. The term “site of the work” is defined as follows:

(1) “Site of the work” includes all of the following:

(i) The primary construction site(s), defined as the physical place or places where the building or work called for in the contract will remain.

(ii) Any secondary construction site(s), defined as any other site(s) where a significant portion of the building or work is constructed, *provided* that such construction is for specific use in that building or work and does not simply reflect the manufacture or construction of a product made available to the general public, and *provided further* that the site is either established specifically for the performance of the contract or project, or is dedicated exclusively, or nearly so, to the performance of the contract or project for a specific period of time. A “significant portion” of a building or work means one or more entire portion(s) or module(s) of the building or work, such as a completed room or structure, with minimal construction work remaining other than the installation and/or final assembly of the portions or modules at the place where the building or work will remain. A “significant portion” does not include materials or prefabricated component parts such as prefabricated housing components. A “specific period of time” means a period of weeks, months, or more, and does not include circumstances where a site at which multiple projects are in progress is shifted exclusively or nearly so to a single project for a few hours or days in order to meet a deadline.

(iii) Any adjacent or virtually adjacent dedicated support sites, defined as:

(A) Job headquarters, tool yards, batch plants, borrow pits, and similar facilities of a contractor or subcontractor that are dedicated exclusively, or nearly so, to performance of the contract or project, *and* adjacent or virtually adjacent to either a primary construction site or a secondary construction site, and

(B) Locations adjacent or virtually adjacent to a primary construction site at which workers perform activities associated with directing vehicular or pedestrian traffic around or away from the primary construction site.

29 CFR 5.2 “Site of the work” (1)(iii)(B) (enhanced display)

29 CFR 5.2 “Site of the work” (2)

- (2) With the exception of locations that are on, or that themselves constitute, primary or secondary construction sites as defined in paragraphs (1)(i) and (ii) of this definition, site of the work does not include:
- (i) Permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project; or
 - (ii) Fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a material supplier, which are established by a material supplier for the project before opening of bids and not on the primary construction site or a secondary construction site, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Subcontractor. The term “subcontractor” means any contractor that agrees to perform or be responsible for the performance of any part of a contract that is subject wholly or in part to the labor standards provisions of any of the laws referenced in [§ 5.1](#). The term subcontractor includes subcontractors of any tier.

United States or the District of Columbia. The term “United States or the District of Columbia” means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including non-appropriated fund instrumentalities and any corporation for which all or substantially all of its stock is beneficially owned by the United States or by the foregoing departments, establishments, agencies, or instrumentalities.

Wages. The term “wages” means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

Wage determination. The term “wage determination” includes the original decision and any subsequent decisions revising, modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination must be in accordance with the provisions of [§ 1.6](#) of this subtitle.

[88 FR 57731, Aug. 23, 2023]

§§ 5.3-5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

Link to an amendment published at [88 FR 57734](#), Aug. 23, 2023.

29 CFR 5.5 (enhanced display)

29 CFR 5.5(a)

(a) *Required contract clauses.* The Agency head will cause or require the contracting officer to require the contracting officer to insert in full, or (for contracts covered by the Federal Acquisition Regulation (48 CFR chapter 1)) by reference, in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the laws referenced by § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages* —

(i) *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents 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. As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (a)(4) of this section. 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 classifications and wage rates conformed under paragraph (a)(1)(iii) of this section) and the Davis-Bacon poster (WH-1321) must 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 be easily seen by the workers.

(ii) *Frequently recurring classifications.*

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (a)(1)(iii) of this section, provided that:

29 CFR 5.5(a)(1)(ii)(A)(1)

The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
The classification is used in the area by the construction industry; and

The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

- (1) The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed
- (2) on the wage determination for such classification.

(iii) (3) Conformance.

(B) (A) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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; and
- (2) The classification is used 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) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) 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 will be sent by the contracting officer by email to DBAconformance@dol.gov. 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.

(D) 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 will, by email to DBAconformance@dol.gov, 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.

29 CFR 5.5(a)(1)(iii)(D) (enhanced display)**29 CFR 5.5(a)(1)(iii)(E)**

- (E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must 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.
- (iv) *Fringe benefits not expressed as an hourly rate.* 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (v) *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.
- (vi) *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.
- (2) *Withholding —*
- (i) *Withholding requirements.* The [write in name of Federal agency or the recipient of Federal assistance] may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph (a)(3)(iv) of this section, the [Agency] may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, 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.

29 CFR 5.5(a)(2)(i) (enhanced display)**29 CFR 5.5(a)(2)(ii)**

(ii) *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its reprocurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

(3) *Records and certified payrolls —*

(i) *Basic record requirements —*

- (A) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.
- (B) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.
- (C) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph (a)(1)(v) of this section 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which 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 records which show the costs anticipated or the actual cost incurred in providing such benefits.
- (D) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) *Certified payroll requirements —*

29 CFR 5.5(a)(3)(ii) (enhanced display)**29 CFR 5.5(a)(3)(ii)(A)**

- (A) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the [write in name of appropriate Federal agency] if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of agency]. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.
- (B) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (a)(3)(i)(B) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).
- (C) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:
- (1) That the certified payroll for the payroll period contains the information required to be provided under paragraph (a)(3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (a)(3)(i) of this section, and such information and records are correct and complete;
 - (2) That each laborer or mechanic (including each helper and apprentice) working 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 29 CFR part 3; and

29 CFR 5.5(a)(3)(ii)(C)(2) (enhanced display)

29 CFR 5.5(a)(3)(ii)(C)(3)

- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.
 - (D) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(C) of this section.
 - (E) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.
 - (F) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.
 - (G) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- (iii) *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed. (iv) *Required disclosures and access —*
- (A) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents that the [write the name of the agency] or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the [write the name of the agency] or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.
 - (B) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to §

5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or

29 CFR 5.5(a)(3)(iv)(B) (enhanced display)

29 CFR 5.5(a)(3)(iv)(C)

made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

- (C) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the [write in name of appropriate Federal agency] if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of agency], the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) *Apprentices and equal employment opportunity* —

(i) *Apprentices* —

- (A) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (B) *Fringe benefits.* Apprentices must 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, fringe benefits must be paid in accordance with that determination.
- (C) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio

applicable to the locality of the project pursuant to paragraph (a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of

29 CFR 5.5(a)(4)(i)(C) (enhanced display)

29 CFR 5.5(a)(4)(i)(D)

work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

- (D) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.
- (ii) *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must 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 must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the [write in the name of the Federal agency] may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.
- (7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 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 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 40 U.S.C. 3144(b) or § 5.12(a).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

29 CFR 5.5(a)(10)(ii) (enhanced display)**29 CFR 5.5(a)(10)(iii)**

- (iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.
- (11) *Anti-retaliation*. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
 - (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
 - (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or
 - (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.
- (b) *Contract Work Hours and Safety Standards Act (CWHSSA)*. The Agency Head must cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full, or (for contracts covered by the Federal Acquisition Regulation) by reference, in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses must be inserted in addition to the clauses required by paragraph (a) of this section or 29 CFR 4.6. As used in this paragraph (b), the terms "laborers and mechanics" include watchpersons and guards.
- (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 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 (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$32 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 (b)(1).

(3) *Withholding for unpaid wages and liquidated damages* —

29 CFR 5.5(b)(3)(i) (enhanced display)

29 CFR 5.5(b)(3)(ii)

(i) *Withholding process.* The [write in the name of the Federal agency or the recipient of Federal assistance] may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its procurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

(4) *Subcontracts.* The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

- (5) *Anti-retaliation.* It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
 - (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

29 CFR 5.5(b)(5)(ii) (enhanced display)**29 CFR 5.5(b)(5)(iii)**

- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
 - (iv) Informing any other person about their rights under CWHSSA or this part.
- (c) *CWHSSA required records clause.* In addition to the clauses contained in paragraph (b) of this section, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by § 5.1, the Agency Head must cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made; and actual wages paid. Further, the Agency Head must cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.
- (d) *Incorporation of contract clauses and wage determinations by reference.* Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.
- (e) *Incorporation by operation of law.* The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by § 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

29 CFR 5.5(e) (enhanced display)**29 CFR 5.6**

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control No.
(a)(1)(ii)(B)	1235-0023
(a)(1)(ii)(C)	1235-0023
(a)(1)(iv)	1235-0023
(a)(3)(i)	1235-0023
(a)(3)(ii)(A)	1235-0023
	1235-0008
(c)	1235-0023

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58

FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008; 81 FR 43450, July 1,

2016; 82 FR 2225, 2226, Jan. 9, 2017; 83 FR 12, Jan 2, 2018; 84 FR 218, Jan. 23, 2019; 87 FR 2334, Jan. 14, 2022; 88 FR 2215, Jan. 13, 2023; 88 FR 57734, Aug. 23, 2023; 89 FR 1815, Jan. 11, 2024]

§ 5.6 Enforcement.

(a) *Agency responsibilities.*

(1)

(i) The Federal agency has the initial responsibility to ascertain whether the clauses required by § 5.5 and the appropriate wage determination(s) have been incorporated into the contracts subject to the labor standards provisions of the laws referenced by § 5.1. Additionally, a Federal agency that provides Federal financial assistance that is subject to the labor standards provisions of the Act must promulgate the necessary regulations or procedures to require the recipient or sub-recipient of the Federal assistance to insert in its contracts the provisions of § 5.5. No payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency unless it ensures that the clauses required by § 5.5 and the appropriate wage determination(s) are incorporated into such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency after the beginning of construction unless there is on file with the Federal agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of § 5.5 or unless there is on file with the Federal agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

- (iii) If a contract subject to the labor standards provisions of the applicable statutes referenced by § 5.1 is entered into without the incorporation of the clauses required by § 5.5, the agency must, upon the request of the Administrator or upon its own initiative, either terminate and resolicit the contract with the required contract clauses, or incorporate the required clauses into the contract (or ensure they are so incorporated) through supplemental agreement, change order, or any and all authority that may be needed. Where an agency has not entered directly into such a contract but instead has provided Federal financial assistance, the agency must ensure that the recipient or sub-recipient of the Federal assistance similarly incorporates the clauses

29 CFR 5.6(a)(1)(ii) (enhanced display)

29 CFR 5.6(a)(1)(ii)(A)

required into its contracts. The method of incorporation of the correct wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable law. Additionally, the following requirements apply:

- (A) Unless the Administrator directs otherwise, the incorporation of the clauses required by § 5.5 must be retroactive to the date of contract award or start of construction if there is no award.
- (B) If this incorporation occurs as the result of a request from the Administrator, the incorporation must take place within 30 days of the date of that request, unless the agency has obtained an extension from the Administrator.
- (C) The contractor must be compensated for any increases in wages resulting from incorporation of a missing contract clause.
- (D) If the recipient refuses to incorporate the clauses as required, the agency must make no further payment, advance, grant, loan, or guarantee of funds in connection with the contract until the recipient incorporates the required clauses into its contract, and must promptly refer the dispute to the Administrator for further proceedings under § 5.13.
- (E) Before terminating a contract pursuant to this section, the agency must withhold or crosswithhold sufficient funds to remedy any back wage liability resulting from the failure to incorporate the correct wage determination or otherwise identify and obligate sufficient funds through a termination settlement agreement, bond, or other satisfactory mechanism.
- (F) Notwithstanding the requirement to incorporate the contract clauses and correct wage determination within 30 days, the contract clauses and correct wage determination will be effective by operation of law, retroactive to the beginning of construction, in accordance with § 5.5(e).

(2)

- (i) Certified payrolls submitted pursuant to § 5.5(a)(3)(ii) must be preserved by the Federal agency for a period of 3 years after all the work on the prime contract is completed, and must be produced at the request of the Department of Labor at any time during the 3-year period, regardless of whether the Department of Labor has initiated an investigation or other compliance action.

- (ii) In situations where the Federal agency does not itself maintain certified payrolls required to be submitted pursuant to § 5.5(a)(3)(ii), upon the request of the Department of Labor the Federal agency must ensure that such certified payrolls are provided to the Department of Labor. Such certified payrolls may be provided by the applicant, sponsor, owner, or other entity, as the case may be, directly to the Department of Labor, or to the Federal agency which, in turn, must provide those records to the Department of Labor.
- (3) The Federal agency will cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes referenced in § 5.1. Investigations will be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations will include interviews with workers, which must be taken in confidence, and examinations of certified payrolls, regular payrolls, and other basic records required to be maintained under § 5.5(a)(3). In making such examinations, particular care

29 CFR 5.6(a)(3) (enhanced display)

29 CFR 5.6(a)(4)

must be taken to determine the correctness of classification(s) of work actually performed, and to determine whether there is a disproportionate amount of work by laborers and of apprentices registered in approved programs. Such investigations must also include evidence of fringe benefit plans and payments thereunder. Federal agencies must give priority to complaints of alleged violations.

- (4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages, liquidated damages, and monetary relief for violations of § 5.5(a)(11) or (b)(5), and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(b) *Department of Labor investigations and other compliance actions.*

- (1) The Administrator will investigate and conduct other compliance actions as deemed necessary in order to obtain compliance with the labor standards provisions of the applicable statutes referenced by § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes referenced by § 5.1.
- (2) Federal agencies, contractors, subcontractors, sponsors, applicants, owners, or other entities, as the case may be, must cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations or other compliance actions.
- The findings of such an investigation or other compliance action, including amounts found due, may not be altered or reduced without the approval of the Department of Labor.
- (4) Where the underpayments disclosed by such an investigation or other compliance action total \$1,000 or more, where there is reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, or where liquidated damages may be assessed under CWHSSA, the Department of Labor will furnish the Federal agency an

enforcement report detailing the labor standards violations disclosed by the investigation or other compliance action and any action taken by the contractor or subcontractor to correct the violations, including any payment of back wages or any other relief provided workers or remedial actions taken for violations of § 5.5(a)(11) or (b)(5). In other circumstances, the Department of Labor will furnish the Federal agency a notification summarizing the findings of the investigation or other compliance action.

- (c) *Confidentiality requirements.* It is the policy of the Department of Labor to protect from disclosure the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of a worker or other informant who makes a written or oral statement as a complaint or in the course of an investigation or other compliance action, as well as portions of the statement which would tend to reveal the identity of the informant, will not be disclosed in any manner to anyone other than Federal officials without the prior consent of the informant. Disclosure of such statements is also governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see part 70 of this subtitle) and the "Privacy Act of 1974" (5 U.S.C. 552a, see part 71 of this subtitle).

[88 FR 57739, Aug. 23, 2023]

29 CFR 5.6(c) (enhanced display)

29 CFR 5.7

§ 5.7 Reports to the Secretary of Labor.

- (a) *Enforcement reports.*
- (1) Where underpayments by a contractor or subcontractor total less than \$1,000, where there is no reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation or other compliance action was made at the request of the Department of Labor. In the latter case, the Federal agency will submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice" or remedial action taken for violations of § 5.5(a)(11) or (b)(5)), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.
 - (2) Where underpayments by a contractor or subcontractor total \$1,000 or more, or where there is reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, the Federal agency will furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.
- (b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator.

This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOLSA.

- (c) *Additional information.* Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.
- (d) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in § 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

[48 FR 19540, Apr. 29, 1983, as amended at 88 FR 57734, Aug. 23, 2023]

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

- (a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages 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 any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of \$32 for each

29 CFR 5.8(a) (enhanced display)

29 CFR 5.8(b)

calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory of District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

- (b) *Findings and recommendations of the Agency Head.* The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of \$500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.
- (c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative

who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to part 7 of this title, and the Administrative Review Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to part 8 of this title, and the Administrative Review Board in its discretion reviews such decision and order.

- (d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is \$500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 51 FR 13496, Apr. 21, 1986; 81 FR 43450, July 1, 2016; 83 FR 12, Jan. 2, 2018; 84 FR 218, Jan. 23, 2019; 87 FR 2334, Jan. 14, 2022; 88 FR 2215, Jan. 13, 2023; 89 FR 1815, Jan. 11, 2024]

§ 5.9 Suspension of funds.

- (a) *Suspension and withholding.* In the event of failure or refusal of the contractor or any subcontractor to comply with the applicable statutes referenced by § 5.1 and the labor standards clauses contained in § 5.5, whether incorporated into the contract physically, by reference, or by operation of law, the Federal agency (and any other agency), may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, take such action as may be necessary to cause the suspension of the payment, advance, or guarantee of funds until such time as the violations are

29 CFR 5.9(a) (enhanced display)

29 CFR 5.9(b)

discontinued and/or until sufficient funds are withheld as may be considered necessary to compensate workers for the full amount of wages and monetary relief to which they are entitled, and to cover any liquidated damages and pre-judgment or post-judgment interest which may be due.

- (b) *Cross-withholding.* To satisfy a contractor's liability for back wages on a contract, in addition to the suspension and withholding of funds from the contract(s) under which the violation(s) occurred, the necessary funds also may be withheld under any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards and/or the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency.
- (c) *Cross-withholding from different legal entities.* Cross-withholding of funds may be requested from contracts held by other entities that may be considered to be the same prime contractor as that term is defined in § 5.2. Such cross-withholding is appropriate where the separate legal entities have

independently consented to it by entering into contracts containing the withholding provisions at § 5.5(a)(2) and (b)(3). Cross-withholding from a contract held by a different legal entity is not appropriate unless the withholding provisions were incorporated in full or by reference in that different legal entity's contract. Absent exceptional circumstances, cross-withholding is not permitted from a contract held by a different legal entity where the Davis-Bacon labor standards were incorporated only by operation of law into that contract.

[88 FR 57740, Aug. 23, 2023]

§ 5.10 Restitution, criminal action.

- (a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b) of this section where violations of the labor standards clauses contained in § 5.5 and the applicable statutes referenced by § 5.1 result in underpayment of wages to workers or monetary damages caused by violations of § 5.5(a)(11) or (b)(5), the Federal agency or an authorized representative of the Department of Labor will request that restitution be made to such workers or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of 40 U.S.C. 3141(2)(B), including interest from the date of the underpayment or loss. Interest on any back wages or monetary relief provided for in this part will be calculated using the percentage established for the underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.
- (b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter will be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator will be informed simultaneously of the action taken.

[88 FR 57741, Aug. 23, 2023]

§ 5.11 Disputes concerning payment of wages.

- (a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, proper classification, or monetary relief for violations of § 5.5(a)(11) or (b)(5). The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to § 5.5(a)(9), or upon request of the contractor or subcontractor.

29 CFR 5.11(a) (enhanced display)

29 CFR 5.11(b)

- (b)
 - (1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor, if any, by registered or certified mail to the last known address or by any other means normally assuring delivery, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that either the contractor, the subcontractor, or both, should also be subject to debarment under the Davis-Bacon Act or any of the other applicable statutes referenced by § 5.1, the notification will so indicate.

- (2) A contractor or subcontractor desiring a hearing concerning the Administrator's investigation findings must request such a hearing by letter or by any other means normally assuring delivery, sent within 30 days of the date of the Administrator's notification. The request must set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses.
- (3) Upon receipt of a timely request for a hearing, the Administrator will refer the case to the Chief Administrative Law Judge by Order of Reference, with an attached copy of the notification from the Administrator and the response of the contractor or subcontractor, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearings will be conducted in accordance with the procedures set forth in part 6 of this subtitle.

(c)

- (1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 5.12, the Administrator will notify the contractor and subcontractor, if any, by registered or certified mail to the last known address or by any other means normally assuring delivery, of the investigation findings, and will issue a ruling on any issues of law known to be in dispute.

(2)

- (i) If the contractor or subcontractor disagrees with the factual findings of the Administrator or believes that there are relevant facts in dispute, the contractor or subcontractor must advise the Administrator by letter or by any other means normally assuring delivery, sent within 30 days of the date of the Administrator's notification. In the response, the contractor or subcontractor must explain in detail the facts alleged to be in dispute and attach any supporting documentation.
 - (ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator will examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator will refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator will so rule and advise the contractor and subcontractor, if any, accordingly.
- (3) If the contractor or subcontractor desires review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor or subcontractor must file a petition for review thereof with the Administrative Review Board within 30 days of the date of the ruling, with a copy thereof to the Administrator. The petition for review must be filed in accordance with part 7 of this subtitle.

29 CFR 5.11(c)(3) (enhanced display)

29 CFR 5.11(d)

- (d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings or ruling will be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator will advise the Comptroller General of the Administrator's recommendation in accordance with § 5.12(a)(2). If a timely response or petition for review is filed, the

findings or ruling of the Administrator will be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board.

[88 FR 57741, Aug. 23, 2023]

§ 5.12 Debarment proceedings.

(a) *Debarment standard and ineligible list.*

- (1) Whenever any contractor or subcontractor is found by the Secretary of Labor to have disregarded their obligations to workers or subcontractors under the Davis-Bacon Act, any of the other applicable statutes referenced by § 5.1, this part, or part 3 of this subtitle, such contractor or subcontractor and their responsible officers, if any, and any firm, corporation, partnership, or association in which such contractor, subcontractor, or responsible officer has an interest will be ineligible for a period of 3 years to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of any of the statutes referenced by § 5.1.
- (2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator will transmit to the Comptroller General the name(s) of the contractors or subcontractors and their responsible officers, if any, and any firms, corporations, partnerships, or associations in which the contractors, subcontractors, or responsible officers are known to have an interest, who have been found to have disregarded their obligations to workers or subcontractors, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. In cases arising under contracts covered by any of the applicable statutes referenced by § 5.1 other than the Davis-Bacon Act, the Administrator determines the name(s) of the contractors or subcontractors and their responsible officers, if any, and any firms, corporations, partnerships, or associations in which the contractors, subcontractors, or responsible officers are known to have an interest, to be debarred. The names of such ineligible persons or firms will be published on SAM or its successor website, and an ineligible person or firm will be ineligible for a period of 3 years from the date of publication of their name on the ineligible list, to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of any of the statutes referenced by § 5.1.

(b) *Procedure.*

- (1) In addition to cases under which debarment action is initiated pursuant to § 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed violations which constitute a disregard of its obligations to workers or subcontractors under the Davis-Bacon Act, the labor standards provisions of any of the other applicable statutes referenced by § 5.1, this part, or part 3 of this subtitle, the Administrator will notify by registered or certified mail to the last known address or by any other means normally assuring delivery, the contractor or subcontractor and responsible officers, if any, and any firms, corporations, partnerships, or associations in which the contractors, subcontractors, or responsible officers are known to have an interest of the finding.

29 CFR 5.12(b)(1) (enhanced display)

29 CFR 5.12(b)(1)(i)

- (i) The Administrator will afford such contractor, subcontractor, responsible officer, and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a) of this section. The Administrator will furnish to those notified a summary of the investigative findings.
 - (ii) If the contractor, subcontractor, responsible officer, or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request must be made by letter or by any other means normally assuring delivery, sent within 30 days of the date of the notification from the Administrator, and must set forth any findings which are in dispute and the basis for such disputed findings, including any affirmative defenses to be raised.
 - (iii) Upon timely receipt of such request for a hearing, the Administrator will refer the case to the Chief Administrative Law Judge by Order of Reference, with an attached copy of the notification from the Administrator and the responses of the contractor, subcontractor, responsible officers, or any other parties notified, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute.
 - (iv) In considering debarment under any of the statutes referenced by § 5.1 other than the DavisBacon Act, the Administrative Law Judge will issue an order concerning whether the contractor, subcontractor, responsible officer, or any other party notified is to be debarred in accordance with paragraph (a) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge will issue a recommendation as to whether the contractor, subcontractor, responsible officers, or any other party notified should be debarred under 40 U.S.C. 3144(b).
- (2) Hearings under this section will be conducted in accordance with part 6 of this subtitle. If no hearing is requested within 30 days of the date of the notification from the Administrator, the Administrator's findings will be final, except with respect to recommendations regarding debarment under the DavisBacon Act, as set forth in paragraph (a)(2) of this section.

(c) *Interests of debarred parties.*

- (1) A finding as to whether persons or firms whose names appear on the ineligible list have an interest under 40 U.S.C. 3144(b) or paragraph (a) of this section in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.
- (2)
 - (i) The Administrator, on their own motion or after receipt of a request for a determination pursuant to paragraph (c)(3) of this section, may make a finding on the issue of interest.
 - (ii) If the Administrator determines that there may be an interest but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (c)(4) of this section.
 - (iii) If the Administrator finds that no interest exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken. (iv)

29 CFR 5.12(c)(2)(iv) (enhanced display)

29 CFR 5.12(c)(2)(iv)(A)

- (A) If the Administrator finds that an interest exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address or by any other means normally assuring delivery), which will include the reasons therefore, and such person or firm will be afforded an opportunity to request that a hearing be held to decide the issue.
- (B) Such person or firm will have 20 days from the date of the Administrator's ruling to request a hearing. A person or firm desiring a hearing must request it by letter or by any other means normally assuring delivery, sent within 20 days of the date of the Administrator's notification. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, must be submitted with the request for a hearing.
- (C) If no hearing is requested within the time mentioned in paragraph (c)(2)(iv)(B) of this section, the Administrator's finding will be final and the Administrator will notify the Comptroller General in cases arising under the DBA. If a hearing is requested, the ruling of the Administrator will be inoperative unless and until the Administrative Law Judge or the Administrative Review Board issues an order that there is an interest.

(3)

- (i) A request for a determination of interest may be made by any interested party, including contractors or prospective contractors and associations of contractors, representatives of workers, and interested agencies. Such a request must be submitted in writing to the Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.
- (ii) The request must include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the ineligible list has an interest in any firm, corporation, partnership, or association that is seeking or has been awarded a contract or subcontract of the United States or the District of Columbia, or a contract or subcontract that is subject to the labor standards provisions of any of the statutes referenced by § 5.1. No particular form is prescribed for the submission of a request under this section.

(4) The Administrator, on their own motion under paragraph (c)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who will conduct such hearings as may be necessary to render a decision solely on the issue of interest. Such proceedings must be conducted in accordance with the procedures set forth in part 6 of this subtitle.

(5) If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Administrative Review Board to render a decision solely on the issue of interest. Such proceeding must be conducted in accordance with the procedures set forth in part 7 of this subtitle. *[88 FR 57741, Aug. 23, 2023]*

29 CFR 5.13**§ 5.13 Rulings and interpretations.**

- (a) All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to part 1 of this subtitle, of the rules contained in this part and in parts 1 and 3 of this subtitle, and of the labor standards provisions of any of the laws referenced in § 5.1 must be referred to the Administrator for appropriate ruling or interpretation. These rulings and interpretations are authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be submitted via email to dgceinquiries@dol.gov; by mail to Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210; or through other means directed by the Administrator.
- (b) If any such ruling or interpretation is made by an authorized representative of the Administrator of the Wage and Hour Division, any interested party may seek reconsideration of the ruling or interpretation by the Administrator of the Wage and Hour Division. The procedures and time limits set out in § 1.8 of this subtitle apply to any such request for reconsideration.

[88 FR 57743, Aug. 23, 2023]

§ 5.14 Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in § 5.1 unless the statute specifically provides such authority.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

- (a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.
- (b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:
 - (1) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

29 CFR 5.15(b)(1) (enhanced display)**29 CFR 5.15(b)(2)**

- (2) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.
- (3) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) Tolerances.

- (1) The “basic rate of pay” under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.
- (2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the “regular rate” under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the “basic rate” under the Contract Work Hours and Safety Standards Act.
- (3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling \$500 or less under specified circumstances.
- (4)
 - (i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.
 - (ii) The apprentice comes within the definition contained in § 5.2.
 - (iii) The time in question does not involve productive work or performance of the apprentice's regular duties.

(d) Variations.

- (1) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully the unpaid wages and any back pay or other monetary relief due laborers and mechanics, with interest, and the liquidated damages due the United States, the available funds will be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, will be used for the payment of liquidated damages.

- (2) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 40 hours in the

29 CFR 5.15(d)(2) (enhanced display)**29 CFR 5.15(d)(3)**

workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1 $\frac{1}{2}$ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

- (3) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by section 102 of the Act in accordance with the basic rate of pay as defined in paragraph (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:

- (i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work.

(A) The employee receives gross wages of not less than \$300 per week regardless of the total number of hours worked in any workweek, and

(B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 40 hours in the workweek;

- (ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract.

(Reporting and recordkeeping requirements in paragraph (d)(2) have been approved by the Office of Management and Budget under control numbers 1235-0023 and 1235-0018. Reporting and recordkeeping requirements in paragraph (d)(3)(ii) have been approved by the Office of Management and Budget under control number 1235-0018)

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 61 FR 40716, Aug. 5, 1996; 82 FR 2226, Jan. 9, 2017; 88 FR 57743, Aug. 23, 2023]

§ 5.16 [Reserved]

§ 5.17 [Reserved]

29 CFR 5.17 (enhanced display)

29 CFR 5.18

§ 5.18 Remedies for retaliation.

- (a) *Administrator request to remedy violation.* When the Administrator finds that any person has discriminated in any way against any worker or job applicant in violation of § 5.5(a)(11) or (b)(5), or caused any person to discriminate in any way against any worker or job applicant in violation of § 5.5(a)(11) or (b)(5), the Administrator will notify the person, any contractors for whom the person worked or on whose behalf the person acted, and any upper tier contractors, as well as the relevant contracting agency(ies) of the discrimination and request that the person and any contractors for whom the person worked or on whose behalf the person acted remedy the violation.
- (b) *Administrator directive to remedy violation and provide make-whole relief.* If the person and any contractors for whom the person worked or on whose behalf the person acted do not remedy the violation, the Administrator in the notification of violation findings issued under § 5.11 or § 5.12 will direct the person and any contractors for whom the person worked or on whose behalf the person acted to provide appropriate make-whole relief to affected worker(s) and job applicant(s) or take appropriate remedial action, or both, to correct the violation, and will specify the particular relief and remedial actions to be taken.
- (c) *Examples of available make-whole relief and remedial actions.* Such relief and remedial actions may include, but are not limited to, employment, reinstatement, front pay in lieu of reinstatement, and promotion, together with back pay and interest; compensatory damages; restoration of the terms, conditions, and privileges of the worker's employment or former employment; the expungement of warnings, reprimands, or derogatory references; the provision of a neutral employment reference; and the posting of a notice to workers that the contractor or subcontractor agrees to comply with the Davis-Bacon Act and Related Acts anti-retaliation requirements.

[88 FR 57743, Aug. 23, 2023]

Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act Source: 29

FR 13465, Sept. 30, 1964, unless otherwise noted.

§ 5.20 Scope and significance of this subpart.

The 1964 amendments (Pub. L. 88-349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally assisted construction include the basic hourly rate of pay and the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments and make available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations

will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also to provide guidance to contractors and their associations; laborers and mechanics and their organizations; and local, State, and Federal agencies. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in [§ 5.13](#).

29 CFR 5.20 (enhanced display)

29 CFR 5.21

[88 FR 57743, Aug. 23, 2023]

§ 5.21 [Reserved]

§ 5.22 Effect of the Davis-Bacon fringe benefits provisions.

The Davis-Bacon Act and the prevailing wage provisions of the statutes referenced in [§ 1.1](#) of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See the definitions of the terms “prevailing wage” and “area” in [§ 1.2](#) of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms “wages”, “scale of wages”, “wage rates”, “minimum wages”, and “prevailing wages”, as used in the Davis-Bacon Act.

[88 FR 57744, Aug. 23, 2023]

§ 5.23 The statutory provisions.

Pursuant to the Davis-Bacon Act, as amended and codified at [40 U.S.C. 3141\(2\)](#), the term “prevailing wages” and similar terms include the basic hourly rate of pay and, for the listed fringe benefits and other bona fide fringe benefits not required by other law, the contributions irrevocably made by a contractor or subcontractor to a trustee or third party pursuant to a bona fide fringe benefit fund, plan, or program, and the costs to the contractor or subcontractor that may be reasonably anticipated in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the affected laborers and mechanics. [Section 5.29](#) discusses specific fringe benefits that may be considered to be bona fide.

[88 FR 57744, Aug. 23, 2023]

§ 5.24 The basic hourly rate of pay.

“The basic hourly rate of pay” is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

§ 5.25 Rate of contribution or cost for fringe benefits.

- (a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.
- (b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See § 5.5(a)(1)(i) and (iii).

29 CFR 5.25(b) (enhanced display)**29 CFR 5.25(c)**

- (c) Except as provided in this section, contractors must “annualize” all contributions to fringe benefit plans (or the reasonably anticipated costs of an unfunded benefit plan) to determine the hourly equivalent for which they may take credit against their fringe benefit obligation. The “annualization” principle reflects that DBRA credit for contributions made to bona fide fringe benefit plans (or the reasonably anticipated costs of an unfunded benefit plan) is allowed based on the effective rate of contributions or costs incurred for total hours worked during the year (or a shorter time period) by a laborer or mechanic.
 - (1) *Method of computation.* To annualize the cost of providing a fringe benefit, a contractor must divide the total cost of the fringe benefit contribution (or the reasonably anticipated costs of an unfunded benefit plan) by the total number of hours worked on both private (non-DBRA) work and work covered by the Davis-Bacon Act and/or Davis-Bacon Related Acts (DBRA-covered work) during the time period to which the cost is attributable to determine the rate of contribution per hour. If the amount of contribution varies per worker, credit must be determined separately for the amount contributed on behalf of each worker.
 - (2) *Exception requests.* Contractors, plans, and other interested parties may request an exception from the annualization requirement by submitting a request to the WHD Administrator. A request for an exception may be granted only if each of the requirements of paragraph (c)(3) of this section is satisfied. Contributions to defined contribution pension plans (DCPPs) are excepted from the annualization requirement, and exception requests therefore are not required in connection with DCPPs, provided that each of the requirements of paragraph (c)(3) is satisfied and the DCPP provides for immediate participation and essentially immediate vesting (*i.e.*, the benefit vests within the first 500 hours worked). Requests must be submitted in writing to the Division of Government Contracts Enforcement by email to DBAannualization@dol.gov or by mail to Director, Division of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Ave. NW, Room S-3502, Washington, DC 20210.
 - (3) *Exception requirements.* Contributions to a bona fide fringe benefit plan (or the reasonably anticipated costs of an unfunded benefit plan) are excepted from the annualization requirement if all of the following criteria are satisfied:

- (i) The benefit provided is not continuous in nature. A benefit is not continuous in nature when it is not available to a participant without penalty throughout the year or other time period to which the cost of the benefit is attributable; and
- (ii) The benefit does not compensate both private work and DBRA-covered work. A benefit does not compensate both private and DBRA-covered work if any benefits attributable to periods of private work are wholly paid for by compensation for private work.

[29 FR 13465, Sept. 30, 1964, as amended at 88 FR 57744, Aug. 23, 2023]

§ 5.26 “* * * contribution irrevocably made * * * to a trustee or to a third person”.

- (a) *Requirements.* The following requirements apply to any fringe benefit contributions made to a trustee or to a third person pursuant to a fund, plan, or program: Such contributions must be
 - (1) made irrevocably;
 - (2) The trustee or third person may not be affiliated with the contractor or subcontractor;
 - (3) A trustee must adhere to any fiduciary responsibilities applicable under law; and

29 CFR 5.26(a)(3) (enhanced display)

29 CFR 5.26(a)(4)

- (4) The trust or fund must not permit the contractor or subcontractor to recapture any of the contributions paid in or any way divert the funds to its own use or benefit.
- (b) *Excess payments.* Notwithstanding the above, a contractor or subcontractor may recover sums which it had paid to a trustee or third person in excess of the contributions actually called for by the plan, such as excess payments made in error or in order to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions is not yet known. For example, a benefit plan may provide for definite insurance benefits for employees in the event of contingencies such as death, sickness, or accident, with the cost of such definite benefits borne by the contractor or subcontractor. In such a case, if the insurance company returns the amount that the contractor or subcontractor paid in excess of the amount required to provide the benefits, this will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

[88 FR 57744, Aug. 23, 2023]

§ 5.27 “* * * fund, plan, or program”.

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase “fund, plan, or program” is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.28 Unfunded plans.

- (a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the Act, pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the Act (see 40 U.S.C. 3141(2)(B)(ii)). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting these requirements, among others, and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4; see *also* S. Rep. No. 963, p. 6.)
- (b) Such a benefit plan or program, commonly referred to as an unfunded plan, may not constitute a fringe benefit within the meaning of the Act unless:
- (1) It could be reasonably anticipated to provide the benefits described in the Act;
 - (2) It represents a commitment that can be legally enforced;
 - (3) It is carried out under a financially responsible plan or program;
 - (4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected; and
 - (5) The contractor or subcontractor requests and receives approval of the plan or program from the Secretary, as described in paragraph (c) of this section.

29 CFR 5.28(b)(5) (enhanced display)

29 CFR 5.28(c)

- (c) To receive approval of an unfunded plan or program, a contractor or subcontractor must demonstrate in its request to the Secretary that the unfunded plan or program, and the benefits provided under such plan or program, are “bona fide,” meet the requirements set forth in paragraphs (b)(1) through (4) of this section, and are otherwise consistent with the Act. The request must include sufficient documentation to enable the Secretary to evaluate these criteria. Contractors and subcontractors may request approval of an unfunded plan or program by submitting a written request in one of the following manners:
- (1) By mail to the United States Department of Labor, Wage and Hour Division, Director, Division of Government Contracts Enforcement, 200 Constitution Ave. NW, Room S-3502, Washington, DC 20210;
 - (2) By email to unfunded@dol.gov (or its successor email address);
 - (3) or By any other means directed by the Administrator.
- (d) Unfunded plans or programs may not be used as a means of avoiding the Act's requirements. The words “reasonably anticipated” require that any unfunded plan or program be able to withstand a test of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the Act, an unfunded plan or program must be “bona fide” and not a mere simulation or sham for avoiding compliance with the Act. To prevent these provisions from being used to avoid compliance with the Act, the Secretary may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet future obligations under the plan. Such an account must be preserved for the purpose intended. (S. Rep. No. 963, p. 6.)

[88 FR 57744, Aug. 23, 2023]

§ 5.29 Specific fringe benefits.

- (a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: Medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.
- (b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).
- (c) The term “other bona fide fringe benefits” is the so-called “open end” provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area. (S. Rep. No. 963, p. 6).
- (d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be “bona fide” (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is “bona fide” in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or

29 CFR 5.29(d) (enhanced display)**29 CFR 5.29(e)**

program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under § 5.5(a)(1)(iv).

- (e) Where the plan is not of the conventional type described in paragraph (d) of this section, the Secretary must examine the facts and circumstances to determine whether fringe benefits under the plan are “bona fide” in accordance with requirements of the Act. This is particularly true with respect to unfunded plans discussed in § 5.28. Contractors or subcontractors seeking credit under the Act for costs incurred for such plans must request specific approval from the Secretary under § 5.5(a)(1)(iv).
- (f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

- (g) For a contractor or subcontractor to take credit for the costs of an apprenticeship program, the following requirements must be met:
- (1) The program, in addition to meeting all other relevant requirements for fringe benefits in this subpart, must be registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship ("OA"), or with a State Apprenticeship Agency recognized by the OA.
 - (2) The contractor or subcontractor may only take credit for amounts reasonably related to the costs of the apprenticeship benefits actually provided to the contractor's employees, such as instruction, books, and tools or materials. It may not take credit for voluntary contributions beyond such costs. Amounts the employer is required to contribute by a collective bargaining agreement or by a bona fide apprenticeship plan will be presumed to be reasonably related to such costs in the absence of evidence to the contrary.
 - (3) Costs incurred for the apprenticeship for one classification of laborer or mechanic may not be used to offset costs incurred for another classification.
 - (4) In applying the annualization principle to compute the allowable fringe benefit credit pursuant to § 5.25, the total number of working hours of employees to which the cost of an apprenticeship program is attributable is limited to the total number of hours worked by laborers and mechanics in the apprentice's classification. For example, if a contractor enrolls an employee in an apprenticeship program for carpenters, the permissible hourly Davis-Bacon credit is determined by dividing the cost of the program by the total number of hours worked by the contractor's carpenters and carpenters' apprentices on covered and non-covered projects during the time period to which the cost is attributable, and such credit may only be applied against the contractor's prevailing wage obligations for all carpenters and carpenters' apprentices for each hour worked on the covered project. [29 FR 13465, Sept. 30, 1964, as amended at 88 FR 57745, Aug. 23, 2023]

29 CFR 5.29(g)(4) (enhanced display)

29 CFR 5.30

§ 5.30 Types of wage determinations.

- (a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. The examples contained in paragraph (c) of this section demonstrate how fringe benefits may be listed on wage determinations in such cases.
- (b) Wage determinations do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs, the wage determination will contain only the basic hourly rates of pay which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.
- (c) The following illustrates examples of the situations discussed in paragraph (a) and (b) of this section:

Figure 1 to Paragraph (c)

29 CFR 5.30(c) (enhanced display)

29 CFR 5.30(c)

CLASSIFICATION	RATE	FRINGES
Bricklayer	\$21.96	\$0.00
Electrician	\$47.65	3%+\$14.88
Elevator mechanic	\$48.60	\$35.825+a+b a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving. b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service; 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.
Ironworker, structural	\$32.00	\$12.01
Laborer: common or general	\$21.93	\$6.27
Operator: bulldozer	\$18.11	\$0.00
Plumber (excludes HVAC duct, pipe and unit installation)	\$38.38	\$16.67

Note 1 to paragraph (c): This format is not necessarily in the exact form in which determinations will issue; it is for illustration only.

29 CFR 5.30(c) (enhanced display)**29 CFR 5.31**

[88 FR 57745, Aug. 23, 2023]

§ 5.31 Meeting wage determination obligations.

- (a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge their minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for “bona fide” fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.
- (b) A contractor or subcontractor may discharge their obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to their laborers or mechanics in the following ways:
 - (1) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for “bona fide” fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for “Laborer: common or general” in § 5.30, figure 1 to paragraph (c), will be met by the payment of a straight time hourly rate of not less than \$21.93 and by contributions of not less than a total of \$6.27 an hour for “bona fide” fringe benefits; or
 - (2) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, they would meet their obligations for “Laborer: common or general” in § 5.30, figure 1 to paragraph (c), by paying directly to the laborers a straight time hourly rate of not less than \$28.60 (\$21.93 basic hourly rate plus \$6.27 for fringe benefits); or
 - (3) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge their minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in paragraphs (b)(1) and (2) of this section. Thus, for example, their obligations for “Laborer: common or general” may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than \$28.60 (\$21.93 basic hourly rate plus \$6.27 for fringe benefits).

[88 FR 57746, Aug. 23, 2023]

§ 5.32 Overtime payments.

- (a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straighttime rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be

excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.

29 CFR 5.32(b)

(b) The legislative report notes that the phrase “contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program” was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)

(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics \$3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of \$3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of \$3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying \$3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of \$3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be \$3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the \$3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying \$3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to \$2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as \$1 an hour. In this example the regular or basic hourly rate would continue to be \$3 an hour. See S. Rep. No. 963, p. 7. **§ 5.33 Administrative expenses of a contractor or subcontractor.**

(a) *Creditable costs.* The costs incurred by a contractor's insurance carrier, third-party trust fund, or other third-party administrator that are directly related to the administration and delivery of bona fide fringe benefits to the contractor's laborers and mechanics can be credited towards the contractor's obligations under a Davis-Bacon wage determination. Thus, for example, a contractor may take credit for the premiums it pays to an insurance carrier or the contributions it makes to a third-party trust fund that both administers and delivers bona fide fringe benefits under a plan, where the insurance carrier or third-party trust fund uses those monies to pay for bona fide fringe benefits and for the administration and delivery of such benefits, including evaluating benefit claims, deciding whether they should be paid, approving referrals to specialists, and other reasonable costs of administering the plan. Similarly, a contractor may also take credit for monies paid to a third-party administrator to perform tasks that are directly related to the administration and delivery of bona fide fringe benefits, including under an unfunded plan.

29 CFR 5.33(a) (enhanced display)**29 CFR 5.33(b)**

- (b) *Noncreditable costs.* A contractor's own administrative expenses incurred in connection with the provision of fringe benefits are considered business expenses of the firm and are therefore not creditable towards the contractor's prevailing wage obligations, including when the contractor pays a third party to perform such tasks in whole or in part. For example, a contractor may not take credit for the costs of office employees who perform tasks such as filling out medical insurance claim forms for submission to an insurance carrier, paying and tracking invoices from insurance carriers or plan administrators, updating the contractor's personnel records when workers are hired or separate from employment, sending lists of new hires and separations to insurance carriers or plan administrators, or sending out tax documents to the contractor's workers, nor can the contractor take credit for the cost of paying a third-party entity to perform these tasks. Additionally, recordkeeping costs associated with ensuring the contractor's compliance with the Davis-Bacon fringe benefit requirements, such as the cost of tracking the amount of a contractor's fringe benefit contributions or making sure contributions cover the fringe benefit amount claimed, are considered a contractor's own administrative expenses and are not considered directly related to the administration and delivery of bona fide fringe benefits. Thus, such costs are not creditable whether the contractor performs those tasks itself or whether it pays a third party a fee to perform those tasks.
- (c) *Questions regarding administrative expenses.* Any questions regarding whether a particular cost or expense is creditable towards a contractor's prevailing wage obligations should be referred to the Administrator for resolution prior to any such credit being claimed.

[88 FR 57747, Aug. 23, 2023]

Subpart C—Severability

Source: 88 FR 57747, Aug. 23, 2023, unless otherwise noted.

§ 5.40 Severability.

The provisions of this part are separate and severable and operate independently from one another. If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision is to be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is one of utter invalidity or unenforceability, in which event the provision is severable from this part and will not affect the remaining provisions.

29 CFR 5.40 (enhanced display)

XIII. EQUAL EMPLOYMENT OPPORTUNITY – 41 C.F.R. §§ 60-1.4 and 60-4.3; 2 C.F.R. § 200, Appx. II(C), and Executive Order 11246

Applicability: The equal opportunity contract clause must be included in any contract or subcontract when the amount exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract or subcontract must include the clause for the remainder of the year, regardless of the amount or the contract.

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, sexual orientation, gender identity, 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) 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 by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) 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.

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

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such 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 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.

(8) The Contractor will include the provisions of paragraphs (1) through (8) 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 may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, 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 § 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 must 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 areas 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 nonworking 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 must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must 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 woman 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 nonsegregated 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 supervisors' 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, the Contractor may be in violation of the Executive Order if a 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, sexual orientation, gender identity, 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 § 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).

See [Attachment 5](#).

XIV. Prohibition of Segregated Facilities – 2 CFR Part 200, Appendix II(C), 41 CFR Part 60-1

1. 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 provision is a violation of the Equal Opportunity provision in this Contract.

2. "Segregated facilities," as used in this provision, 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, sexual orientation, gender identity, 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.

3. The Contractor shall include this provision in every subcontract and purchase order that is subject to the Equal Opportunity provision of this Contract.

[See Attachment 6.](#)

XV. Notice of Requirement for Affirmative Action – 41 C.F.R. § 60-4 and Executive Order 11246

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: No goal established, project is Race and Gender Neutral.

Goals for female participation in each trade: No goal established, project is Race and Gender Neutral.

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 C.F.R. 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 C.F.R. 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 C.F.R. 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 Arizona, Maricopa County, and City of Phoenix.

XVI. Tax Delinquency and Felony Convictions - Section 8113 of the Consolidated Appropriations Act, 2022 (Public Law 117-103) and similar provisions in subsequent appropriations acts; DOT Order 4200.6

The sponsor must ensure that no funding goes to any contractor who:

- Has been convicted of a Federal felony within the last 24 months; or
- Has any outstanding tax liability for which all judicial and administrative remedies have lapsed or been exhausted.

[See Attachment 7.](#)

XVII. Termination of Contract – 2 C.F.R. Part 200, Appendix II(B) and FAA Circular 150/5370-10, § 80-09

TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)

The City may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of the City. Upon receipt of a written notice of termination, except as explicitly directed by the City, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.

TERMINATION FOR CAUSE (EQUIPMENT)

The City may, by written notice of default to the Contractor, terminate all or part of this Contract for cause if the Contractor:

1. Fails to begin the Work under the Contract within the time specified in the Notice- to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any City-approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the City will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the City's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the City, the City has authority to acquire equipment by other procurement action. The Contractor will be liable to the City for any excess costs the City incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the City shall be at the Contract price. The City may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the City determines to be necessary to protect the City against loss because of Contractor default.

City will not terminate the Contractor's right to proceed with the work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the City, acts of another Contractor in the performance of a contract with the City, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the City determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the City issued the termination for the convenience the City.

The rights and remedies of the City in this clause are in addition to any other rights and remedies provided by law or under this contract.

XVIII. Debarment and Suspension – 2 C.F.R. Parts 180 (Subpart B), 200

Appendix II(H), and 1200; U.S. DOT Order 4200.5; and Executive Orders 12549 and 12689

Certification of Bidder or Offeror Regarding Debarment

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

Certification of Lower Tier Contractors Regarding Debarment

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally-assisted project. The successful bidder will accomplish this by:

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

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

See [Attachment 8](#).

XIX. Contract Workhours and Safety Standards Act Requirements – 2 C.F.R. Part200, Appendix II(E), 2 CFR § 5.5(b), 40 USC § 3702, 3704

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 \$29 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 or the City 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.

XX. Clean Air and Water Pollution Control – 2 C.F.R. § 200, Appendix II(G), 42 USC § 7401 et seq. 33 USC §1251 et seq

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the City immediately upon discovery. The City 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.

XXI. Distracted Driving and Texting While Driving – Executive Order 13513 and DOT Order 3902.10

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving” (October 1, 2009), and DOT Order 3902.10, “Text Messaging While Driving” (December 30, 2009), the FAA encourages the City and Contractor, as recipients of federal funds, to adopt and enforce safety policies that decrease crashes caused by distracted drivers, including policies to ban text messaging while driving when performing any work related to this Contract, a grant or a subgrant.

In support of this initiative, the City 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 this Contract. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving a motor vehicle in the performance of work activities associated with this Contract.

XXII. Occupational Safety and Health Act of 1970 -- 29 C.F.R. Part 1910

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 C.F.R. Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor 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 C.F.R. Part 1910). Contractor 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.

XXIII. Copeland “Anti-kickback” Act – 2 CFR Part 200, Appendix II(D) and 29 CFR Parts 3 and 5

This provision applies to all construction contracts and subcontracts financed under the AIP that exceed \$2,000.

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 City a weekly statement on the wages paid to each employee performing on covered work during the prior week. The City must report any violations of the Act to the FAA.

This content is from the eCFR and is authoritative but unofficial.

Title 29 —Labor

Subtitle A —Office of the Secretary of Labor

Part 3 Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States

§ 3.1 Purpose and scope.

§ 3.2 Definitions.

§ 3.3 Certified payrolls.

§ 3.4 Submission of certified payroll and the preservation and inspection of weekly payroll records.

§ 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

§ 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

§ 3.7 Applications for the approval of the Secretary of Labor.

§ 3.8 Action by the Secretary of Labor upon applications.

§ 3.9 Prohibited payroll deductions.

§ 3.10 Methods of payment of wages.

§ 3.11 Regulations part of contract.

PART 3—CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

Authority: R.S. 161, sec. 2, 48 Stat. 848; Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301; 40 U.S.C. 3145; Secretary's Order 01-2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014).

Source: 29 FR 97, Jan. 4, 1964, unless otherwise noted.

§ 3.1 Purpose and scope.

This part prescribes “anti-kickback” regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 3145), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 of 1950 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours and Safety Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

[88 FR 57728, Aug. 23, 2023]

§ 3.2 Definitions.

As used in the regulations in this part:

Affiliated person. The term “affiliated person” includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

Agency. The term “agency” means any Federal, State, or local government agency or instrumentality, or other similar entity, that enters into a contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, for a project subject to the Davis-Bacon labor standards, as defined in § 5.2 of this subtitle.

(1) **Federal agency.** The term “Federal agency” means an agency or instrumentality of the United States or the District of Columbia, as defined in this section, that enters into a contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to a project subject to the Davis-Bacon labor standards.

(2) [Reserved]

Building or work. The term “building or work” generally includes construction activity of all types, as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The term includes, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, solar panels, wind turbines, broadband installation, installation of electric car chargers, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The term “building or work” also includes a portion of a building or work, or the installation (where appropriate) of equipment or components into a building or work.

(1) **Building or work financed in whole or in part by loans or grants from the United States.** The term “building or work financed in whole or in part by loans or grants from the United States” includes any building or work for which construction, prosecution, completion, or repair, as defined in this section, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes any building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(2) [Reserved]

Construction, prosecution, completion, or repair. The term “construction, prosecution, completion, or repair” mean all types of work done on a particular building or work at the site thereof as specified in § 5.2 of this subtitle, including, without limitation, altering, remodeling,

painting and decorating, installation on the site of the work of items fabricated offsite, covered transportation as reflected in § 5.2, demolition and/or removal as reflected in § 5.2, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, performed by laborers and mechanics at the site.

Employed (and wages). Every person paid by a contractor or subcontractor in any manner for their labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by assistance from the United States through loan, grant, loan guarantee or insurance, or otherwise, is “employed” and receiving “wages”, regardless of any contractual relationship alleged to exist between the contractor and such person.

Public building (or public work). The term “public building (or public work)” includes a building or work the construction, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of or with funds of a Federal agency to serve the general public regardless of whether title thereof is in a Federal agency. The construction, prosecution, completion, or repair of a portion of a building or work, or the installation (where appropriate) of equipment or components into a building or work, may still be considered a public building or work, even where the entire building or work is not owned, leased by, or to be used by the Federal agency, as long as the construction, prosecution, completion, or repair of that portion of the building or work, or the installation (where appropriate) of equipment or components into that building or work, is carried on by authority of or with funds of a Federal agency to serve the interest of the general public.

United States or the District of Columbia. The term “United States or the District of Columbia” means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, and any corporation for which all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[88 FR 57729, Aug. 23, 2023]

§ 3.3 Certified payrolls.

(a) [Reserved]

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, each week must provide a copy of its weekly payroll for all laborers and mechanics engaged on work covered by this part and part 5 of this chapter during the preceding weekly payroll period, accompanied by a statement of compliance certifying the accuracy of the weekly payroll information. This statement must be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and must be on the back of Form WH-347, “Payroll (For Contractors Optional Use)” or on any form with identical wording.

Copies of WH-347 may be obtained from the contracting or sponsoring agency or from the Wage and Hour Division website at <https://www.dol.gov/agencies/whd/government-contracts/construction/forms> or its successor site. The signature by the contractor, subcontractor, or the authorized officer or employee must be an original handwritten signature or a legally valid electronic signature.

- (c) The requirements of this section do not apply to any contract of \$2,000 or less.
- (d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[88 FR 57729, Aug. 23, 2023]

§ 3.4 Submission of certified payroll and the preservation and inspection of weekly payroll records.

- (a) *Certified payroll.* Each certified payroll required under § 3.3 must be delivered by the contractor or subcontractor, within 7 days after the regular payment date of the payroll period, to a representative at the site of the building or work of the agency contracting for or financing the work, or, if there is no representative of the agency at the site of the building or work, the statement must be delivered by mail or by any other means normally assuring delivery by the contractor or subcontractor, within that 7 day time period, to the agency contracting for or financing the building or work. After the certified payrolls have been reviewed in accordance with the contracting or sponsoring agency's procedures, such certified payrolls must be preserved by the agency for a period of 3 years after all the work on the prime contract is completed and must be produced for inspection, copying, and transcription by the Department of Labor upon request. The certified payrolls must also be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.
- (b) *Recordkeeping.* Each contractor or subcontractor must preserve the regular payroll records for a period of 3 years after all the work on the prime contract is completed. The regular payroll records must set out accurately and completely the name; Social Security number; last known address, telephone number, and email address of each laborer and mechanic; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid. The contractor or subcontractor must make such regular payroll records, as well as copies of the certified payrolls provided to the contracting or sponsoring agency, available at all times for inspection, copying, and transcription by the contracting officer or their authorized representative, and by authorized representatives of the Department of Labor.

[88 FR 57730, Aug. 23, 2023]
29 CFR 3.11 (enhanced display)

§ 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

- (a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.
- (b) Any deduction of sums previously paid to the laborer or mechanic as a bona fide prepayment of wages when such prepayment is made without discount or interest. A bona fide prepayment of wages is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.
- (c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.
- (d) Any deduction constituting a contribution on behalf of the laborer or mechanic employed to funds established by the contractor or representatives of the laborers or mechanics, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of the laborers or mechanics, their families and dependents: *Provided, however,* That the following standards are met:
 - (1) The deduction is not otherwise prohibited
 - (2) by law; It is either:
 - (i) Voluntarily consented to by the laborer or mechanic in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment; or
 - (ii) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its laborers or mechanics;
 - (3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and
 - (4) The deductions must serve the convenience and interest of the laborer or mechanic.
- (e) Any deduction requested by the laborer or mechanic to enable him or her to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (f) Any deduction voluntarily authorized by the laborer or mechanic for the making of contributions to governmental or quasi-governmental agencies, such as the American

Red Cross.

- (g) Any deduction voluntarily authorized by the laborer or mechanic for the making of contributions to charitable organizations as defined by 26 U.S.C. 501(c)(3).
- (h) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: *Provided, however,* That a collective bargaining agreement between the contractor or subcontractor and representatives of its laborers or mechanics provides for such deductions and the deductions are not otherwise prohibited by law.
- (i) Any deduction not more than for the “reasonable cost” of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and 29 CFR part 531. When such a deduction is made the additional records required under 29 CFR 516.25(a) must be kept.
- (j) Any deduction for the cost of safety equipment of nominal value purchased by the laborer or mechanic as their own property for their personal protection in their work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the contractor, if such deduction does not violate the Fair Labor Standards Act or any other law, if the cost on which the deduction is based does not exceed the actual cost to the contractor where the equipment is purchased from the contractor and does not include any direct or indirect monetary return to the contractor where the equipment is purchased from a third person, and if the deduction is either:
 - (1) Voluntarily consented to by the laborer or mechanic in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or
 - (2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its laborers and mechanics.

[88 FR 57730, Aug. 23, 2023]

§ 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under § 3.5. The Secretary may grant permission whenever he finds that:

- (a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;
- (b) The deduction is not otherwise prohibited by law;
- (c) The deduction is either:
 - (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the

obtaining of employment or its continuance, or

(2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

§ 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under § 3.6 must comply with the requirements prescribed in the following paragraphs of this section:

- (a) The application must be in writing and addressed to the Secretary of Labor. The application must be submitted by email to dbadeductions@dol.gov, by mail to the United States Department of Labor, Wage and Hour Division, Director, Division of Government Contracts Enforcement, 200 Constitution Ave., NW, Room S-3502, Washington, DC 20210, or by any other means normally assuring delivery.
- (b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of § 3.6, and specifies any conditions which have changed in regard to the payroll deductions.
- (c) The application must state affirmatively that there is compliance with the standards set forth in the provisions of § 3.6. The affirmation must be accompanied by a full statement of the facts indicating such compliance.
- (d) The application must include a description of the proposed deduction, the purpose of the deduction, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.
- (e) The application must state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

[88 FR 57731, Aug. 23, 2023]

§ 3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor will decide whether or not the requested deduction is permissible under provisions of § 3.6; and will notify the applicant in writing of the decision.

[88 FR 57731, Aug. 23, 2023]

§ 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under § 3.6 are prohibited.

§ 3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

§ 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part must expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see § 5.5(a) of this subtitle. However, these requirements will be considered to be effective by operation of law, whether or not they are incorporated into such contracts, as set forth in § 5.5(e) of this subtitle.

[88 FR 57731, Aug. 23, 2023]

XXIV. Federal Fair Labor Standards Act (Federal Minimum Wage) – 29 U.S.C. §§ 201, et seq., 2 CFR § 200.430

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

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

XXV. Procurement of Recovered Materials — 2 CFR § 200.323, 2 CFR Part 200, Appendix II(J) 40 CFR Part 247 and 42 USC § 6901, et seq (Resource Conservation and Recovery Act (RCRA))

This provision must be included in all construction and equipment projects.

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.

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.

XXVI. Seismic Safety – 49 C.F.R. Part 41

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a

level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

XXVII. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment - 2 CFR § 200, Appendix II(K), 2 CFR § 200.216

The City and subgrant recipients are prohibited from using AIP grant funds to:

- a. Procure or obtain,
- b. Extend or renew a contract to procure or obtain, or
- c. Enter into a contract to procure or obtain certain covered telecommunications equipment.

These restrictions apply to telecommunication equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system. Covered telecommunications equipment is equipment produced or provided by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of either).

See [Attachment 9](#) for Certification which must be included in all AIP funded contracts and lower-tier contracts.

XXVIII. Certification Regarding Domestic Preferences for Procurements - 2 CFR § 200.322, 2 CFR Part 200, Appendix II(L)

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

ATTACHMENT 1 - BUY AMERICAN CERTIFICATION

Certification of Compliance with FAA Buy American Preference – Construction Projects

(Involves the replacement, rehabilitation, reconstruction of airfield surfaces such as on runways, taxiways, taxilanes, aprons, roadways, parking lots, etc.)

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 U.S.C. § 50101, BABA and other related Made in America Laws, U.S. statutes, guidance, and FAA policies, 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 U.S.C. § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing iron, steel and manufactured products produced in the United States; or
 - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
 - c) 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
 - d) 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:

- a) To provide to the City or the FAA evidence that documents the source and origin of the iron, steel and/or manufactured product.
 - b) To faithfully comply with providing U.S. domestic products.
 - c) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
 - d) To certify that all construction materials used in the project are manufactured in the U.S.
- The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 U.S.C. § 50101(a) but may qualify for either a Type

3 or Type 4 waiver under 49 U.S.C. § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

- a) To submit to the City or FAA within 15 calendar days of being selected as the responsive bidder, 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.⁴
- 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 2 Waiver (Nonavailability) - The iron, steel, manufactured goods or construction materials or manufactured goods are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

Type 3 Waiver - The cost of components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the "facility/project." The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including:
- b) Listing of all manufactured products that are not comprised of 100% 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).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- d) 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 (Unreasonable Costs) – Applying this provision for iron, steel,

manufactured goods or construction materials would increase the cost of the overall project by more than 25%. The required documentation for a Type 4 Waiver is:

- a) A completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bids and/or offers;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

False Statements: Per 49 U.S.C. § 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.

Date

Signature

Company Name

Title

Certification of Compliance with FAA Buy American Preference – Equipment/Building Projects

(Involves and includes the acquisition of equipment such as snow removal equipment, navigational aids, wind cones, and the construction of buildings such as hangars, terminal development, lighting vaults, aircraft rescue & firefighting buildings, etc.)

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 U.S.C. § 50101 and other Made in America Laws, U.S. statutes, guidance, and FAA policies 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, BABA and other related U.S. statues, guidance, and policies of the FAA by:
 - a) Only installing steel and manufactured products produced in the United States;
 - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
 - c) Installing manufactured products for which the Federal Aviation Administration has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - d) 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:

- a) To provide to the City or FAA evidence that documents the source and origin of the steel and manufactured product.
 - b) To faithfully comply with providing U.S. domestic product.
 - c) To furnish U.S. domestic product for any waiver request that the FAA rejects.
 - d) 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% Buy American Preferences of 49 U.S.C. § 50101(a), but may qualify for a Type 3

waiver under 49 U.S.C. § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

- a) To submit to the City within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that support 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 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 refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 2 Waiver (Nonavailability) - The iron, steel, manufactured goods or construction materials are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is:

- a) Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

Type 3 Waiver - The cost of the item components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "item". The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all product components and subcomponents that are not comprised of 100% 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).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- d) 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 (Unreasonable Costs) – Applying this provision for iron, steel manufactured goods or construction materials, would increase the cost of the overall

project by more than y 25%. The required documentation for a Type 4 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bidders and/or offerors;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

False Statements: Per 49 U.S.C. § 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.

Date

Signature

Company Name

Title

ATTACHMENT 2 – CERTIFICATION REGARDING LOBBYING

As a condition of responsiveness, this Certification must be submitted with each bid or offer exceeding \$100,000.

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 federally 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.

The Bidder or Offeror, _____, certifies the truthfulness and accuracy of each statement of this certification. In addition, the Bidder or Offeror understands and agrees that the provisions of 31 U.S.C. §§ 3801-3812,

Administrative Remedies for False Claims and Statements, apply to this certification.

Signature of Bidder's/Offeror's Authorized Official

Name and Title of Bidder's/Offeror's Authorized Official

Bidder's/Offeror's Firm Name

Date

ATTACHMENT 3 - RIGHTS IN DATA AND RIGHTS IN INVENTIONS

Contractor by entering into this Contract with the City to perform services associated with or in requirement of the conditions stated in this Contract does, by affixing its authorized signature on the lines provided below, agrees to the following:

1. That no sole rights to data provided in the submission or in fulfillment of contract requirements exist within the domain of the Contractor.
2. That all data provided in the submission or in the documents provided in fulfillment of this Contract become the property of the City for its use and benefit.
3. That no data submitted in documents required for Contract fulfillment will be regarded by the City as proprietary to the Contractor.
4. "Intellectual Property Rights" or "IPR" means all intellectual property rights, including any rights in any invention, patent, discovery, improvement, know-how, utility model, trade-mark, copyright, industrial design, mask work, integrated circuit topography, and trade secret, and all rights of whatsoever nature in computer software and data, confidential information, and all intangible rights or privileges of any nature similar to any of the foregoing, including in every case in any part of the world and whether or not registered, and shall include all rights in any applications and granted registrations for any of the foregoing.
5. "Joint IPR" means the Intellectual Property Rights conceived, created, developed, or reduced to practice in a Project pursuant to this Contract.
6. Intellectual Property Ownership. The City shall own all right, title, and interest in any Intellectual Property conceived, developed, created, or reduced to practice pursuant to this Contract, and Contractor shall have no ownership interest therein. Contractor hereby irrevocably transfers, conveys, and assigns to the City all of its right, title, and interest therein and in any property owned or to be owned by the City under this Contract. Contractor shall execute such documents, render such assistance, and take such other action as the City may reasonably request, at the City's reasonable expense, to apply for, register, perfect, confirm, and protect City's Intellectual Property Rights and ownership interests. The City has the exclusive right to apply for or register any patents, mask work rights, copyrights, and such other proprietary protections with respect thereto.
7. All documents, including artwork, copy, posters, billboards, photographs, video tapes, audio tapes, systems designs, drawings, estimates, field notes, investigations, software, reports, diagrams, surveys, analysis, studies, or any other original works of authorship created by Contractor in the performance of this Contract are to be and remain "works for hire" under Title 17, United States Code, and the property of the City and all copyright ownership and authorship rights in the works shall belong to the City pursuant to 17 U.S.C. § 201(b). If the works that are the subject matter of this Contract are deemed to not be works for hire, then Contractor hereby assigns to the City all of its right, title, and interest for the entire world in and to the works and the copyright therein. Contractor agrees to cooperate

and execute additional documents reasonably necessary to conform with its obligations under this paragraph.

8. All Joint IPR will be the exclusive property of the City, and Contractor hereby assigns all its right, title, and interest in the same to the City. Any and all intellectual property conceived by the Contractor prior to the term of this Contract and utilized by it in rendering duties to the City are hereby licensed to the City for use in its operations and for an infinite duration. This license is non-exclusive and may be assigned without the Contractor's prior written approval by the City. Contractor agrees to provide all reasonable assistance requested by the City for the registration and protection of such intellectual property rights free of charge.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Bidder's/Contractor's Firm Name

Date

ATTACHMENT 4 – 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 as 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 18 U.S.C. § 1001.

The Offeror/Contractor must provide immediate written notice to the City 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 C.F.R. 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 as published by the USTR; or
- 2) whose subcontractors are owned or controlled by one or more citizens or national of a foreign country on the 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 the 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 is not a firm from a foreign country foreign country included on the list of countries that discriminate against U.S. firms as published by the 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 City cancellation of the Contract or subcontract for default at no cost to the City of the FAA.

Signature of Offeror's Authorized Official

Name and Title of Offeror's Authorized Official

Offeror's Firm Name

Date

**ATTACHMENT 5 - CERTIFICATION ON PREVIOUS CONTRACTS
SUBJECT TO EQUAL OPPORTUNITY CLAUSE**

Each Contractor and proposed subcontractors must complete the following form by checking the appropriate blanks.

The Contractor or subcontractor has _____ has not ____ participated in a previous contract subject to the Equal Opportunity Clause prescribed by Executive Order 11246, as amended, of September 24, 1965.

The Contractor or subcontractor has _____ has not ____ submitted all compliance reports in connection with any such contract due under the applicable filing requirements; and that representations indicating submission of required compliance reports signed by proposed subcontractors will be obtained prior to award of subcontractors.

If the Contractor or subcontractor has participated in a previous contract subject to the Equal Opportunity Clause and has not submitted compliance reports due under applicable filing requirements, the Contractor shall submit a compliance report on Standard Form 100, "Employee Information Report EEP-1" prior to the award of this Contract.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Contractor's Firm Name

Contractor's Business Address

Date

ATTACHMENT 6 - CERTIFICATION OF NON-SEGREGATED FACILITIES

This Certification of Non-Segregated Facilities must be submitted prior to the award of a contract or subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

Contractors receiving federally-assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Notice to Prospective Subcontractors of Requirements for Certification of Non-Segregated Facilities

1. A Certification of Non-Segregated Facilities shall be submitted prior to the award of a subcontract exceeding \$10,000, which is not exempt from the provisions of the Equal Opportunity Clause.
2. Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

The Federally assisted Contractor certifies that he does not maintain or provide, for his employees any segregated facilities at any of his establishment, and that he does not permit his employees to perform their services at any location, under his control where segregated facilities are maintained. The Federally assisted Construction Contractor certifies further that he will not maintain or provide for his employees segregated facilities at any of his establishments, and that will not permit his employees to perform their services at any location, under this control, where segregated facilities are maintained. The Federally assisted Construction Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract.

As used in this certification, the term "segregated facilities" means any waiting room, work areas, and washrooms, restaurants and other eating area, 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 which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, sex or national origin, because of habit, local custom, or any other reason. The Federally assisted Contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for special time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity

Clause and that he will retain such certifications in his files.

Certification: The above information is true and complete to the best of my knowledge and belief.

Name of Contractor or subcontractor: _____

Signature and Title: _____

Business Address: _____

ATTACHMENT 7 – 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 () 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 () 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 City about its tax liability or conviction to the City, 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.

Signature of Bidder's/Offeror's Authorized Official

Name and Title of Bidder's/Offeror's Authorized Official

Bidder's/Offeror's Firm Name

Date

ATTACHMENT 8 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

A. The Bidder/Contractor certifies to the best of its knowledge and belief that the Bidder/Contractor and/or any of its Principals:

1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
2. Have not within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws or receiving stolen property; and
3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (A) (2) of this provision.
4. Have not within a three-year period preceding this bid been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.
5. Have not within a three-year period preceding this bid had one or more contracts terminated for default by any Federal agency.

B. For the purpose of this Certification, "Principals" means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE U.S. AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER S TITLE 18, U.S.C. SECTION 1001.

1. The Bidder/Contractor must provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Bidder/Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
2. A certification that any of the items in paragraph (A) of this provision exists will not necessarily result in withholding of an award. However, the certification will be considered in connection with a determination of the Bidder's/Contractor's responsibility. Failure of the Bidder/Contractor to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Bidder/Contractor nonresponsible.
3. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render, in good faith, the certification required

by paragraph (A) of this provision. The knowledge and information of a Bidder/Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

4. The certification in paragraph (A) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Bidder/Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the Contract for default.

_____ Signature of Bidder's/Contractor's Authorized Official

_____ Name and Title of Bidder's/Contractor's Authorized
Official

_____ Bidder's/Contractor's Firm Name

_____ Date (FAA/Date)

**ATTACHMENT 9 – PROHIBITION ON CERTAIN
TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR
EQUIPMENT – 2 CFR § 200, Appendix II(K), 2 CFR § 200.216**

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

Signature of Contractor's/Subcontractor's Authorized Official

Name and Title of Contractor's/Subcontractor's Authorized Official

Contractor's/Subcontractor's Firm Name

Date

"General Decision Number: AZ20240008 08/30/2024

Superseded General Decision Number: AZ20230008

State: Arizona

Construction Type: Highway

Counties: Coconino, Maricopa, Mohave, Pima, Pinal, Yavapai and Yuma Counties in Arizona.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

<http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024
1	01/19/2024
2	08/30/2024

CARP0408-005 07/01/2023

	Rates	Fringes
CARPENTER (Including Cement Form Work).....	\$ 34.50	14.17

ENGI0428-001 06/01/2023

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Group 1.....	\$ 31.69	13.52
Group 2.....	\$ 34.96	13.52
Group 3.....	\$ 36.04	13.52
Group 4.....	\$ 37.07	13.52

POWER EQUIPMENT OPERATORS CLASSIFICATIONS:

GROUP 1: A-frame boom truck, air compressor, Beltcrete, boring bridge and texture, brakeman, concrete mixer (skip type), conductor, conveyor, cross timing and pipe float, curing machine, dinky (under 20 tons), elevator hoist (Husky and similar), firemen, forklift, generator (all), handler, highline cableway signalman, hydrographic mulcher, joint inserter, jumbo finishing machine, Kolman belt loader, machine conveyor, multiple power concrete saw, pavement breaker, power grizzly, pressure grout machine, pump, self-propelled chip spreading machine, slurry seal machine (Moto paver driver), small self-propelled compactor (with blade-backfill, ditch operation), straw blower, tractor (wheel type), tripper, tugger (single drum), welding machine, winch truck

GROUP 2:

ALL COUNTIES INCLUDING MARICOPA: Aggregate Plant, Asphalt plant Mixer, Bee Gee, Boring Machine, Concrete Pump, Concrete Mechanical Tamping-Spreading Finishing Machine, Concrete Batch Plant, Concrete Mixer (paving & mobile), Elevating Grader (except as otherwise classified), Field Equipment Serviceman, Locomotive Engineer (including Dinky 20 tons & over), Moto-Paver, Oiler-Driver, Operating Engineer Rigger, Power Jumbo Form Setter, Road Oil Mixing Machine, Self-Propelled Compactor (with blade-grade operation), Slip Form (power driven lifting device for concrete forms), Soil Cement Road Mixing Machine, Pipe-Wrapping & Cleaning Machine (stationary or traveling), Surface Heater & Planer, Trenching Machine, Tugger (2 or more drums).

MARICOPA COUNTY ONLY: Backhoe < 1 cu yd, Motor Grader (rough), Scraper (pneumatic tired), Roller (all types asphalt), Screed, Skip Loader (all types 3<6 cu yd),

Tractor (dozer, pusher-all).

GROUP 3:

ALL COUNTIES INCLUDING MARICOPA: Auto Grade Machine, Barge, Boring Machine (including Mole, Badger & similar type directional/horizontal), Crane (crawler & pneumatic 15>100 tons), Crawler type Tractor with boom attachment & slope bar, Derrick, Gradall, Heavy Duty Mechanic-Welder, Helicopter Hoist or Pilot, Highline Cableway, Mechanical Hoist, Mucking Machine, Overhead Crane, Pile Driver Engineer (portable, stationary or skid), Power Driven Ditch Lining or Ditch Trimming Machine, Remote Control Earth Moving Machine, Slip Form Paving Machine (including Gunnert, Zimmerman & similar types), Tower Crane or similar type.

MARICOPA COUNTY ONLY: Backhoe<10 cu yd, Clamshell < 10 cu yd, Concrete Pump (truck mounted with boom only), Dragline <10 cu yd, Grade Checker, Motor Grader (finish-any type power blade), Shovel < 10 cu yd.

GROUP 4: Backhoe 10 cu yd and over, Clamshell 10 cu yd and over, Crane (pneumatic or crawler 100 tons & over), Dragline 10 cu yd and over, Shovel 10 cu yd and over.

All Operators, Oilers, and Motor Crane Drivers on equipment with Booms, except concrete pumping truck booms, including Jibs, shall receive \$0.01 per hour per foot over 80 ft in addition to regular rate of pay

Premium pay for performing hazardous waste removal \$0.50 per hour over base rate.

* IRON0075-004 08/01/2024

COCONINO, MARICOPA, MOHAVE, YAVAPAI & YUMA COUNTIES

	Rates	Fringes
Ironworker, Rebar.....	\$ 33.00	18.91
Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson		
Zone 2: 050 to 100 miles - Add \$4.00		
Zone 3: 100 to 150 miles - Add \$5.00		
Zone 4: 150 miles & over - Add \$6.50		

LABO1184-008 06/01/2023

	Rates	Fringes
Laborers:		
Group 1.....	\$ 24.18	7.59
Group 2.....	\$ 25.82	7.59
Group 3.....	\$ 26.68	7.59
Group 4.....	\$ 27.65	7.59
Group 5.....	\$ 28.75	7.59

LABORERS CLASSIFICATIONS:

GROUP 1: All Counties: Chipper, Rip Rap Stoneman. Pinal County Only: General/Cleanup Laborer. Maricopa County Only: Flagger.

GROUP 2: Asphalt Laborer (Shoveling-excluding Asphalt Raker or Ironer), Bander, Cement Mason Tender, Concrete Mucker, Cutting Torch Operator, Fine Grader, Guinea Chaser, Power Type Concrete Buggy

GROUP 3: Chain Saw, Concrete Small Tools, Concrete Vibrating Machine, Cribber & Shorer (except tunnel), Hydraulic Jacks and similar tools, Operator and Tender of Pneumatic and Electric Tools (not herein separately classified), Pipe Caulker and Back-Up Man-Pipeline, Pipe Wrapper, Pneumatic Gopher, Pre-Cast Manhole Erector, Rigger and Signal Man-Pipeline

GROUP 4: Air and Water Washout Nozzleman; Bio-Filter, Pressman, Installer, Operator; Scaffold Laborer; Chuck Tender; Concrete Cutting Torch; Gunite; Hand-Guided Trencher; Jackhammer and/or Pavement Breaker; Scaler (using boson's chair or safety belt); Tamper (mechanical all types).

GROUP 5: AC Dumpman, Asbestos Abatement, Asphalt Raker II, Drill Doctor/Air Tool Repairman, Hazardous Waste Removal, Lead Abatement, Lead Pipeman, Process Piping Installer, Scaler (Driller), Pest Technician/Weed Control, Scissor Lift, Hydro Mobile Scaffold Builder.

PAIN0086-001 04/01/2017

	Rates	Fringes
PAINTER		
PAINTER (Yavapai County only), SAND BLASTER/WATER BLASTER (all Counties).....	\$ 19.58	6.40
ZONE PAY: More than 100 miles from Old Phoenix Courthouse \$3.50 additional per hour.		

* SUAZ2009-001 04/20/2009

	Rates	Fringes
CEMENT MASON.....	\$ 19.28	3.99
ELECTRICIAN.....	\$ 22.84	6.48
IRONWORKER (Rebar)		
Pima County.....	\$ 23.17	14.83
Pinal County.....	\$ 20.27	8.35
LABORER		
Asphalt Raker.....	\$ 15.49 **	3.49
Compaction Tool Operator....	\$ 14.59 **	2.91
Concrete Worker.....	\$ 13.55 **	3.20
Concrete/Asphalt Saw.....	\$ 13.95 **	2.58
Driller-Core, diamond, wagon, air track.....	\$ 16.94 **	3.12
Dumpman Spotter.....	\$ 14.99 **	3.16

Fence Builder.....	\$ 13.28 **	2.99
Flagger		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 12.35 **	1.59
Formsetter.....	\$ 16.09 **	3.97
General/Cleanup Laborer		
Coconino, Maricopa,		
Mohave, Pima, Yavapai &		
Yuma.....	\$ 14.54 **	3.49
Grade Setter (Pipeline).....	\$ 17.83	5.45
Guard Rail Installer.....	\$ 13.28 **	2.99
Landscape Laborer.....	\$ 11.39 **	
Landscape Sprinkler		
Installer.....	\$ 15.27 **	
Pipelayer.....	\$ 14.81 **	2.96
Powderman, Hydrasonic.....	\$ 16.39 **	2.58
OPERATOR: Power Equipment		
Asphalt Laydown Machine.....	\$ 21.19	6.05
Backhoe < 1 cu yd		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 17.37	3.85
Backhoe < 10 cu yd		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Clamshell < 10 cu yd		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Concrete Pump (Truck		
Mounted with boom only)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 19.92	7.10
Crane (under 15 tons).....	\$ 21.35	7.36
Dragline (up to 10 cu yd)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Drilling Machine		
(including Water Wells).....	\$ 20.58	5.65
Grade Checker		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 16.04 **	3.68
Hydrographic Seeder.....	\$ 15.88 **	7.67
Mass Excavator.....	\$ 20.97	4.28
Milling Machine/Rotomill.....	\$ 21.42	7.45
Motor Grader (Finish-any		
type power blade)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 21.92	4.66
Motor Grader (Rough)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 20.07	4.13
Oiler.....	\$ 18.15	8.24
Power Sweeper.....	\$ 16.76 **	4.44
Roller (all types Asphalt)		

Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.27	3.99
Roller (excluding asphalt)...	\$ 15.65 **	3.32
Scraper (pneumatic tired) Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 17.69	3.45
Screed Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 17.54	3.72
Shovel < 10 cu yd Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Skip Loader (all types <3 cu yd).....	\$ 18.28	5.30
Skip Loader (all types 3 < 6 cu yd) Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.64	4.86
Skip Loader (all types 6 < 10 cu yd).....	\$ 20.15	4.52
Tractor (dozer, pusher - all) Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 17.26	2.65

PAINTER

Coconino, Maricopa, Mohave, Pima, Pinal & Yuma..	\$ 15.57 **	3.92
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TRUCK DRIVER

2 or 3 Axle Dump or Flatrack.....	\$ 16.27 **	3.30
5 Axle Dump or Flatrack.....	\$ 13.97 **	2.89
6 Axle Dump or Flatrack (< 16 cu yd).....	\$ 17.79	6.42
Belly Dump.....	\$ 14.67 **	
Oil Tanker Bootman.....	\$ 22.03	
Self-Propelled Street Sweeper.....	\$ 13.11 **	5.48
Water Truck 2500 < 3900 gallons.....	\$ 18.14	4.55
Water Truck 3900 gallons and over.....	\$ 15.92 **	3.33
Water Truck under 2500 gallons.....	\$ 15.94 **	4.16

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.
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** Workers in this classification may be entitled to a higher
minimum wage under Executive Order 14026 (\$17.20) or 13658
(\$12.90). Please see the Note at the top of the wage
determination for more information. Please also note that the
minimum wage requirements of Executive Order 14026 are not

currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at

<https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and

the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier. Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier. A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

State Adopted Rate Identifiers

Classifications listed under the "SA" identifier indicate that the prevailing wage rate set by a state (or local) government was adopted under 29 C.F.R §1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 01/03/2024 reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
 - * a survey underlying a wage determination
 - * a Wage and Hour Division letter setting forth a position on a wage determination matter
 - * a conformance (additional classification and rate) ruling
- On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described

in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====
END OF GENERAL DECISION"

BID PROPOSAL
CITY OF PHOENIX, ARIZONA
OFFICE OF THE CITY ENGINEER
PROJECT TITLE: PSHIA TERMINAL 3 RECIRCULATION ROADWAY IMPROVEMENTS
DESIGN-BID-BUILD
PROJECT NO.: AV14000029- FAA
BOND ISSUE OR BUDGET PROJECT

PROPOSAL to the City Engineer of the City of Phoenix.

In compliance with the Advertisement for Bids, by the City Engineer, the undersigned bidder:

(Print or type contractor name)

Having examined the contract documents, site of work and being familiar with the conditions to be met, hereby submits the following proposal for furnishing the material, equipment, labor and everything necessary for the completion of the work listed and agrees to execute the contract documents and furnish the required bonds and certificates of insurance for the completion of said work, at the locations and for the prices set forth on the inside pages of this form.

Understands that construction of this project will be in accordance with all applicable Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Uniform Standard Details, latest revision, and the City of Phoenix Supplements, latest revision to the MAG Uniform Standard Specifications and Details, except as otherwise required by the project plans and specifications.

No proposal may be withdrawn for a period of 50 days after opening without consent of the Contracting Agency through the body or agent duly authorized to accept or reject the proposal except in the case of federally-assisted projects.

Understands that his proposal will be submitted with a proposal guarantee of certified check, cashier's check or surety bond for an amount not less than ten (10) percent of the amount bid, as referenced in the Call for Bids.

Agrees that upon receipt of Notice of Award, from the City of Phoenix, he will execute the contract documents within 10 calendar days.

Work will be completed within **210 calendar days**, beginning with the day following the starting date specified in the Notice to Proceed. The time allowed for completion of the work includes lead time for obtaining the necessary materials and/or equipment and approvals.

The bidder will acknowledge all addenda in writing. By writing the addenda number(s) below, the bidder agrees that this proposal is computed with consideration of the specification book(s) plus any and all addenda.

<u>ADDENDA NO.</u>	<u>DATE</u>	<u>ADDENDA NO.</u>	<u>DATE</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**CITY OF PHOENIX
BID PROPOSAL**

PROJECT TITLE: PHOENIX SKY HARBOR INTERNATIONAL AIRPORT TERMINAL 3 RECIRCULATION ROADWAY IMPROVEMENTS
PROJECT NO.: AV14000029 - FAA
FEDERAL AIP NO.:

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
1	ALLOWANCE FOR UNFORESEEN UTILITY RELOCATIONS	JOB	1	\$75,000.00	\$75,000.00
2	CONSTRUCTION SURVEYING AND LAYOUT	JOB	1		
3	MOBILIZATION/DEMOBILIZATION	JOB	1		
4	CLEARING AND GRUBBING	LS	1		
5	CONSTRUCT ASPHALT CONCRETE FOR PERMANENT PAVEMENT REPLACEMENT TYPE C-3/4, 6" THICK	SY	203		
6	SLURRY SEAL COAT PER MAG SPEC 332	SY	3921		
7	CONSTRUCT CONCRETE VALLEY GUTTER PER MAG STD DTL 240, MOD PER PLANS	SF	92		
8	CONSTRUCT CONCRETE CURB AND GUTTER PER MAG STD DTL 220-1, TYPE A	LF	408		
9	REMOVE EXISTING CONCRETE CURB AND GUTTER	LF	409		
10	REMOVE EXISTING CONCRETE VALLEY GUTTER	SF	102		
11	REMOVE EXISTING SIGN, POSTS, & FOUNDATIONS	EA	3		
12	OBLITERATE EXISTING PAVEMENT MARKINGS (4" EQUIVALENT)	LF	2919		
13	OBLITERATE EXISTING PAVEMENT SYMBOL MARKINGS	EA	17		
14	INSTALL WHITE HAZARD MARKER PER MAG STD DTL 141, TYPE 1	EA	32		
15	INSTALL NEW SIGN PANEL, FLAT SHEET ALUMINUM, RETRO-REFLECTIVE SHEETING (TYPE IV OR EQV.)	SF	84		
16	INSTALL NEW SIGN POST AND FOUNDATION PER MAG STD DTL 131, TYPE C	EA	7		
17	APPLY PAVEMENT MARKING (WHITE PAINT) (4" EQUIVALENT)	LF	3278		
18	APPLY PAVEMENT MARKING PREFORMED SINGLE ARROW (THRU)	EA	3		
19	APPLY PAVEMENT MARKING PREFORMED SINGLE ARROW (MERGE LEFT)	EA	4		
20	APPLY PAVEMENT MARKING PREFORMED "ONLY"	EA	1		
21	APPLY PAVEMENT MARKING, PREFORMED "MPH 25"	EA	5		
22	APPLY PAVEMENT MARKING, PREFORMED "MPH 35"	EA	2		
23	ALLOWANCE FOR TEMPORARY TRAFFIC CONTROL	JOB	1	\$175,000.00	\$175,000.00
24	INSTALL STEEL SLEEVE BOLLARD (5' O.C.) PER DETAIL 2, SHEET 13	EA	13		
25	INSTALL SWING GATE PER OWNER'S SPECIFICATIONS	EA	1		
26	INSTALL RAILING PER DETAIL 1, SEE SHEET 13	LF	45		
27	REMOVE & DISPOSE OF EXISTING LIGHT POLE, BASE AND FOUNDATION, BACKFILL WITH SUITABLE MATERIAL AS REQUIRED BY MAG	EA	10		
28	EXCAVATE AND REMOVE EXISTING PULL BOX	EA	10		
29	NEW STREET LIGHT FIXTURE ON DIRECT BURIED POLE (PER CITY OF PHOENIX STREET TRANSPORTATION STANDARD)	EA	10		

**CITY OF PHOENIX
BID PROPOSAL**

PROJECT TITLE: PHOENIX SKY HARBOR INTERNATIONAL AIRPORT TERMINAL 3 RECIRCULATION ROADWAY IMPROVEMENTS
 PROJECT NO.: AV14000029 - FAA
 FEDERAL AIP NO.:

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
30	NEW PULL BOX NO. 5 PLACED AT OLD POLE LOCATION	EA	10		
31	NEW 2-#10, #10 GROUND, 1" DIRECT BURIED CONDUIT FROM JUNCTION BOX TO NEW POLE	LF	500		
32	3-#8, #8 GROUND (OR MATCH EXISTING CONDUCTOR SIZE)	LF	300		
33	SPLICE ELECTRICAL CONDUCTORS INTO STREET LIGHTING CIRCUIT AT EXISTING PULLBOX	EA	1		
34	INSTALL NEW NO. 5 ELECTRICAL PULL BOX	EA	1		
35	SINGLE-WAY (1)-2" CONDUIT, DIRECT BURIED	LF	160		
36	REMOVE EXISTING CONDUIT AND CONDUCTORS	LF	135		
37	ALLOWANCE FOR OWNER'S CONTINGENCY	JOB	1	\$75,000.00	\$75,000.00
BASE BID (ITEMS 1 THROUGH 37 - INCLUSIVE)					
				_____ & _____/100 DOLLARS	
WRITTEN WORDS					

Prepared By:

Signature

Name

Position/Title

Firm Name

PROPOSAL SUBMITTAL

PROJECT TITLE: PSHIA TERMINAL 3 RECIRCULATION ROADWAY IMPROVEMENTS DBB

PROJECT NO.: AV14000029 – FAA

FEDERAL AID/AIP NO. _____

THIS PROPOSAL IS SUBMITTED BY _____

a corporation organized under the laws of the state of _____

partnership consisting of _____

a joint venture of _____

or individual trading as _____

of the City of _____

FIRM _____

ADDRESS _____

CITY _____ CITY _____ CITY _____

PHONE _____ VENDOR NO. _____

BY _____

Officer and Title (signature)

Officer and Title (print or type)

Date

WITNESS: If Contractor is an individual
(signature)

ATTEST: If Contractor is Corporation or Partnership
(signature and title)

SURETY BOND

PROJECT NO.: AV14000029 - FAA

That we, _____, as Principal, (hereinafter called the Principal) and the _____, a corporation duly organized under the laws of the state of _____, a Surety, (hereinafter called Surety) are held and firmly bound unto the City of Phoenix as Obligee, in the sum of ten (10) percent of the total amount of the bid of Principal, submitted by him to the City of Phoenix for the work described below, for the payment of which sum, well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents and in conformance with A.R.S. 34-201.

WHEREAS, the said Principal is herewith submitting its proposal for PHOENIX SKY HARBOR INTERNATIONAL AIRPORT TERMINAL 3 RECIRCULATION ROADWAY IMPROVEMENTS DESIGN-BID-BUILD

NOW, THEREFORE, if the City of Phoenix will accept the proposal of the Principal and the Principal will enter into a Contract with the City of Phoenix in accordance with the terms of such proposal and give such Bonds and Certificates of Insurance as specified in the Standard Specifications with good and sufficient Surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter into such Contract and give such Bonds and Certificates of Insurance, if the Principal will pay to the City of Phoenix the difference not to exceed the penalty of the bond between the amount specified in the proposal and such larger amount for which the Obligee may in good faith Contract with another party to perform the work covered by the proposal, then this obligation will be null and void, otherwise to remain in full force and effect.

Signed and sealed the _____ day of _____ A.D., 20__

Principal

TITLE

Surety

WITNESS

A.M. BEST RATING:

CITY OF PHOENIX
LIST OF MAJOR SUBCONTRACTORS AND SUPPLIERS

PROJECT NO.: AV14000029 - FAA PROJECT TITLE: PSHIA TERMINAL 3 RECIRCULATION ROADWAY IMPROVEMENTS DESIGN-BID-BUILD

DESCRIPTION OF WORK OR MATERIALS (CONTRACTOR TO ENTER TRADE/SUPPLIER AREAS)	SELF-PERFORMED BY PRIME CONTRACTOR	SUBCONTRACTOR/SUPPLIER COMPANY NAME (IF NOT SELF-PERFORMED)	CONTACT PERSON	PHONE NUMBER	DOLLAR VALUE OF WORK OR MATERIALS IN BID
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				

I hereby certify by signing below that the above listed companies will be utilized to perform work on this project for an **equal to or greater than 5% of the base bid**. These companies will not be removed or replaced without prior written approval by the City of Phoenix Project Manager. The City requires that ALL vendors providing work equal to or greater than 5% of the base bid are listed or you will be disqualified. If you are self-performing work, you must still list any suppliers for materials or list any subcontractors with whom you will directly contract.

COMPANY NAME _____ SIGNATURE _____

NAME & TITLE _____ PHONE NUMBER _____ DATE _____

EMAIL ADDRESS _____

**CITY OF PHOENIX
LIST OF ALL SUBCONTRACTORS AND SUPPLIERS**

PROJECT NO.: AV1400029- FAA PROJECT TITLE: PSHIA TERMINAL 3 RECIRCULATION ROADWAY IMPROVEMENTS DESIGN-BID-BUILD

DESCRIPTION OF WORK OR MATERIALS (CONTRACTOR TO ENTER TRADE/SUPPLIER AREAS)	SELF-PERFORMED BY PRIME CONTRACTOR	SUBCONTRACTOR/SUPPLIER COMPANY NAME (IF NOT SELF-PERFORMED)	CONTACT PERSON	PHONE NUMBER	DOLLAR VALUE OF WORK OR MATERIALS IN BID
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				

I hereby certify by signing below that the above listed companies will be utilized to perform work on this project. These companies will not be removed or replaced on the project without prior written approval by the City of Phoenix Project Manager. The City requires that ALL vendors providing work are listed or you will be disqualified. If you are self-performing work, you must still list any suppliers for materials or list any subcontractors with whom you will directly contract.

COMPANY NAME _____ SIGNATURE _____
 NAME & TITLE _____ PHONE NUMBER _____ DATE _____
 EMAIL ADDRESS _____

BIDDER'S DISCLOSURE STATEMENT

Authorized Contact for this Disclosure Statement

Name: _____

Title: _____

E-mail: _____

Phone number: _____

List any EIN, DBA, trade name, or other identity used in the last five years, the state or country where filed, and the status (active or inactive): (if applicable): _____

Business Characteristics

Business entity type – Please check appropriate box and provide additional information:

- | | | |
|--------------------------|-------------------------------|------------------------------------|
| <input type="checkbox"/> | Corporation | Date of incorporation: _____ |
| <input type="checkbox"/> | Limited Liability Company | Date organized: _____ |
| <input type="checkbox"/> | Limited Liability Partnership | Date of registration: _____ |
| <input type="checkbox"/> | Limited Partnership | Date established: _____ |
| <input type="checkbox"/> | General Partnership | Date established: _____ |
| <input type="checkbox"/> | Sole Proprietor | How many years in business?: _____ |
| <input type="checkbox"/> | Other (explain) | date established: _____ |

Was the business entity formed in the State of Arizona? Yes _____ No _____

If no, indicate jurisdiction where Business Entity was formed: _____

Business License Number and Classification: _____

Business Transaction Privilege License Number: _____

Special Use or other zoning permits required for Bidder's operation and performance of the services under this Agreement:

Is the Business Entity currently registered to do business in Arizona with the Arizona Corporation Commission? Yes _____ No _____ Not required _____ (if sole proprietor or general partnership)

Does the Business Entity have a City of Phoenix business privilege license? Yes _____ No _____ If "no" explain and provide detail such as "not required" or "application in progress" or other reason.

Is the Business Entity publicly traded? Yes _____ No _____

Is the responding Business Entity a Joint Venture? Note: If the Submitting Business entity is a Joint Venture, also submit a questionnaire for each Business Entity comprising the Joint Venture. Yes _____ No _____

Is the Business Entity's Principal Place of Business/Executive office in Phoenix? If "no" does the Business Entity maintain an office in Phoenix? Yes _____ No _____

Provide the address and phone number for the Phoenix office. _____

Is the business certified by Phoenix as a Small Business Enterprise? Yes _____ No _____

Identify Business Entity Officials and principal Owners:

Name(s) _____ Title _____ Percentage ownership ____%(Enter 0% if not applicable).

Name(s) _____ Title _____ Percentage ownership ____%(Enter 0% if not applicable).

Name(s) _____ Title _____ Percentage ownership ____%(Enter 0% if not applicable).

Name(s) _____ Title _____ Percentage ownership ____%(Enter 0% if not applicable).

Affiliates and Joint Venture Relationships

Does the Business entity have any Affiliates? Yes _____ No _____ Attach additional pages if necessary.

Affiliate name: _____

Affiliate EIN (if available): _____.

Affiliate's primary Business Activity: _____

Explain relationship with Affiliate and indicate percent ownership, if applicable. _____

Are there any Business Entity Officials or Principal Owners that the Business Entity has un common with this Affiliate? _____

Individual's name: _____

Position/Title with Affiliate: _____

Has the Business Entity participated in any joint Ventures within the past three years? Yes _____ No _____
(Attach additional pages if necessary)

Joint Venture Name: _____

Joint venture EIN (if applicable): _____

Identify parties to the Joint Venture: _____

Contract History

Has the Business Entity held any contracts with the city of Phoenix in the last three (3) years? Yes _____ No _____ If "yes" attach a list.

Integrity – Contract Bidding

Within the past three (3) years, has the Business Entity or any Affiliate been suspended or debarred from any government contracting process or been disqualified on any government procurement? Yes _____ No _____

Been subject to a denial or revocation of a government prequalification? Yes _____ No _____

Been denied a contract award or had a bid rejected based upon a finding of a non-responsibility by a government entity? Yes _____ No _____

Agreed to a voluntary exclusion from bidding/contracting with a government entity? Yes _____ No _____

Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity? Yes _____ No _____

Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity? Yes _____ No _____

For each "Yes" answer above, provide an explanation of the issues.

Integrity – Contract Award

Within the past three (3) years has the Business Entity or any Affiliate been suspended, cancelled, or terminated for cause on any government contract? Yes _____ No _____

Been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract? Yes _____ No _____

For each "yes" answer, provide an explanation. (Attach explanation on a separate sheet of paper).

Certifications/Licenses

Within the past three (3) years, has the Business Entity or Affiliate had a revocation, suspension, or disbarment of any business or professional permit and/or license? Yes _____ No _____

If "yes" provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issues.

Legal Proceedings

Within the past three (3) years, has the Business Entity of any Affiliate:

Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation? Yes _____ No _____

Been the subject of an indictment, grant of immunity, judgment or conviction, (including entering into a plea bargain for conduct constituting a crime)?
Yes _____ No _____

Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful? Yes _____ No _____

Had a government entity find a willful prevailing wage or supplemental payment violation? Yes _____ No _____

Been involved in litigation as either a plaintiff or a defendant involving a copyright or patent infringement violation or an anti-trust violation? Yes _____ No _____

Other than previously disclosed, for the past three (3) years:

(i) Been subject to the imposition of a fine or penalty in excess of \$1000 imposed by any government as a result of the issuance of citation, summons or notice of violation, or pursuant to any administrative, regulatory, or judicial determination? Yes _____ No _____

(ii) Been charged or convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity? Yes _____ No _____

If "yes" provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issues.

Leadership Integrity

If the Business Entity is a joint Venture Entity, answer "N/A – Not Applicable" to questions below:

Within the past three (3) years has any individual previously identified, or any other Business Entity Leader not previously identified, or any individual having the authority to sign, execute, or approve bids, proposals, contracts or supporting documentation with the city of Phoenix been subject to:

A sanction imposed relative to any business or professional permit and/or license? Yes _____ No _____

An investigation, whether open or closed, by any government entity for a civil or criminal violation for any business related conduct? Yes _____ No _____



The Official U.S. Government System for:

Contract Opportunities

Contract Data

(Reports ONLY from fpds.gov)

Wage Determinations

Federal Hierarchy

Departments and Subtiers

Assistance Listings

Entity Information

Entities, Disaster Response Registry, Exclusions, and Responsibility/Qualification (was fapiis.gov)

Entity Reporting

SCR and Bio-Preferred Reporting

Are you searching for Federal Acquisition Supply Chain Security Act (FASCSA) orders?

[View FASCSA Orders](#)

Already know what you want to find?

Select Domain...	e.g. 1606N020Q02
------------------	------------------

Register Your Entity or Get a Unique Entity ID

Register your entity or get a Unique Entity ID to get started doing business with the federal government.

[Get Started](#)

[Renew Entity](#)

[Check Entity Status](#)

Announcements

Entity Validation Review Time

Sep 10

Entity validation review time will depend on whether we can make a match from your original document submission, or if we need to request additional documentation. Most entities find a match immediately, ...

Change is Coming for SAM.gov Exclusions APIs

Mar 12

If you use SAM.gov's exclusions application programming interface (API), be aware that in mid-to-

Have Questions about SAM.gov?

VIDEO TRAINING: [Get a Unique Entity ID](#)

TOPIC	
HOW TO REGISTER FOR THE UNIQUE ENTITY ID	The Unique Entity ID is a 12-character alphanumeric value assigned, managed, and owned by the federal government.
THE UNIQUE ENTITY ID ENTITY REGISTRATION	
SET A UNIQUE ENTITY ID	The Unique Entity ID is a verification that your organization is what you say it is.
CORRECTLY OBTAIN ENTITY INFORMATION	
DOCUMENTATION FOR YOUR ENTITY	

UNIQUE ENTITY ID

- 12-character alphanumeric value
- Assigned, managed, and owned by the federal government
- Validates your organization's legal business name and address

GSA

SAM.gov

late September 2024, older versions of the API will retire and no longer be available. Version 1 (V1) of the exclusions API is

Refine Your Search Results with the New Search Editor Jul 29, 2023

If you use Simple Search in SAM.gov today, you can continue to search as you normally do. Simple Search will remain the default. If you know how to use Boolean search phrases (advanced formulas used with special terms along with ...

Entity Administrators. Vital roles for your business in SAM. Sep 12

As an Entity Administrator, you are responsible for a variety of tasks such as annually renewing your entity's registration. You don't have to be the only one at your entity to do these tasks though.

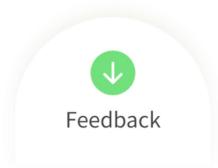
SAM.gov: Federal Entity Registration Extension Aug 6

Federal Entity Registrations (Entity Type: US Federal Government) currently active have been extended and will not expire until September, 30, 2026. NOTE: Impacted Entities will still receive 60, 30, and 15 Day emails until ...

Video: How to get a Unique Entity ID

Frequently Asked Questions

- Do I need a user account?
- What's the difference between signing up and registering?
- What if I already have a login.gov account?
- What do I need to register my entity?



Our Website

- About This Site
- Our Community
- Release Notes
- System Alerts

Policies

- Terms of Use
- Privacy Policy
- Restricted Data Use
- Freedom of Information Act
- Accessibility

Our Partners

- Acquisition.gov
- USASpending.gov
- Grants.gov
- More Partners

Customer Service

- Help
- Check Entity Status
- Federal Service Desk
- External Resources
- Contact



⚠ WARNING

This is a U.S. General Services Administration Federal Government computer system that is "FOR OFFICIAL USE ONLY." This system is subject to monitoring. Individuals found performing unauthorized activities are subject to disciplinary action including criminal prosecution.

This system contains Controlled Unclassified Information (CUI). All individuals viewing, reproducing or disposing of this information are required to protect it in accordance with 32 CFR Part 2002 and GSA Order CIO 2103.2 CUI Policy.

SAM.gov

An official website of the U.S. General Services Administration



City of Phoenix

AFFIDAVIT OF IDENTITY

Your completion of this form is required by Arizona state law. A.R.S. §§ 1-501 and -50 only if you are a sole proprietor.

I, _____ (print full name exactly as on document), hereby affirm, upon penalty of perjury, that I presented the document marked below to the City of Phoenix, that I am lawfully present in the United States, and that I am the person stated on the document. (select one category only)

Arizona driver license issued after 1996.
Print first four numbers/letters from license:

--	--	--	--

Arizona non-operating identification license.
Print first four numbers/letters:

--	--	--	--

Birth certificate or delayed birth certificate issued in any state, territory or possession of the U.S.
Year of birth: _____; Place of birth: _____

United States Certificate of Birth Abroad.
Year of birth: _____; Place of birth: _____

United States Passport.
Print first four numbers/letters on Passport:

--	--	--	--

Foreign Passport with United States Visa.
Print first four numbers/letters on Passport:

--	--	--	--

Print first four numbers/letters on Visa:

--	--	--	--

I-94 Form with a photograph.
Print first four numbers on I-94:

--	--	--	--

USCIS Employment Authorization Document (EAD).
Print first four numbers/letters on EAD:

--	--	--	--

or Perm. Resident Card (acceptable alternative):

--	--	--	--

Refugee Travel Document.
Date of issuance: _____; Refugee country: _____

U.S. Certificate of Naturalization.
Print first four digits of CIS Reg. No.:

--	--	--	--

U.S. Certificate of Citizenship.
Date of issuance: _____; Place of issuance: _____

Tribal Certificate of Indian Blood.
Date of issuance: _____; Name of tribe: _____

Tribal or Bureau of Indian Affairs Affidavit of Birth.
Year of birth: _____; Place of birth: _____

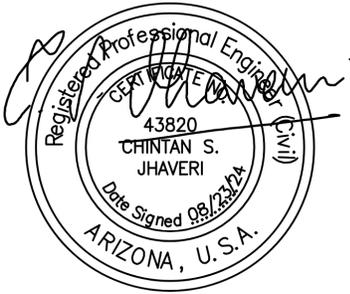
Signed: _____ Dated: _____

**TECHNICAL SPECIAL PROVISION
 AND CIVIL TECHNICAL SPECIFICATIONS**

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7	Records.....	SP-4
8	Shop Drawings and Submittals.....	SP-4
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10	Sanitary Facilities	SP-5
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15	Sequence of Construction	SP-8
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17	Yellow Warning Lights for Vehicles.....	SP-10
18	Disposal of Surplus Material which does not Contain Asbestos.....	SP-11
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27	Environmental Compliance.....	SP-26
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30	Clearing and Grubbing	SP-35
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32	Slurry Seal Coat	SP-36
33	Construct Concrete Valley Gutter	SP-36
34	Construct Concrete Curb and Gutter	SP-36
35	Remove Existing Concrete Curb and Gutter.....	SP-37
36	Remove Existing Concrete Valley Gutter.....	SP-37
37	Remove Existing Signs, Posts & Foundations	SP-37
38	Obliterate Existing Pavement Markings (4" Equivalent)	SP-38
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40	Install White Hazard Marker	SP-38

41	Install New Sign Panel, Flat Sheet Aluminum, Retro-Reflective Sheeting.....	SP-39
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43	Apply Pavement Marking, White Paint (4" Equivalent).....	SP-40
44	Apply Pavement Marking Preformed Single Arrow (Thru).....	SP-40
45	Apply Pavement Marking Preformed Single Arrow (Merge Left)	SP-40
46	Apply Pavement Marking Preformed "ONLY"	SP-41
47	Apply Pavement Marking Preformed "MPH 25"	SP-41
48	Apply Pavement Marking Preformed "MPH 35"	SP-42
49	Allowance for Temporary Traffic Control.....	SP-42
50	Install Steel Sleeve Bollard.....	SP-43
51	Install Swing Gate	SP-43
52	Install Railing.....	SP-43



TECHNICAL SPECIAL PROVISION AND CIVIL TECHNICAL SPECIFICATIONS

1. TRAFFIC CONTROL AND REGULATIONS. All traffic and/or traffic control devices on this project shall be provided, maintained and/or controlled by the Contractor, as specified in the City of Phoenix *Traffic Barricade Manual*, latest edition, with revisions as shown below:

- a. The following shall be considered major streets:
 - 24th Street;
 - Air Lane;
 - 48th Street;
 - 44th Street;
 - Buckeye Road, and;
 - Sky Harbor Boulevard;
 - Old Tower Road.
- b. Permission to restrict City streets, sidewalks and alleys (street closure permits) shall be requested as specified in the *Traffic Barricade Manual*, latest edition.
- c. Unless otherwise provided herein or directed by the City's Project Manager, all traffic on this project shall be regulated as specified in the *Traffic Barricade Manual*, latest edition.
- d. Off-peak hours at Phoenix Sky Harbor International Airport are from 11:00PM to 5:00AM for lane restrictions.
- e. No complete road closures are allowed.
- f. Sky Harbor Boulevard during peak hours shall have no less than two (2) lanes operational in each direction unless noted or approved otherwise.
- g. The Contractor shall submit for each construction phase, a Landside Traffic Control Plan containing traffic control drawings with barricade layouts to the City for approval. This submittal must be transmitted to the City a minimum of one (1) week prior to instituting the particular Traffic Control Plan.

2. PLANS AND SPECIFICATIONS. The Contractor shall keep at least one (1) copy of the contract documents constantly accessible on the work site.

The following is the precedence of the Contract Documents:

- a. Change Orders or Supplemental Agreements
- b. Addenda
- c. Contract Specifications/SpecialProvisions/Technical Provisions
- d. The Plans
- e. COP Supplement to MAG Standard Specifications and Details, latest revision
- f. MAG Standard Specifications and Details, latest revision

Calculated dimensions will govern over scaled dimensions. The Contractor shall not take advantage of any apparent error or omission on the Plans or Specifications. In the event the Contractor discovers any apparent error or discrepancy, he shall immediately call upon the City's

Project Manager for his/her interpretation and decision, and such decision shall be final.

Electronic files (CAD files) are not a part of the contract documents. Information contained on CAD files may not be compatible with the coordinates, elevations, details, and dimensions shown on the Project Plans. The Contractor may be provided with CAD files; however, the Contractor shall survey and construct the project from the information shown on the Project Plans, and as specified in the Project Specifications and Contract Documents.

3. WATER. All water required for and in conjunction with the work to be performed shall be provided by the Contractor and at the Contractor's expense. The Contractor shall arrange for the installation of an appropriate meter and bear the cost of such installation and the cost of the water.

When the Contractor needs a temporary waterline to the staging area, he shall coordinate the temporary waterline installation with the City of Phoenix Aviation Department Inspection Staff. There shall be no separate pay item for the construction of temporary water lines. These costs shall be included in items for which direct payment is made.

Prior to the actual water line shut down, the Contractor shall follow the following sequence of events:

- a. Construct all new waterlines, except for connections to existing water lines.
- b. Test the new water line in accordance with MAG and the City of Phoenix Supplemental specifications.
- c. Demonstrate that all fittings and waterlines are on site available to connect the new waterline to the existing waterline.
- d. Notify all customers in writing who will be experience water service interruption.
- e. Notify the Fire Department of possible low pressures to firelines and satisfy Fire Department requirements.
- f. Complete the connection of new temporary waterline under this Contract, to existing, with minimum disruption to the waterline system.

4. SECURITY FENCES AND GATES. All existing security fences and gates affected by the work shall be maintained by the Contractor until final completion and acceptance of the work. Existing security fence and gates that interfere with construction operations shall not be relocated or dismantled until permission is obtained from the City of Phoenix Airside Operations, through the City's Project Manager. The duration that the security fence or gate may be left relocated or dismantled shall be approved by the City of Phoenix.

If airside access is needed, the Contractor shall submit to the City, a Security Gate Access Plan for review prior to the work, and prior to relocation or removal of any security gates or fence. The Contractor shall restore all security fences and gates that are affected by the work, to their original or to a better condition.

5. POWER. All power for lighting, operation of Contractor's plant or equipment, or for any other use as may be required in the execution of the work to be performed under the provisions of these contract documents shall be provided by the Contractor at his/her expense. Subject to the approval of the City, he/she may be permitted to connect to existing facilities where available, but he/she shall meter and bear the cost of such power.

6. OPERATIONAL SAFETY AND MARKING. This project is within the limits of the Phoenix Sky Harbor International Airport Air Operations Area, and as such, strict safety and security requirements are in effect. The Contractor's attention is directed to the City of Phoenix, *Airport Construction Safety Manual* and the following FAA Advisory Circulars:

a. Federal Aviation Advisory Circulars.

1. Advisory Circular AC 150/5210-5D, "Painting, Marking, and Lighting of Vehicles Used on an Airport", which is incorporated into these contract documents by reference. All Contractor vehicles and equipment shall be provided with orange and white checkered flags during hours with sufficient daylight. Fully functional amber rotating beacons shall be provided during all hours of work.

2. Advisory Circular AC 150/5370-2G, "Operational Safety on Airports During Construction", which is incorporated into these Contract Documents by reference. The Special Safety requirements during construction shall be strictly observed.

b. Portable Light Plants.

1. The height, placement and orientation of light plants used during night construction will be subject to the review and approval of the City of Phoenix Aviation Department. Special care must be made to light plant position, orientation and use in order to avoid impairing both aircraft movements and the Air Traffic Control Tower (ATCT) operations.

2. A minimum of seven (7) days prior to the start of night construction the Contractor shall submit a Construction Lighting Plan for review and approval by the City's Project Manager. This lighting plan shall be updated and re-submitted for approval, as and when dictated by changes to the Plan during the progression of the work, or if a revised Plan is requested by the City.

c. Contractor Operational Assistance.

1. The Contractor shall provide trained personnel with vehicles, to escort the Contractor employees, subcontractors, vendors, truckers and any other person who are required to perform work that allows them to have access to the secured areas of the Airport.

2. The Contractor provided Operational Assistance shall hold security badges and attend escort training/airfield drivers training that will be conducted by Airside or Landside Operations, if required by the Airport.

3. These Contractor Operational Assistance personnel shall be under the direction of the City of Phoenix Airside or Landside Operations, applicable.

d. Open Trenching Limitations.

Open storm drain trenches, electrical duct or conduit trenches, utility trenches or any other trench shall be limited to 500-feet accumulative in length at any time.

e. Availability of Water Trucks and Vacuum Sweepers.

Vacuum sweepers and highway 4M water trucks shall be available and in operating condition to control dust and remove foreign object debris seven (7) days per week and twenty-four (24) hours per day, including Holidays. A minimum of two (2) vacuum sweepers (one airside, and one landside) and one (1) 4M highway water trucks shall be operating continuously at all times the Contractor or any subcontractor is working on the project.

- f. **Paint Striping and Obliteration.** Asbestos and lead based paint identification and/or remediation shall be performed by the City of Phoenix unless otherwise indicated by an authorized City of Phoenix representative.

Prior to starting Work:

1. Paint marking trucks and obliteration by water blasting shall be on call and available to respond to the project site within twelve (12) hours.
2. The Contractor shall fabricate aluminum stencils/templates for all surface painted numbers and letters. Upon project completion, the Contractor shall deliver to the City of Phoenix, all stencils/templates for surface painted numbers and letters. The gauge of the aluminum stencil/template shall match the gauge of the City's existing stencils/templates.

g. **Measurement and Payment.**

1. Operational Safety and Marking shall not be measured for payment under this Special Provision. All costs in relation herewith will be considered incidental to the item of work to which it pertains.

7. **RECORDS.** The City of Phoenix, ADOT, the FAA, the Comptroller General of the United States, or any of their authorized representatives, shall be allowed access to any books, documents, papers, and records of the Contractor which are directly pertinent to this project for the purpose of making audit, examination, excerpts, and transcriptions for a period of three (3) years following completion of the work.

8. **SHOP DRAWINGS AND SUBMITTALS.** The Contractor shall submit all submittals including materials, shop drawings, working drawings or supplementary drawings to the City's Project Manager for review for general conformance in accordance with MAG 105.2. Contractor submittals shall be uploaded to the City's Oracle® Unifier system as necessary in PDF format. Each submittal shall be numbered sequentially and shall be submitted as to cause no delay in the work.

The date when the Contractor uploads the submittal(s) shall be included in the Contractor's schedule using a distinct schedule activity ID number for each submittal. All submittals shall have assigned due dates. Due dates shall correspond with the approved Critical Path Method (CPM) schedule start dates for related activities allowing a minimum of fifteen (15) calendar days, or otherwise specified in the Specifications, for the City Project Manager's review as well as adequate time for fabrication and delivery of the material. The Engineer and the City of Phoenix shall not be held responsible for late or inadequate submittals provided by the Contractor. Failure to submit by the submittal date may result in withholding of payment either in part or in full until the submittals are received. Materials shall not be incorporated into the work without the submittal reviewed, or the material certification reviewed by the City of Phoenix Materials Laboratory.

The Contractor shall submit a detailed listing of all submittals (e.g. mix designs, material certifications) and shop drawings immediately after obtaining Notice to Proceed, for review and approval by the City's Project Manager. The listing can be developed in a spreadsheet format and shall include:

- a. Specification item number
- b. Item description

- c. Description of submittal
- d. Specification paragraph requiring submittal, and
- e. Scheduled date of submittal to be returned to Contractor

The Contractor shall certify each submittal and shop drawing by providing an original signed and dated letter to the City, that he has reviewed and approved the submittal and that it conforms to the requirements of the contract documents.

If this original certification is not included, the submittal and/or shop drawing will be returned without any action by the City. At the time of each submittal, the Contractor shall define and delineate in writing on the certification, any deviations from the contract documents.

The City's review will be only for general conformance with the design concept of the work and for compliance with the information contained in the contract documents. The review of a specified item, as such, will not indicate review of the assembly in which the item functions. Review by the City will not relieve the Contractor from responsibility for any errors or omissions in the submittal or shop drawings, nor from his responsibility for complying with the contract documents.

9. PROTECTION OF EXISTING FACILITIES. Prior to the start of the construction, periodically as requested, and at the completion of the project, a representative of the Aviation Department and the Contractor's authorized representative will inspect the excavation and embankment areas, staging area, haul roads and job site to evaluate the condition of existing facilities. The City may videotape these inspections. The Contractor will be held responsible for any damage to existing facilities in accordance with MAG Uniform Standard Specifications Section 107.9. The City's Project Manager and the Contractor shall video tape and inspect the condition of existing facilities. The video tape and the written report shall be uploaded to Unifier, documenting the results of the inspection performed prior to the start of the work.

There may be existing ground monitoring wells throughout the Airport owned by the City of Phoenix and Arizona Department of Environmental Quality (ADEQ). The Contractor shall provide lighted barricades around the existing ground monitoring wells that are within the construction limits, prior to the start of construction.

Existing ground monitoring wells shall be protected in-place by the Contractor. The environmental division of the Aviation Department will complete the grade adjustments to the ground monitoring wells as necessary, unless noted otherwise on plans. However, the cost of repairs due to damage caused by the Contractor shall be borne solely by the Contractor. The Contractor shall coordinate all adjustments or repairs to the ground monitoring wells with the Environmental Division.

10. SANITARY FACILITIES. The Contractor shall furnish temporary sanitary facilities at the site, as provided herein, for the needs of all construction workers and others performing work or furnishing services on the project. Sanitary facilities shall be of reasonable capacity, properly maintained throughout the construction period, and obscured from public view to the greatest practical extent. If toilets of the chemically treated type are used, at least one (1) or more toilets will be furnished at each secured site, as required by the Arizona State Department of Health Services. The Contractor shall enforce the use of such sanitary facilities by all personnel at the site.

For construction phases or sub-phases where the work hours are limited and the area is to be reopened at the end of the work shift, the Contractor shall provide mobile chemically treated facilities to be mobilized and demobilized to the work area daily.

11. PARKING. The Contractor shall provide and maintain suitable off-site parking areas outside of the Air Operations Area for the use of all construction workers and others performing work or furnishing services in connection with the project, as required to avoid any need for parking personal vehicles where they may interfere with public traffic, aircraft and Owner's operations, or construction activities. A preliminary parking location is shown in the plans; however, the Contractor's parking area will be determined in the pre-construction conference. The Contractor shall restore all parking areas to original (pre-construction) condition, including fence, gates and ground surfaces following all construction activities.

12. CONSTRUCTION SCHEDULE. Refer to City of Phoenix specifications for project schedule requirements. There will be no work (with exception to vacuum sweeping for the cleanup of foreign object debris) as described in the following:

- a. The night shift on New Year's Eve, all day on New Year's day, the night shift on New Year's day
- b. The night shift prior to Labor day, all day on Labor day, the night shift on Labor day
- c. The night shift prior to Memorial day, all day on Memorial day, the night shift on Memorial day
- d. The night shift prior to the 4th of July, all day on the 4th of July, the night shift on the 4th of July
- e. The night shift prior to Thanksgiving day, all day on Thanksgiving day, the night shift on Thanksgiving day, the Sunday day shift and the Sunday night shift following Thanksgiving
- f. The night shift on Christmas Eve, all day on Christmas day, the night shift on Christmas day
- g. Any dates described in the current City of Phoenix Aviation Department's moratorium calendar.

The Contractor shall develop his schedule, plan his work, and provide sufficient manpower materials and equipment to complete all work within the allotted contract time utilizing five (5) day work weeks and multiple shift operations as needed.

13. DELAYS AND EXTENSIONS OF TIME. Delete MAG Section 110 and substitute the following:

a. Notice of Claim for Additional Time. Claims for additional time must be made by the Contractor per Article 6. Notice of any Contractor claims of time extension entitlement due to extra work must be included in the Contractors change order request regarding the extra work. Failure to provide the notice required by this section shall constitute a waiver of any entitlement the Contractor may otherwise have. Notices shall include: (1) the nature of the delay; (2) the critical path activities being affected; (3) the probably effect of the delay on progress of the work; (4) a description of efforts the Contractor intends to make to mitigate the delay, and; (5) a cost estimate. If the notice includes adverse weather delays, the notice shall also include data substantiating the adverse weather.

b. Notice of Claim for Additional Cost. If the Contractor wishes to make a claim for an increase in the contract sum, written notice shall be given before proceeding to execute the work. The written notice shall be given to the City within five (5) calendar days after the occurrence of the event giving rise to the claim. Prior notice is not required for claims relating to an emergency endangering life or property. The Contractor shall provide notice of claims relating to emergencies within five (5) days after the occurrence of the emergency. Failure to strictly comply with this

notice requirement shall constitute waiver of such claims.

c. Out-of-Sequence Work. The Contractor and Owner contemplate that changes in the Contractor’s schedule and the performance of out-of-sequence work may be necessary for the beneficial and timely completion of the project, safety of the flying public or convenience of the Owner. The Contractor expressly waives any claim for additional costs resulting from out-of-sequence work beneficial to the overall project.

d. Continuing Contract Performance. Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract other than amounts in dispute.

e. Claim Documentation. Within thirty (30) calendar days after the Contractor submits a notice of claim, the Contractor shall submit a “Claim,” which shall include the following documentation:

1. The date of the occurrence and the nature and circumstances of the issue for which the notice of claim was given.
2. The identity of any documents and the substance of any oral communication related to the issue.
3. The basis for an assertion that the work required is a change from the original Contractor work or schedule.
4. The identity of particular elements of contract performance for which a change in compensation and/or time may be sought including:
5. A previously submitted project schedule demonstrating that any affected activities were identified as on the project’s critical path or were made critical by the delay.
 - a) Pay item(s) that have been or may be affected by the issue and any adjustments to unit price(s) that are required;
 - b) Labor and/or materials that will be added, deleted or wasted by the problem and what equipment will be idled or required.
 - c) Delay and disruption in the manner and sequence of performance that has been or will be required.
 - d) Adjustments to delivery schedule(s), staging, and contract time due to the dispute and
 - e) An estimate of time within which the Owner must respond to the notice to minimize cost, delay, or disruption of issue.
6. Any other items or information germane to the dispute.
7. “I, _____, being the _____ (must be an officer) of _____ (Contractor), declare under penalty of perjury under the laws of the State of Arizona, and do personally certify and attest that: I have thoroughly reviewed the attached Claim for additional compensation and/or extension of time, and know it’s contents, and said claim is made in good faith; the supporting data is truthful and accurate; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the City of Phoenix is liable; and, further, that I am familiar with Federal Acquisition Regulation (FAR) clause 52.214-27, found in 48 CFR Part 52; and further know and understand that submission or certification of a false claim may lead to fines, imprisonment, and/or other severe legal consequences.”

By: _____
Title: _____
Date: _____

The Contractor's written certification, under oath: If any subcontractor or any lower tier subcontractor wishes to make a Claim, the subcontractor shall also provide the certification (in addition to the General Contractor).

f. Claims for Consequential Damages. The Contractor waives claims against the Owner for consequential damages arising out of or relating to this contract. This waiver includes the Contractor's principal office expenses including the compensation of personnel stationed there, financing losses, business and reputation and lost profits.

g. Claim Review. Claims shall be submitted to the RPR, who will review the Claim and provide a recommendation to the Owner. The RPR's recommendation shall not be binding on the Owner. The Owner may meet with the Contractor review the claim.

h. Owner's Audit Rights. The submission of a Claim by the Contractor shall entitle the Owner to audit all Contractor records and documents relating to the project, including but not limited to the Contractor's bid documents, job cost records and ledgers, payrolls, schedules, communications with its subcontractor and material suppliers and subcontract agreements. The Contractor's failure to timely provide these documents shall constitute a material breach of the Contract.

14. COORDINATION BETWEEN CONTRACTORS. There may be work on airport projects by other contractors that could affect this project. The Contractor on this project shall work with airport personnel to coordinate his/her activities and access to the project.

15. SEQUENCE OF CONSTRUCTION. The following scheduling requirements are being provided to serve as supplemental information in preparation of the sequencing of construction. It is not the intent of these Special Provisions or the construction plans to dictate to the Contractor his/her method of construction for this project. The Contractor shall review these specifications and submit to the RPR prior to construction, his/her construction plan on how he/she will meet the project schedule for review.

a. Limitations of Operations. The Contractor shall conduct all his operations in such a manner so as to maintain a smooth, safe, uninterrupted flow of aircraft and vehicular traffic adjacent to the work site. He shall conduct all his earthwork construction in such a manner so as to minimize any potential differential settlement between the edges of existing pavements. Unless noted otherwise on the plans, no work shall be performed within active runway or taxiway safety areas. The Contractor shall remove all equipment from the Runway and Taxiway safety areas including the infields prior to re-opening the Taxiway.

Limits of the various phases of work shall be clearly delineated with barricades, barricade lights, mandatory signs, taxiway signs (temporary and permanent) and paint markings as shown on the plans and specified herein, in order to deter aircraft and vehicles from entering the construction areas. The Contractor shall work closely with Airport Operations personnel, City of Phoenix Inspectors and the City's Project Manager to ensure that the work is accomplished with minimal interference with aircraft movements.

Aircraft always have the "right-of-way". When the Contractor is working adjacent to an active apron, runway or taxiway and an aircraft approaches the work area, the Contractor may be required to "pull back" his operations, i.e., move workers, materials and equipment away from

the taxiway or runway, outside of object free area, or as directed by City of Phoenix Operations or Inspection personnel.

The Contractor shall maintain all active runway and taxiway lighting systems at all times, unless otherwise specified. When temporary bypasses of active circuits are to be constructed in order to work on portions of the circuits, the circuits shall be de-energized and re-energized in conformance with the procedures specified by the City of Phoenix Aviation Department.

b. Opening Inspections. When the Contractor requests in writing to open an individual phase of work, or areas that are scheduled to be reopened to traffic, the City's Project Manager will conduct an observation of the construction area before opening to aircraft traffic. The conditions which observations will consider potentially hazardous and which must be corrected prior to reopening the taxiway prior to the end of a work shift (day shift or night shift as the case may be) include but are not limited to, the following:

1. Trenches, holes, or excavations on, or adjacent to any open taxiway, runway, apron or related safety area.
2. Un-marked or un-lighted holes, trenches or excavations near any runway, apron, taxiway, or related safety area.
3. Mounds or piles of earth, temporary stockpiles, construction materials, temporary structures, or other objects on or in the vicinity of any open runway, apron, taxiway object free area, or in a related safety, approach or departure area.
4. Vehicles or equipment (whether operating or idle) on any open apron, taxiway, or in any related safety, approach or departure area.
5. Vehicles, equipment, excavations, stockpiles, or other materials which could impinge upon Navigational Aid (NAVAID) critical areas and degrade or otherwise interfere with electronic signals from radios or electronic NAVAIDs or interfere with visual NAVAID facilities.
6. Objects (whether marked/flagged or not) or activities anywhere on or in the vicinity of the airport which could be distracting, confusing, or alarming to pilots during aircraft operations.
7. Un-flagged or un-lighted low visibility vehicles and equipment including cranes in the vicinity of an active runway, taxiway or apron or near any approach or departure surface.
8. Misleading or malfunctioning obstruction lights or barricade lights.
9. Inadequate approach/departure surfaces (needed to assure adequate landing/takeoff clearance over obstructions or work or storage areas).
10. Inadequate, confusing, or misleading (to user pilots) marking/lighting of any open apron, runway, taxiway, or in any related safety, approach or departure area.
11. Water, dirt, debris, or other transient accumulation that temporarily obscures pavement marking, pavement edges, or derogates the visibility of runway/taxiways marking, lighting or of construction and maintenance areas. There is zero tolerance for foreign object debris (FOD).
12. Inadequate or improper methods of marking, barricading, or lighting of temporarily closed portions of airport operation areas including unlighted or missing construction and barricade lights.
13. Construction materials, trash or other materials with FOD potential, whether on aprons, runways, taxiways, service road, public streets or related safety areas. Inspectors will be watchful for debris that can be ingested into aircraft engines creating a potential for FOD. Such items include rock, aggregate, soil, loose polyethylene and other light materials capable of being blown onto aircraft movement areas by wind.
14. Construction/maintenance activities or materials that could hamper airport rescue and fire-fighting (ARFF) vehicle access from ARFF stations to all parts of the runway/taxiway system, runway approach and departure areas, or aircraft parking locations.

15. The time allowances for all work is inclusive of the Contractor moving onto the site, performing work activities, performing all clean-up, having the work area and haul routes inspected and approved by the City's Project Manager, and moving off the site. The Contractor shall provide adequate lighting for the needs of the inspection personnel.

Any Aircraft Operating Areas (AOA), open apron, runway, taxiway, or in any related safety, approach or departure area that does not pass inspection must remain closed until such time cleanup is performed and approved.

c. Construction Phasing. Typical work to be done during each construction phase is given as supplemental information and is not intended to be a complete listing of all work to be accomplished. All work called for on the plans and all items necessary to construct a complete, operational section of a concrete taxiway within the limits of the work area shall be completed in the individual phase and/or sub-phases, prior to proceeding with the next phase or sub-phase.

16. **ARCHAEOLOGICAL FEATURES.** Although the City of Phoenix Aviation Department has made every effort prior to construction to identify all cultural resources in the project area, previously unidentified archaeological materials may be found during the construction of this project.

If human remains are encountered during any phase of the construction, the Contractor shall suspend all work in the vicinity of the find and shall take steps to secure the protection of the remains. The Archaeological Consultant and the City of Phoenix Archaeologist shall be contacted immediately to determine an appropriate course of action. In the event of suspension of work pursuant to this Special Provision, the Contractor may be entitled to an adjustment of contract time.

If satisfactory fulfillment of the Contract involves alterations to the contract time that affect the Contractor's completion time, the Contractor may request a supplemental agreement that extends that Contract time. The supplemental agreement shall be in the form of a Request for Extension of Contract time and shall include the Contractor's revised schedule and all other pertinent data. The request shall show why an increase of Contract time is warranted.

An extension of contract time will not be considered unless the work affected by the Archaeological investigation and suspension of a construction activity becomes a critical item on the Contractor's CPM schedule.

17. **YELLOW WARNING LIGHTS FOR VEHICLES.** The Contractor will provide flashing yellow warning lights at all times during construction, including periods of low visibility, as well as orange and white checkered flags during daylight, for all vehicles and all mobile construction equipment on the construction site, per Advisory Circular 150/5210-5D, "Painting, Marking, and Lighting of Vehicles Used on an Airport" as included in the Appendix. Yellow warning lights and orange and white checkered flags must be displayed in a prominent visible position and kept operational at all times. The Contractor must rectify the condition of any lights or flags not found to be acceptable to the City of Phoenix Operations immediately. If not rectified within six (6) hours, or a lesser time, at the discretion of the City of Phoenix, or if a clearly unsafe condition exists, work may be suspended at no cost to the City of Phoenix, until the situation is addressed.

All construction motor vehicles must display adequate company identification logos on both

sides of the vehicle and at all times while within the AOA. Failure to comply will result in the issuing of a Notice of Violation (NOV) and the appropriate fine.

There will be no separate measurement of pay item for yellow warning lights, checkered flags or company identification logos. The cost will be included in other bid items.

18. DISPOSAL OF SURPLUS MATERIAL WHICH DOES NOT CONTAIN ASBESTOS. No measurement or direct payment will be made for the hauling and disposal of surplus and/or waste material; the cost shall be incidental to the cost of the project. All surplus and/or waste material shall be disposed of by Contractor at and off-site location such as a landfill, subject to the following conditions:

a. If the City landfills are used, the Contractor shall pay the normal dumping fee. The Estes Landfill will not be available to dispose of surplus materials.

b. If private property within the City limits is used, the Contractor shall obtain written permission from the property Owner and deliver a copy of this Agreement to the RPR prior to any hauling or dumping. All disposal and grading shall be in strict conformance with the City of Phoenix Grading and Drainage Ordinance. The Contractor shall obtain and pay for the necessary permit(s).

c. If the surplus material is disposed of outside the City limits, the Contractor shall comply with all applicable laws/ordinances of the agency concerned and be responsible for all cost incurred.

19. HAUL PERMIT. Obtaining the haul permit and the approval by Street Transportation does not release the Contractor from strict compliance with MAG Subsection 108.5, Limitation of Operations. On any project, when the quantity of fill or excavation to be hauled exceeds 10,000 cubic yards, or when the duration of the haul is for more than twenty (20) working days, the Contractor shall:

a. Obtain and pay for a written haul permit from the Development Services Department.

b. Obtain approval of the proposed haul route, number of trucks, etc., by the Street Transportation Department.

20. UNDERGROUND FACILITIES. The Contractor will make whatever investigation it deems necessary to verify the location of underground utility facilities, by providing a private utility locating company to verify the location of all on-site utilities prior to construction. The utility locator company shall mark all utilities that may or may not conflict with construction. The Contractor shall field survey these utilities and plot this information on the Record Drawings that the Contractor will be preparing. If such facilities are not in the location shown in the drawings, then (regardless of whether this is discovered prior to or during construction) the Contractor's remedies, if any, pursuant to Article 6.3, Chapter 2, Title 40, A.R.S. (A.R.S. § 40-360.21 through A.R.S. § 40-360.32, "Underground Facilities"), shall be the Contractor's sole remedy for extra work, delays, and disruption of the job, or any other claim based on the location of utility facilities. Locations of utility facilities are shown on drawings and were furnished by the City, are to be regarded as preliminary information only, subject to further investigation by the Contractor. The City does not warrant the accuracy of these locations,

and the Contractor, by entering into this Contract, expressly waives and disclaims any claim or action against the City under any theory for damage resulting from location of utility facilities.

The Contractor shall be responsible for obtaining all utility location information, and for performing all requirements as prescribed in A.R.S. § 40-360.21 through A.R.S. § 40-360.29, for all underground facilities, including those that have been installed on the current project, until the project is accepted by the City.

At least two (2) working days prior to commencing any excavation, the Contractor shall contact Arizona 811, the Blue Stake Center, between the hours of 6:00 a.m. and 5:00 p.m., Monday through Friday, for information relative to the location of buried utilities that are located on landside. The number to be called is as follows: Maricopa County: (602) 659-7500.

Several utility owners, including the City of Phoenix, the Federal Aviation Administration, and others have utilities in the proposed work area. These utilities shall be located and potholed by the Contractor prior to starting construction. The Contractor is advised that several underground environmental monitoring facilities exist within the project work limits. These facilities are to be protected by the Contractor and left in an undisturbed condition, unless noted on plans. Any inadvertent damage must be reported immediately to the Aviation Department Environmental Section. The Contractor will be responsible for returning any damaged environmental monitoring facility to a pre-construction condition.

There shall be no separate measurement of payment for location of existing utilities or existing underground facilities. The cost of this item shall be included in other bid items.

21. CHANGE ORDER REQUEST MARKUPS. The Contractor shall conform to the following markups for change order work, or for the allowance work that is self-performed by the Contractor and/or performed by a subcontractor. The Contractor shall also utilize the Change Order Request Summary Worksheet. The Contractor shall submit all required backup and supplemental information, calculations, invoices, etc., that are required to justify and support all Contractor and subcontractor costs.

a. General Contractor Self-Performed Work and Subcontractor Work Markups. For overhead and profit, the actual or approved costs for equipment, material, and labor shall be marked up by twelve percent (12%) for profit and overhead.

b. General Contractor Markups of Subcontractor Work and Subcontractor Markups of Lower Tier Subcontractors. The Contractor shall be allowed to markup actual or approved subcontractor costs for equipment, material, and labor (excluding subcontractor overhead and profit) by seven and one half percent (7.5%). Subcontractors shall be allowed to markup actual or approved lower tier subcontractor costs for equipment, material, and labor (excluding lower tier subcontractor overhead and profit) by seven and one half percent (7.5%).

c. Bond. No markups for bond will be permitted until the contract monetary amount has been exceeded for which the bond has been issued. No bond markups will be permitted for work performed by subcontractors and lower tier subcontractors.

d. Insurance. The Contractor shall be allowed to markup the cost for change order work plus bond costs for property damage/public liability insurance, utilizing the same percentage used

on the initial contract. Verification, from insurance carriers, of this percentage shall be submitted with the initial change order request.

e. Sales Tax. The Contractor shall be allowed to markup the cost for change order work plus bond and insurance costs by the current, approved sales tax multiplier.

22. EXTENSIONS OF CONTRACT TIME. MAG General Condition Specification 108.7, DETERMINATION AND EXTENSION OF CONTRACT TIME, is deleted in its entirety and substitute the following:

a. Weather Delay. “Extensions of time due to adverse weather conditions not reasonably anticipated will be granted only if such inclement weather prevents the execution of critical path items of work at the time of the inclement weather. Extensions of time for weather delays will be considered only if such actual monthly inclement weather exceeds the monthly average for that month as shown in the Table below. The extension would be considered on the day after the rainfall exceeds the monthly average listed in the Table. The Contractor shall base his CPM Schedule using at least three (3) weather delay days per month between January and March, and at least one (1) weather delay day per month between April and December. These weather days will not be considered for an extension of contract time.

The Contractor shall request an extension of time in writing within forty-eight (48) hours after the event that caused the delay. This written notification is required regardless if the request is based on inclement weather or based on other factors. No extension of time will granted if the written request is not received within forty-eight (48) hours.

TABLE – City of Phoenix Average Monthly Precipitation Data.

<i>Month</i>	<i>Average Monthly Precipitation</i>
January	0.94-inches
February	1.05-inches
March	1.13-inches
April	0.32-inches
May	0.11-inches
June	0.05-inches
July	0.88-inches
August	0.98-inches
September	0.75-inches
October	0.65-inches
November	0.67-inches
December	0.94-inches

b. Notice of Claim for Additional Time. If the Contractor wishes to make a claim for an increase in the Contract Time, written notice shall be given. The notice shall be made in writing to the RPR within five (5) days of the delay causing occurrence except for notice of adverse weather caused delays, which shall be made within forty-eight (48) hours. The notice shall set forth (a) the cause of the delay, (b) a description of the portion or portions of Work affected by the delay, (c) the specific number of days of delay for which an extension of time is requested, (d) all actions the Contractor is taking to mitigate the delay (e) any actions the Owner or others could take to mitigate the delay (f) the latest schedule showing the delayed activity’s relationship to the project’s critical path and (g) all details pertaining thereto. In the case of a continuing delay, the Contractor shall weekly submit an updated notice. Failure to give notice

of a claim for extension of time in strict compliance with this provision shall constitute a waiver of such claim.

c. Critical Path. No extension of time shall be granted to the Contractor for a delay caused by the Owner, Engineer, other contractors or any other party, or other causes beyond the Contractor's control, unless the delay affects the critical path of the Project as defined on a critical path method schedule or monthly update provided to the Owner before the delaying occurrence and then only to the extent that the delay affects the critical path. If the delay event forces a previously non-critical path activity onto the project critical path, this change must be shown on the next monthly update and expressly identified in the narrative report. Failure to so identify critical path changes shall be deemed to waive the Contractor's right to recover any costs associated with the delay event's impact on the activity. Delays not identified on the Contractor's next monthly update shall be waived. No extension of time shall be granted to the Contractor to the extent that, notwithstanding the existence of any such circumstance beyond the Contractor's control, delay would have resulted in any event due to a concurrent unexcused delay.

d. Changes in the Work. For changes in the work that significantly affect the time and progress of the work, any time extensions shall be requested no later than when the change in the work is requested. Any change order negotiated and signed by the Contractor and Owner that does not include an express time extension shall be deemed conclusive evidence that no time extensions related to the changed work is warranted and the Contractor shall forever waive its right to claim entitlement to such a time extension.

Change order requests shall include all costs necessary to perform the extra work within the contract period unless a time extension is granted. This shall include but not be limited to necessary acceleration costs. The Contractor may reserve the right to request a time extension at a later date. However, if the Contractor elects to do so, the City will withhold ten (10) percent of the change order amount until the Contractor submits a critical path method schedule analysis that complies with all Contract requirements and identifies the resultant delay. If the Contractor fails to timely do so, the Owner may use the withheld amount to perform a schedule analysis to identify the resulting delay.

e. Overhead Costs During Time Extensions. The Contractor and Owner contemplate that the entire contract period may be reasonably necessary to complete this Contract's scope of work. It is the contemplation of the parties that any home office or field overhead or supervision costs necessary to perform work during the entire contract period is incorporated into the Contractor's overall Bid. The Contractor shall not be entitled to recover home office or field overhead and supervision costs during the performance period, even if the Contractor originally planned to complete the work before the contract period expired. Acceptance by the Owner of schedules showing early completion by the Contractor shall not constitute a waiver of this provision.

23. MAG SPECIFICATION MODIFICATIONS. In addition to any other modifications to the MAG specifications contained elsewhere in this Contract, the following changes are made:

a. MAG Section 104.2.4 is deleted and replaced with:

"104.2.4 At the Contractor's Request: Changes in the plans or specifications, which do not materially affect and are not detrimental to the work or to the interests of the Contracting

Agency, may be granted to facilitate the work. Requests shall be in writing and submitted to the RPR for approval. The Contracting Agency shall be entitled to a reduction in cost equal to one-hundred percent of any cost reductions to the Contractor caused by the change. In no event shall a Contractor requested change result in any additional cost to the Contracting Agency. The Contractor assumes sole responsibility and liability for changes it requests and the Contracting Agency's approval of a proposed change shall not create any liability on the part of the Contracting Agency.

b. MAG Section 105.11 is deleted and replaced with:

“105.11 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK:

(A) *Duty to Uncover Work:* If a portion of the work is covered contrary to the RPR's request or to requirements specifically expressed in the Contract, the RPR may order in writing that it either be uncovered for observation and/or replaced. The cost of uncovering or replacing the work shall be solely at the Contractor's expense. The Contractor shall not be entitled to any associated time extensions or impact costs associated with such a request.

(B) *Cost of Uncovering Work:* If a portion of the work has been covered that the RPR has not specifically requested to observe prior to it's being covered or the Contract does not provide for inspection, the RPR may request the Contractor to uncover the work. If the uncovered work is in compliance with Contract requirements, the Contracting Agency shall bear the cost of uncovering and replacing the work. If the uncovered work is not in compliance with Contract requirements, the Contractor shall bear such costs.

(C) *Duty to Correct Rejected Work:* Work done contrary to the instruction of the RPR, work done beyond the lines shown on the plans, or as given, any extra work done without authority, unacceptable work, poor workmanship, work done with defective materials, work damaged through carelessness or found unacceptable by the RPR, whether observed before or after substantial completion of the work and whether or not fabricated, installed or completed shall be promptly corrected by the Contractor. The Contractor shall bear all costs of correcting such work, including the replacement or repair of other work affected, additional testing and inspection costs, and additional RPR costs. The Contractor shall not be entitled to recover any impact costs or delay damages and shall not be entitled to any time extensions in any way relating to correcting the work. Work rejected by the RPR shall be promptly corrected. All work rejected before final acceptance shall be corrected prior to final payment.

(D) *One Year Duty to Correct Work:* Without limiting the Owner's statutory, common law, or other contractual rights, if within one (1) year after the date of final acceptance, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty or guarantee required by the Contract, any defective work or work not in accordance with the Contract shall be promptly corrected by the Contractor after written notice by the RPR or Owner to do so. The Contractor shall bear all costs of correcting such work, including replacement or repair of other work affected by the defect and any other damages resulting from such defect. This obligation shall survive Final Payment to the Contractor.

- (E) *Owner's Right to Correct Non-Conforming Work:* If the Contractor fails to correct nonconforming or defective work within a reasonable time, the Owner may correct it with its own forces. If the Contractor does not correct the work within a reasonable time, the Owner may provide written notice to the Contractor and then remove and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay the Owner's expenses within ten (10) days thereafter, the Owner may sell such materials and equipment and shall deduct its expenses, including additional services by the RPR.
- (F) *Acceptance of Non-Conforming Work:* If the Owner prefers to accept defective or non-conforming work rather than require its removal and correction, the Owner shall be entitled to recover one-hundred and fifty (150) percent of the cost of removing and correcting the work. Such adjustment shall be effected whether or not final payment has been made."

c. Delete MAG Section 108.4 and substitute the following:

"The Contractor shall furnish a construction schedule and monthly updates to the schedule. The City's review of the Contractor's schedule is for purposes of: (1) determining the Contracting Agency's staffing requirements; (2) to ensure general compliance with the contract documents as it relates to the completion of all work; (3) to monitor and evaluate the construction status for purposes of approving progress payments; (4) to evaluate project delays and claims for additional time and compensation; and (5) to identify methods for mitigating delay impacts. In the event the schedule does not contain sufficient information to meet the above purpose, or does not comply with the Contract's schedule and monthly update requirements, the Contractor shall resubmit a new schedule or update with the required information. The Contractor shall not change an accepted construction schedule without the written consent of the City's Project Manager. The orderly procedure of all work to be performed shall be the full responsibility of the Contractor.

Review of a submitted schedule by the City shall in no way be construed as an affirmation or admission that the schedule is reasonable or workable, which responsibility remains the Contractor's obligation. When the schedule shows a completion prior to the completion date, this extra time between the contract completion date and the scheduled completion date (float), may be used by the Contracting Agency without additional compensation to the Contractor, including extended field and home office overhead and supervision costs. The Contracting Agency shall not be liable to the Contractor for any damages for delay if the Contractor complete the work prior to expiration of the original Contract completion date or as modified by approved change orders, if any."

d. Delete MAG section 108.11 and substitute the following:

- "A. *Termination for Convenience:* The Owner may, without cause, terminate the Contract for its convenience, even if the Contractor has not failed to perform any part of the Contract. Termination of the Contract shall be affected by written notice to the Contractor. Upon receipt of such notice, the Contractor shall, unless the notice directs otherwise:
 - 1. Immediately discontinue the work and the placing of all orders and subcontracts in connection with this Contract;

2. Immediately cancel all of the existing orders and subcontracts made hereunder;
 3. Immediately transfer to the Owner all materials, supplies, work in progress, appliances, facilities, machinery and tools acquired by the Contractor in connection with the performance of the Contract, and take such action as may be necessary or as the Owner may direct for protection and preservation of the Work relating to this Contract;
 4. Deliver all plans, Drawings, Specifications and other necessary information to the Owner;
 5. Take all necessary steps to secure the project site and work.
- B. *Contractor's Exclusive Remedy:* If the Owner terminates the Contract for convenience, the following shall be the Contractor's exclusive remedy.
1. Reimbursement of all actual expenditures and costs approved by the Owner as having been made or incurred in performing the work;
 2. Reimbursement of expenditures made and costs incurred with the Owner's prior written approval in settling or discharging outstanding commitments entered into by the Contractor in performing the Contract; and
 3. Payment of profit, in so far as profits is realized hereunder, of an amount equal to the actual profit on the entire Contract at the time of termination multiplied by the percentage of the completed work. In no event shall the Contractor be entitled to anticipated fees or profits on Work not required to be performed.
- C. *Warranties, Guarantees and Indemnities to Remain in Effect.* All obligations of the Contractor under the Contract with respect to completion of the work, including but not limited to all warranties, guarantees and indemnities, shall apply to all work completed or substantially completed by the Contractor prior to a convenience or for cause termination by the Owner. Notwithstanding the above, any termination by the Owner or payments to the Contractor shall be without prejudice to any claims or legal remedies that the Owner may have against the Contractor for any cause.
- D. *Conversion of Termination for Cause to Termination for Convenience.* If a termination for convenience by the Owner is determined to be wrongful or improper for any reason, such termination shall automatically be converted to a convenience termination and the Contractor's remedy for such wrongful termination shall be limited to the recoveries for a convenience termination.
- E. *Remedy Limited to Damages:* In the event that the Contractor is terminated, whether for cause or convenience, the Contractor's sole remedy shall be for damages. In no event shall the Contractor be entitled to reinstatement or other equitable relief from a court or other forum.
- F. *Termination For Cause:* The Owner may terminate the Contract if the Contractor:

1. fails or refuses to supply enough properly skilled workers or proper materials to ensure compliance with approved schedules or as directed by the RPR;
2. fails to make payment to subcontractors for labor or materials in accordance with the respective agreements between the Contractor and subcontractors or A.R.S. § 34-221.
3. disregards laws, ordinances, rules, regulations or orders of a public authority having jurisdiction;
4. breaches any provision of the Contract;
5. fails to furnish the Owner with satisfactory assurances evidencing the Contractor's ability to complete the work in compliance with all Contract requirements.;
6. fails to comply with approved schedules or fails to comply with Contract schedule requirements; or
7. fails after commencement of the work to proceed diligently and continuously with the construction and completion of the work for more than seven (7) days, except as permitted under the Contract.

G. *Contractor Right to Receive Payment:* When the Owner terminates the Contract for cause; the Contractor shall not be entitled to receive further payment until the work is finished. If it appears the Contractor would have sustained a loss on the entire Contract had it been completed, the Contractor shall not be entitled to any profit and an appropriate adjustment shall be made reducing the Contractor's payment to reflect the Contractor's anticipated rate of loss for the entire Contract.

H. *Cost of Finishing Work.* If the unpaid balance of the Contract exceeds costs of finishing the work, including compensation to the RPR and other Owner representatives, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner shall be certified by the RPR and this obligation for payment shall survive the Contract's termination.

24. CONSTRUCTION SURVEY AND LAYOUT. The Contractor shall set all construction stakes, establishing lines, grades and elevations to construct the Project, including necessary utilities, appurtenances and shall be responsible for their conformance with plans and specifications. The Engineer has established survey control points and benchmarks for the project. Refer to the Survey Control Plan.

a. Initial Verification. Prior to setting any construction stakes, the Contractor shall first verify the accuracy of the control points established by the Engineer. If errors are discovered during this verification process, and the control points do not agree with the geometry shown in the plans, the Contractor shall immediately notify the Engineer in writing, explaining the issue in detail. Upon completion of this verification process, the Contractor shall employ an Arizona registered Land Surveyor to certify in writing that all control points established by the Engineer are acceptable and adequate to allow the Contractor's construction staking to meet the accuracy requirements of the specifications.

b. General Description. After the Contractor's registered land surveyor has submitted his written certification verifying the accuracy of the control points established by the Engineer, the Contractor shall set all stakes including, but not necessarily limited to:

centerline stakes; offset stakes; reference point stakes; slope stakes; pavement lines; grade stakes; blue tops for subgrade and subbase course; stakes for utilities; drainage; pipe; base and pavement courses; paint striping layouts; supplemental bench marks and permanent record drawing elevations; as well as all other horizontal and vertical controls necessary for complete and accurate layout of the construction work.

- c. Materials, Personnel and Equipment.** All work shall be done under the direction of a registered land surveyor employed by the Contractor. All survey crew chiefs shall be a registered civil engineer, a registered land surveyor, an engineer in training or a NICET level III (or a higher level NICET level) certified technician. The Contractor shall furnish all materials, personnel and equipment necessary to perform all surveying, staking and verification of the accuracy of all existing control points, which have been provided by the Engineer and/or the City. Included in this work shall be all calculations required for the satisfactory completion of the project in conformance with the plans and specifications.

Materials and equipment shall include, but shall not necessarily be limited to: vehicles for transporting personnel and equipment; properly adjusted and accurate survey equipment; stakes; flagging and all other devices necessary for checking; marking, establishing and maintaining lines, grades and layout to perform the work called for in the contract. The Contractor shall furnish a sufficient quantity of competent personnel to perform the survey work and layout.

- d. Light Poles.** The Contractor shall stake all light new light pole locations for approval by the City prior to installation.
- e. Discrepancies.** Any discrepancies in the grade, alignment, quantities, locations or dimensions detected by the Contractor shall immediately be brought to the attention of the RPR. Changes to the project plans will not be allowed without the written approval of the RPR.
- f. Record Drawings.** The work shall include establishing and marking the "Record Drawings" with coordinates, elevations and changes to the design, as well as locating existing utilities with coordinates and elevations. Refer to A.R.S. § 32-152.
- g. Measurement and Payment.** Survey will be measured for payment by the lump sum. Travel time shall not be measured for payment. Survey work for quality control surveys shall not be measured for payment, but shall be considered incidental to the Contractor Quality Control program.

Payment will be made under:

Item 2 Construction Survey and Layout – per Lump Sum

- 25. WORK DONE BY CITY FORCES** There are items of work that are to be performed by the City that the Contractor will have to build into his schedule. This includes paint removal of any paint containing lead, prior to pavement removal, and asbestos testing of the concrete. It is anticipated that the paint removal will take approximately twelve working days and will need to be completed prior to the asphalt removal and after the area is barricaded. There shall be no separate payment for coordination between the Contractor and City related to this item.

26. AIRPORT SAFETY REQUIREMENTS

26.1 CONTRACTOR GENERAL AIRPORT SAFETY REQUIREMENTS. PHX is committed to providing a safe work environment and requires contractors ensure the health and safety of its employees and the employees of its subcontractors. Hazards include but are not limited to harmful dusts, fumes, and vapors, strong acids, molten or hot metal, metal with sharp or jagged edges, electrical hazards, overhead hazards and moving vehicles. PHX requires contractors comply with all federal, state and local laws, codes and regulations as applicable to the area and type of work conducted on the airport.

26.2 SAFETY COORDINATOR All Contracts will require the Contractor to designate a Safety Coordinator(s) as the point of contact for the Project regarding Safety. Contractor shall work with the Airport's Safety section in meeting the pre-requisites to establish the Safety Coordinator. The Safety Coordinator(s) will represent the company having oversight of the project activities and the person(s) with a direct relationship with the Airport's Safety section. The Safety Coordinator(s) should at minimum be responsible for planning, implementing and overseeing company's employee safety at work. Their main duty is to ensure that the company complies and adheres to Occupational Health and Safety (OHSA) guidelines to reduce work-related injuries and provide a direct point of contact for the Airport's Safety section.

The Safety Coordinator(s) is responsible for implementing and maintaining the safety program for areas pertaining to the project. Responsibilities may include administration and coordination of the following activities:

- Thoroughly reviewing accident investigations and initiating corrective action.
- In the event of an accident, preparing and submitting a written report, and assisting in the investigation according to requirements.
- Holding safety meetings.
- Reviewing safety performance and taking action as necessary within the areas of responsibility.
- Maintaining effective and prompt communication of safety matters.
- Monitoring compliance with established safety standards and regulations.
- Assigning duties to subcontractors, checking work areas, making housekeeping inspections, and keeping records of conditions found and corrective actions taken.
- Requiring employees to use personal protective equipment such as safety glasses, body harnesses, respiratory protection equipment and head and eyewear protection.
- Maintaining effective communication of safety matters to employees.
- Assisting in the development and communication of safe work procedures for unusual or hazardous operations.
- Maintaining compliance with the requirements of federal, state, local, and other agencies, and with the requirements of the Contractor's safety programs.

26-3.1 HAZARD IDENTIFICATION AND JOB HAZARD ANALYSIS (JHA) To ensure that safety risks are assessed, understood and controlled to reduce operational risks and exposures Contractor shall develop and maintain a procedure for the identification of hazards and effective management of risk for activities and tasks conducted within the scope of project activity. There shall be a system, based on hazard identification and risk assessment, which ensures effective controls are in place to minimize exposure to hazards.

Contractor risk assessment process will use risk matrix and include at minimum the following elements:

- hazard identification;
- credible worst-case consequence;
- risk ranking;
- risk control treatments; and
- monitoring and review of controls.

A JHA shall be undertaken for each activity and shall at minimum:

- consider the tasks to be performed;
- identify and document the hazards;
- identify control measures;
- develop and implement hazard controls and regulatory compliance;
- perform the work and monitor the effectiveness of the hazard controls;
- consider emergency response procedures;
- provide feedback to improve the process (e.g. routine workplace inspections, auditing compliance during work performance, job briefing postings, lessons learned, etc); and
- provide for hazard assessments on new equipment or equipment where conditions change.

26-4.1 SAFETY VIOLATIONS Safety violations by Contractor employees constitute non-compliance with provisions of the contract and may result in immediate removal of the employee from airport premises. The Contractor's manager, supervisor, or other person in charge who directs or allows employees to perform unsafe acts or to work in or around unsafe conditions will be immediately removed from the airport premises.

26-5.1 SAFETY TRAINING Contractor are responsible for ensuring that employees under their supervision, direct and/or indirect, are competent, trained, understand, and comply with the requirements of OSHA and applicable ADOSH standards. Upon request and/or as applicable, contractors must show proof of training for their employees prior to commencing any work activities associated with OSHA/ADOSH regulations.

Contractor are to train their employees on the safety, health, environmental, and fire prevention requirements for the work they are to perform and enforce adherence to safe work practices and procedures.

26-6.1 SAFETY EQUIPMENT Contractor is responsible for providing their employees with the proper tools and equipment to perform the job safely, including any required personal protective equipment. Contractor must ensure that their subcontractors do the same.

Personal protective equipment shall be worn according to the hazards associated with various types of exposure (e.g. Safety glasses, ear plugs, gloves, chemical gloves, respirators, aprons, harnesses, etc.)

Contractor must supply their own equipment necessary for their employees to perform the work safely and in compliance with rules, regulations. Contractor are to arrange for the proper use, maintenance, and repair of work equipment.

26-7.1 REGULATORY COMPLIANCE Contractor shall perform all work in a manner that complies with all applicable federal, state, and local laws, rules, and regulations and complies with safety best practices (e.g., 29 CFR 1900 through 1999, Federal Aviation Administration, Transportation Security Administration, National Fire Protection Association, Arizona Department of Environmental Quality) while performing work and/or in support, direct or indirect, of the airport project,

In addition, contractors are obligated to:

- obtain/provide information on OSHA/ADOSH safety plans/procedures when affecting airport employees;
- coordinate operations with the appropriate PHX supervisor(s) should both PHX employees and Contractor personnel be working in a work area simultaneously;
- inform the Aviation Project Manager and/or Aviation Safety of any hazards encountered or created either through a debriefing or during the operation;
- the requirements are in addition to any other requirements or obligations set forth herein the Contract documents or applicable federal, state, and local laws, rules, regulations, and permits;

26-8.1 WORK PERMITS Contractor shall obtain, at their expense, all applicable work permits required to perform their work to ensure that any potential hazard takes into consideration the reduction of risk and includes safety precaution measures in place.

Work Permits shall:

- be approved for use prior to commencing the task;
- clearly define the work to be completed under the Work Permit;
- show on the permit the duration of the work.

Examples of where Work Permits are required (but not limited to):

- electrical or equipment isolations;
- confined space work;
- surface excavations;
- working at heights;
- work performed near x-ray or radioactive sources;
- high voltage work or working in proximity to high voltage;
- hot work (excluding hot work conducted in workshops).

26-9.1 SAFETY PROGRAM Contractor are responsible for establishing and implementing a safety program. This program will include maintaining and auditing safety performance for compliance with applicable federal, state, local regulations and with established safety and environmental requirements.

Contractor are responsible for planning and executing work according to the stated objectives of their safety program.

At minimum, such programs are to provide employees with information on the following topics (as applicable to the type of work required and/or exposed to):

- Construction Safety Phasing Plan

- Site Specific Safety Plan
- Hazards present in their work assignment and surrounding area.
- Personnel protective equipment requirements.
- Proper procedures for safe work and reporting unsafe job conditions.
- Hazardous Energy control (lockout/tagout).
- Confined space and powered industrial trucks.
- Fire prevention and fire extinguishers.
- Waste disposal and environmental release requirements.
- Respiratory Protection
- Hot Work
- Fall protection / Working at Heights
- Electrical safety
- Hazardous Materials / Hazard Communication
- Evacuation
- Traffic Control
- Emergency Procedures and Contacts
- Lifting and Crane Works
- Machine and Equipment Guarding
- Extreme Weather
- Work Permits
- Personal Protective Equipment (PPE)
- Hearing Conservation
- Scaffolding
- Bloodborne Pathogens
- Spill Prevention Control, and Countermeasures
- Trenching and Excavation

The Contractor shall provide, when applicable or upon request, a written safety program(s)/plan(s) to the Aviation Project Manager and/or Aviation Safety.

As it pertains to their work responsibility, the Contractor's written safety program(s)/plan(s) must meet the requirements set forth in federal (e.g., of OSHA 29 CFR 1900 through 1999, Federal Aviation Administration), state, and local regulatory entities.

Procedures used by the Contractor for intended/proposed work in a controlled area must be discussed with the Aviation Project Manager and/or Aviation Safety prior to commencement of work.

26-10.1 SAFETY INSPECTIONS Contractor are to conduct regularly scheduled safety inspections of the work being conducted by the contract and/or subcontract personnel. The scope or duration of work may regulate the frequency of these inspections.

The inspection program may include but not be limited to:

- Housekeeping;
- correct use of work permits, JHAs;
- appropriate workplace behaviors;
- equipment condition;
- hazard identification;

- task observations; and
- work and environmental conditions.

Inspections must be carried out by line management to verify that employees are competent, trained, equipped and if required, certified to carry out their work in accordance with statutory and company requirements.

All inspection findings must be actioned using a formal corrective action plan that addresses identified issues.

Contractor must take immediate corrective action when a violation of job safety, fire, or environmental safety hazard is observed. Contractor are to regularly review their safety performance. Agreed corrective and preventative actions must be tracked to completion, closed out and verified as being effective. Failure to correct a problem may result in work stoppage in the related area, and work will not be permitted to resume until the problem is corrected.

Work stoppages need to be communicated to the Aviation Project Manager immediately and/or the Airport Duty Manager. Contractor are required to administer their own safety activities and are responsible for the safety of their employees.

If required by the project, Contractor and their Safety Coordinator or designee must attend a pre-work safety conference with the Aviation Project Manager and Aviation Safety (et.al as required) prior to beginning work. The conference is to review procedures, forms, record keeping and reporting, and to ensure a clear understanding of the safety program relevant to the work to be performed.

26-11.1 SAFETY RIGHTS Contractor agrees that, in addition to any other right under the Contract, the Aviation Project Manager, shall have the right to take any or all of the following actions:

- Review and approve all Contractor work plans and work specific safety requirements;
- Designate safety precautions in addition to those in use or proposed by Contractor;
- Verify Contractor have effectively planned for eliminating or controlling work hazards that may impact the safety or health of the Airports and Contractor personnel or the general public;
- Require Contractor to provide additional safeguards beyond what Contractor plans to utilize;
- Conduct and document field safety observations and inspections to verify Contractor compliance with the Contractor Safety Program, the Contract requirements, applicable federal, state, and local laws, rules, regulations, and permits;
- Stop work to ensure compliance with safe work practices and applicable federal, state and local laws, rules, and regulations;
- Suspend, terminate, or place on probationary status Contractor in the event of a safety incident or failure to comply with these program requirements; and Evaluate Contractor safety performance at periodically during performance of the work and at conclusion of the work.

26-12.1 SAFETY INCIDENT REPORTING Contractor shall have a formal process implemented to report, investigate, record and follow-up incidents, injuries and occupational illnesses. This must include the determination of underlying causes and to minimize the potential for the future occurrence of similar events.

All incidents including, safety, environmental, process loss, property damage, injuries, near misses and occupational illnesses that occur within the project scope must be reported by Contractor's employees to their immediate supervisor as soon as possible and recorded on Contractor's Incident Report form.

All incidents, injuries, near misses and occupational illnesses shall be assessed within 24 hours for actual consequence and potential risk and corrective and preventative actions planned to reduce the likelihood and potential consequence of the event.

All high potential incidents and incidents that result in recordable injuries shall be formally investigated to determine causal and contributing factors and the appropriate corrective and preventative actions.

Incident investigations shall be led by an appropriately trained person and reviewed by Contractor, Aviation Project Manager, and Aviation Safety to verify the thoroughness of the investigations, completeness of findings and suitability of the recommended actions.

Contractor shall maintain records of all project related incidents, including all investigations and associated corrective and preventative actions.

Contractor is to immediately provide such information with complete copies of all documents, photographs, witness statements, another evidence related to any of the above to the Aviation Project Manager and Aviation Safety during the course of the incident, investigation, and/or upon request.

26-13.1 SAFETY MEETINGS Contractor should hold regularly scheduled safety meetings and require attendance by employees. Accident prevention should have a prominent place on the agenda, and the meeting records should state the specific items discussed. Each supervisor should hold safety and training meetings in their work area with their on-site staff and review specific procedures pertinent to the work activity.

Safety meetings provide an opportunity to point out hazardous conditions or unsafe work practices, and discuss safety and environmental rules and regulations, safe working procedures, analysis of accidents, and potential hazards.

Records and minutes of safety meetings are encouraged, including recording attendees and subjects covered.

26-14.1 GENERAL HOUSEKEEPING Good housekeeping shall be maintained during all operations and clean up should occur at the end of work each day.

Maintaining a clean work environment is the responsibility of the contractor. The Contractor is responsible for properly managing all waste generated in the course of the project in accordance with federal, state, and local regulations. Passageways, exits, and firefighting equipment must not be blocked or obstructed.

26-15.1 INDEMINFICATION Contractor shall indemnify and hold harmless the Airport, the City of Phoenix and the Engineer from and against any and all losses, liabilities, damages, costs, fines, expenses, deficiencies, taxes and reasonable fees and expenses of counsel and agents, including any costs incurred in enforcing this contract, that PHX may sustain, suffer or incur arising from

- (i) Contractor's failure or alleged failure to comply, in whole or in part, with any of its obligations hereunder the contract;
- (ii) any loss of or damage to Contractor's equipment throughout the course of construction activity(ies);
- (iii) any violation of laws;
- (iv) any damage to any property of PHX caused by the maintenance or operation of any Contractor employees, direct or indirect;
- (v) any claims by any third person with respect to death, injury or property damage caused, in whole or in part, by the maintenance or operation of any Contractor employee, direct or indirect; and
- (vi) any claims resulting from or arising out of injury or death of any employee, agent of Contractor, direct or indirect, including claims alleging that PHX failed to provide a safe place to work.

METHOD OF MEASUREMENT

26-16.1 All items specified in this section are considered incidental to the project.

BASIS OF PAYMENT

26-17.1 All items specified in this section are to be considered as incidental to the Contract. No additional payment will be made for conformance to the specifications

27. ENVIRONMENTAL COMPLIANCE.

27-1.1 GENERAL. Contractor shall, at Contractor's own expense, comply with all present and subsequently enacted Environmental Laws, and any amendments thereto, affecting Contractor's occupation and use of the Premises.

27-2.1 DEFINITIONS

1. "*Environmental Laws*" means those laws promulgated for the protection of human health or the environment, including but not limited to, the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA], 42 U.S.C. Sections 9601 et seq., as amended by the Superfund Amendment and Reauthorization Act [SARA]; the Solid Waste Disposal Act [SWDA], 42 U.S.C. Sections 6901 et seq., as amended by the Resource Conservation and Recovery Act [RCRA] including Subtitle I, Underground Storage Tanks; the Toxic Substances Control Act [TSCA], 15 U.S.C. Sections 2601 et seq.; the Public Health Service Act (Title XIV) [PHSA] a.k.a. the Safe Drinking Water Act [SDWA] and SDWA Amendments of 1996, 42 U.S.C. Sections 300f et seq.; the Federal Water Pollution Control Act [FWPCA], as amended by the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the Clean Air Act, 42 U.S.C. Sections 7401 et seq.; Title 49 of the Arizona Revised Statutes, including the Arizona Environmental Quality

Act, A.R.S. Sections 49-101 et seq.; the Arizona Comprehensive Air Quality Act, A.R.S. Sections 49-401 et seq.; the Arizona Solid Waste Management Act, A.R.S. Section 49-701 et seq.; the Arizona Hazardous Waste Management Act, A.R.S. Sections 49-901 et seq.; the Arizona Underground Storage Tank Regulation Act, A.R.S. Sections 49-1001 et seq.; the Occupational Safety and Health Act of 1970 as amended, 29 U.S.C. Sections 651-678 and the regulations promulgated thereunder, and, any other laws, regulations and ordinances (whether enacted by local, state or federal government) now in effect or hereafter enacted, that provide for the regulation or protection of human health or the environment, including the ambient air, ground water, surface water, and land use, including substrata soils.

2. In this Contract, the term “*regulated substances*” means:
 - a. Those substances identified or listed as a hazardous substance, pollutant, hazardous material, and, petroleum, in CERCLA/SARA; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 5101 et seq.; RCRA, Subtitle I, Regulation of Underground Storage Tanks, 42 U.S.C. Sections 6991 through 6991i; Clean Air Act, 42 U.S.C. Section 7412 et seq.; and in any rule or regulation adopted to implement said statutes.
 - b. Those substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a hazardous, special, or solid waste in the Arizona Environmental Quality Act, A.R.S. Sections 49-101 et seq., including but not limited to, the Water Quality Assurance Revolving Fund Act [WQARF], A.R.S. Sections 49-281 et seq.; the Arizona Comprehensive Air Quality Act, A.R.S. Sections 49-401 et seq.; the Arizona Solid Waste Management Act, A.R.S. Sections 49-701 et seq.; the Arizona Underground Storage Tank Regulation Act, A.R.S. Sections 49-1001 et seq.; A.R.S. Sections 49-851 through 49-868 pertaining to Management of Special Waste; the Arizona Hazardous Waste Management Act, A.R.S. Sections 49-921 et seq.; and in any rule or regulation adopted to implement said statutes.
 - c. All substances, materials and wastes that are, or that become, regulated, or that otherwise are classified as hazardous or toxic, under any Environmental Law during the term of this Contract.
3. The term “*release*” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.
4. As used herein, the term “*Premises*” means Contractor’s leasehold and/or any part or portion of Phoenix Sky Harbor International Airport (PSHIA), Phoenix Deer Valley Airport (DVT), Phoenix Goodyear Airport (GYR) or City owned property where Contractor or its employees or agents causes to occur a release of a regulated substance.
5. As used herein, the term “*Contractor*” means every consultant, lessee, sublessee, licensee, permittee, concessionaire, tenant or other person, firm or corporation occupying or using the Premises pursuant to an agreement and includes Contractor’s heirs, personal representatives, successors-in-interest and assigns.

27-3.1. COMPLIANCE Contractor shall not cause or permit any regulated substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Premises, or transported to or from the Premises, by Contractor, its agents, employees, Contractor’s invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

27-3.1.1 Contractor may provide for the treatment of certain discharges regulated under the City of Phoenix pretreatment ordinances pursuant to Chapter 28 of the Phoenix City Code or such other ordinances as may be promulgated and the Federal Clean Water Act, 33 U.S.C. Section 1251 et seq.

Contractor shall indemnify, defend and hold harmless, on demand, City of Phoenix ("City"), its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, the environment or Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of Contractor's occupancy or use of the Premises during the term of this Contract or any previous contract or uses of the Premises by Contractor or its owners or affiliated entities, agents, employees, invitees, visitors or licensees. Regardless of the date of termination of this Contract, Contractor's obligations and liabilities under this Section shall continue so long as City bears any liability or responsibility under the Environmental Laws arising from Contractor's occupancy or use of the Premises during the term of this Contract. This indemnification of City by Contractor includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of regulated substances caused by Contractor to be present on or under the Premises or present in the soil or ground water on or under the Premises or present in surface waters on or adjacent to the Premises.

27-3.1.2 Without limiting the foregoing, if the release by Contractor of any regulated substance on or under the Premises, or to the air, groundwater or surface waters on or adjacent to the Premises results in any contamination of the Premises, air, groundwater or surface waters, Contractor shall promptly take all actions at its sole cost and expense that are necessary to mitigate any immediate threat to human health or the environment. Contractor shall then undertake any further action necessary to return the contaminated site to the condition existing prior to the introduction by Contractor of any regulated substance; provided that City's approval of such actions shall first be obtained. Contractor shall undertake such actions without regard to the potential legal liability of any other person; however, any remedial activities by Contractor shall not be construed to impair Contractor's rights, if any, to seek contribution or indemnity from another person.

27-3.1.3 Contractor shall, at Contractor's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Contractor's occupancy or use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or remediation plan that may be necessary due to any actual or potential spills or discharges of regulated substances on, under or from the Premises, or to the air, groundwater or surface waters on or adjacent to the Premises during the term of this Contract. At no cost or expense to City, Contractor shall promptly provide all information requested by City pertaining to the applicability of the Environmental Laws to the

Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, City shall have the right to inspect, within ten (10) days of Contractor's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets and legally privileged documents, regarding environmental conditions relating to the use, storage, or treatment of regulated substances by Contractor on, under or from the Premises or to the air, groundwater or surface waters on or adjacent to the Premises.

27-3.1.4 Contractor shall notify the Aviation Director within twenty-four (24) hours upon learning of the following:

- a) Any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Contractor's occupancy or use of the Premises;
- b) Any change in Contractor's activities on the Premises that will change or have the potential to change Contractor's or City's obligations or liabilities under Environmental Laws;
- c) Any assertion of a claim or other occurrence for which Contractor may incur an obligation under this Section.

27-3.1.5 Contractor shall at its own expense obtain and comply with any permits or approvals that are required or may become required as result of any occupancy or use of the Premises by Contractor, its agents, employees, invitees and assigns.

27-3.1.6 Contractor shall insert the provisions of this Exhibit in any agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Contract.

27-3.1.7 Contractor shall obtain and maintain compliance with any applicable financial responsibility requirements of federal, state and/or local law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a regulated substance and present evidence thereof to the City, as may be applicable.

27-3.1.8 Contractor shall take reasonable precautions to prevent other persons not acting under Contractor's authority from conducting any activity that would result in the release of a regulated substance on, under or from the Premises or to the air, groundwater or surface waters on or adjacent to the Premises. Contractor shall also exercise due care with respect to any regulated substance that may come to be located on the Premises as a result of the actions of third parties who are not under Contractor's authority.

27-3.1.9 Contractor shall make its best efforts to minimize its production of a waste stream that includes regulated substances, and shall minimize the storage of regulated substances on, in and around the Premises.

27-4.1. TERMINATION OF AGREEMENT Contractor's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Exhibit or applicable Environmental Law shall constitute a material breach of this Contract and shall permit the City to pursue the following remedies, in addition to all

other rights and remedies provided by law or otherwise provided for in this Contract, to which the City may resort cumulatively, or in the alternative.

27-4.1.1 The City of Phoenix may, at the City's election, keep this Contract in effect and enforce all of its rights and remedies under the Contract, including (1) the right to recover rent and other sums as they become due by appropriate legal action and/or (2) the right, upon ten (10) day's written notice to Contractor, to make payments required of Contractor or perform Contractor's obligations and be reimbursed by Contractor for the cost thereof, unless such payment is made or obligation performed by Contractor within such ten (10) day period.

27-4.1.2 The City of Phoenix may, at the City's election, terminate this Contract upon written notice to Contractor. Upon the City's termination, Contractor shall immediately pay to the City an amount equal to all accrued but unpaid rents plus interest thereon calculated from the date the rent is past due at a rate equal to: (1) eighteen percent (18%) per annum or (2) the maximum interest rate permitted by state law, whichever is greater.

27-4.1.3 Notwithstanding any other provision in this Contract to the contrary, the City shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Laws on, under or from the Premises or in surface waters on or adjacent to the Premises, without waiving any of its rights under this Contract.

27-4.1.4 The exercise by the City of any of its rights under Section C of this Exhibit shall not release Contractor from any obligation it would otherwise have under this Exhibit.

27-4.1.5 The covenants of this Exhibit shall survive the termination of this Contract.

27-5.1 AZPDES STORMWATER GENERAL PERMIT COMPLIANCE SUPPLEMENT
Contractor shall also comply with the AZPDES Stormwater General Permit Compliance Supplement to this Exhibit as if the Supplement is fully set forth herein.

With the exception of discharges on Indian Country, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality through the Arizona Pollutant Discharge Elimination System (AZPDES) program. An AZPDES permit is required for any point source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants to either a municipal separate storm sewer system (MS4) or to waters of the United States, AZPDES permits are required for stormwater discharges.

The City of Phoenix (the "City") and its Contractors are required to obtain AZPDES permit coverage to the extent that stormwater is discharged from the Premises. Coverage under the AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2008-001) ("AZPDES Construction General Permit") is required for stormwater discharges generated by construction activities. Coverage under the AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity from Non-Mining Facilities to Waters of the United States (AZMSG2010-38) ("AZPDES Multi-Sector General Permit") is required for stormwater discharges generated by facilities and operations engaged in certain industrial activities. Among these industries are those engaged in "air transportation" and associated activities.

The City has obtained coverage under the AZPDES Multi-Sector General Permit for its “air transportation” facilities at Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport and Phoenix Goodyear Airport (collectively hereinafter referred to as the “Airports”). The City has adopted a Stormwater Quality Protection ordinance, Phoenix City Code Ch. 32C, and has in place an “Aviation Department Stormwater Enforcement Procedures and Civil Penalty Policy” (“Aviation Stormwater Policy”), both of which were developed to comply with federal and local laws governing stormwater pollution.

27-5.1.2 COMPLIANCE GENERALLY The City adopted the Aviation Stormwater Policy to achieve compliance with the AZPDES program requirements by the Aviation Department, its contractors and permittees. Contractor is subject to the policy as a condition of its activities, operations, and location at the Airports. The City shall have the right to monitor and require compliance with the Aviation Stormwater Policy.

Contractor agrees to comply with the Aviation Stormwater Policy and to implement at its sole expense, unless otherwise agreed to in writing between City and Contractor, those requirements of the Airports’ Stormwater Pollution Prevention Plans (SWPPP) and City ordinances that pertain to its operations and activities on the Premises at the Airports. Contractor warrants that it will use its best efforts to meet all deadlines that are established by statute, regulation, ordinance, and the Aviation Stormwater Policy, or that are agreed to by the parties. Contractor acknowledges that time is of the essence in the implementation of all City Permit requirements.

Full compliance with the AZPDES Permit Program as contained in 18 A.A.C. 9, Art. 9; Chapter 32(C) of the Phoenix City Code; and the Aviation Stormwater Policy is a material condition of this Contract, and for any breach thereof which exposes City to civil or criminal fine, penalty, sanction or remediation cost by any governmental entity, City may terminate this Contract. This remedy is in addition to any other remedies available to the City.

27-5.1.3 AZPDES CONSTRUCTION GENERAL PERMIT If Contractor elects to perform construction activities at the Airports, Contractor is required, prior to commencing those construction activities, to obtain stormwater discharge authorization from ADEQ under an AZPDES Construction General Permit. Contractor will obtain that authorization by preparing a SWPPP and filing for AZPDES Construction General Permit coverage in coordination with the City’s project manager. The City will consult with and assist Contractor with regard to the filing for AZPDES Construction General Permit coverage as time and personnel allow. Contractor will also work with the City’s project manager to develop pollution controls (e.g., Best Management Practices, Control Measures, schedules and procedures) for the SWPPP. Contractor is solely responsible for implementation of the pollution controls, all related costs and compliance with its AZPDES Construction General Permit obligations.

27-5.1.4 AZPDES MULTI-SECTOR GENERAL PERMIT Contractor is required, prior to commencing its operations and activities at the Airports, to obtain stormwater discharge authorization from the ADEQ under an AZPDES Multi-Sector General Permit. Contractor will obtain that authorization as a “Co-Permittee” with the City. As a Co-Permittee, the Contractor agrees to:

- Provide the City with a copy of Contractor’s written Authorization to Discharge to the extent Contractor has received such from the Arizona Department of Environmental Quality; and

- Implement the Airports' SWPPP, including Best Management Practices, Control Measures, schedules, and procedures, as applicable to the Contractor's operations.

In connection with its coverage under the AZPDES Multi-Sector General Permit, the City has developed a SWPPP for the Airports to minimize the contact of storm and other precipitation event water with "significant materials" (as defined in the Regulations and City Ordinances) generated, stored, handled or otherwise used on Airport facilities. The City shall provide a copy of the SWPPP, including Best Management Practices, Control Measures, schedules, and procedures to Contractor, and Contractor shall implement that portion of the SWPPP applicable to its activities.

The City agrees that, to the extent allowed by law, Contractor shall have the right to be removed as a Co-Permittee from coverage under the AZPDES Multi-Sector General Permit should its Contract be canceled or terminated for other reasons, or due to Contractor's relocation, noncompliance with the AZPDES Multi-Sector General Permit requirements or Contractor's exercise of choice. In no event shall Contractor be relieved of its obligation to comply with the requirements of the AZPDES permit program with regard to its occupation and use of the Premises at the Airports, nor shall Contractor be excused from any obligations or indemnifications incurred and owed to City prior to Contractor's removal as a Co-Permittee that result from a failure of Contractor to fulfill an obligation of a Co-Permittee.

27-5.1.5 POLLUTION CONTROLS City reserves the right to impose upon Contractor any Best Management Practices, Control Measures, schedules, and procedures, other action necessary to ensure City's ability to comply with its AZPDES program requirements or applicable City ordinances; however, except in "extreme emergency" conditions, Contractor shall have ten (10) days from date of receipt of written notice imposing such pollution control measures or other requirements to notify City in writing if it objects to any action it is being directed to undertake. If Contractor does not provide the specified timely notice, it will be deemed to have assented to implementation of the pollution control measures or other requirements. If Contractor provides City with timely written notice of its objections, the parties agree to negotiate a prompt resolution of their differences. Contractor warrants that it will not serve a written notice of objections for purposes of delay or avoiding compliance.

As used herein, "*extreme emergency conditions*" means:

- a) Conditions that impose an immediate impact on waters of the United States (e.g., Salt River) resulting from an emergency situation such as fire, spill, release or explosion, such that the facility responsible for the release must immediately begin appropriate response activities independently of City's direction or oversight;
- b) An emergency such that a facility has to close because of a catastrophic event, where the facility can extend the ten (10) day notice period, but must implement pollution control measures before it reopens;
- c) A collapse of the storm sewer system or other event which forecloses the Airports and/or City from performing its obligations under the City Permit due to lack of capacity.

27-5.1.5 COVENANT OF GOOD FAITH City and Contractor covenant to act in good faith to implement any AZPDES program requirements imposed on them pursuant to 18 A.A.C. 9, Art. 9. City and Contractor acknowledge that close cooperation will be necessary to ensure

compliance with any AZPDES Multi-Sector General Permit requirements to promote safety and minimize costs, and each party agrees to a candid exchange of information necessary to coordinate a stormwater management and monitoring plan.

27-5.1.6 INDEMNIFICATION The covenants of insurance and indemnification in favor of City imposed by other provisions of the Contract shall extend to, and are incorporated into, the provisions of this Supplement to Exhibit 3.

27-5.1.5 COVENANT OF GOOD FAITH City and Contractor covenant to act in good faith to implement any AZPDES program requirements imposed on them pursuant to 18 A.A.C. 9, Art. 9. City and Contractor acknowledge that close cooperation will be necessary to ensure compliance with any AZPDES Multi-Sector General Permit requirements to promote safety and minimize costs, and each party agrees to a candid exchange of information necessary to coordinate a stormwater management and monitoring plan.

27-6.1 DISPOSAL OF SURPLUS MATERIAL All surplus and/or waste material must be disposed of off the Airport property at the Contractor's discretion, subject to the following conditions:

If the City landfills are used, the Contractor will pay the normal dumping fee.

If private property within the City limits is used, the Contractor will obtain written permission from the property owner and deliver a copy of this agreement to the City prior to any hauling dumping. If the surplus material is disposed of outside City limits, the Contractor will comply with all applicable laws/ordinances of the agency concerned and be responsible for all costs incurred.

27-7.1 ASBESTOS/LEAD BASED PAINT IDENTIFICATION AND REMEDIATION Asbestos and lead based paint identification and/or remediation will be performed by the City of Phoenix unless otherwise indicated by an authorized City of Phoenix representative. Prior to starting Work, the Contractor should obtain a copy of the asbestos and lead based paint survey of the affected area, and contact the City of Phoenix Aviation Environmental Division Manager prior to the disturbance of any building materials that contain or potentially contain asbestos or lead based paint. Building materials that could potentially contain asbestos include any materials that are not wood, metal or glass. Any building materials that will be disturbed during renovation or demolition projects that have not been previously inspected will be inspected by an Asbestos Hazard Emergency Response Act (AHERA) certified building inspector approved by the City of Phoenix. Any asbestos and lead based paint remediation activities will be conducted by contractors licensed to perform asbestos and lead based paint remedial activities and will be approved by the City of Phoenix. All asbestos and lead based paint inspection and remedial work will be performed in compliance with all applicable local, state and federal regulations regarding asbestos, lead based paint and general construction.

METHOD OF MEASUREMENT

27-8.1 All items specified in this section are considered incidental to the project.

BASIS OF PAYMENT

27-9.1 All items specified in this section are to be considered as incidental to the Contract. No additional payment will be made for conformance to the specifications.

28. UNFORESEEN UTILITY RELOCATIONS (ALLOWANCE)

28-1 General. The Unforeseen Utility Relocation item is provided for the purpose of encumbering funds to cover the costs of unforeseen utility relocations or modifications needed to complete the utility work not known at time of bid. This item will be used to relocate any existing utility that is in conflict with the proposed pavement section, including subgrade preparation, or other project improvements. This item may also be used to address unknown utility issues. The amount of the allowance is determined by the Owner and is not subject to individual bid pricing. All bidders shall incorporate the amount pre-entered in the bid proposal and shall reflect the same in the total amount bid for this project. It shall be understood that this allowance is an estimate only. It is further understood that authorized work, if any, may be less than the allowance item.

METHOD OF MEASUREMENT

28-2 The Existing Utility Relocation item will be measured based on the actual costs billed to the project by the utility agency or contractors used to complete the work as is deemed necessary by the Owner.

BASIS OF PAYMENT

29-5 Payment will be made under:

Item 1 Unforeseen Utility Relocations (Allowance) – per Allowance

29. MOBILIZATION/DEMOBILIZATION

29-1 Description. This item of work shall consist of, but is not limited to, work and operations necessary for the movement of personnel, equipment, material and supplies to and from the project site for work on the project except as provided in the contract as separate pay items.

29-2 Mobilization limit. Mobilization shall be limited to 4 percent of the total project cost.

29-3 Posted notices. Prior to commencement of construction activities, the Contractor must post the following documents in a prominent and accessible place where they may be easily viewed by all employees of the prime Contractor and by all employees of subcontractors engaged by the prime Contractor: Equal Employment Opportunity (EEO) Poster “Equal Employment Opportunity is the Law” in accordance with the Office of Federal Contract Compliance Programs Executive Order 11246, as amended; Davis Bacon Wage Poster (WH 1321) - DOL “Notice to All Employees” Poster; and Applicable Davis-Bacon Wage Rate Determination. These notices must remain posted until final acceptance of the work by the Owner.

METHOD OF MEASUREMENT

29-4 Basis of measurement and payment. Based upon the contract lump sum price for “Mobilization” partial payments will be allowed as follows:

- a. With first pay request, 25%.
- b. When 25% or more of the original contract is earned, an additional 25%.
- c. When 50% or more of the original contract is earned, an additional 40%.
- d. After Final Inspection, Staging area clean-up and delivery of all Project Closeout materials as required by Section 90, paragraph 90-11, *Contractor Final Project Documentation*, the final 10%.

BASIS OF PAYMENT

29-5 Payment will be made under:

Item 3 Mobilization – per Lump Sum.

30. CLEARING AND GRUBBING

30-1 Description Clearing and Grubbing shall be constructed per the requirements of MAG Standard Specifications Section 201 and within the project limits shown on the construction plans.

METHOD OF MEASUREMENT

30-2 Clearing and Grubbing will be measured per Lump Sum.

BASIS OF PAYMENT

30-3 Payment will be made under:

Item 4 Clearing and Grubbing– per Lump Sum.

31. ASPHALT PAVEMENT PERMANENT REPLACEMENT

31-1 Description Asphalt Pavement Permanent Replacement shall be constructed per the requirements of MAG Standard Specifications Section 336 and applicable City of Phoenix Supplements and as shown on construction plans.

METHOD OF MEASUREMENT

31-2 Asphalt Pavement Permanent Replacement will be measured per square yard of pavement constructed complete in place.

BASIS OF PAYMENT

31-3 Payment will be made under:

Item 5 Construct Asphalt Concrete Permanent Pavement Replacement – per Square Yard

32. SLURRY SEAL COAT

32-1 Description Slurry seal coat shall be applied per the requirements of MAG Standard Specifications Section 332 and within the project limits shown on the construction plans.

METHOD OF MEASUREMENT

32-2 Slurry seal coat will be measured per square yard of area of application.

BASIS OF PAYMENT

32-3 Payment will be made under:

Item 6 Slurry Seal Coat – per Square Yard.

33 CONCRETE VALLEY GUTTER

33-1 Description Concrete valley gutter shall be constructed per the requirements of MAG Standard Specifications Section 340 and as shown on the construction plans.

METHOD OF MEASUREMENT

33-2 Concrete valley gutter will be measured per square foot complete in place.

BASIS OF PAYMENT

33-3 Payment will be made under:

Item 7 Construct Concrete Valley Gutter – per Square Foot.

34 CONCRETE CURB AND GUTTER

34-1 Description Concrete curb and gutter shall be constructed per the requirements of MAG Standard Specifications Section 340 and as shown on the construction plans.

METHOD OF MEASUREMENT

34-2 Concrete curb and gutter will be measured per linear foot complete in place.

BASIS OF PAYMENT

34-3 Payment will be made under:

Item 8 Construct Concrete Curb and Gutter – per Linear Foot.

35 REMOVE EXISTING CONCRETE CURB AND GUTTER

35-1 Description Removal of existing concrete curb and gutter shall be performed per the requirements of MAG Standard Specifications Section 350 and as shown on the construction plans.

METHOD OF MEASUREMENT

35-2 Removal of concrete curb and gutter will be measured per linear foot of curb and gutter removed.

BASIS OF PAYMENT

35-3 Payment will be made under:

Item 9 Remove Existing Concrete Curb and Gutter – per Linear Foot.

36 REMOVE EXISTING CONCRETE VALLEY GUTTER

36-1 Description Removal of existing concrete valley gutter shall be performed per the requirements of MAG Standard Specifications Section 350 and as shown on the construction plans.

METHOD OF MEASUREMENT

36-2 Removal of concrete curb valley gutter will be measured per square foot of valley gutter removed.

BASIS OF PAYMENT

36-3 Payment will be made under:

Item 10 Remove Existing Concrete Valley Gutter – per Square Foot.

37 REMOVE EXISTING SIGNS, POSTS AND FOUNDATIONS

37-1 Description Removal of existing signs, posts and foundations shall be performed per the requirements of MAG Standard Specifications Section 350 and as shown on the construction plans.

METHOD OF MEASUREMENT

37-2 Removal of signs, posts and foundations will be measured per each sign, post and foundation assembly removed.

BASIS OF PAYMENT

37-3 Payment will be made under:

Item 11 Remove Existing Sign, Post & Foundation – per Each.

38 OBLITERATE EXISTING PAVEMENT MARKINGS

38-1 Description Obliteration of existing pavement markings shall be performed per the requirements of ADOT Standard Specifications Section 701 and as shown on the construction plans.

METHOD OF MEASUREMENT

38-2 Obliteration of existing pavement markings shall be made by the linear foot (4” equivalent) of marking or striping obliterated, including any surface restoration.

BASIS OF PAYMENT

38-3 Payment will be made under:

Item 12 Obliterate Existing Pavement Marking – per Linear Foot (4” equivalent).

39 OBLITERATE EXISTING PAVEMENT SYMBOL MARKINGS

39-1 Description Removal of existing pavement marking symbols shall be performed per the requirements of ADOT Standard Specifications Section 701 and as shown on the construction plans.

METHOD OF MEASUREMENT

39-2 Obliteration of existing pavement marking symbols shall be measured per each symbol obliterated, including any surface restoration.

BASIS OF PAYMENT

39-3 Payment will be made under:

Item 13 Obliterate Existing Pavement Marking Symbol – per Each.

40 INSTALL WHITE HAZARD MARKER

40-1 Description Installation of white hazard markers includes furnishing and installing white hazard markers per MAG Standard Detail 141, Type 1, complete in place as shown on the construction plans.

METHOD OF MEASUREMENT

40-2 Installation of white hazard markers will be measured per each marker installed complete in place.

BASIS OF PAYMENT

40-3 Payment will be made under:

Item 14 Install White Hazard Marker – per Each.

41 INSTALL NEW SIGN PANEL, FLAT SHEET ALUMINUM, RETRO-REFLECTIVE SHEETING

41-1 Description Installation of flat sheet sign panels (Type IV or Equivalent) shall include furnishing and installing retro-reflective sheeting per ADOT Standard Specifications Sections 608 and 1007, complete in place as shown on the construction plans.

METHOD OF MEASUREMENT

41-2 Installation of pavement marking will be measured per square foot of sign panel furnished and installed, complete in place.

BASIS OF PAYMENT

41-3 Payment will be made under:

Item 15 Install New Sign Panel, Flat Sheet Aluminum, Retro-Reflective Sheeting – per Square Foot.

42 INSTALL NEW SIGN POST AND FOUNDATION

42-1 Description Installation of new sign post and foundation shall include furnishing and installing sign post and foundation per MAG Standard Detail 131, complete in place as shown on the construction plans.

METHOD OF MEASUREMENT

42-2 Installation of sign post and foundation will be measured per each furnished and installed, complete in place.

BASIS OF PAYMENT

42-3 Payment will be made under:

Item 16 Install New Sign Post and Foundation – per Each.

43 APPLY PAVEMENT MARKING, WHITE PAINT (4" EQUIVALENT)

43-1 Description Application of pavement marking, white paint for solid and dashed white striping includes providing and applying paint in accordance with MAG Standard Specifications and City of Phoenix Supplements, as shown on the construction plans.

METHOD OF MEASUREMENT

43-2 White paint applied will be measured by the Linear Foot (4" Equivalent), complete in place.

BASIS OF PAYMENT

43-3 Payment will be made under:

Item 17 Apply Pavement Marking White Paint (4" Equivalent) – per Linear Foot.

44 APPLY PAVEMENT MARKING PREFORMED SINGLE ARROW (THRU), THERMOPLASTIC

44-1 Description This item consists of furnishing and installation of thermoplastic pavement marking symbol, preformed arrow (Thru) shall be completed per ADOT Standard Specifications Sections 704 and 705, complete in place as shown on the construction plans.

METHOD OF MEASUREMENT

44-2 Installation of pavement marking will be measured per each marking installed complete in place.

BASIS OF PAYMENT

44-3 Payment will be made under:

Item 18 Apply Pavement Marking Preformed Single Arrow (Thru) – per Each.

45 APPLY PAVEMENT MARKING PREFORMED SINGLE ARROW (MERGE LEFT), THERMOPLASTIC

45-1 Description This item consists of furnishing and installation of thermoplastic pavement marking symbol, preformed arrow (Merge Left) shall be completed per

ADOT Standard Specifications Sections 704 and 705, complete in place as shown on the construction plans.

METHOD OF MEASUREMENT

45-2 Installation of pavement marking will be measured per each marking installed complete in place.

BASIS OF PAYMENT

45-3 Payment will be made under:

Item 19 Apply Pavement Marking Preformed Single Arrow (Merge Left) – per Each.

46 APPLY PAVEMENT MARKING PREFORMED “ONLY”, THERMOPLASTIC

46-1 Description This item consists of furnishing and installation of thermoplastic pavement marking symbol “ONLY” shall be completed per ADOT Standard Specifications Sections 704 and 705, complete in place as shown on the construction plans.

METHOD OF MEASUREMENT

46-2 Installation of pavement marking will be measured per each marking installed complete in place.

BASIS OF PAYMENT

46-3 Payment will be made under:

Item 20 Apply Pavement Marking Preformed “ONLY” – per Each.

47 APPLY PAVEMENT MARKING PREFORMED “MPH 25”, THERMOPLASTIC

47-1 Description This item consists of furnishing and installation of thermoplastic pavement marking symbol “MPH 25” shall be completed per ADOT Standard Specifications Sections 704 and 705, complete in place as shown on the construction plans.

METHOD OF MEASUREMENT

47-2 Installation of pavement marking will be measured per each marking installed complete in place.

BASIS OF PAYMENT

47-3 Payment will be made under:

Item 21 Apply Pavement Marking Preformed “MPH 25” – per Each.

48 APPLY PAVEMENT MARKING PREFORMED “MPH 35”, THERMOPLASTIC

48-1 Description This item consists of furnishing and installation of thermoplastic pavement marking symbol “MPH 35” shall be completed per ADOT Standard Specifications Sections 704 and 705, complete in place as shown on the construction plans.

METHOD OF MEASUREMENT

48-2 Installation of pavement marking will be measured per each marking installed complete in place.

BASIS OF PAYMENT

48-3 Payment will be made under:

Item 22 Apply Pavement Marking Preformed “MPH 25” – per Each.

49 ALLOWANCE FOR TEMPORARY TRAFFIC CONTROL

49-1 Description This item consists of implementing adequate traffic control in accordance with City of Phoenix Traffic Barricade Manual (current version), MAG Section 401, the Manual on Uniform Traffic Control Devices (MUTCD), and per requirements and restrictions imposed by the Landside Operations Division of Phoenix Sky Harbor International Airport. Examples of such restrictions may include, but are not limited to, night work only (23:00 to 5:00), keeping a certain minimum number of lanes open along Sky Harbor Boulevard and within the inner and outer curb lanes, providing flaggers, off-duty police officers, etc. The Contractor shall provide temporary traffic control plans or “Maintenance of Traffic” plans for review and approval /permitting by owner prior to implementing such measures.

METHOD OF MEASUREMENT

49-2 The Temporary Traffic Control item will be measured based on the actual costs billed to the project by the contractors used to complete the work as is deemed necessary by the Owner.

BASIS OF PAYMENT

49-3 Payment will be made under:

Item 23 Temporary Traffic Control (Allowance) – per Allowance

50 INSTALL STEEL SLEEVE BOLLARD

50-1 Description This item consists of furnishing and installing a steel sleeve bollard including foundation, complete in place, in accordance with details shown on plans. The contractor shall mark locations of the new bollards in the field using marking paint, for final approval by Owner, prior to any work on this item taking place. This item shall also include marking and clearing the proposed location to avoid conflicts with existing underground utilities.

The type, color, finish and height of the new bollards shall match existing bollards installed in the vicinity along the north inner curb of Terminal 3. The contractor shall also provide shop drawings to the Owner for review and approval prior to procurement.

METHOD OF MEASUREMENT

50-2 Installation of bollard will be measured per each bollard assembly including foundation, furnished and installed, complete in place.

BASIS OF PAYMENT

50-3 Payment will be made under:

Item 23 Install Steel Sleeve Bollard – per Each.

51 INSTALL SWING GATE

51-1 Description This item consists of furnishing and installing a swing gate at the turnaround. The gate is intended to be kept locked with emergency breakaway functionality. The contractor shall also provide shop drawings to the Owner for review and approval prior to procurement.

METHOD OF MEASUREMENT

51-2 Installation of swing gate will be measured per each complete assembly including foundation, furnished and installed, complete in place.

BASIS OF PAYMENT

51-3 Payment will be made under:

Item 24 Install Swing Gate – per Each.

52 INSTALL RAILING

52-1 Description This item consists of furnishing and installing safety railing including foundation, complete in place, in accordance with details shown on plans. The contractor shall mark locations of the new railing alignment in the field using marking paint, for final approval by Owner, prior to any work on this item taking place. This item shall also include marking and clearing the proposed location to avoid

conflicts with existing underground utilities.

The type, color, finish and height of the new safety railing shall match existing safety railing installed in the vicinity along the curb between inner and outer lanes on the south side of Terminal 3. The contractor shall also provide shop drawings to the Owner for review and approval prior to procurement.

METHOD OF MEASUREMENT

52-2 Installation of safety railing will be measured per linear feet of railing, furnished and installed, complete in place. There shall be no separate measurement of foundations.

BASIS OF PAYMENT

52-3 Payment will be made under:

Item 25 Install Railing – per Linear Feet.

END OF TECHNICAL SPECIAL PROVISIONS AND CIVIL TECHNICAL SPECIFICATIONS

ELECTRICAL TECHNICAL SPECIFICATIONS

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Division 26 - Electrical

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26 05 09	Conduits
26 05 19	600 V Class Cable
26 05 26	Grounding and Bonding for Electrical Systems
26 06 01	Electrical Demolition
26 56 00	Lighting



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SECTION 26 05 09 CONDUITS

PART 1 - GENERAL

1.01 SCOPE OF WORK:

- A. Furnish and install conduits as required, and as shown on the Plans. Materials employed shall be as shown on the Plans.

1.02 SUBMITTALS:

- A. Submit product literature including manufacturer part number, model number, material, size, and specifications. Material shall not be installed until the Engineer has reviewed the submittal data.
- B. Shop Drawings shall be submitted for review and acceptance showing routing, conduit size, and number and size of wires in each conduit before installation of conduit and any related work.
- C. Proposed routing of conduits buried under floor slabs-on-grade.
- D. Identify conduit by tag number of equipment served or by circuit schedule number.
- E. Proposed routing and details of construction including conduit and rebar embedded in floor slabs, columns, etc. Identify conduit by tag number of equipment served or by circuit schedule number.
- F. Proposed location and details of construction for openings in slabs and walls for raceway runs.
- G. Refer to Section 26 05 00 for further submittal requirements.

1.03 REFERENCES:

- A. American National Standards Institute (ANSI): C80.1, Rigid Steel Conduit - Zinc-Coated, and C80. 3, Electrical Metallic Tubing, Steel Galvanized.
- B. National Electric Manufacturers Association (NEMA): RN-1, Polyvinyl-Chloride (PVC) Externally Coated Galvanized Rigid Steel Conduit, and FB-1, EMT Conduit Fittings.
- C. Underwriters Laboratories Inc. (UL):
 - 1, Flexible Metal Conduit.
 - 6, Rigid Metal Conduit.
 - 360, Liquid-Tight Flexible Steel Conduit.
 - 467, Grounding and Bonding Equipment.
 - 514, Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers, and 514B, EMT fittings.
 - 651, Schedule 40 and 80 Rigid PVC Conduit.
 - 870, Wireways, Auxiliary Gutters, and Associated Fittings.
 - 884, Underfloor Raceways and Fittings.
 - 886, Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations.
 - 797, Electrical Metallic Tubing.

PART 2 - PRODUCTS

2.01 RACEWAYS:

- A. Exposed conduit in an unclassified or hazardous area shall be galvanized rigid steel (GRS) unless specifically indicated otherwise on the Plans. Conduits in the corrosive areas shall be PVC coated GRS unless otherwise indicated. Underground and/or concrete encased conduits shall be PVC, unless

otherwise indicated. All wiring, except as otherwise noted, shall be in conduit. Conduit size shall not be less than the National Electrical Code (NEC) size required for the conductors therein and shall not be smaller than 3/4-inch. No underground conduit shall be less than one inch, unless otherwise indicated on Plans.

- B. Condulet type fittings shall be Crouse-Hinds, Appleton, or equal with wedge nut covers. All condulets located outdoors or in wet locations shall be weathertight.
- C. In unclassified areas, flexible conduit shall be grounding type, weatherproof, corrosion resistant, and watertight.
- D. Couplings, connectors, and fittings shall be standard types specifically designed and manufactured for the purpose. They shall be installed to provide a firm mechanical assembly and electrical conductivity throughout.
- E. Expansion fittings shall be OZ type AX with jumper for exposed locations and type DX at structural expansion joints, Spring City, or equal. Conduits shall have expansion fittings in accordance with NEC.
- F. The conduits and fittings shall be supported per NEC requirements as a minimum.

2.02 GALVANIZED RIGID STEEL (GRS):

- A. Conduit and couplings shall be hot-dipped galvanized with zinc coated threads and outer coating of zinc bichromate, in accordance with ANSI C80.1 standards, as manufactured by Jones & Laughlin Steel Corporation, Allied Tube & Conduit Corporation, Triangle PWC, or equal.
- B. Steel conduit shall not be buried in earth without concrete encasement and additional corrosion protection. A half lapped rapping of 20 mil PVC based corrosion protection tape shall be used.

2.03 RIGID NONMETALLIC – PVC:

- A. Where specifically indicated on the Plans, or elsewhere specified, conduit may be high density Schedule 40, 90 degrees C, heavy-duty PVC. The conduit shall be manufactured from virgin polyvinyl chloride compound which meets ASTM D1784, NEMA TC-2, ANSI C33.91, and UL 651 standards. Smoke emissions shall be limited to less than 6 grams per 100 grams of material tested.
- B. Where conduit concrete encasement is indicated on the Plans, conduit supports shall be installed at eight foot intervals. PVC conduit shall be manufactured by Carlon, Triangle Conduit & Cable, or equal.

PART 3 - EXECUTION

3.01 INSTALLATION:

- A. Conduit runs are schematic only and shall be modified as required to suit field conditions, subject to review and acceptance by the Engineer.
- B. Conduit shall run continuously between outlets and shall be provided with junction boxes where connections are made. Couplings, connectors, and fittings shall be acceptable types designed and manufactured for the purpose, and shall provide a firm mechanical assembly, and electrical conductivity throughout.
- C. Conduit runs shall be straight and true. Elbows, offsets, and bends shall be uniform and symmetrical. Changes in direction shall be made with long radius bends, or with fittings of the condulet type.

- D. Conduit runs in buildings and structures shall be exposed except as specifically noted or accepted by the Engineer.
- E. Conduit runs shall not interfere with the proper and safe operation of equipment and shall not block or interfere with ingress or egress, including equipment removal hatches.
- F. Exposed conduits shall be securely fastened with clamps, or straps, intended for conduit use. All exposed conduit shall be run on the walls and ceiling only and shall be parallel to the planes of the walls or ceiling. No diagonal runs will be permitted. Flexible conduit shall be used only for short lengths required to facilitate connections between rigid conduit to motors from junction boxes, or control equipment. The maximum length of flexible conduit shall be 3 feet.
- G. Conduit runs on water-bearing walls shall be supported one inch away from the wall on an accepted channel. When channel galvanizing, or other coating, is cut or otherwise damaged, it shall be field coated to original condition. No conduit shall be run in water-bearing walls, unless specifically designated otherwise.
- H. Conduit shall be thoroughly reamed to remove burrs. IMC or GRS shall be reamed during the treading process, and Rigid Nonmetallic PVC or EMT shall be reamed before applying fittings. A zinc rich cold galvanizing shall be used to restore corrosion protection on field cut threads. Bushings and lock nuts or hubs shall be used at conduit terminations. The total number of bends in any run between pull points shall not exceed 360 degrees. Junction boxes and pull boxes shall be installed at points acceptable to the Engineer. Conduit ends shall be plugged to prevent the entrance of moisture or debris during construction. All spare conduits shall be adequately capped and shall contain a suitable pull string.
- I. Joints shall be set up tight. Hangers and fastenings shall be secure, and of a type appropriate in design, and dimensions, for the particular application.
- J. Conduit runs shall be cleaned and internally sized (obstruction tested) so that no foreign objects, or obstructions remain in the conduit prior to pulling in conductors.
- K. After installation of complete conduit runs 2 inches and larger, conduits shall be snaked with a conduit cleaner equipped with a cylindrical mandrel of a diameter not less than 85 percent of the nominal diameter of the conduit. Conduits through which the mandrel will not pass shall be prepared or replaced.
- L. Expansion fittings shall be installed across all expansion joints and at other locations where necessary to compensate for thermal expansion and contraction.
- M. Provide trenching, backfill, and compaction for conduits installed underground. Multiple underground conduits shall maintain a 7 ½” separation measured from the center of each conduit for M.V. cable and a 2” separation measured from outside wall to outside wall for low voltage and signal wires, or as otherwise noted on the drawings.

END OF SECTION 26 05 09

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SECTION 26 05 19 600 VOLT CLASS CABLE

PART 1 - GENERAL

1.01 SCOPE OF WORK:

- A. This section covers the furnishing and installation of 600 Volt Class cables and conductors, terminations and splicing, and pulling lubricants.

1.02 SUBMITTALS:

- A. Products shall be submitted in accordance with Section 26 05 00, and elsewhere in the Contract Documents, prior to installation.

1.03 REFERENCES:

- A. Insulated Cable Engineers Association/National Electrical Manufacturers Association (ICEA/NEMA):
 1. S-68-516/WC 8, ethylene-propylene rubber-insulated wire and cable for the transmission and distribution of electrical energy.
 2. S-61-402/WC 5, thermoplastic-insulated wire and cable for the transmission and distribution of electrical energy.
 3. S-66-524/WC 7, cross-linked thermosetting-polyethylene-insulated wire and cable for transmission and distribution of electrical energy.
- B. Underwriters Laboratory, Inc.
 1. 44, rubber insulated wires and cables.
 2. 83, thermoplastic-insulated wires and cables.
 3. 486A, wire connectors and soldering lugs for use with copper conductors.
 4. 486B, wire connectors for use with aluminum conductors.
 5. 510, insulating tape.
- C. National Electric Code
- D. Insulated Cable Engineers Association

PART 2 - PRODUCTS

2.01 ACCEPTED MANUFACTURERS:

- A. Conductors and Multi Conductor Cables (MCC), subject to compliance with Contract Documents, the following manufacturers are acceptable: American Insulated Wire Corporation, Cablec Corporation, Okonite Company, Southwire Company, or equal.

2.02 CONDUCTORS:

- A. Wire sizes shall be American Wire Gauge (AWG) sizes with Class B stranded construction. Number 2 AWG and smaller shall be factory color coded with a separate color for each phase and neutral, which shall be used consistently throughout the system. Larger cables shall be coded by the use of colored tape. Conductors sized No. 1 and larger shall be Type 2, rated for 90 degrees C. All circuit conductors, #6 or smaller shall be "THWN" stranded copper. All other conductors shall be "XHHW" stranded copper.
- B. Individual or multiple conductor cables for power, control, and alarm circuits of 480 volts or less shall be insulated for not less than 600 volts and shall have insulation type as indicated on the Plans. "THWN" shall conform to ICEA S-61-402/NEMA WC 5 and UL 83 and "XHHW" shall conform to ICEA S-66-524/NEMA WC 7 and UL 44. Where wire size is not indicated, they shall be of the size required by the NEC, except that

no wire external to panels and motor control centers shall be less than No. 12 AWG, unless specifically noted on the Plans. Panel control wiring shall not be less than No. 14 AWG. Where cable is indicated to be run in cable tray, said cable shall be UL listed for cable tray use.

- C. All wiring shall be as indicated on the Plans. Wires shall be new and shall be soft drawn copper with not less than 97 percent conductivity. The wire and cable shall have size, grade of insulation, voltage, and manufacturer's name permanently marked on the outer covering at not more than 2-foot intervals. All wires shall conform to the latest Standards of the ASTM, and ICEA, and shall be tested for their full length by these Standards. Insulation thickness shall be not less than that specified by the National Electrical Code.

2.03 TERMINATIONS AND SPLICES:

- A. Cable shall be rated 600 volts. Other parts of cable systems such as splices and terminations shall be rated at not less than 600 volts. Splicing shall join conductors mechanically and electrically to provide a complete circuit prior to installation of insulation.
- B. Splices in wires No. 10 AWG and smaller shall be made with an insulated, solderless, pressure type connector, Type I, Class 1, Grade B, Style G, or Type II, Class 1 of FS W-S-610 and conforming to the applicable requirements of UL 486A.
- C. Splices in wires No. 8 AWG and larger shall be made with non-insulated, solderless, pressure type connector, Type II, Class 2 of FS W-S-610, conforming to the applicable requirements of UL 486A and UL 486B. They shall then be covered with an insulation and jacket material equivalent to the conductor insulation and jacket.
- D. All splices below grade or in wet locations shall be sealed type conforming to ANSI C119.1 or shall be waterproofed by a sealant-filled, thick wall, heat shrinkable, thermosetting tubing or by pouring a thermosetting resin into a mold that surrounds the joined conductors.
- E. Conductors, including grounding conductors, of different sizes shall be spliced and then soldered or welded. Splices in wet locations and all splices below grade shall be of the Exothermic type.

2.04 PULLING LUBRICANT:

- A. All cables shall be properly coated with pulling compound (Aqua Gel, CRC, or equal) before being pulled into conduits so as to prevent mechanical damage to the cables during installation. "Yellow 77" is not acceptable.
- B. Other lubricants to be substituted must be accompanied by a statement from the cable manufacturer as to its acceptable use with the cable being installed.

2.05 IDENTIFICATION:

- A. All conductors shall be numbered with "tube sleeve" type tags with heat impressed letters and numbers.

- B. Color code all wiring as follows:

- 1. Lighting and power wiring:

		<u>120/208 VAC</u>	<u>480VAC</u>	<u>24V DC</u>	<u>120 VAC</u> <u>Control/Power</u>
a.	Phase 1	Black	Brown	Blue	Red
b.	Phase 2	Red	Orange		
c.	Phase 3	Blue	Yellow		
d.	Neutrals	White	White		White
e.	Ground	Green	Green		

- 2. Color code ends of feeder phase conductors only.

PART 3 - EXECUTION

3.01 INSTALLATION:

- A. The pulling tension and side-wall pressures, as recommended by the cable manufacturer, shall not be exceeded. Additional pull boxes shall be installed, as required, to meet the cable manufacturer's recommendations.
- B. As far as practical, all circuits shall be continuous from origin to termination without splices in intermediate pull boxes. Sufficient slack shall be left at the termination to make proper connections. In no case shall a splice be pulled into the conduit. Conductor splicing shall not be permitted without the Engineer's approval.
- C. Install all cables in conduit.
- D. Each feeder and branch circuit shall be installed in its own individual conduit unless combining feeder and branch circuits is permitted as defined in the following:
 - 1. As specifically indicated on the Plans.
 - 2. For lighting, multiple branch circuits may be installed in a conduit as allowed by the NEC and with the wire ampacity derated in accordance with the requirements of the NEC. Conduit fill shall not exceed the limits established by the NEC.
 - 3. When field conditions dictate and written permission is obtained from the Engineer.
- E. Feeder and branch circuits shall be isolated from each other and from all instrumentation and control circuits.
- F. Control circuits shall be isolated from all other feeder, branch and instrumentation circuits, except as noted above.
 - 1. 12 V DC, 24 V DC and 48 V DC control circuits may be combined in common conduit.
 - 2. 125 V DC control circuits shall be isolated from all other DC and AC control circuits.
 - 3. 120 V AC control circuits shall be isolated from all DC control circuits.
- G. Make splices only at pull or junction boxes.
 - 1. Crimp or indenter-type connectors are not allowed, except for control circuits landed on terminal strips.
 - 2. For wire smaller than #6 AWG: Use insulated conical spring type connectors, or "wire nuts".
 - 3. For #6 AWG and larger wire: Use solderless lugs and screw type connectors.

END OF SECTION 26 05 19

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SECTION 26 05 26 GROUNDING AND BONDING FOR ELECTRICAL SYSTEMS

PART 1 - GENERAL

1.1 SUMMARY

A. Includes But Not Limited To:

1. Furnish and install grounding for electrical installation as described in Contract Documents except as excluded below.

B. Related Sections:

1. Section 26 05 01: Common Electrical Requirements.

PART 2 - PRODUCTS

2.1 COMPONENTS

A. Size materials as shown on Drawings and in accordance with applicable codes.

B. Grounding And Bonding Jumper Conductors: Bare copper or with green insulation.

C. Make grounding conductor connections to ground rods and water pipes using approved bolted clamps listed for such use.

D. Service Grounding Connections And Cable Splices:

1. Make by exothermic process.
2. Type One Acceptable Products:
 - a. 'Cadweld' by Erico Products Inc, Solon, OH www.erico.com.
 - b. 'ThermOweld' by Continental Industries, Omaha, NB www.conind.com.

PART 3 - EXECUTION

3.1 INSTALLATION

A. Grounding conductors and bonding jumper conductors shall be continuous from terminal to terminal without splice. Provide grounding for following.

1. Electrical service, its equipment, and enclosures.
2. Conduits and other conductor enclosures.
3. Neutral or identified conductor of interior wiring system.
4. Main panelboard, power, and lighting panelboards.
5. Non-current-carrying metal parts of fixed equipment such as motors, starter and controller cabinets, instrument cases, and lighting fixtures.

B. Grounding connection to main water supply shall be accessible for inspection and made within six inches of point of entrance of water line to building. Provide bonding jumpers across water meter and valves to assure electrical continuity.

- C. Ground identified common conductor of electrical system at secondary side of main transformer supplying building. Ground identified grounded (neutral) conductor of electrical system on supply side of main service disconnect.
- D. Pull grounding conductors in non-metallic raceways, in flexible steel conduit exceeding 72 inches in length, and in flexible conduit connecting to mechanical equipment.
- E. Provide grounding bushings on all feeder conduit entrances into panelboards and equipment enclosures.
- F. Bond conduit grounding bushings to enclosures with minimum #10 AWG conductor.
- G. Connect equipment grounds to building system ground.
 - 1. Use same size equipment grounding conductors as phase conductors up through #10 AWG.
 - 2. Use NEC Table 250.122 for others unless noted otherwise in Drawings.
- H. Run separate insulated grounding cable from each equipment cabinet to electrical panel. Do not use intermediate connections or splices. Affix directly to cabinet.

PART 4 - BASIS OF PAYMENT

4.1 GROUND CABLE

- A. Payment for items described in this section will be made as part of payment for the other system components as described in each section containing pay items. See pay items in section 26 0519.

END OF SECTION 26 05 26

SECTION 26 06 01 ELECTRICAL DEMOLITION

PART 1 - GENERAL

1.01 SCOPE OF WORK

- A. Demolition of existing electrical shall be as indicated on the Plans or as indicated elsewhere herein.
- B. Demolition information shown on the Plans is based on visual field examination and existing record drawings. The Contractor is responsible for verification of all items indicated or not. All items affected that are not indicated on the plans shall be brought to the Engineer's attention before demolition for direction.
- C. The Contractor shall confine demolition work to the item specifically identified on the plans. The Contractor shall be liable for any other damage he may inflict to the existing installations.

PART 2 - PRODUCTS

2.01 MATERIALS AND EQUIPMENT

- A. Care shall be taken in demolition or removal of items as indicated on plans as being returned to the Owner. The Contractor shall notify the Owner prior to removing existing equipment.
- B. Whether indicated on the plans or not, the Contractor shall provide patching material to fill voids where demolition has taken place. Patching materials shall match, as nearly as practical, the existing original structure material for each surface being patched.

PART 3 - EXECUTION

3.01 COORDINATION

- A. The Contractor shall verify existing field conditions, measurement, circuitry etc. as indicated on Plans prior to performing any demolition.
- B. The Contractor shall verify that abandoned or demolished wiring and electrical equipment serve only abandoned facilities. If demolished or abandoned electrical is necessary for proper operation of facilities to remain in service, the Contractor shall immediately notify the Engineer for direction.
- C. Demolition shall not be performed without coordinating with new construction to limit down time and ease of switchover. The Contractor must coordinate with the Engineer and the Owner prior to any demolition.
- D. Prior to performing any demolition work, the Contractor shall provide temporary wiring and connections to maintain existing systems in service during construction. Temporary wiring shall conform to the National Electrical Code.

3.02 PERFORMANCE

- A. General: The means and methods of performing electrical demolition and removal operations are the sole responsibility of the Contractor. However, equipment used, and methods of demolition and removal will be subject to approval of the Engineer.
1. Remove exposed abandoned conduit systems, including abandoned conduit systems in false ceilings.
 2. Remove wiring in abandoned conduit systems to source of power supply, where indicated.
 3. In exposed through-structure conduit or foundation locations, cut conduits and foundation below the finished structure surfaces in order to perform adequate surface patching.
 4. Maintain electrical continuity of existing electrical installations which remain active. Modify installations as necessary to maintain continuity and provide adequate access as required by the National Electrical Code.
 5. Extend existing installations using materials and methods compatible with existing electrical installations, and as specified elsewhere herein.
 6. Disconnect and leave in place electrical devices and equipment serving utilization equipment that has been removed or demolished.
- B. Cutting: Perform cutting work of existing structure materials by such methods as will prevent extensive damage beyond the immediate area of cutting.
- C. Unless otherwise indicated existing, electrical equipment, conduit, wire, etc. indicated for demolition shall be removed and disposed of in a lawful manner, off Site.
- D. The Contractor shall move existing electrical equipment required to be returned to the Owner, to locations as directed by the Owner. Care shall be taken to ensure existing electrical equipment being returned to the Owner does not become damaged. The Contractor shall provide a means for storing and or stacking of the returned equipment prior to moving to final location, if necessary.
- E. Items Abandoned in Place:
1. All items to be abandoned in place shall be de-energized.
 2. Connections shown or otherwise indicated as disconnected shall be removed with lugs left in place and with all conduit and cable openings properly plugged and sealed as required by the NEC.
 3. Any abandoned in-place equipment damaged by Contractor shall be repaired and restored to its original condition.

END OF SECTION 26 06 01

SECTION 26 56 00 LIGHTING

PART 1 - GENERAL

1.01 SCOPE OF WORK:

- A. The Contractor shall provide all labor, materials, equipment and incidentals as shown, specified and required to furnish and install a fully operation lighting system per Contract Drawings and Specifications.

1.02 QUALITY ASSURANCE:

A. Reference Standards:

1. National Electrical Code (NEC)
2. UL Standard #57, Electric Lighting Fixtures
3. Illuminating Engineering Society (IES)
4. All applicable local lighting ordinances

B. Miscellaneous:

1. Lamps are identified for each luminaire in the Lighting Fixture Schedule on the Plans.
2. Lighting fixtures and electrical components:
 - a. UL labeled, complete with lamps.
 - b. Rated for area classification as indicated.
3. Location of lighting fixtures on Plans are intended to be used as a guide.
 - a. Field conditions may affect actual locations.
 - b. Coordinate with other trades to avoid conflicts in mounting of fixtures and other equipment.
4. The quality standard is established by the fixture listed in the Lighting Fixture Schedule.
 - a. This quality standard includes, but is not necessarily limited to construction features, materials of construction, finish, and photometrics.

1.03 SUBMITTALS:

A. The following shall be submitted to the Engineer for review:

1. Acknowledgment that products submitted meet requirements of standards referenced.
2. Manufacturer's technical information on products to be used including photometric performance curves for the fixture and ballast data.
3. Acknowledgment that products submitted are UL or ETL listed.
4. When general data sheets constitute part of the submittal, identify the products to be used on this project.
5. Manufacturer's installation instructions.
6. Identification of fixtures by Lighting Fixture Schedule.
7. UL nameplate data (Voltage, wattage, etc.).
8. Finishes, colors, and mounting type.
9. Pole, fixture, and accessories.
10. Pole wind loading.
11. Fixture IES files
12. LED Luminaire Warranty.

- B. Contractor shall submit shop drawings, manufacturer's data sheets, and a complete wiring diagram detailing all connections to the electrical system in accordance with Section 26 05 00, and other requirements of the Contract Documents.

PART 2 - PRODUCTS

2.01 MANUFACTURERS:

- A. LEDs shall be manufactured by North American/Phillips, Nichia, or equal.
- B. Lighting fixtures shall be provided as indicated on the Lighting Fixture Schedule on the Plans.
- C. Lighting drivers shall be manufactured by Philips, Advance, Jefferson, Universal, Bodine, Lithonia, or equal.
- D. Light poles shall be as indicated on the Plans. pole grounding lug and handhole. Pole foundations shall be as indicated on the Plans.
- E. Lighting fixtures shall be manufactured by Evolve or approved equal.
- F. Manufacturer shall have been in operation for a minimum of 10 years.

2.02 MATERIALS:

A. General:

- 1. Lamps:
 - a. See lighting fixture schedule on Plans for wattage, voltage and number required.
- 2. All Fixtures:
 - a. There shall be no live parts normally exposed to contact.
 - b. When intended for use in wet area:
 - (1) Mark fixtures "suitable for wet locations."
 - c. When intended for use in damp areas:
 - (1) Mark fixtures "suitable for damp locations" or "suitable for wet locations."
 - d. In wet or damp area, install fixtures so that water cannot enter or accumulate in the wiring compartment, lampholder, or other electrical parts.
 - e. Gasket seals: Urethane foam
 - f. Diffusers: UV stabilized acrylic plastic
- 3. Underground wiring:
 - a. Provide all wiring runs with separate green grounding conductor.
 - b. Ground all pole bases.
- 4. Pole wiring from base to driver:
 - a. No. 12 type XHHW.
 - b. Each phase shall be protected by a 30A, 600V, type Tron waterproof fuseholder, Bussman "Limitron" type fuse, size rating 3-times load current.

2.03 FIXTURES:

A. Light Emitting Diode (LED) Fixtures:

- 1. Drivers for Light emitting Diode (LED) fixtures shall be pole mounted manufactured by Hubbell, <http://www.hubbell.com> or approved equal.
 - a. Type: Solid State
 - b. Operates at 50-60Hz with a power factor greater than 95%
 - c. 10Kv surge suppression
 - d. Power supply shall operate between -40°F to +140°F.
 - e. Vibration test to ANSI C136.31-2001 for Roadway Luminaire Vibration.
 - f. Salt fog tested to ASTM B117 for a minimum of 1,000 hours.
 - g. Intrusion Protection 66

- h. Integral heat sink
- i. Optical system (Full cut-off)
- j. Lumen maintenance factor of L94 or better after 60,000 hours in a 40°C ambient environment
- k. Manufacturer shall provide a In Situ thermal Report at 50°C
- l. Driver case temperature shall not exceed driver manufactures max TC rating while operating in the fixture in a 50°C ambient environment.
- m. LED junction temp shall not exceed LED chip manufactures max limit per the LM80 report while operating in the fixture in a 50°C ambient environment.

PART 3 - EXECUTION

3.01 INSTALLATION:

- A. Install lamps in all luminaires.
- B. Replace all failed LED lamps with new lamps prior to final acceptance by Owner.
- C. Provide mounting brackets and/or structural mounting support for fixtures.
 - 1. Do not support fixture from conduit system.
 - 2. Do not support fixture from outlet boxes.
- D. Install with approved mounting hardware following manufacturer’s recommendations.
- E. All penetrations required for installation of pendant mounted fixtures and associated conduit/box supports in garage shall have ground penetrating radar (GPR) scans completed prior to construction.
- F. Pole mounted fixtures shall be mounted on concrete poles as indicated on the Plans. All poles shall be bonded to the facility ground system. Poles shall have adequate handholes where indicated.
- G. Fixture mounting heights and locations indicated on the Plans are approximate and are subject to revision in the field where necessary to avoid conflicts and obstructions.
- H. Spare Parts:
 - 1. Provide 1 for every 100 of each type and rating installed. Furnish at least one of each luminaire family.
 - 2. Provide spare globes and guards, 1 for every 100 of each type
 - 3. Provide 1% spare replaceable LED lamp modules for each primary fixture series type in fixture schedule.
 - 4. Provide spare LED drivers, 1 for every 100 of each primary fixture series
 - 5. Provide 1% spare LED luminaires with non-replaceable lamp modules consisting of entire LED luminaire assembly and driver(s)
 - 6. Provide 10% additional cost of fixture count discrepancies. This should be used for budgetary purposes only with no additional cost to the Owner
 - 7. Spare LED lamp module shall be delivered to Owner in new condition and in original packaging
 - 8. Manufacturer and model numbers shall match those installed in the project
- I. Training
 - 1. Contractor shall provide owner with 3 complete copies of a set of Operations and Maintenance manuals.
 - a. All “Approved as Noted” comments shall be corrected/picked-up in this record manual set.

- b. Each manual shall contain specific information pertaining to the equipment that was installed
 - c. Each manual shall have
2. Luminaires cut sheets
 3. Control gear/ballasts/drivers
 4. Lamps Contractor shall provide qualified personnel onsite to provide a minimum of three days of training to Owner's representatives.
 5. Training shall cover luminaire use and maintenance, Architectural lighting system use and Group re-lamping cycles.

3.02 ADJUSTING AND CLEANING:

- A. Wipe all lighting fixture reflectors, lenses, lamps, and trims clean after installation and prior to acceptance of Project by Owner.

END OF SECTION 26 56 00