



COUNCIL DECISION REQUEST

SUBJECT: Airport Engineering and Construction Management Consultant Services

MEETING DATE: 7-31-14

SUBMITTED BY: LaRon G. Garrett, Asst. Town Mgr 

SUBMITTAL TO AGENDA

AMOUNT BUDGETED: \$65,000

APPROVED BY TOWN MANAGER

EXPENDITURE REQUIRED: \$63,530



EXHIBITS (If Applicable, To Be Attached): Proposed Contract

POSSIBLE MOTION

I move to award the Echo Ramp Expansion Construction Administration to Armstrong Consultants, Inc., contingent on Federal Aviation Administration and the Arizona Department of Transportation Multi-model Planning Division approval, and authorize the Town Manager to sign all necessary contract documents.

SUMMARY OF THE BASIS FOR POSSIBLE MOTION:

The construction plans for the Echo Ramp Expansion at the airport have been completed and we are now ready to move into the construction phase. As part of that construction we need to contract with a firm to perform the construction administration. Responses were solicited from three consulting engineering firms familiar with airport construction administration. Based on those responses, Armstrong Consultants, Inc. was selected as the most qualified firm. A Scope of Services and Fee was negotiated with them and is part of the attached proposed contract. The negotiated fee for this contract is \$63,350.00.

This project is being funded through a grant from the Federal Aviation Administration (FAA) and the Arizona Department of Transportation Multi-model Planning Division (ADOT). The FAA will pay approximately 92% and ADOT will pay approximately 4%, with the Town paying the remaining approximate 4%. This grant includes the construction cost and the construction administration costs. This information has also been submitted to the FAA and ADOT for their approval.

Approval of this contract will allow us to move forward with this construction project.

PROS: This will allow the Echo Ramp Expansion to move forward.

CONS: None

FUNDING:

Acct:260-5-4445-00-8813	Budget: \$600,000	Available: 600,000	Expense: 63,530	Remaining: 536,470.
Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:

FM: 

Date: 7-22-14

JUL 31 2014 I, 2*

TOWN OF PAYSON
ECHO RAMP EXPANSION CONTRUCTION ADMINISTRATION

This CONTRACT, entered into as of this _____ day of _____, 2014, by and between the TOWN OF PAYSON, herein called the TOWN, and Armstrong Consultants, Inc., a professional corporation, herein called the "CONSULTANT",

WITNESSETH THAT: **WHEREAS,**

1. The TOWN desires to procure the services of CONSULTANT for the purpose of providing construction management and administration services for the Echo Ramp Expansion.
2. The CONSULTANT and TOWN desire to enter into and execute a written contract involving said services and to agree upon the terms thereof.

NOW, THEREFORE, in consideration of the foregoing recitals and of the covenants and agreements by the parties made to be kept and performed, the parties agree as follows:

ARTICLE I CONTRACT

The CONSULTANT as an independent contractor and not as an agent of the TOWN shall provide the services required in accordance with the Scopes of Services attached as Exhibit A. Nothing herein contained is intended nor shall it be construed to create either an agency or employment relationship between the TOWN and the CONSULTANT.

ARTICLE II TIME OF PERFORMANCE

This CONTRACT will be valid for a period of sixty (60) calendar days from the official Notice to Proceed or when all items of the project scope have been completed, whichever comes first.

ARTICLE III COMPENSATION AND PAYMENT

For the performance of its services, CONSULTANT shall be paid in accordance with the individual Authorizations for Services approved by the TOWN, in the manner and at the times specified in said Authorizations.

- A. MANNER OF PAYMENT - On or as soon as practicable after the last day of each month, CONSULTANT shall prepare and submit to TOWN an invoice covering costs incurred during the previous month based on actual time spent on the project or an estimate of the work completed to date. A progress report shall accompany each invoice. TOWN shall pay CONSULTANT within thirty days after receipt of the invoice the amount shown to be due.

- B. CONSULTANT'S FEE – It is expressly understood and agreed that the total compensation to be paid the Consultant shall be a fixed price amount of Sixty Three Thousand, Five Hundred Thirty Dollars and NO/100 (\$63,530.00) for the services specified in Exhibit A – Scope of Work. The cost of additional services shall be based on either an agreed upon lump sum, or hourly and shall be approved by the TOWN, ADOT and the FAA prior to proceeding with the work.

ARTICLE IV CHANGES IN WORK

Significant changes in the scope, character, or complexity of the work or services in addition to those specified in the attached Scope of Work may be negotiated if the TOWN determines that such changes are desirable and necessary. Authorization to perform additional service shall be in writing, and shall specify the basis of CONSULTANT'S fee. No changes in Scope of Work or amendments to this CONTRACT shall be made without prior written approval of the TOWN, the Arizona Department Of Transportation Multimodal Planning Division, Aeronautics Group (ADOT-MPG Aeronautics Group), and the Federal Aviation Administration. Such changes increasing the amount of CONSULTANT'S compensation shall be incorporated in written supplemental agreements to this contract. CONSULTANT will supply fee estimates for such additional services on request of the TOWN.

ARTICLE V INSURANCE

The CONSULTANT shall furnish certificates prior to commencement of the work described herein, showing insurance in force as follows:

1. Public Liability and Property Damage insurance in an amount not less than one million (\$1,000,000.00) dollars per occurrence, two million (\$2,000,000.00) aggregate.
2. Architect's and/or Engineers' Professional Liability insurance in an amount not less than one million (\$1,000,000.00) dollars per occurrence, two million (\$2,000,000.00) aggregate.

Excepting the Professional Liability coverage, insurance certificates shall name both the CONSULTANT and the TOWN as insureds.

ARTICLE VI OWNERSHIP OF DOCUMENTS

All documents, including original drawings, estimates, specifications, field notes and data which are prepared in the performance of this CONTRACT are to be and remain the property of the TOWN and are to be delivered to the Public Works Director before the final payment is made to the CONSULTANT. However, if the CONSULTANT wishes, he may retain reproducible record prints of drawings and copies of other documents. The Consultant shall endorse by his professional seal all plans, specifications and engineering data furnished by him. Such sealed documents shall not be used for extensions of the Project or for new projects without CONSULTANT'S written permission. However, the TOWN has the right to contract for design

and/or construction engineering services on any of the projects identified in the Airport Master Plan or Airport Capital Improvements Program without first seeking the CONSULTANT'S written permission.

ARTICLE VII RETENTION OF RECORDS

The CONSULTANT and any subcontractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this contract, and shall make all such materials available to the TOWN, or its duly authorized representatives at any reasonable time during the term of work on the contract, and for six (6) years after the date of final payment to the CONSULTANT by the TOWN for work performed hereunder.

ARTICLE VIII ASSIGNMENT

This CONTRACT shall not be assigned by either party without prior written approval of the other. The CONSULTANT may utilize sub-consultant personnel or services in the performance of this CONTRACT with prior written approval of the TOWN. In the event that CONSULTANT so utilizes the personnel or services of such entities, CONSULTANT shall be solely responsible for payment to each of such entities for the personnel or services so utilized, and the TOWN shall be under no obligation of any kind either to reimburse CONSULTANT for such costs or to pay such entities directly for such costs. It shall extend to and be binding upon the heirs, administrators, executors, successors and assigns of the parties hereto.

ARTICLE IX RESPONSIBILITY OF CONSULTANT

CONSULTANT shall perform its services to the best of its ability as an independent contractor in accordance with industry standards, this CONTRACT, and applicable laws and regulations. CONSULTANT agrees to correct any deficiencies and reimburse the TOWN for any costs to the TOWN arising from or related to such deficiencies resulting from its services which are discovered and reported to CONSULTANT within one year from the date of completion of its services hereunder. If CONSULTANT does not correct deficiencies as written in this Article, then he shall be liable for the amount necessary to replace the services necessary for such corrections. Under no circumstances shall CONSULTANT, its subcontractors and suppliers, be liable to TOWN for any consequential damages including loss of use or loss of profit, except that CONSULTANT shall be liable to TOWN, and shall hold the TOWN harmless therefrom, for any loss or damage arising out of or in connection with CONSULTANT'S negligent performance of this CONTRACT. It is understood by CONSULTANT and the TOWN that CONSULTANT shall provide insurance against the possibility of such negligence, as provided by Article V herein above.

ARTICLE X RESPONSIBILITY OF TOWN

The TOWN will designate a representative to review and approve documents submitted by CONSULTANT. The representative shall be empowered to render decisions and provide information in a timely manner that will not delay the orderly progress of the work, to the extent practical and provided for by the Town Council of the Town of Payson.

ARTICLE XI STATE FUNDING REQUIREMENTS

The CONSULTANT agrees to comply with the provisions of the State of Arizona Executive Order 75-5, dated April 28, 1975, as amended by Executive Order 99-4, relating to equal opportunity which is herein incorporated by reference.

ARTICLE XII AUDIT

The CONSULTANT shall grant the Town of Payson, the ADOT-MPG Aeronautics Group, the Federal Aviation Administration, or any of its duly authorized representatives to have access to any books, documents, papers and records of the CONSULTANT which are directly pertinent to this CONTRACT for the purpose of making audit, examination, excerpts, and transcriptions.

ARTICLE XIII CIVIL RIGHTS ACT OF 1964, TITLE VI REQUIREMENTS

During the performance of this CONTRACT, the CONSULTANT for itself, its assigns and successors in interest agree as follows:

1. Compliance with Regulations:

The CONSULTANT shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

2. Nondiscrimination:

The CONSULTANT, with regard to the work performed by it during this CONTRACT, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment:

In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a Subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports:

The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TOWN, the Federal Aviation Administration, or the ADOT-MPG Aeronautics Group, to be pertinent to ascertain compliance with such Regulations, orders and instructions or for the purpose of making audit, examination, excerpts, and transcripts. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the TOWN or the Federal Aviation Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance:

In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this CONTRACT, the TOWN shall impose such Contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- (a) Withholding of payments to the CONSULTANT under this CONTRACT until the CONSULTANT complies, and/or
- (b) Cancellation, termination or suspension of this CONTRACT, in whole or in part

6. Incorporation of Provisions:

The CONSULTANT shall include the provisions of paragraphs 1 through 5 above in every subcontract, including procurement of materials and leases of equipment unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action, with respect to any subcontract or procurement, as the TOWN or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Consultant becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the TOWN to enter into such litigation to protect the interest of the TOWN and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interest of the United States.

ARTICLE XIV AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 - GENERAL CIVIL RIGHTS PROVISIONS

The CONSULTANT assures that it will comply with the pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provided, or is in the form

of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of Consultants, this provision binds the Consultant from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

ARTICLE XV DISADVANTAGED BUSINESS ENTERPRISE (DBE) ASSURANCES

1. Policy.

It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this CONTRACT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this CONTRACT.

2. DBE Obligation.

The CONSULTANT agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this CONTRACT. In this regard, all Consultants shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Consultants shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

3. Contract Assurance (§26.13).

The Consultant or Sub-Consultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the 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.

4. Prompt Payment (§26.29).

The prime Consultant agrees to pay each Sub-Consultant under this prime Contract for satisfactory performance of its contract no later than 60 days from the receipt of each payment the prime Consultant receives from the Town. The prime Consultant agrees further to return retainage payments to each Sub-Consultant with 60 days after the Sub-Consultant'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 Town. This clause applies to both DBE and non-DBE Sub-Consultants.

ARTICLE XVI LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

1. No Federal appropriated funds shall be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with any Federal grant, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities", in accordance with its instructions.

ARTICLE XVII ACCESS TO RECORDS AND REPORTS

The CONSULTANT shall maintain an acceptable cost accounting system. The CONSULTANT agrees to provide the TOWN, the Federal Aviation Administration, and the Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to this contract for the purposes of making an audit, examination, excerpts, and transcriptions. The CONSULTANT agrees to maintain all books, records, and reports required under this Contract for a period of not less than 3 years after final payment is made and all pending matters are closed.

ARTICLE XVIII BREACH OF CONTRACT TERMS

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

ARTICLE XIX RIGHTS TO INVENTIONS

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

ARTICLE XX TRADE RESTRICTION CLAUSES

The CONSULTANT, by execution of this CONTRACT, certifies that it:

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 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 on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
3. Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a CONSULTANT or Sub-Consultant who is unable to certify to the above. If the CONSULTANT knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the TOWN cancellation of the contract at no cost to the Government.

Further, the CONSULTANT agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The CONSULTANT may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The CONSULTANT shall provide immediate written notice to the TOWN if the CONSULTANT learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the CONSULTANT if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the CONSULTANT or Sub-Consultant knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the TOWN cancellation of the Contract or subcontract for default at no cost to the Government.

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

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker

subject to prosecution under Title 18, United States Code, Section 1001.

ARTICLE XXI TERMINATION OF CONTRACT

1. The TOWN may, by written notice, terminate this contract in whole or in part at any time, either for the TOWN's convenience or because of the CONSULTANT'S failure to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in process, delivered to the TOWN.
2. If the termination is for the convenience of the TOWN, an equitable adjustment in the Authorization of Service price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
3. If the termination is due to failure to fulfill the CONSULTANT'S obligations, the TOWN may take over the work and prosecute the same to completion by contract or otherwise. In such case, the CONSULTANT shall be liable to the TOWN for any additional cost occasioned to the TOWN thereby.
4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the CONSULTANT had not so failed, the termination shall be deemed to have been effected for the convenience of the TOWN. In such event, adjustment in the Authorization of Service price shall be made as provided in paragraph 2 of this clause.
5. This contract may also be terminated automatically if the CONSULTANT fails to submit the annual renewal request as described in Article II of this document.
6. The rights and remedies of the TOWN provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

ARTICLE XXII CERTIFICATION REGARDING DEBARMENT, SUSPENSION,

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

ARTICLE XXIII NON-APPROPRIATION/NON-RECEIPT OF FUNDS.

Nothing herein shall be construed as obligating the Town to expend, or as involving the Town in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for this work. Nor shall anything herein be

construed as obligating the Town to expend, or as involving the Town in any contract or other obligation for the future payment of money if the Town does not have sufficient revenues for this expenditure.

ARTICLE XXIV BUSINESS LICENSE.

The CONSULTANT shall provide the TOWN with a copy of its Town of Payson business license. If the CONSULTANT is exempt from the Town's business licensing requirements, it shall still provide the Town with the items required under Section 110.03(C)-(D) of the Town Code.

ARTICLE XXV SCRUTINIZED BUSINESS OPERATIONS.

Pursuant to A.R.S. §35-391.06, the Parties hereby warrant and represent that they do not have, nor any of their subcontractors have, and during the term of the Contract will not have a scrutinized business operation in ether Sudan or Iran.

ARTICLE XXVI AUTHORIZED PRESENCE REQUIREMENTS/GOVERNMENT
PROCUREMENT (A.R.S. §41-4401).

1. Consultant and any Sub-consultant employed by Consultant warrants their compliance with all Federal immigration laws and regulations that relate to their employees and Arizona Revised Statutes Section 23-214(A).
2. A breach of the warranty under Sub-Section 1 above shall be deemed a material breach of this Contract and shall be subject to penalties up to and including termination of the Contract.
- 3 The Town retains the legal right to inspect the papers of the Consultant or Sub-consultant who works on this CONTRACT to ensure that the Consultant or Sub-consultant is complying with Sub-Section 1 above.

ARTICLE XXVII DISPUTE RESOLUTION.

This CONTRACT shall be governed and construed in accordance with the internal laws of the State of Arizona. In particular, this CONTRACT is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein, and which provides for cancellation of contracts by the municipality for certain conflicts of interest. With the written consent of both Parties, any dispute, controversy, claim, or cause of action arising out of or related to this CONTRACT may, but in no event need, be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq. Judgment upon any award rendered by the arbitrator(s), if filed in Arizona Superior Court, shall be filed in the Superior Court of Gila County, Arizona; or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County,

Arizona. The venue for any such dispute shall be Gila County, Arizona, and both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees without contribution from the other party, whether the same is resolved through arbitration, litigation in a court, or otherwise.

ARTICLE XXVIII CERTIFICATION OF CONSULTANT

I hereby certify that I am a Principal, Secretary/Treasurer and duly authorized representative of the firm of Armstrong Consultants, Inc. whose address is 861 Rood Avenue, Grand Junction, CO 81501, and that neither I nor the above firm I represent has:

1. Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this CONTRACT,
2. Agreed, as an express or implied condition for obtaining this CONTRACT, to employ or retain the services of any firm or person in connection with carrying out the CONTRACT, other than specified in Article IX,
3. Paid or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the CONTRACT; except as here expressly stated:

I acknowledge that this certificate is to be furnished to the Federal Aviation Administration of the United States Department of Transportation, in connection with this Contract involving participation of Airport Improvement Program (A.I.P.) funds and is subject to applicable State and Federal Laws, both criminal and civil.

DATE

TITLE

Binding Upon Successors: This CONTRACT shall be binding upon the undersigned parties, their successors, partners, assigns, and legal representatives.

IN WITNESS WHEREOF, the parties hereto have entered into this CONTRACT effective as of the day and year first herein above written.

TOWN OF PAYSON
A MUNICIPAL CORPORATION
303 N. Beeline Highway
Payson, AZ 85541

ARMSTRONG CONSULTANTS, INC.
861 Rood Avenue
Grand Junction, CO 81501

BY: _____

BY: _____

ITS: Town Manager

ITS: _____

ATTEST: _____

ITS: Town Clerk

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this contract and approved it as to form. When reviewing this contract for form, the Legal Department considers whether the following situations have been addressed:

1. Identification of parties;
2. Offer and acceptance;
3. Existence of contract consideration (we do not review to determine if consideration is adequate);
4. That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

We have not reviewed the contract for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the contract or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the contract.

Dated this ____ day of _____, 2014.

By _____
Tim Wright, Town Attorney

EXHIBIT A

SCOPE OF WORK

6. Provide review of all submittals for materials to be used on the project. Review all shop drawings items as required during construction.
7. Provide technical assistance and recommendations to the airport during construction.
8. Provide a full-time resident inspector to monitor and document construction progress for Element 1, confirm conformance with schedules, plans and specifications, measure and document construction pay quantities, document significant conversations or situations, document input or visits by local authorities, conduct Davis Bacon interviews, coordinate certified payroll review, etc.
9. Prepare change orders and supplemental agreements, if required. All coordination of change orders will be provided by the Engineer.
10. Prepare and submit weekly inspection reports. Reports will be submitted to the FAA, ADOT-MPD Aeronautics Group, and Sponsor.
11. Prepare and confirm monthly payment requests. Payment requests will be reviewed for accuracy with contractor and project inspector. Engineer will prepare FAA and State reimbursement requests for the Owner.
12. Prepare and submit the project QA test summary.
13. Conduct final project inspection with the Owner, FAA, ADOT-MPD Aeronautics Group and the contractor. Any punch list items will be noted and coordinated with the contractor for necessary action.
14. Prepare record drawings and a final project report. The final report will follow the current FAA AIP Final Report guidance. The FAA, ADOT-MPD Aeronautics Group and the Sponsor will each receive a copy of the record drawings in the electronic or hard copy format of their choosing.
15. Update ALP drawing sheets as necessary and when the CAD files are available.

APPENDIX A

Required Contract Provisions for A/E Contracts Under Airport Improvement Program

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REQUIREMENTS FOR CONTRACT PROVISIONS

Federal laws and regulations require that specific contract provisions be included in certain contracts, requests for proposals, or invitations to bid **whether or not** the contracts are federally-funded. This requirement is established within the grant assurances. Other contract provisions are required to be in federally-funded contracts, including all subcontracts. For purposes of determining requirements for contract provisions, the term **contract** includes subcontracts.

The type and magnitude of a project determines whether a provision is required. Some Federal provisions have dollar thresholds that define when they are applicable. The majority of the Federal provisions may be incorporated within the contract itself. However, certain Federal notices are required to be identified within the Notice-to-Bidders.

GENERAL REQUIREMENTS FOR CONTRACTS

In general, the sponsor must:

- 1) Physically incorporate these contract provisions (not simply by reference) in each contract funded under AIP;
- 2) Require the contractor (including all subcontractors) to insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all subcontracts;
- 3) Require the contractor (or subcontractor) to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services;
- 4) Require that the prime contractor be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider; and
- 5) Not modify the provisions. Minor additions covering state or sponsor requirements may be included in a separate supplemental specification, provided they do not conflict with federal laws and regulations and do not change the intent of the required contract provision.

Subject to the applicability criteria noted in the specific contract provisions, these contract provisions apply to all work performed on the contract.

GENERAL REQUIREMENT FOR REQUESTS FOR BIDS (ADVERTISEMENT) AND NOTICE TO BIDDERS

In general, the sponsor may incorporate certain provisions *by reference* in the Request for Bids (the Advertisement) rather than including the entire text of the provision in the Request or Notice. The provisions that can be incorporated by reference in the Request or Notice are:

- 1) Buy American Preference

- 2) Foreign Trade Restriction
- 3) Davis Bacon
- 4) Affirmative Action
- 5) Governmentwide Debarment and Suspension
- 6) Governmentwide Requirements for Drug-free Workplace

REQUIREMENTS FROM ALL CONTRACTS - THE FOLLOWING ARE THE OBLIGATIONS TO SPONSORS.

Where noted, the sponsor must include certain notifications in contracts or solicitations for proposals regardless of funding source.

FAILURE TO COMPLY WITH PROVISIONS:

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- 1) Withhold progress payments or final payment,
- 2) Terminate the contract,
- 3) Seek suspension/debarment, or
- 4) Any other action determined to be appropriate by the sponsor or the FAA.

REQUIRE - CONTRACT PROVISIONS.

The following list summarizes the contract provisions and to what types of contracts the provisions apply:

All Contracts Regardless of Funding Source

- a. Civil Rights – General
- b. Civil Rights – Title VI
- c. Affirmative Action Plan

All AIP Funded Contracts

- a. Access to Records and Reports
- b. Buy American Preferences
- c. Civil Rights – General
- d. Civil Rights - Title VI
- e. Disadvantaged Business Enterprises
- f. Federal Fair Labor Standards Act (Minimum Wage)
- g. Lobbying and Influencing Federal Employees
- h. Occupational Safety and Health Act
- i. Rights to Inventions
- j. Trade Restriction Clause

Additional Provisions for AIP Funded Contracts that are \$10,000 and greater

- a. Termination of Contract

Additional Provisions for AIP Funded Contracts that are \$25,000 and greater

- a. Debarment and Suspension

Additional Provisions for AIP Funded Contracts that are \$100,000 and greater

- a. Breach of Contract
- b. Clean Air and Water Pollution Controls
- c. Contract Work Hours and Safety Standards

ACCESS TO RECORDS AND REPORTS

(48 CFR 101-11.6 (a) & 200-116.8 (a) & 200-11.1)

APPLICABILITY

Applies to all AIP-funded projects and must be included in all contracts and subcontracts.

MANDATORY CONTRACT LANGUAGE

The mandatory language that must be used on AIP funded project contracts is as follows:

ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

BREACH OF CONTRACT TERMS

2 CFR § 200 Appendix II(A)

APPENDIX II

This provision is required in all contracts that exceed the simplified acquisition threshold. This threshold, fixed at 41 USC 403(11), is presently set at \$100,000.

MANDATORY CONTRACT LANGUAGE

The regulation does not prescribe mandatory language, however the following clause represents sample language that meets the intent of 2 CFR § 200 Appendix II(A). This provision requires grantees to incorporate administrative, contractual or legal remedies in instances where contractors violate or breach contract terms.

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of 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 agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

BUY AMERICAN PREFERENCE

49 USC § 50101

APPLICABILITY

The sponsor must meet the Buy American preference requirements found in 49 USC § 50101 in all AIP-funded projects. The Buy America requirements flow down from the sponsor to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The Buy American preference also applies to professional service agreements if the agreement includes any manufactured product as a deliverable.

EXEMPTIONS

The Buy-American preference requirements established within 49 USC § 50101 require that all steel and manufactured goods used on AIP projects must be produced in the United States. It also gives the FAA the ability to issue a waiver to the sponsor to use other materials on the AIP funded project. The FAA requires that these waivers be requested in advance of use of the materials on the AIP funded project. The sponsor may request that the FAA issue a waiver from the Buy American preference requirements if the FAA finds that:

- 1) applying the provision is not in the public interest;
- 2) the steel or manufactured goods are not available in sufficient quantity or quality in the United States;
- 3) the cost of components and subcomponents produced in the United States is more than 60 percent of the total components of a facility or equipment, and final assembly has taken place in the United States. Items that have an FAA standard specification item number (such as specific airport lighting equipment) is considered the equipment in this case. For construction of a facility, the application of this subsection is determined after bid opening; or
- 4) applying this provision would increase the cost of the overall project by more than 25 percent.

NATIONWIDE BUY AMERICAN WAIVERS WEBSITE

The FAA Office of Airports maintains a list of equipment that has received waivers from the Buy American preference requirements on the http://www.faa.gov/airports/aip/buy_american/ website. Products listed on the Nationwide Buy American Waivers Issued list do not require a project specific Buy American preference requirement waiver from the FAA.

MANDATORY CONTRACT LANGUAGE

The mandatory language that must be used on AIP funded project contracts is as follows:

BUY AMERICAN CERTIFICATION

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

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

Type of Certification is based on Type of Project:

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.

- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

Certificate of Buy American Compliance for Total Facility

(Buildings such as Terminal, SRE, ARFF, 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 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter "X".

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

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

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing US domestic products
3. 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 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
 4. To furnish US domestic product for any waiver request that the FAA rejects.
 5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

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

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

- a) Detailed cost information for total project using US domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a

false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

* * * * *

Certificate of Buy American Compliance for Manufactured Products

(Non-building construction projects, equipment acquisition projects)

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

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

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

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic product
- 3. To furnish US domestic product for any waiver request that the FAA rejects
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

- The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

- 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
- 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
- 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of the item components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- a) Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c) Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

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

- a) Detailed cost information for total project using US domestic product
- b) Detailed cost information for total project using non-domestic product

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

Date

Signature

Company Name

Title

CIVIL RIGHTS - GENERAL

Reference to 49 USC § 47123:

APPLICABILITY

The General Civil Rights Provisions found in 49 USC § 47123, derived from the Airport and Airway Improvement Act of 1982, Section 520, apply to all AIP-funded projects. This provision is in addition to the Civil Rights – Title VI provisions.

MANDATORY CONTRACT LANGUAGE

The mandatory language that must be used on AIP funded project contracts is as follows:

GENERAL CIVIL RIGHTS PROVISIONS

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

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

TITLE VI RIGHTS - TITLE VI ASSURANCES

Appropriate clauses from the Standard DOT Title VI Assurances must be included in all contracts and solicitations. The clauses are as follows:

- 1) Title VI Solicitation Notice
- 2) Title VI Clauses for Compliance with Nondiscrimination Requirements.
- 3) Title VI Required Clause for Land Interests Transferred from the United States
- 4) Title VI Required Clause for Real Property Acquired Or Improved by the sponsor subject to the nondiscrimination Acts and Regulations.
- 5) Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program
- 6) Title VI List Of Pertinent Nondiscrimination Statutes And Authorities

APPLICABILITY

The sponsor must insert the **Title VI Solicitation Notice** in:

- 1) All solicitations for bids, requests for proposals work, or material subject to the nondiscrimination acts and regulations made in connection with Airport Improvement Program grants; and
- 2) All proposals for negotiated agreements regardless of funding source

The Sponsor must insert the **Title VI required contract clause** and the **Title VI list of Pertinent Nondiscrimination Statutes and Authorities** in every contract or agreement, unless the sponsor has determined and the FAA has agreed, that the contract or agreement is not subject to the nondiscrimination Acts and the Regulations. The sponsor must insert the clauses of **Title VI Clauses for Deeds Transferring United States Property**, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.

The sponsor must include the **Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, Or Program**, the **Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program**, and the **Title VI List of Pertinent Nondiscrimination Authorities**, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the sponsor with other parties:

- 1) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
- 2) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

MANDATORY CONTRACT LANGUAGE

Title VI Solicitation Notice

(Source: Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Title VI Solicitation Notice:

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 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.

Title VI Clauses for Compliance with Nondiscrimination Requirements

(Source: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

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 Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and

will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI Clauses for Deeds Transferring United States Property

(Source: Appendix B of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances.

NOW, THEREFORE, the Federal Aviation Administration as authorized by law and upon the condition that the (***Title of Sponsor***) will accept title to the lands and maintain the project constructed thereon in accordance with (***Name of Appropriate Legislative Authority***), for the (**Airport Improvement Program or other program for which land**)

is transferred), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the **(Title of Sponsor)** all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in **(Exhibit A attached hereto or other exhibit describing the transferred property)** and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto **(Title of Sponsor)** and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the **(Title of Sponsor)**, its successors and assigns. The **(Title of Sponsor)**, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the **(Title of Sponsor)** will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].* (*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

(Source: Appendix C of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the **(Title of Sponsor)** pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. 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. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) 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, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination 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, etc., in the event of breach of any of the above Nondiscrimination covenants, (**Title of Sponsor**) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) 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 (**Title of Sponsor**) 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 (**Title of Sponsor**) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

(Source: Appendix D of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

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 (**Title of Sponsor**) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., 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, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.

- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, (**Title of Sponsor**) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, (**Title of Sponsor**) will there upon revert to and vest in and become the absolute property of (**Title of Sponsor**) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

Title VI List of Pertinent Nondiscrimination Authorities

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS
APPLICABLE TO CONTRACTS AWARDED BY THE FEDERAL AVIATION ADMINISTRATION

APPLICABLE TO CONTRACTS AWARDED BY THE FEDERAL AVIATION ADMINISTRATION

Incorporate in all professional service agreements, construction contracts and subcontracts that exceed \$100,000.

MANDATORY CONTRACT LANGUAGE

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

1. Overtime Requirements.

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

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

In the event of any violation of the clause set forth in paragraph (1) above, 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 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3. Withholding for Unpaid Wages and Liquidated Damages.

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 any monies 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 above.

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 section.

DEBARMENT AND SUSPENSION (NON-PAYOFF) (2012)
(Reference: 2 CFR part 180 (a) and (b) and 27 CFR part 170 (b)(1) and (2))
Subject: Part 8, Debarment, Prohibition & Suspension

APPLICABILITY

The contract agreement that ultimately results from this solicitation is a "covered transaction" as defined by Title 2 CFR Part 180. Bidder must certify at the time they submit their proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction. The bidder with the successful bid further agrees to comply with Title 2 CFR Part 1200 and Title 2 CFR Part 180, Subpart C by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction".

Incorporate in all contracts and subcontracts that exceed \$25,000.

MANDATORY CONTRACT LANGUAGE

CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)

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

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS)

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 Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

DISADVANTAGED BUSINESS ENTERPRISES

49 CFR part 26

APPLICABILITY

The Disadvantaged Business Enterprise requirements found in 49 CFR part 26, apply to all AIP-funded projects and must be included in all contracts and subcontracts. This includes both project with contract goals and project relying on race/gender neutral means.

MANDATORY CONTRACT LANGUAGE

The mandatory language that must be used on AIP funded project contracts is as follows. Other than to insert appropriate Sponsor information into the noted spaces, the Sponsor must not modify these contract clauses:

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§ 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29)- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than {specify number} days from the receipt of each payment the prime contractor receives from {Name of recipient}. The prime contractor agrees further to return retainage payments to each subcontractor within {specify the same number as above} 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 {Name of Recipient}. This clause applies to both DBE and non-DBE subcontractors.

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

(29 USC 201-210)

APPLICABILITY:

The federal minimum wage provisions are contained in the Fair Labor Standards Act (FLSA) which is administered by the United States Department of Labor Wage and Hour Division. All contracts and subcontracts must meet comply with the FLSA, including the recordkeeping standards of the Act.

MANDATORY CONTRACT LANGUAGE

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

(49 CFR part 20, Appendix A)

APPLICABILITY:

The Lobbying and Influencing Federal Employees prohibition found in 49 CFR part 20, Appendix A, applies to all AIP-funded projects and must be included in all contracts and subcontracts.

MANDATORY CONTRACT LANGUAGE

The mandatory language that must be used on AIP funded project contracts is as follows:

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

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

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970
 (reference to 29 CFR part 1910)
 POLICY ONLY

The United States Department of Labor Occupational Safety & Health Administration (OSHA) oversees the workplace health and safety standards wage provisions from the Occupational Safety and Health Act of 1970. All contracts and subcontracts must meet comply with the Occupational Safety and Health Act of 1970.

MANUFACTURING CONTRACT LANGUAGE

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (29 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

RIGHT TO INVENTIONS

(Refer to 2 CFR § 200 Appendix II(F))

MANDATORY

The requirement for rights to inventions and materials found in 2 CFR § 200 Appendix II(F) applies to all AIP-funded projects and must be included in all contracts and subcontracts.

(MANDATORY CONTRACT LANGUAGE)

The regulation does not prescribe mandatory language, however the following clause represents sample language that meets the intent of 2 CFR § 200 Appendix II(F).

RIGHTS TO INVENTIONS

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

TERMINATION OF CONTRACT

(Refer to 2 CFR § 200 Appendix II(D))

APPLICABLE

Incorporate in all contracts and subcontracts that exceed \$10,000.

(MANDATORY CONTRACT LANGUAGE)

TERMINATION OF CONTRACT

- a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.
- e. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

TRADE RESTRICTION

1. General AIP Report

QUESTIONS

The trade restriction clause applies to all AIP-funded projects and must be included in all contracts and subcontracts.

MANDATORY CONTRACT LANGUAGE

The mandatory language is as follows:

TRADE RESTRICTION CLAUSE

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

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous. The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

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

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

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