9-19-17 9:00 a.m.
II A 12 / moved from
9-7-17

AGENDA REPORT
September 19, 2017

SUBJECT:
FAA & FDOT Grant acceptance for Primary Runway 14-32 Rehabilitation, Construction Phase Services

FISCAL IMPACT:
Total Project Cost (Construction): $4,449,006
FAA @ 90% $4,004,105 FDOT @ 8% $335,920 VA@2% $88,980 (Charges for Services -No Loan/Dept).

No General Funds are required for this project. Airport Revenues pay all match monies.

DEPT/OFFICE:
Valkaria Airport

REQUESTED ACTION:
It is requested the Board of County Commissioners approve and authorize the chairman to execute the attached FAA Grant Offer and pending FDOT Joint Participation Agreement for funds related to the rehabilitation of Primary Runway 14-32, including edge lighting, Construction Phase. Additionally, approve the Work Order for the consulting engineer firm (Avcon Inc) for Construction Phase Services.

SUMMARY EXPLANATION and BACKGROUND:
Brevard County completed a comprehensive airport master plan and airport layout plan for the Valkaria Airport in 2007. This plan was updated in 2015 addressing various airport needs; runway, taxiway, lighting, hangars and other airport maintenance and improvement projects needed to meet FAA design criteria. Rehabilitation of Primary Runway 14-32 is listed in the near term CIP and recommended in the FDOT Statewide Airfield Pavement Management Program.

On April 5, 2016 the BOARD in regular session approved and executed an FAA Grant and FDOT Joint Participation Agreement for the Design Phase Services related to the asphalt rehabilitation and Edge Lighting for !Primary Runway 14-32. Total Design Cost $248,410. Included Work Order with Avcon, Inc. for the Design Phase Engineering Services.

This project is now ready for construction. Attached is the FAA Grant offer. The FDOT JPA will follow shortly.

ATTACHMENTS:

Description

No Attachments Available

REVIEWERS:

Department	Reviewer	Action
Valkaria Airport	Lewis, Sally	Approved
ACM Development	Denninghoff, John	Approved
County Manager	Abbate, Frank	Approved

consistent with project progress. Should you fail to make draws on a regular basis, your grant may be placed in "inactive" status, which will affect your ability to receive future grant offers.

Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- A signed/dated SF-270 (non-construction projects) or SF-271 or equivalent (construction projects) and SF-425 annually, due 90 days after the end of each federal fiscal year in which this grant is open (due December 31 of each year this grant is open); and
- Performance Reports, which are due within 30 days of the end of a reporting period as follows:
    1. Non-construction project: Due annually at end of the Federal fiscal year.
    2. Construction project: Submit FAA form 5370-1, Construction Progress and Inspection Report at the end of each fiscal quarter.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend $750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

Once the project(s) is completed and all costs are determined, we ask that you close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

William Farris, (407) 812-6331, is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,

Bart Vernace, PE
Manager

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

September 20, 2017

MEMORANDUM

TO: Steve Borowski, Valkaria Airport Manager

RE: Item II.A.12., Grant Acceptance from Federal Aviation Administration (FAA) and Pending Florida Department of Transportation (FDOT) Joint Participation Agreement (JPA) for Primary Runway 14-32 Rehabilitation, Construction Phase Services

The Board of County Commissioners, in regular session on September 19, 2017, executed and accepted grant from FAA; authorized the Chairman to execute the pending FDOT Joint Participation Agreement for the funds related to the rehabilitation of Primary Runway 14-32, including edge lighting and construction phase; and approved the Work Order for the consulting engineering firm (Avcon, Inc.) for the Construction Phase Services. Enclosed is the executed Grant Acceptance for your action.

Upon execution by the FAA, please return a copy of the fully-executed Grant Acceptance to this office for inclusion in the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for Donna Scott
Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

cc: Assistant County Manager Denninghoff
Finance
Budget

SECTION C

OWNER - CONTRACTOR AGREEMENT

THIS AGREEMENT, in three (3) copies, made this 07 day of December 2017 , by and between the BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS (herein referred to as the "Owner"), whose mailing address is and 2725 Judge Fran Jamieson Way, Viera, fl 32940 and Dickerson Florida, Inc. (herein referred to as the "Contractor"), whose mailing address 3122 N. 25th Street, Ft. Pierce, FL 34936. All correspondence, submittals and notices relating to or required under this Contract shall be sent, in writing, to the Contractor's address above; unless either party is notified, in writing, of a change in address, and to the Valkaria Airport.

WITNESSETH:

WHEREAS, it is the intent of the Owner to obtain the services of the Contractor in connection with the construction of Runway 14-32 Rehabilitation, hereinafter referred to as the "Project" or the "Work"; and

WHEREAS, the Contractor desires to perform such construction on the project in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the promises made herein and other good and valuable consideration, the following terms and conditions are hereby mutually agreed to, by and between the Owner and the Contractor:

Article 1
DEFINITIONS

1.1 All terms in this Agreement which are defined in the Advertisement for Bids, Information to Bidders, the General Provisions and Special Provisions shall have the meanings designated herein.

1.2 The Contract Documents are as defined in the General Provisions and set forth herein. Such documents form the Contract, and all are as fully a part hereof as if attached to this Agreement or repeated therein. The General Provisions are those General Provisions set forth in Bid # B-3-17-80, attached hereto as Attachment 1.

Article 2
STATEMENT OF THE WORK

2.1 The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work, as required by the Contract Documents, and in Attachment 2, Scope of Work, attached hereto and incorporated by reference.

2.2 The Contractor shall further provide and pay for all related facilities described in any of the Contract Documents, including all work expressly specified therein and such additional work as may be reasonably inferred therefrom, saving and excepting only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Contractor. The totality of the obligations imposed upon the Contractor by this Article and by all other provisions of the Contract Documents, as well as the

structures to be built and the labor to be performed, is herein referred to as the "Work".

Article 3
DESIGN CONSULTANT

3.1 The Design Consultant (as defined in the General Provisions) shall be AVCON, Inc. 955 Croton Road, Melbourne, FL 32935 provided, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as its Design Consultant and so advising the Contractor in writing, at which time the person or organization so designated shall be the Design Consultant for purposes of this Contract.

Article 4
TIME OF COMMENCEMENT AND COMPLETION

4.1 The Contractor shall commence the Work promptly upon the date established in the Notice to Proceed. If there is no Notice to Proceed, the date of commencement of the Work shall be the date of this Agreement or such other date as may be established herein.

4.2 Time is of the essence. The Contractor shall achieve Completion, as defined in the General Provisions, within 183 calendar days for the Runway 14-32 Rehabilitation from the date of Notice to Proceed. This time period shall be designated the Contract Time.

4.3 Should the Contractor fail to substantially complete the Work on or before the date stipulated as a Milestone date in Article 4.3 above, or for Substantial Completion (or such later date as may result from an extension of time granted by the Owner), the Contractor shall (upon staff's recommendation to and approval by the Board of County Commissioners) pay the Owner as liquidated damages the sum of $500 for each consecutive calendar day that terms of the contract remain unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which the owner will sustain per day by failure of the Contractor to complete within time as stipulated; it being recognized by the Owner and the Contractor that the injury to the Owner which could result from a failure of the Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall cost for liquidated damages be construed as a penalty on the Contractor. The Owner may deduct any Liquidated Damages incurred under this paragraph from pending Payment Applications.

4.4 For each consecutive calendar day that the Work remains incomplete after the date established for Final Completion, the Owner shall (upon staff's recommendation to and approval by the Board of County Commissioners) retain from the compensation otherwise to be paid to the Contractor the sum of $500. This amount is the minimum measure of damages the Owner will sustain as a failure of the Contractor to complete all remedial work, correct deficient work, clean up the project and other miscellaneous tasks as required to complete all work specified. This amount is in addition to the liquidated damages prescribed above and represents compensation for additional costs the Owner could incur or suffer caused by on-going construction while occupying the Project. Such costs could include, but are not limited to, additional inspections, additional security and safety measures, temporary facilities or structures, reduced employee efficiency, additional operating costs, employee overtime, split shift, insurance, etc.

4.5 The amount of liquidated damages set forth in Articles 4.4 and 4.5 hereinabove shall be assessed cumulatively. The items of cost included in the assessment of liquidated

damages are as defined in the General Provisions.

Article 5
CONTRACT SUM

5.1 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Modification or as otherwise provided in the Contract Documents, the Owner shall pay to the Contractor, in current funds and at the time and in the installments hereinafter specified, for the actual quantities of all work satisfactorily completed and accepted at the unit prices bid of established by change order herein referred to as the "Contract Sum" for the **Rehabilitation of Runway 14-32 in the amount of $4,001,396.35**

Article 6
PROGRESS PAYMENTS

6.1 The Contractor hereby agrees that on or about the last day of every month during the performance of the Work the Contractor will deliver to the DESIGN CONSULTANT an Application for Payment of the work for the preceding thirty (30) days in accordance with the provisions of Article 9 of the General Provisions. This date may be changed upon mutual agreement, stated in writing, between the Owner and Contractor. Payment under this Contract shall be made as provided in the General Provisions and in accordance with Florida Statutes.

Article 7
OTHER REQUIREMENTS

7.1 The Contractor shall submit certified copies of the recorded Performance Bond and Payment Bond, as well as Certifications of Insurance as required by the Contract Documents *prior to commencing work on the jobsite.*

7.2 The Owner shall furnish to the Contractor, at the Contractor's request, any leftover/returned set(s) of drawings and specifications, at no extra cost, for use in the Construction of the Work. Additional sets of drawings or specifications shall be obtained by the Contractor at the Contractor's own expense.

7.3 The Contractor shall perform at least ten percent (10%) of the total Work with forces that are in the direct employment of the Contractor's organization.

This Agreement entered into as of the day and year first written above.

ATTEST:

Scott Ellis, Clerk

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

By: _____
Rita Pritchett, Chair

As approved by the Board on: September 19, 2017

ATTEST:

Dickerson Florida, Inc.

By: _____

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

PERFORMANCE AND PAYMENT BOND

(Public Work)

In compliance with F.S. Chapter 255.05(1)(a)

BOND NO.: 106609276

CONTRACTOR NAME: Dickerson Florida, Inc.

CONTRACTOR ADDRESS: P. O. Box 910
Fort Pierce, Florida 34954

CONTRACTOR PHONE NO.: 772-429-4444

SURETY COMPANY: Travelers Casualty and Surety Company of America
One Tower Square
Hartford, Connecticut 06183

SURETY AGENT: Surety Agency, LLC
552-B New Haw Creek Road
Asheville, N. C. 28805

SURETY AGENT PHONE NO.: 828-236-1000

OWNER NAME: Brevard County Board of County Commissioners

OWNER ADDRESS: 2725 Judge Fran Jamieson Way
Viera, Florida 32940

OWNER PHONE NO.: 321-952-4590

OBLIGEE NAME:(If contracting entity is different from owner,the contracting public entity)

OBLIGEE ADDRESS:

OBLIGEE PHONE NO.:

BOND AMOUNT: $4,001,396.35

CONTRACT NO.:(If applicable)

DESCRIPTION OF WORK: Runway Rehabilitation

PROJECT ADDRESS: Valkaria Airport
No. 1 Pilots Place
Valkaria, Florida 32950

LEGAL DESCRIPTION: Runway 14-32 Rehabilitation, Valkaria Airport
Valkaria, Florida 32950

FRONT PAGE

All other bond page(s) are deemed subsequent to this page regardless of any page number(s) that may be pre-printed thereon

PUBLIC CONSTRUCTION PAYMENT BOND

BY THIS BOND, We Dickerson Florida, Inc., as Principal and Travelers Casualty and Surety Company of America, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of Four Million one thousand three hundred ninety six and 35/100 Dollars ($ 4,001,396.35), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract dated December 7, 20 17, between Principal and Owner for construction of Runway 14-32 Rehabilitation, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this 7th day of December, 20 17.

Witness:

Antoinette Peters

Witness:

Susan R. Russell

Dickerson Florida, Inc.
Principal Seal

Its: [signature]
Title PRESIDENT

Travelers Casualty and Surety Company of America
Surety Seal

Its: Karen K. Beard
Title Karen K. Beard, Attorney-in-Fact and Florida Licensed Agent

PUBLIC CONSTRUCTION PERFORMANCE BOND

BY THIS BOND, We Dickerson Florida, Inc., as Principal and Travelers Casualty and Surety Company of America, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of Four million one thousand three hundred ninety six and 35/100 Dollars ($ 4,001,396.35), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Performs promptly, completely and faithfully the contract dated December 7, 20 17 between Principal and Owner for construction of Runway 14-32 Rehabilitation the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract including the delivery, execution and performance of any warranty work required by the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under the contract; and
3. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this 7th day of December, 20 17.

Witness: Antoinette Peters

Witness: Susan R. Russell

Dickerson Florida, Inc.
Principal Seal
Its: [signature]
Title PRESIDENT

Travelers Casualty and Surety Company of America
Surety Seal
Its: Karen K. Beard
Title Karen K. Beard, Attorney-in-Fact and Florida Licensed Agent

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

TRAVELERS

POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 223206

Certificate No. 006731579

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Karen K. Beard

of the City of Asheville, State of North Carolina, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 11th day of March, 2016.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

State of Connecticut
City of Hartford ss.

By: _____
Robert L. Raney, Senior Vice President

On this the 11th day of March, 2016, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.

Marie C. Tetreault, Notary Public

58440-8-12 Printed in U.S.A.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 7th day of December, 20 12.

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

GENERAL PROVISIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Performance and Labor and Material Payment Bonds, Bid Bond, the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order issued pursuant to the provisions of Article 12, (3) a written order for a minor change in the Work issued by the Design Consultant pursuant to Article 12. The Contract Documents include Bidding Documents such as the Invitation or Advertisement for Bids, the Information to Bidders, sample forms, the Contractor's Bid or portions of Addenda relating to any of these.

The Contract Documents do not include any other documents, including but not limited to soils, geotechnical or other reports, boundary or other surveys and analyses, hereinafter "technical data"; which may be printed, bound or assembled with the contract documents, or otherwise made available to the Contractor for review or information under this Contract, unless specifically enumerated and expressly incorporated by reference in the Owner-Contractor Agreement.

The Contractor may rely upon the general accuracy of the technical data contained in such reports and drawings, but such reports and drawings are not contract documents. Such technical data is identified in the Supplementary Conditions. Except for such reliance on such technical data, the Contractor may not rely upon or make any claim against Owner with respect to:

A. The completeness of such reports and drawings for Contractor's purposes, including but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by the Contractor and safety precautions and programs incident thereto, or;

B. Other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or;

C. Any Contractor interpretation of or conclusion drawn from any technical data or any such data, interpretations, opinions or information.

1. The Drawings and Specifications referred to in the Contract Documents have been prepared by AVCON, Inc.

1.1.2 THE CONTRACT

The Contract is the sum of all the Contract Documents. This Contract represents the entire and integrated Agreement between the Owner and the Contractor and

supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1 and notwithstanding anything contained in the Contract Documents to the contrary, there can be no increase in the Contract Sum or Time without an executed change order approved by the Board of County Commissioners and the Florida Department of Transportation.

1.1.3 THE WORK

The Work comprises the completed construction required by the Contract Documents and includes all labor, supplies and other facilities or things necessary to produce such construction, and all materials, equipment, and supplies incorporated or to be incorporated in such construction.

1.1.4 FURNISH, INSTALL, PROVIDE

The terms "Furnish" or "Install" or "Provide", unless specifically limited in context, mean: Furnishing and incorporating a specified item, product or material in the work, including all necessary labor, materials, equipment to perform the work required, ready for use.

1.1.5 NOTICE

The term "Notice" as used herein shall mean written notice. Written notice shall be deemed to have been duly served when delivered to or at the last known business address of the person, firm or corporation for whom intended, or to their or its duly authorized agent, representative or officer; or when enclosed in a postage prepaid wrapper or envelope addressed to such person, firm or corporation at their or its last known business address and deposited in a United States mailbox.

1.1.6 MISCELLANEOUS WORDS OR TERMS

Whenever they refer to the work or its performance, "Directed", "Required", "Permitted", "Ordered", "Designated", "Prescribed", and words of like import shall imply the direction, requirements, permission, order, designation or prescription of the Owner or Design Consultant, and "Approved", "Acceptable", "Satisfactory", "in the judgment of" and words of like import shall mean approved by or acceptable to or satisfactory to, in the judgment of the Owner.

1.1.7 BIDDER: Any individual, company, corporation, partnership, or joint venture who submits a bid for work required as distinct from a sub-bidder who submits a bid to a prime bidder.

1.1.8 BIDDING DOCUMENTS: The Invitation or Advertisement for Bid, Contractor's Qualification Statement, Information to Bidders, Sample Forms, Proposal, Specifications, Drawings and Addenda issued prior to receipt of bids.

1.1.9 DIRECTED, REQUIRED, ACCEPTABLE: When these words refer to work or its performance, "directed," "required," "permitted," "ordered," "designated," "prescribed," and words of like implication, mean "by direction of," "requirements of," "permission of," "order of," "designation of," or "prescription of" the Design Consultant. Likewise, "acceptable," "satisfactory," "in the judgement of," and words of like import, mean "recommended by," "acceptable to," "satisfactory to," or "in the judgement of" the Design Consultant.

1.1.10 AS SHOWN, AS INDICATED, AS DETAILED: These words, and words of like implication, refer to information contained by drawings describing the work, unless explicitly stated otherwise in other Contract Documents.

1.1.11 MANUFACTURER: An individual, company, or corporation who manufactures, fabricates, or assembles a standard product. A standard product is one that is not made to special design, and is furnished by either direct sale or by contract to the Contractor, Subcontractor or Vendor.

1.1.12 MATERIAL SUPPLIER OR VENDOR: A person or organization who supplies, but who is not responsible for the installation of, materials, products and equipment of a standard nature that are not specifically fabricated for this particular Contract.

1.1.13 PLANS OR DRAWINGS: All drawings or reproduction of drawings pertaining to required work.

1.1.14 PRODUCT: The term "product" includes materials, systems and equipment.

1.1.15 PROPOSAL: A complete and properly signed document whereby a bidder proposes to do the work or designated portion thereof for the sums stipulated therein, supported by data called for by the bidding requirements.

1.1.16 SPECIFICATIONS: Descriptions, provisions and requirements, pertaining to method and manner of performing work, or to quantities and qualities of materials to be furnished under terms of the Contract.

1.1.17 DAY: Calendar day unless otherwise specifically designated. All dates shall mean midnight of the indicated day unless otherwise stipulated.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed in not less than triplicate by the Owner and Contractor and each of which shall be deemed an original, but all of which shall constitute one and the same instrument. If either the Owner or the Contractor or both do not sign the Contract Documents, then they shall be as described in Paragraph 1.1.1.

1.2.2 By executing the Contract, the Contractor represents that the Contractor has visited the site, and become familiar with the local conditions under which the Work is to be performed, and correlated observations with the requirements of the Contract Documents. Contractor further represents that the Design Drawings and Specifications contain some minor errors and discrepancies, however, if such errors or discrepancies would affect contract time or price, the Contractor addressed them during the bidding phase. Such errors and discrepancies shall not form the basis of any claim by Contractor for defective design or breach of any implied warranties as to fitness of plans or specifications against Owner.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings unless

otherwise specifically defined herein. The table of contents, index, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light upon the interpretation of the provisions to which they refer.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings is for clarity only, and shall not control the Contractor in dividing the work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor may subcontract the Work in such divisions as the Contractor sees fit and the Contractor is ultimately responsible for furnishing all work shown on the drawings and/or in the Specifications.

1.2.5 Anything shown on the drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or mentioned respectively in both. Technical specifications take priority over general specifications and detail drawings take precedence over general drawings. Any work shown on one drawing shall be construed to be shown in all drawings and the contractor will coordinate the work and the drawings. If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: The Owner- Contractor Agreement; Modifications; Addenda; any Supplementary Conditions; the General Provisions; the Specifications; the Drawings; as between schedules and information given on Drawings, the schedules shall govern; as between figures given on Drawings and the scaled measurements, the figures shall govern; as between large-scale Drawings and small scale Drawings, the larger scale shall govern. Any such conflict or inconsistency between or in the drawings shall be submitted to the Design Consultant whose decision thereon shall be final and conclusive.

1.2.6 The Contractor agrees that nothing contained in the Contract Documents or any contract between the Owner and the Design Consultant shall create any contractual relationship between the Design Consultant and the Contractor and any Subcontractor or Sub-subcontractors. The Contractor acknowledges and agrees that this Contract is not intended to create, nor shall any provision be interpreted as creating, any contractual relationship between the Owner or Contractor and any third parties.

1.2.7 The provisions of this Contract cannot be amended, modified, varied or waived by the Owner or its agents or representatives in any respect except by a modification approved and executed by the Brevard County Board of County Commissioners. The Contractor is hereby given notice that no person has authority to orally waive, or to release the Contractor from any of the Contractor's duties or to alter obligations under or arising out of this Contract. Any waiver, approval or consent granted by Modification to the Contractor shall be limited to those matters specifically and expressly stated thereby to be waived, approved or consented to and shall not relieve the Contractor of the obligation to obtain any future waiver, approval or consent.

1.2.8 Any material or operation specified by reference to published specifications of a manufacturer, a society, an association, a code, or other published standard, shall comply with requirements of the listed document which is current on date of receipt of bids. In case of a conflict between referenced document and project specifications, project specifications shall govern. In case of a conflict between

referenced documents, the one having more stringent requirements shall govern.

1.2.9 The Contractor, if requested, shall furnish an affidavit from manufacturer certifying that materials or product delivered to job meets requirements specified.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All Drawings, Specifications and copies thereof furnished to the Contractor are and shall remain the property of the Design Consultant and/or Owner. They are to be used only with respect to this Project and are not to be used on any other project. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Design Consultant on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design Consultant's common law copyright or other reserved rights.

ARTICLE 2

THE DESIGN CONSULTANT

2.1 DEFINITIONS

2.1.1 The terms "Design Consultant" or "A/E" or "Architect" or "Engineer" as used or set forth in the Contract Documents, shall mean the entity and its consulting firm or agencies, or their duly authorized representatives, that is responsible for designing or engineering the work, and performing the activities specified herein, as identified in the Owner-Contractor Agreement, including any consulting-engineers or subcontractors to said entity or firm. Such firm or agency and its representatives shall act severally within the scope of particular duties entrusted to them, unless otherwise provided for in the Contract.

2.1.2 The Design Consultant is identified in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The Design Consultant is further described as and, throughout this document, shall mean one or both of the following:

2.1.2.1 ARCHITECT, a person or other legal entity lawfully licensed to practice architecture in the state wherein the Project is located; or

2.1.2.2 ENGINEER, a person or other legal entity lawfully licensed to practice engineering in the state wherein the Project is located.

2.1.3 DESIGN CONSULTANT AVCON Inc.

2.2 SERVICES OF THE DESIGN CONSULTANT

2.2.1 The Design Consultant will provide certain services as hereinafter described.

2.2.2 Should errors, omissions, or conflicts in the Drawings, Specifications, or other Contract Documents prepared by the Design Consultant be discovered, the Design Consultant will prepare such amendments or supplementary documents and provide consultation as may be required.

2.2.3 The Design Consultant will visit the site at intervals appropriate to the stage of construction to familiarize itself generally with the progress and quality of the

Work. The Design Consultant will not be required to make exhaustive or continuous on-site inspections to check the quality and quantity of the Work, but shall make as many inspections as may reasonably be required to fulfill its obligations to the Owner. On the basis of such on-site observations and his powers under the Contract, the Design Consultant shall endeavor to secure the faithful performance of the Contract by Owner and Contractor. The Design Consultant shall:

- determine the progress and quality of the Work, subject to the right of the Owner to make an overriding decision to the contrary;
- interpret the requirements of the drawings and specifications and issue supplemental instructions to the Contractor as may be required;
- recommend to the Owner suspension of the Work (in whole or in part) whenever such suspension may be necessary to ensure the proper execution of the Contract;
- have authority to reject, in writing, Work which does not conform to the requirements of the drawings and specifications.

The Design Consultant shall have no authority to approve or order changes in the Work which alter the design concept or which call for an extension of time or a change in the contract price. Upon request, the Design Consultant shall confirm, in writing, within ten (10) days, any oral order or determination made by the Design Consultant.

2.2.4 The Design Consultant will render written field reports to the Owner in the form required by the Owner relating to the periodic visits and inspections of the Project required by Subparagraph 2.2.3.

2.2.5 The Design Consultant and Owner shall at all times have access to the Work wherever it is in preparation or progress. The Contractor shall provide safe facilities for such access so the Design Consultant may perform the Design Consultant's functions under the Contract Documents.

2.2.6 As required, the Design Consultant will render to the Owner, within a reasonable time, interpretations concerning the design and other technical aspects of the Work and the Contract Documents.

2.2.7 All communications, correspondence, submittals, and documents exchanged between the Design Consultant and the Contractor in connection with the Project shall be copied to the Owner and/or in a manner prescribed by the Owner.

2.2.8 Although the Owner is bound by the terms of the Contract with the Contractor, including the drawings and specifications, the Owner shall have the right, but not the duty, to countermand any decision of the Design Consultant and to follow or reject the advice of the Design Consultant, including but not limited to acceptance of the Work, as the Owner deems best. In those instances where the Design Consultant has been given authority to inspect, recommend, make a decision, etc., the Design Consultant shall promptly do so, but in the case of disagreement between them, the decision of the Owner shall be final. The party taking issue with the determination, interpretation or decision of the Design Consultant shall give the other party written notice of such fact within seven (7) calendar days after the determination, interpretation or decision is communicated by the Design Consultant. In the actual performance of the Work, however, the Contractor shall, in the first instance, proceed in accordance with the instructions given by the Design Consultant unless the Owner and the Contractor mutually agree that the Contractor shall proceed otherwise.

2.2.9 The Design Consultant's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.

2.2.10 All orders from the Owner to the Contractor shall either be transmitted through the Design Consultant or the Design Consultant shall be informed of the order by the Owner.

2.2.11 The Design Consultant shall provide to the Owner and the Contractor after each visit to the site, a written report indicating the date, time of day, weather conditions and the names of the persons representing the Design Consultant who participated in the visit. The report shall advise the Owner of any problems that were noted and shall compare the Design Consultant's observations of the actual progress of the Work with that reported by the Contractor. On the basis of the Design Consultant's on-site observations, the Design Consultant shall make every reasonable effort to guard the Owner against defects and deficiencies in the Work of the Contractor. If the Design Consultant observes any Work that does not conform to the Contract Documents, the Design Consultant shall report this observation to the Contractor and Owner. The Design Consultant will prepare and submit to the Contractor and Owner a field report which will identify the Contractor's Work which is not in conformance with the Contract Documents. The Design Consultant shall have reasonable time to complete the field report. The Contractor shall, upon receipt of the field report, cause the defective, omitted or non-conforming work listed in the field report to be corrected and/or completed, and its acceptance acknowledged before.

2.2.12 The Design Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures (other than those expressly specified in the Contract Documents), or for safety precautions and programs in connection with the Work, and the Design Consultant shall not be responsible for the Contractor's failure to carry out the Contractor's own responsibilities.

2.2.13 The Design Consultant shall have the authority and responsibility to inspect the Work, to note and report defective Work and deviations from the Contract Documents to the Owner, to reject same, and to recommend to the Owner the suspension of the Work when necessary to prevent defective Work from proceeding or being covered.

2.2.14 All material and workmanship shall be subject to inspection, examination and test by the Owner and/or its Design Consultant at any and all times during manufacture and/or construction. The Design Consultant shall have authority to reject defective materials and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected materials shall be satisfactorily replaced with proper material without charge therefore and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in the General Provisions, the Contractor and surety being liable for any damages.

2.2.15 Jobsite inspections, tests conducted on site or tests of materials gathered on site, which the Contract requires to be performed by independent entities, shall be contracted and paid for by the Owner, unless specified otherwise. Examples of such tests are the testing of cast in-place concrete, foundation materials, soil

compaction, pile installations, caisson bearings and steel framing connections. Although conducted by independent testing entities, the Owner will not contract and pay for test or certifications of materials, manufactured products or assemblies which the Contact, codes, standards, etc., require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or ASTM. If there are any fees to be paid for such tests and certifications, they will be paid by the Contractor. The Contractor shall also pay for inspections, tests and certifications which the Contract specifically requires the Contractor to perform or pay, together with any inspections and tests which the Contractor chooses to perform for the Contractor's own quality control purposes. The Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor and materials necessary and convenient for making such tests. Except as provided below, whenever such examination and testing finds defective materials, equipment or workmanship, the Contractor shall reimburse the Owner for all costs of re-examination and re-testing.

2.2.16 Should it be considered necessary or advisable by the Owner or the Design Consultant at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, the Contractor shall, on request, promptly furnish all necessary facilities, labor and materials to expose the Work to be tested to the extent required. If such Work is found to be defective in any respect, due to the fault of the Contractor or his subcontractors, the Contractor shall pay all expenses of uncovering and identifying the Work, of examination and testing, and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, the actual cost of the Contractor's labor and material necessary involved in uncovering the Work, the cost of examination and testing and Contractor's cost of material and labor necessary for replacement shall be paid to the Contractor and the Contractor shall, in addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time.

2.2.17 The Design Consultant will recommend to the Owner that the Work be suspended when in the Design Consultant's judgment the drawings and specifications are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the Owner. The cost of any such Work stoppage shall be borne by the Contractor unless it is later determined that no fault existed in the Contractor's Work.

2.2.18 The Design Consultant will review Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and for general compliance with the Contract Documents. Such action shall be taken within **fourteen (14) days** of receipt unless specified otherwise.

2.2.19 The Owner will establish with the Design Consultant procedures to be followed for review and processing of all Shop Drawings, catalog submittals, project reports, test reports, maintenance manuals, and other necessary documentation, as well as requests for changes and applications for extensions of time.

2.2.20 The Design Consultant will review Change Orders as required under the Contract Documents.

2.2.21 The Design Consultant and the Owner will conduct inspections to determine the dates of Substantial Completion and Final Completion, and will jointly issue a final Certificate for Payment. The Design Consultant and Owner shall be responsible for issuance of Certificates of Substantial and Final Completion.

2.2.22 The Design Consultant will prepare a set of reproducible record prints of Drawings showing significant changes in the Work made during the construction process, based on neatly and clearly marked-up prints, Drawings, and other data furnished by the Contractor. The Design Consultant will also provide the Owner assistance in the original operation of any equipment or system such as initial start-up, testing, adjusting, and balancing.

2.2.23 In case of the termination of the employment of the Design Consultant, the Owner may appoint a new Design Consultant whose status under the Contract Documents shall be that of the former Design Consultant, or the Owner may assume all of the services of the Design Consultant thereafter.

ARTICLE 3

OWNER

3.1 DEFINITION

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is represented by the Facilities Construction Division. The Owner is referred to throughout the Contract Documents as if singular in number.

3.1.2 Owner: **Brevard County Board of County Commissioners**
Valkaria Airport (X59(
Attn: Steve Borowski, Airport Manager
No. 1 Pilots Place
Valkaria, FL 32950
(321)952-4590; Fax (321)952-4592

3.2 CONSTRUCTION PROGRAM MANAGER (IF APPLICABLE)

3.2.1 The Owner may contract with a Construction Program Manager who will assist and advise the Owner during Project construction and until the issuance of the final Certificate for Payment. If a Construction Program Manager is utilized, the Owner's communications with the Contractor and the Design Consultant shall generally be through the Construction Program Manager, who will assist the Owner with regard to the Project. The Owner must approve all payments to the Contractor and, notwithstanding anything in the Contract Documents to the contrary, **only the Brevard County Board of County Commissioners has the authority to authorize or issue Change Orders.** Neither the Design Consultant nor Construction Program Manager shall have any authority to authorize or issue change orders. If applicable, all of the Contractor's communications to the Owner or to the Design Consultant shall be exclusively through the Construction Program Manager.

3.2.2 The Construction Program Manager, **if applicable**, will represent the Owner, but the Owner has the right but not the duty to countermand any decision or action of the Construction Program Manager, and to follow or reject the advice of the Construction Program Manager. The Construction Program Manager is not authorized to revoke, alter, change, relax, or release any requirements of the Contract, nor to approve or accept any portion of the Work not performed in accordance with, nor to issue instructions contrary to, the Contract Documents.

3.3 INFORMATION, SERVICES AND RIGHTS OF THE OWNER

3.3.1 The Owner will provide administration of the Contract as hereinafter described.

3.3.2 The Owner shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.

3.3.3 Owner shall not be responsible for or have control or charge of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with Work, and will not be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents.

3.3.4 The Owner or Design Consultant will have authority to require special inspection or testing of the work in accordance with Subparagraph 2.2.14, whether or not such Work has been fabricated, installed, or completed. However, neither the Owner's or Design Consultant's authority to act under this Subparagraph, nor any decision made by the Owner or Design Consultant in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Owner or Design Consultant to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

3.3.5 The Owner shall have the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors, and the Design Consultant, to discuss such matters as procedures, progress, problems, and scheduling.

3.3.5.1 Each Contractor is requested and required to attend scheduled job site progress conferences as called by the Design Consultant. Contractor shall be represented at these job progress conferences by an authorized representative of the home office of the Contractor as well as by project personnel representatives. These meetings shall be open to subcontractors and material suppliers, and any others who can contribute shall be encouraged by Contractor to attend. It shall be the principal purpose of these meetings, or conferences, to affect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the project on schedule and to complete the project within the specified Contract Time. Each Contractor shall be prepared to assist progress of the work and to recommend remedial measures for the correction of progress as may be appropriate. The Owner shall be the coordinator of the conferences and shall preside as chairman or assign the responsibility to the Design Consultant.

3.3.6 The Owner, with the Design Consultant's assistance, will establish procedures to be followed for processing all Shop Drawings, catalogs, pay requests, change orders, test reports, maintenance manuals, and any other project reports and/or documentation.

3.3.7 The Design Consultant will review and make recommendations regarding all requests for changes and the Design Consultant shall implement the processing of Change Orders, including applications for extension of the Contract Time.

3.3.8 The Owner, however, will not be responsible for the failure of Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet scheduled completion dates or the failure of the Contractor to schedule and coordinate the Work of the Contractor's own trades and Subcontractors or to coordinate and cooperate with other separate contractors.

3.3.9 The Owner, in consultation with the Design Consultant, will each review and

process all Applications for Payment by the Contractor, including the final Application for Payment **within seven (7) calendar days**.

3.3.10 The Owner and Design Consultant shall not be responsible or liable to Contractor for the acts, errors or omissions of the Contractor, any separate Subcontractor, any separate contractor or any contractor's or subcontractor's agents or employees, or any other persons performing any of the Work.

3.3.11 The Owner shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project. Such documents are not part of the Contract Documents and are provided for Contractor's information only.

3.3.12 The Owner shall secure and pay for necessary easements required for permanent structures or for permanent changes in existing facilities. The Contractor shall provide all necessary as-built legal descriptions and documentation required for applicable easements, on a timely basis in order to avoid any adverse impact on project schedule.

3.3.13 The Owner will make available for the Contractor's reasonable review, at the Owner's offices or together with the Contract Documents, certain boring logs, geotechnical, soils and other reports, surveys and analyses pertaining to the Contract site of which the Owner is aware and has in its possession. Any boring logs that are provided to the Contractor are only intended to reflect conditions at the locations of the borings and do not necessarily reflect site conditions at other locations. Any reports, surveys, boring logs and analyses provided by Owner are for the Contractor's information only, and their accuracy and completeness are not guaranteed or warranted by the Owner or the Design Consultant, and such reports are not adopted by reference into, nor are they part of the Contract Documents. Notwithstanding any factual statement, conclusion, or any language or recommendations contained in such reports, the Contractor assumes full responsibility for inspection of the site and determination of the character, legal limits, quality and quantity of any soil, surface or subsurface conditions that may be encountered or which may affect the Work, and for the means and methods of construction that the Contractor employs when performing the Work.

3.3.14 The foregoing rights are in addition to other rights of the Owner enumerated herein and those provided by law.

3.4 OWNER'S RIGHT TO STOP OR TO SUSPEND THE WORK

3.4.1 If Contractor fails to correct defective Work as required by Paragraph 13.2 or fails to carry out the Work or supply labor and materials in accordance with the Contract Documents, the Owner by a written order may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

3.4.2 The Owner may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as the Owner may determine to be appropriate for the convenience of the Owner.

3.4.3 If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Owner or the Design Consultant in the administration of this Contract, or by failure of any one of them to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for an increase in the actual time

required for performance of the Work by the Contractor, due solely to such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no claim for an extension of time shall be made under this Subparagraph 3.4.3 for any suspension, delay, or interruption pursuant to Subparagraph 3.4.1, or for which claim is provided or excluded under any other provision of this Contract. No claim under this Subparagraph shall be allowed for an extension of time required for performance, unless the claim for an extension of time is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, or no later than 20 days after the act or failure to act involved. The Contractor must submit to the Owner a written statement setting forth, as then practicable, the extent of such claimed time extension. Any time extension granted shall only be for the unreasonable portion of the delay to critical work activities and in accordance with Article 8 hereof.

3.4.4 In the event of a suspension of work or delay or interruption of work per Article 3.4.3, the Contractor will and will cause the Contractor's subcontractors to protect materials and work against damage or injury from the weather and maintain completed and uncompleted portions of the work as required by the Contract Documents. If, in the opinion of the Owner any work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of its subcontractors to so protect same, such work and materials shall be removed and replaced at the expense of the Contractor.

3.4.5 No claim by the Contractor for an equitable adjustment under Subparagraph 3.4.3 shall be allowed if asserted after final payment under this Contract.

3.5 OWNER'S RIGHT TO CARRY OUT THE WORK

3.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seventy two (72) hours after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, with a copy of such notice sent to the Contractor's surety, and without prejudice to any other remedy, make good such deficiencies and may further elect to complete all Work or any portion thereof, through such means as the Owner may select, including the use of a new contractor pursuant to Article 3.5.2. In such case the Owner shall provide notice to the Contractor's surety and an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Design Consultant's, the Owner's additional services made necessary by such default, neglect or failure. Notwithstanding the Owner's right to carry out a portion of the work, maintenance and protection of the work remains the Contractor's and Surety's responsibility as provided for in the Performance Bond and Guarantee of Contractor.

3.5.2 Whenever the Contractor is declared by the Owner to be in default under the Contract, the Surety shall promptly remedy the default, or shall promptly:

1) Complete the Contract in accordance with its terms and conditions, or,

2) Obtain a bid or bids for completing Contract in accordance with its terms and conditions upon determination by Owner and Surety jointly of lowest qualified bidder, arrange for a contract between such bidder and Surety to complete Work and provide any required warranty work on service.

ARTICLE 4

CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or organization identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The term Contractor means the Contractor or its authorized representative, who shall have authority to bind the Contractor in all matters pertinent to this Contract.

4.1.2 This entire Contract is not one of agency by the Contractor for Owner but one in which Contractor is engaged independently in the business of providing the services and performing the Work herein described as an independent contractor.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 Before placing a proposal to the Owner, and continuously after execution of the Contract, the Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner through the Design Consultant any error, inconsistency or omission the Contractor may discover, including any requirement which may be contrary to any law, ordinance, rule, regulation or order of any public authority bearing on the performance of the Work. If the Contractor has reported in writing an error, inconsistency or omission, has promptly stopped the affected work until otherwise instructed, and has otherwise followed the instructions of the Owner, the Contractor shall not be liable to the Owner or the Design Consultant for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the Work at any time without being awarded the Contract and receiving a Notice to Proceed under these Contract Documents, and, where required, possessing approved Shop Drawings, Product Data or Samples for such portion of the Work.

4.2.2 The Contractor and all Subcontractors shall keep at the site of the Work at least one copy of an approved set of drawings and specifications, including all modifications and clarifications, and approved submittals and shall at all times give the Owner and the Design Consultant, inspectors, as well as other representatives of the Owner access thereto.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures of construction and for coordinating all portions of the Work under the Contract.

4.3.1.1 It shall be the responsibility of the Contractor to coordinate the work with other Prime Contractors; to maintain a progress schedule for all Prime Contractors for this project; and to notify the Owner and the Design Consultant of any changes in the progress schedule. The Contractor shall be responsible for providing adequate notice to all Prime Contractors to insure efficient continuity of all phases of the project work. Each other Prime Contractor is held responsible for keeping the Contractor fully informed as to its work progress, including immediate notification of any work progress changes.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, Subcontractors and Sub- subcontractors, suppliers, their agents and employees, and other persons performing any of the Work and for their compliance with each and every requirement of the Contract Documents, in the same manner as if they were directly employed by the Contractor.

4.3.3 The Contractor shall not be relieved from any obligations to perform the Work in accordance with the Contract Documents either by the acts, failures to act or duties of the Owner or the Design Consultant in their administration of the Contract, or by inspections (or lack thereof), tests or approvals (or lack thereof) required or performed under Paragraph 7.6 by persons other than the Contractor.

4.3.4 Before starting any section of work, the Contractor shall carefully examine all preparatory work that has been executed to receive the Contractor's work to see that it has been completed in accordance with the Contract Documents. The Contractor shall check carefully, by whatever means are required, to ensure that all Work and adjacent, related work will finish to proper and required standards for quality, contours, planes, and levels.

4.3.5 The Contractor understands and agrees that the Owner and Design Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and they will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner and the Design Consultant will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

4.3.6 The Contractor shall employ no plant, equipment, materials, methods or persons to which the Owner and Design Consultant have a reasonable objection and shall remove no portion of the Work or stored materials from the site of the Work.

4.4 CONTRACTOR'S REPRESENTATIONS

4.4.1 By entering into this Contract with the Owner, the Contractor represents and warrants the following, together with all other representations and warranties in the Contract Documents:

.1 that the Contractor is experienced in and competent to perform the type of work required and to furnish the plant, materials, supplies or equipment to be so performed or furnished by the Contractor;

.2 that the Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to initiate and complete the Work required under the Contract;

.3 that the Contractor is familiar with all Federal, State, and County laws, ordinances, permits, regulations and resolutions which may in any way affect the Work or those employed therein, including but not limited to any special laws or regulations relating to the Work or any part thereof;

.4 that such temporary and permanent work required by the Contract Documents which is to be done by the Contractor will be satisfactorily constructed and fit for use for its intended purpose and that such

construction will not injure any person, or damage any property;

.5 that the Contractor has carefully examined the Contract Documents and the site of the Work and that from those investigations, the Contractor is satisfied and familiar with: (1) the nature and location of the Work; (2) the character, legal limits, quality and quantity of surface and subsurface materials likely to be encountered, including, but not limited to, all structures and obstructions on or at the project site, both natural and man-made; (3) the character of equipment and other facilities needed for the performance of the Work; (4) the general and local conditions including without limitation its climatic conditions, the availability and cost of labor and the availability and cost of materials, tools and equipment; (5) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the work in the manner required by the Contract Documents; and (6) all other matters or things which could in any manner affect the performance of the Work;

.6 that the Contractor will fully comply with all requirements of the Contract Documents;

.7 that the Contractor will perform the Work consistent with good workmanship, sound business practice, and in the most expeditious and economical manner consistent with the best interests of the Owner:

.8 that the Contractor will furnish efficient business administration and experienced superintendence and an adequate supply of workers, equipment, tools and materials at all times;

Per Board of County Commissioners October 7, 1997 meeting: "The Contractor will provide all subcontractors and suppliers with a copy of the Payment Bond required for this project, and of notices required to make a claim under such bond;"

.9 that the Contractor has carefully reviewed the Work required and that the Work can be planned and executed in a normal and orderly sequence of Work and reasonably scheduled so as to ensure completion of the work in accordance with the Contract Documents, allowing for normal and reasonably foreseeable weather, labor and other delays, interruptions and disruptions of the Work;

.10 that the Contractor will complete the Work within the Contract Time and all portions thereof within any required Contract milestones: and

.11 that his Contract price is based upon the labor, materials, systems and equipment required by or reasonably inferable from the Contract Documents, without exception.

4.5 LABOR AND MATERIALS

4.5.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, supplies, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary or proper for or incidental to the execution and completion of the Work required by and in accordance with the Contract Documents and any applicable code or statute, whether specifically required by the Contract Documents or whether their provision may reasonably be inferred

as necessary to produce the intended results, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Final payment will not be made until the Work is so completed. The Contractor hereby acknowledges that its bid price is not based upon any claim to the land, timber, soils or other resources at the Construction site, except to the use of soils for necessary site work unless specified otherwise in the drawings and/or specifications.

4.5.2 The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit subcontractor or person or anyone not skilled in the task assigned. The Owner may, by notice in writing, require the Contractor to remove from the work any subcontractor or employee the Owner deems incompetent, careless or otherwise objectionable and Contractor shall provide for this contingency in all Subcontracts.

4.5.3 The Contractor shall be responsible for ensuring that the work is completed in a skillful and workmanlike manner.

4.5.4 The Contractor shall perform at least that percentage of the Work, if any, specified in Article 7 of the Owner-Contractor Agreement, with forces that are in the direct employment of the Contractor's organization. The Contractor shall submit to the Owner and/or Construction Program Manager within thirty (30) calendar days after award of the Contract for the Work, and prior to the first Application for Payment, an identification and percentage of the Work to be performed by the Contractor with his own forces. The Contractor shall also identify the Work and percentage of Work to be performed by MBE and WBE subcontractors and vendors. The percentage of the Work to be performed shall be calculated by adding the amount of work performed and dividing this sum by the total amount of the Contract. No portion of the Contract shall be subcontracted or otherwise performed by a party not the Contractor, except with the written consent of the Owner.

4.5.5 All equipment, apparatus and/or devices of any kind to be incorporated into the work that are shown or indicated on the drawings or called for in the specifications or required for the completion of the work shall be entirely satisfactory to the Owner and the Design Consultant as regards operations, capacity and/or performance. No approval, either written or verbal, of any drawings, descriptive data or samples of such equipment, apparatus and/or device shall relieve the Contractor of the responsibility to turn over the same in good working order for its intended purpose at the completion of the Work in complete accordance with the Contract Documents. Any equipment, apparatus and/or device not fulfilling these requirements shall be removed and replaced by proper and acceptable equipment, etc. or put in good working order satisfactory to the Owner and Design Consultant without additional cost to the Owner.

4.5.6 The General Contractor shall take all necessary precautions for the safety of persons in the execution of the Contract. Compliance with rules of the Department of Labor Occupational Safety and Health Administration, hereafter referred to as OSHA, is required as an established minimum.

4.6 WARRANTY

4.6.1 The Contractor warrants to the Owner and the Design Consultant that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all workmanship will be of first class quality, free from faults and defects and in conformance with the Contract Documents and all

other warranties and guaranties specified therein. Where no standard is specified for such workmanship or materials, they shall be the best of their respective kinds. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner or the Design Consultant, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 13.

4.6.2 The Work included in this Contract is heretofore specified. The Contractor will be required to complete the Work specified and to provide all items needed for construction of the project, complete and in good order.

4.6.3 The warranties set forth in this Paragraph 4.6 and elsewhere in the Contract Documents shall survive Final Completion of the Work under Paragraph 9.9.

4.6.4 The Contractor and Surety guarantee and warrant to the Owner all work as follows:

.1 that all materials and equipment furnished under this Contract will be new and the best of its respective kind unless otherwise specified;

.2 that all Work will be of first-class quality and free of omissions and faulty, poor quality, imperfect and defective material or workmanship:

.3 that the Work shall be entirely watertight and leak proof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement:

.4 that the Work, including but not limited to, mechanical and electrical machines, devices and equipment, shall be complete systems, fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;

.5 that consistent with requirements of the Contract Documents the Work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment; and

.6 that the Work will be free of abnormal or unusual deterioration which occurs because of poor quality materials, workmanship or unsuitable storage.

4.6.5 All Work not conforming to guarantees and warranties specified in the Contract Documents, including substitutions not properly approved and authorized, may be considered defective. If required by the Design Consultant, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

4.6.6 If, within one (1) year after the Date of Final Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Dooument, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified in the Contract documents, the Contractor shall correct it within five (5) working days or such other period as mutually agreed, after receipt of a written notice from the Owner to do so. The Owner shall give such notice with reasonable promptness after discovery of the condition.

4.6.7 If at any time patent deficiencies in the Work are discovered, the Contractor will be liable for replacement or correction of such Work and any damages which Owner has incurred related thereto, regardless of the time limit of any guarantee or warranty.

4.6.8 Any materials or other portions of the Work, installed, furnished or stored on site which are not of the character or quality required by the specifications, or are otherwise not acceptable to the Owner or the Design Consultant, shall be immediately removed and replaced by the Contractor to the satisfaction of the Owner and Design Consultant, when notified to do so by the Owner and Design Consultant.

4.6.9 If the Contractor fails to correct defective or nonconforming Work as required by Article 4.6.6 or 4.6.7, or if the Contractor fails to remove defective or nonconforming Work from the site, as required by Article 4.6.8, the Owner may elect to either correct such Work in accordance with Article 3.5 or remove and store materials and equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Owner's and/or the Design Consultant's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner

4.6.10 The Contractor shall bear the cost of making good all work of the Owner, separate contractors or others, destroyed or damaged by such correction or removal required under this Article 4, Article 13 or elsewhere in the Contract Documents.

4.7 TAXES

4.7.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective. Owner reserves the right to direct purchase materials to realize a tax savings and adjust the contract amount accordingly. Contractor hereby agrees to permit Owner to direct purchase from the Contractor's suppliers at prices quoted to Contractor and for Owner to retain any tax savings generated thereby.

4.8 PERMITS, FEES AND NOTICES

4.8.1 The Owner shall pay, on behalf of Brevard County, all **Brevard County** permit, inspection and impact fees required to obtain a Certificate of Occupancy. Fees for temporary construction trailer permit shall be the responsibility of the Contractor.

All other fees required by agencies/municipalities **other than Brevard County** to obtain a Certificate of Occupancy shall be the responsibility of the General Contractor. Examples of such fees include, but are not limited to, the following: connection fees, building permit fees, plan review fees, inspection fees, impact fees, etc.

"Public Bid Disclosure Act": Reference is made to Section 218.80, Florida Statutes, known as Public Bid Disclosure Act, and is on file for review by Bidders in the Facilities Construction Division Office.

4.8.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

4.9 SUPERINTENDENT

4.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor.

4.9.2 The superintendent shall be in attendance at the Project site not less than eight (8) hours per day, five (5) days per week, and any time work is being performed at the jobsite, unless the job is closed down due to a general strike or conditions beyond the control of the Contractor or until completion or termination of the Contract. It is understood that such Superintendent shall be acceptable to the Owner and the Design Consultant and shall be the one who will be continued in that capacity for the duration of the project, unless the Owner otherwise agrees. The Superintendent shall not be employed on any other project for or by Contractor or any other entity during the course of the Work.

4.9.3 In the event any of the following conditions shall exist, the Contractor, at no additional expense to the Owner, shall require that the Superintendent be at the Project site not less than ten (10) hours per day, six (6) days per week:

.1 should Substantial Completion not be accomplished on schedule.

.2 should Final Completion not be accomplished on schedule.

.3 should the progress schedule indicate in the opinion of the Owner or Design Consultant that the Contractor is fourteen (14) or more days behind schedule at any time during construction up until thirty (30) days prior to scheduled Substantial Completion.

.4 should the progress schedule indicate in the opinion of the Owner or Design Consultant that the Contractor is seven (7) or more days behind schedule at any time during the last thirty (30) days prior to scheduled Substantial Completion.

4.10

4.11 RESPONSIBILITY FOR COMPLETION

4.11.1 The Contractor shall furnish such labor, materials, facilities and equipment and shall work such hours, as may be necessary to ensure the performance of the Work in accordance with the Schedule and within the Milestone and Completion dates specified in the Owner-Contractor Agreement. If it becomes apparent to the Owner and/or Design Consultant that the Work will not be completed in accordance with the Schedule and within required Milestone or Completion dates, the Contractor agrees to undertake some or all of the following actions, at no additional cost to the Owner, in order to ensure, in the opinion of the Owner and/or Design Consultant that the Contractor will comply with all Milestone and

Completion date requirements:

.1 increase manpower, materials, crafts, equipment and facilities to accelerate performance of the Work;

.2 increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing; and/or

.3 reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

4.11.2 In undertaking the actions required under paragraph 4.12.1, Contractor shall comply with the requirements for a Recovery Schedule set forth in Article 4.11.

4.11.3 If, in the opinion of the Owner or Design Consultant, the actions taken by the Contractor pursuant to this Article or the progress or sequence of Work are not accurately reflected on the Construction Schedule, the Contractor shall revise such schedule to accurately reflect the actual progress and sequence of Work.

4.11.4 Failure of the Contractor to substantially comply with the requirements of this Article may be considered grounds for a determination by the Owner, pursuant to Article 14, that the Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

4.11.5 This paragraph does not eliminate the Contractor's responsibility to comply with the local noise ordinances, all highway permit requirements and all other applicable laws, regulations, rules, ordinances, resolutions, and permit requirements.

4.12 DOCUMENTS AND SAMPLES AT THE SITE

4.12.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. The Contractor shall also maintain document control logs to track all drawings, specifications, Architectural Supplemental Instructions, Change Proposals, Request for Information and Submittals. These shall be delivered to the Design Consultant for the Owner upon completion of the Work.

4.13 SUBMITTALS

4.13.1 Submittals are shop drawings, diagrams, schedules, product data instructions, brochures, samples, manuals, certifications, warranties or any other information required by the technical specifications to be reviewed by the Design Consultant.

4.13.2 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.13.3 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

4.13.4 Samples are physical examples which illustrate materials, equipment or

workmanship and establish standards by which the Work will be judged.

4.13.5 Manuals are manufacturer's installation, start-up, operating, maintenance and repair instructions together with parts lists, pictures, sketches and diagrams which set forth the manufacturer's requirements for the benefit of the Contractor and the Owner.

4.13.6 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Submittals required by the Contract Documents.

4.13.6.1 Unless otherwise directed in writing, **the Contractor shall submit no less than six (6) copies, unless specified otherwise, of each Submittal to the Design Consultant**. Routing of said Submittals will be from the Contractor to the Design Consultant to the Owner and/or Construction Program Manager. The Design Consultant will return three (3) copies of each Submittal directly to the Contractor and provide copies to the Owner and/or Construction Program Manager.

4.13.6.2 For standard manufactured items not requiring special shop drawings for manufacture, submit six (6) copies, unless specified otherwise, of manufacturer's catalog sheets showing illustrated cuts of item to be furnished, scale details, sizes, dimensions, performance characteristics, capacities, wiring diagrams and controls, and all other pertinent information. Four (4) copies of reviewed submissions will be returned to the Contractor.

4.13.6.3 For all other shop drawings, submit one (1) legible, unfolded, reproducible (positive side up sepia) transparencies and five (5) opaque prints for each drawing. Each drawing shall have a clear space for stamps. When phrase "by others" appears on shop drawings, the Contractor shall indicate on the drawing who is to furnish material or operations so marked before submittal.

4.13.6.4 The Contractor shall submit samples in triplicate of adequate size showing quality, type, color range, finish and texture, unless otherwise specified.

4.13.6.5 Where the technical specifications call for the submittal of manufacturer's data or any other information to the Design Consultant for information only, such Submittals shall be made before the commencement of any portion of the Work requiring such submission. Four (4) copies shall be submitted and one (1) will be returned to the Contractor.

4.13.6.6 For use of all trades, the Contractor shall provide number of prints which are required for field distribution.

4.13.6.7 All communications and transactions with manufacturers or Subcontractors shall be through the General Contractor.

4.13.6.8 Where specifications require manufacturer's printed installation instructions, the Contractor shall submit copies of such instructions for review.

4.13.6.9 Where several materials are specified by name for one use, select for use any of those so specified.

4.13.6.10 Whenever item or class of material is specified exclusively by trade name, manufacturer's name, or by catalog reference, use only such item, unless written approval for substitution is secured, as outlined in A- 17, Instructions to Bidders, or the General Provisions.

4.13.6.11 No portion of the Work requiring submission of Submittals shall be commenced or fabricated by the Contractor except at the Contractor's own risk, until the Submittal has been reviewed by the Design Consultant as provided in Article 2. All such portions of the Work shall be in accordance with reviewed Submittals.

4.13.7 By approving and submitting Shop Drawings, Product Data, Manuals and Samples, etc. the Contractor represents that the Contractor has determined and verified all materials, field measurements, and field construction criteria and that the Contractor has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor shall adhere to any supplementary processing and scheduling instructions pertaining to Shop Drawings which may be issued by the Owner.

4.13.7.1 Parts and details not fully indicated on the contract drawings shall be detailed by the Contractor in accordance with standard engineering practice. Dimensions on the Contract Drawings, as well as detailed drawings themselves are subject in every case to measurements of existing, adjacent, incorporated and completed work, which shall be taken by the Contractor before undertaking any work dependent on such data.

4.13.8 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Design Consultant's review of any Submittal under Subparagraph 2.2.18 and 2.2.19 unless the Contractor has specifically informed the Design Consultant in writing of such deviation at the time of submission and the Design Consultant and Owner have given written approval to the specific deviation by a written order. The Contractor shall not be relieved from responsibility for construction means and methods shown in the submittal or for errors or omissions in the Shop Drawings, Product Data, Samples, or Manuals, etc. by the Design Consultant's review thereof.

4.13.9 The Contractor shall make corrections required by the Design Consultant and shall resubmit the required number of corrected copies of Submittals. The Contractor shall direct specific attention, in writing or on resubmitted Submittals, to revisions other than those requested by the Design Consultant on previous Submittals. Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not be cause for extension of Contract Time.

4.13.11 Shop Drawings, Product Data and Samples shall be dated and shall bear the name of the Project; a description or the names or equipment, materials and items; reference to the appropriate Specification Section; and complete identification of locations at which materials or equipment are to be installed.

4.13.12 Submittals shall be accompanied by a transmittal letter, in duplicate, containing the name of the Project, the Contractor's name, the number of Shop Drawings, Product Data, Samples, or Manuals and titles and other pertinent data.

4.14 EQUAL PRODUCTS AND SUBSTITUTIONS

4.14.1 All materials, supplies and articles furnished under this Contract shall, whenever specified and otherwise practicable, be the standard products of recognized, reputable manufacturers. Unless otherwise specifically provided in the Contract Documents, the naming of a certain brand, make, manufacturer or article, device, product, material, fixture or type of construction shall convey the general style,

type, character and standard of quality of the article desired and shall not be construed as limiting competition. The Contractor, in such cases, may with Owner approval, use any brand, make, manufacturer, article, device, product, material, fixture, form or type of construction which in the judgment of the Owner is equal to that specified. An item may be considered equal to the item so named or described if, in the opinion of the Owner (1) it is at least equal in quality, durability, appearance, strength, and design; (2) it will perform at least equally the specific function imposed by the general design for the work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications. Approval by the Owner will be granted based upon considerations of quality, workmanship, economy of operation, suitability for the purpose intended, and acceptability for use on the Project.

4.14.2 To obtain such approval on makes or brands of material other than those specified in Contract Documents, and not previously approved during the bidding, the Contractor's request for approval of any substitution shall include:

.1 complete data substantiating compliance of the proposed substitution with the Contract Documents;

.2 product identification including manufacturer's name, address, and phone number:

.3 manufacturer's literature showing complete product description, performance and test data, and all reference standards:

.4 samples and colors in the case of articles or products;

.5 name and address of similar projects on which the product was used and date of installation;

.6 for construction methods, include a detailed description for the proposed method and drawings illustrating same;

.7 itemized comparison of proposed substitution with product or method specified and any cost reduction which shall benefit the Owner:

.8 accurate cost data on proposed substitution in comparison with product or method specified; and

.9 all directions, specifications, and recommendations by manufacturers for installation, handling, storing, adjustment, and operation.

4.14.3 The Contractor shall also submit with his request for approval a sworn and notarized statement which shall include all of the following representations by the Contractor, namely that:

.1 contractor has investigated the proposed product or method and determined that it is equal or better in all respects to that specified and that it fully complies with all requirements of the Contract Documents;

.2 contractor will meet all contract obligations with regard to this substitution;

.3 contractor will coordinate installation of accepted substitutions into the work, making all such changes and any required schedule adjustments, at no additional cost to the Owner, as may be required for the Work to be complete in all respects;

.4 contractor waives all claims for additional costs and additional time related to substitutions which consequently become apparent. Contractor also agrees to hold the Owner harmless from claims for extra costs and time incurred by other Subcontractors and suppliers, or additional services which may have to be performed by the Construction Program Manager and/or Design Consultant, for changes for extra work that may, at some later date, be determined to be necessary in order for the Work to function in the manner intended in the Contract Documents;

.5 contractor will provide the same warranty and guarantee, and perform any work required in accordance therewith, for the substitution that is applicable to the specified item for which the substitution is requested;

.6 material will be installed, handled, stored, adjusted, tested, and operated in accordance with the manufacturers' recommendation and as specified in the Contract Documents.

.7 in all cases new materials will be used unless this provision is waived by notice from the Owner, or unless otherwise specified in the Contract Documents:

.8 all material and workmanship will be in every respect in accordance with that which, in the opinion of the Owner, is in conformity with approved modern practice;

.9 contractor has provided accurate cost data on the proposed substitution In comparison with the product or method specified.

4.14.4 Subject to the provisions of any applicable laws, approval for substitutions or equal products shall be at the sole discretion of the Owner, shall be in writing to be effective, and the decision of the Owner shall be final. The Owner may require tests of all materials proposed for substitution so submitted to establish quality standards, at the Contractor's expense. After approval of a substitution, if it is determined that the Contractor submitted defective information or data regarding the substitution upon which Owner's approval was based, and that unexpected or uncontemplated extensive redesign or rework of the project will be required in order to accommodate the substitution, or that the substituted item will not perform or function as well as the specified item for which substitution was requested, the Contractor will be required to furnish the original specified item or request approval to use another substitution; the Contractor shall pay all costs, expenses or damages associated with or related to the unacceptability of such a substitution and the resultant use of another item and no time extension shall be granted for any delays associated with or related to such substitution.

4.14.5 If a substitution is approved, no change in brand or make will be permitted unless satisfactory, written evidence is presented to and approved by the Owner that the manufacturer cannot make scheduled delivery of the approved substituted item. Substitutions will not be considered for approval by the Owner if:

.1 the proposed substitution is indicated or implied on the Contractor's shop drawing or product data submittal and has not been formally submitted for approval by the Contractor in accordance with the above-stated requirements, or

.2 acceptance of the proposed substitution will require substantial design

revisions to the Contract Documents or is otherwise not acceptable to the Owner.

4.14.6 Except as otherwise provided for by the provisions of any applicable laws, the Contractor shall not have any right of appeal from the decision of the Owner condemning any materials submitted if the Contractor fails to obtain the approval for substitution under this Article.

4.15 USE OF SITE

4.15.1 The Contractor shall confine operations at the site to areas provided by the Owner and as permitted by law, ordinances, permits, easements, right-of-way agreements and the Contract Documents. The Contractor shall not unreasonably encumber the site, in the opinion of the Owner with any materials, equipment or trailers, nor shall the Contractor block the entrances or otherwise prevent reasonable access to the site, other working and parking areas, completed portions of the Work and/or properties, storage areas, or areas of other facilities that are adjacent to the worksite. If the Contractor fails or refuses to move said material, equipment or trailers within 24 hours of notification by the Owner to so do, the Owner shall have the right, without further notice, to remove, at the Contractor's expense, any material, equipment and/or trailers which the Owner deems are in violation of this paragraph.

4.16 CUTTING AND PATCHING OF WORK

4.16.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly and in accordance with the Contract Documents.

4.16.2 The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. After consent is given, the Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors in cutting, patching or otherwise altering any work, or by excavation. The Owner shall not be required to accept Work with a cut, splice, or patch when such cut, splice or patch is not generally accepted practice for the particular work involved or is otherwise unworkmanlike in the opinion of the Owner.

4.16.3 Existing structures and facilities including but not limited to building, utilities, topography, streets, curbs, walks, etc., that are damaged or removed due to required excavations or other construction work, shall be patched, repaired or replaced by the Contractor to satisfaction of the Owner of such structures and facilities and authorities having jurisdiction. In event the local jurisdictional authorities require that such repairing and patching be done with their own labor and materials, the Contractor shall abide by such regulations and pay for such work.

4.17 CLEANING UP

4.17.1 The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by the Contractor's operations. As a condition of Substantial Completion of the Work, the Contractor shall remove all the Contractor's waste materials and rubbish from and about the Project. Before final payment is made, the Contractor shall remove the Contractor's tools, construction equipment, machinery and surplus materials.

4.17.2 If the Contractor fails to clean up by Substantial Completion of the Work, the Owner may do so as provided in Paragraph 6.3 and the cost thereof shall be charged to the Contractor.

4.17.3 Burning of rubbish on the premises will NOT be permitted.

4.17.4 Debris shall be hauled to a place of legal disposal in a manner satisfactory to the Owner's Representative.

4.18 COMMUNICATIONS

4.18.1 The Contractor shall forward its communications and communications from any subcontractors to the Owner through the Design Consultant, unless instructed otherwise.

4.19 ROYALTIES AND PATENTS

4.19.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss, damages, costs or attorneys' fees on account thereof.

4.20 INDEMNIFICATION

4.20.1 To the fullest extent permitted by law, the Contractor shall, at the Contractor's sole cost and expense, indemnify, defend, and hold harmless the Owner and the Design Consultant and their agents, representatives, and employees from and against all claims, actions, judgments, costs, liabilities, penalties, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, action, judgment, cost, liability, penalty, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.20. Contractor specifically agrees that it has included Fifty Dollars ($50.00) in its bid price, over and above what it otherwise would have bid, to compensate Contractor for all indemnity obligations contained in the Contract Documents.

4.20.2 In any and all claims against the Owner or the Design Consultant or any of their agents, representatives, or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.20 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

4.20.3 No provision of this Paragraph 4.20 shall give rise to any duties on the part of the Owner or the Design Consultant or any of their agents, representatives, or employees.

4.21 PERSONS AUTHORIZED TO SIGN DOCUMENTS

4.21.1 The Contractor, within five (5) days after the date of the Owner-Contractor Agreement, shall file with the Owner, a list of all persons who are authorized to sign documents such as contracts, certificates, and affidavits on behalf of the Contractor and to fully bind the Contractor to all the conditions and provisions of such documents in the event those persons are different from the Owner-Contractor Agreement signatures.

4.22 CONDITIONS AFFECTING THE WORK

4.22.1 The Contractor shall be responsible for taking all steps necessary to ascertain the nature and location of the Work and the general and local conditions which can affect the Work or the cost thereof. Failure by the Contractor to become fully acquainted with conditions which may affect the Work, including, but not limited to conditions relating to transportation, handling, storage of materials, availability of labor, water, roads, weather, topographic and subsurface conditions, multi-prime contract conditions, applicable provisions of law, and the character and availability of equipment and facilities needed prior to and during the execution of the Work, shall not relieve the Contractor of the Contractor's responsibilities under the Contract Documents and shall not constitute a basis for an adjustment in the Contract Sum or the Contract Time under any circumstances. The Owner assumes no responsibility for any understanding or representation about conditions affecting the Work made by any of the Owner's officers, employees, representatives, or agents prior to the execution of the Contract, unless such understandings or representations are expressly stated in the Contract Documents.

4.22. 2 If in the execution of the Work any valuable or historical items or materials of any kind are discovered within the work, such items or materials shall be the property of the Owner. The Contractor shall take reasonable precautions to prevent any persons from removing or damaging such items or materials and shall immediately upon discovery thereof and before removal, acquaint the Owner with such discovery and carry out the Owner's orders as to disposal of the same.

4.23 AUDIT REQUIREMENTS

In the performance of this Contract, the Contractor shall keep books, records and accounts of all activities related to the Contract, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the Contractor and shall be retained by the Contractor for a period of three (3) years after termination of this Contract. All records, books and accounts related to the performance of this Contract shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Contract shall be subject to copyright by Grantee in the United States or any other country. All records or documents created by Contractor or provided to Contractor by the County in connection with the activities or services provided by Contractor under the terms of this agreement, are public records and Contractor agrees to comply with any request for such public records or documents made in accordance with section 119.07 Florida Statutes.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or its authorized representative. The term Subcontractor does not include any separate contractor or that Contractor's subcontractors.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative thereof.

5.1.3 Nothing contained in the Contract Documents is intended to, nor shall it create, any contractual relationship between the Owner, the Design Consultant, or any of their agents, consultants, employees, independent contractors, or representatives and any Subcontractor, Sub-subcontractor, supplier or vendor of the Contractor, but the Owner shall be entitled to performance of all obligations intended for the Owner's benefit, and to enforcement thereof.

5.1.4 The Owner and Design Consultant will not deal directly with any Subcontractor or Sub-subcontractor or materials supplier. Communication will be made only through the Contractor. Subcontractor, Sub-subcontractors or material suppliers shall route requests for information or clarification through the Contractor to the Design Consultant with copies to the Owner.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF WORK

5.2.1 In addition to the prequalification of specified subcontractors prior to award of this Contract, the Contractor, in compliance with the requirements of the Contract Documents, shall furnish to the Owner, in writing, the names, contact name, addresses and telephone numbers of the subcontractors (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work <u>prior to the first Application for Payment</u>. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, or Design Consultant, after due investigation, has reasonable objection to any proposed person or entity that has not already been pre-qualified prior to award of this Contract. Failure of the Owner to reply within five (5) business days shall constitute notice of no reasonable objection. The Contractor understands and agrees that no contractual agreement exists for any part of the Work under this Contract between the Owner or Design Consultant and any of the Contractor's Subcontractors or Sub-subcontractors. Further, the Contractor understands and agrees that the Contractor alone is responsible to the Owner for all of the Work under this Contract and that any review of Subcontractors or Sub-subcontractors by the Owner will not in any way make the Owner responsible to any Subcontractor, nor responsible for the actions or failures of any Subcontractor or Sub-subcontractor.

5.2.1 The Contractor shall not contract with any such proposed person or entity to whom the Owner has made reasonable objection.

5.2.2 If the Owner has reasonable objection to any proposed person or entity under

Subparagraph 5.2.1, the Contractor shall name a substitute to whom the Owner has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued, subject to an audit of said difference by the Owner; **provided**, however, that no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required; or if the Owner has stated Owner's objection in writing before the submission by the Subcontractors of a bid acceptable to Contractor; or if the rejected Subcontractor was unable to enter into work; or if the rejected Subcontractor failed to comply with all applicable laws; or if the rejected Subcontractor was not an on-going business in the field of the proposed Subcontract; or if the rejected Subcontractor does not have a labor force and the means of supply compatible with the scope of the subcontract; or if the rejected Subcontractor does not meet any of the pre-qualification criteria of Section A-6 of the Information to Bidders.

5.2.3 If the Owner requires a change of any proposed Subcontractor or person or organization previously accepted by the Owner, except for reasons stated in 5.2.2, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued, subject to an audit by Owner.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By an appropriate written agreement the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of these Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner. Said agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice Owner's rights. Contractor shall also provide each subcontractor with a copy of the payment bond required by this Agreement, and with notice that (1) claims under such bond should be made in conformance with section 255.05 of the Florida Statutes, and (2) subcontractor should not execute Waivers of Claim under such bond unless the subcontractor has, in fact, been paid. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors.

5.3.2 The provisions herein regarding Subcontractor approvals shall in no way affect the liability of the Contractor to the Owner regarding performance of all obligations by or payment of Subcontractors. Approval to subcontract and of any given Subcontractor shall not to any degree relieve the Contractor of the Contractor's obligation to perform or have performed to the full satisfaction of the Owner all of the work required by this Contract.

5.4 QUALIFICATION SUBMITTALS

5.4.1 Specific qualification submittals, in addition to those set forth in the Information to Bidders, may be required of Subcontractors, installers and suppliers for certain critical items of the Work. These required qualification submittals are set forth in detail in the Technical Specifications and shall be collected and submitted by the Contractor for review and approval by the Design Consultant. All information required of a single Subcontractor, installer or supplier shall be contained in a single, complete submittal. The Contractor shall submit the required qualification information within ten (10) days after receipt of the Design Consultant's request.

5.4.2 The Owner may reject any proposed Subcontractor, installer or supplier, or any qualification submittals related thereto, for the following reasons:

.1 the Contractor's failure to submit requested information within the specified time; or
.2 the Contractor's failure to provide all of the requested information; or
.3 the Contractor's submission of a Subcontractor, installer or supplier, or qualifications thereof, which are unacceptable in the judgment of the Owner, the Construction Program Manager, or Design Consultant.

5.5 PREPARATORY WORK

5.5.1 Before starting any Section of Work, the responsible Subcontractor shall carefully examine all preparatory work that has been executed to receive the Subcontractor's work. The Subcontractor shall check carefully, by whatever means are required, to ensure that the Subcontractor's work and adjacent related work will finish to proper contours, planes and levels. The Subcontractor shall promptly notify the Contractor and the Owner of any defects or imperfections in preparatory work which will, in any way, affect satisfactory completion of his Work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.

5.5.2 Under no condition shall a Section of Work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials rests solely with the Contractor, who shall maintain coordination control at all times.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project, including work proposed under a change order, with the Owner's forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford other contractors and the Owner reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate the Work with that of the Owner and other contractors, and to store the Contractor's apparatus, materials, supplies and equipment in such orderly fashion at the site of the Work as will not unduly or unreasonably interfere with the progress of the Work or the work of any other contractors.

6.2.1.1 If the execution or result of any part of the Work depends upon any work of the Owner or of any separate contractor, the Contractor shall, prior to proceeding with the Work, inspect and promptly report to the Owner in writing any apparent discrepancies or defects in such work of the Owner or of any separate contractor that render it unsuitable for such proper execution or result of any part of the Work.

6.2.1.2 Failure of the Contractor to so inspect and report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive the Work, except as to defects which may develop in the Owner's or separate contractor's work after completion of the Work and which the Contractor could not have discovered by its inspection prior to completion of the Work.

6.2.2 Should the Contractor cause damage to the work or property of the Owner or of any separate contractor on the Project, or to other work on the Site, or delay or interfere with the Owner's work on ongoing operations or facilities or adjacent facilities or said separate contractor's work, the Contractor shall be liable for the same; and, in the case of another contractor, the Contractor shall attempt to settle said claim with such other contractor prior to such other contractor's institution of litigation or other proceedings against the Contractor.

6.2.2.1 If such separate contractor sues the Owner or Design Consultant on account of any damage, delay or interference caused or alleged to have been caused by the Contractor, the Owner shall notify the Contractor, and the Contractor shall defend the Owner and Design Consultant in such proceedings at the Contractor's expense. If any judgment or award is entered against the Owner or Design Consultant, the Contractor shall satisfy the same and shall reimburse the Owner and Design Consultant for all damages, expenses, attorneys' fees and other costs which the Owner or Design Consultant incurs as a result thereof.

6.2.3 Should a separate contractor cause damage to the Work or to the property of the Contractor, or cause delay or interference with the Contractor's performance of the Work, the Contractor shall present directly to said separate contractor any claims it may have as a result of such damage, delay or interference (with an information copy to the Owner) and shall attempt to settle its claim against said separate contractor prior to the institution of litigation or other proceedings against said separate contractor.

6.2.3.1 In no event shall the Contractor seek to recover from the Owner or the Design Consultant, and the Contractor hereby warrants to the Owner and Design Consultant that it will not seek to recover from them, or any of them, any costs, expenses (including, but not limited to, attorney's fees) or damages or other losses incurred by the Contractor as a result of any damage to the Work or property of the Contractor or any delay or interference caused by any separate contractor.

6.2.3.2 In order to carry out the intent of this Article 6, Contractor agrees that privity of

contract exists between Contractor and any separate contractor, as defined herein, for the purpose of disposing of the liabilities or obligations which are imposed upon said parties to each other hereunder; and Contractor agrees to accept service of process and to sue and be sued in Contractor's own name in any litigation which may arise hereunder between Contractor and any separate contractor.

6.2.4 Whenever Contractor receives items from another Contractor or from Owner for storage, erection or installation, the Contractor receiving such items shall give receipt for items delivered, and thereafter will be held responsible for care, storage and any necessary replacing of item or items received.

6.2.5 When certain items of equipment and other work are indicated as "NIC" (not in contract), or to be furnished and installed under other contracts, any requirements for preparation of openings, provision of backing, etc., for receipt of such "NIC" work will be furnished upon written request of the Contractor who shall properly form and otherwise prepare the Contractor's work in a satisfactory manner to receive such "NIC" work.

6.3 OWNER'S RIGHT TO PERFORM DISPUTED WORK

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.17, or for accomplishing coordination, or doing required cutting, filling, excavating or patching as required by Paragraph 4.16, the Owner may carry out such Work and charge the cost thereof to the contractors responsible therefore as the Owner shall determine to be just. Such determination shall be final.

6.4 COORDINATION OF THE WORK

6.4.1 By entering into this contract, Contractor acknowledges that there may be other contractors on the site whose work will be coordinated with that of the Contractor's work. The Contractor expressly warrants and guarantees that the Contractor will cooperate with other contractors and will do nothing to delay, hinder or interfere with the work of other separate contractors or the Owner. The Contractor also expressly agrees that, in the event the Contractor's work is hindered, delayed, interfered with or otherwise affected by a separate contractor, the Contractor's sole remedy will be a direct action against the separate contractor as described in this Article 6. Contractor will have no remedy, and hereby expressly waives and releases any remedy, against the Owner or Design Consultant on account of delay, hindrance, interference or other event caused by a separate contractor.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 SUCCESSORS AND ASSIGNS

7.1.1 The Owner and the Contractor each binds themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due hereunder, without the previous written consent of

the Owner and the Contractor's Surety.

7.2 CLAIMS AND DISPUTES

7.2.1 **Definition**: A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

7.3.2 **Decision of Design Consultant**: Claims, including those alleging an error or omission by the Design Consultant shall be referred initially to the Design Consultant for action. Notice of Claim as required herein shall be required as a condition precedent to litigation of a Claim between the Contractor and the Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work, or (2) the extent to which the Work has been completed.

7.3.3 **Time Limits on Claims**: Claims by either party must be made within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

7.3.4 **Continuing Contract Performance**: Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

7.3.5 **Waiver of Claims - Final Payment**: The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

1. liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents; or
3. terms of special warranties required by the Contract Documents.

7.3.6 **Claims for Concealed Unknown Conditions/Differing Site Conditions**: If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed. The Owner and Design Consultant will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents, and that no change in the terms of the Contract is justified, the Owner shall so notify the Contractor in writing stating the

reasons. If the Owner and the Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for final determination.

7.3.7 **Claims for Additional Cost**: If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds. Claim shall be filed in accordance with the procedure established herein.

7.3.8 **Claims for Additional Time**: If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

7.3.8.1 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

7.3.9 **Injury or Damage to Person or Property**: If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, excluding claim for damage from delay, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty one (21) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 7.3.7 and 7.3.8.

7.4 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND (FOR BIDS $100,000 AND OVER)

7.4.1 The Contractor shall furnish bonds, on the bond form provided in this document, covering the faithful performance of the Contract and the payment of all obligations and damages arising thereunder whether same be direct or indirect, real or consequential in a form and with a surety satisfactory to the Owner. It is expressly agreed that the Surety shall be responsible for any delay or liquidated damages assessed against Contractor.

7.4.2 The Contractor is required to furnish a Performance Bond and a Labor and Material Payment Bond, on the bond form provided in this document, each in the amount of one-hundred percent (100%) of the Contract sum, and recorded in the public records of Brevard County. Bonds and Notice of Commencement shall be submitted within five (5) days of Notice to Proceed. No work shall commence onsite and no payment shall be made until certified copies of the recorded Bonds are submitted and approved by the Owner. A copy of the Bonds shall be provided to each subcontractor.

7.5 RIGHTS AND REMEDIES

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

7.5.2 Except as may be specifically agreed in writing, the failure of the Owner or the Design Consultant to insist in any one or more instances upon the strict performance of any one or more of the provisions of this Contract, or to exercise any right herein contained or provided by law, shall not be construed as a waiver or relinquishment of the performance of any other provisions or right(s), or of the right to subsequently demand such strict performance or exercise such right(s), and the rights shall continue unchanged and remain in full force and effect.

7.5.3 The Contractor agrees that the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by the Owner. The Contractor hereby agrees that no default, act, or omission of the Owner or the Design Consultant, except for failure to make progress payments as required by the Contract Documents, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of this Contract, or (unless the Owner shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work.

7.6 TESTS

7.6.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested, or approved, the Contractor shall give the testing agency, Owner and Design Consultant timely notice of its readiness so the Design Consultant and the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities such as bacteriological tests, pressure tests. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals such as soil borings, soil testing, density, compaction, concrete slump and strength.

7.6.1.1 Unless otherwise stipulated in other Contract Documents, the Contractor shall pay for all utilities required for testing of installed equipment of all of the Contractor's work and work of each Subcontractor. Labor and supervision required for making such tests shall be provided at no additional cost to the Owner.

7.6.2 If the Owner and/or Design Consultant determine that any Work requires special inspection, testing, or approval which Subparagraph 7.6.1 does not include, the Owner will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.6.1. If such special inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including compensation for the Owner's and Design Consultant's additional services made necessary by such failure.

7.6.3 Inspections and tests required to establish compliance with Contract Documents,

as provided for in the Contract Documents, will be made by a pre-qualified, independent testing agency selected by the Owner. The cost of the initial services of such agency will be paid by the Owner. When the initial tests indicate non-compliance with the Contract Documents, any subsequent testing occasioned by non-compliance shall be performed by the same agency and the cost thereof shall be borne by the Contractor. Representatives of the testing agency shall have access to the Work at all times. The Contractor shall provide facilities for such access in order that the agency may properly perform its functions.

7.6.4 The independent testing agency, employed by the Owner, shall prepare the test reports, logs, and certificates applicable to the specific inspections and tests and promptly deliver the specified number of copies to the designated parties. Certificates of inspection, testing or approval required by public authorities shall be secured by the Contractor and promptly delivered to the Owner, in adequate time to avoid delays in the Work or final payment therefore.

7.6.5 The Contractor shall pay for and have sole responsibility for inspections or testing performed exclusively for the Contractor's own convenience.

7.7 FIELD ENGINEERING

7.7.1 The Contractor shall provide and pay for field engineering services required for the project for Survey work required in the execution of the project and/or for Civil or other professional engineering services specified, or required to execute contractor's construction methods.

7.7.2 The Contractor shall retain the services of a registered land surveyor licensed in the State of Florida to identify existing control points and property line corner stakes indicated on the drawings, as required.

7.7.3 Any engineer or land surveyor selected by the Contractor must be acceptable to the Owner and Engineer.

7.7.3.1 The Surveyor shall locate and protect control points prior to starting site work, and preserve all permanent reference points during construction; make no changes or relocations without prior written notice to the Engineer, and report to the Engineer when any reference point is lost or destroyed, or required relocation because of necessary changes in grades or locations. The Surveyor shall be required to replace Project control points which may be lost or destroyed and establish replacements based on original survey control.

7.7.4 The Contractor shall ensure the Project Survey establishes a minimum of two permanent bench marks on the site, referenced to data established by survey control points; includes record locations, with horizontal and vertical data, on Project Record Documents; establishes lines and levels, locate and layout, by instrumentation and similar means.

7.7.5 The Contractor shall furnish three (3) sealed copies of final certified as-built, showing location of project, pervious surfaces, topography and retention areas at a minimum.

7.8 UNENFORCEABILITY OF ANY PROVISION

7.8.1 If any provision of this Contract is held as a matter of law to be unenforceable, against public policy or unconscionable, the remainder of the Contract shall be

enforceable without such provision.

7.9 ATTORNEYS' FEES, VENUE AND OTHER EXPENSES

7.9.1 In the event any action, suit, or proceeding is commenced to enforce the provisions of this document, each party shall bear its own attorney's fees and costs, and any trial shall be non-jury.

Venue for any legal action brought by any party to this Agreement to interpret, construe, or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida.The Contract shall be governed by the laws of the State of Florida.

If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired.

7.10 MISCELLANEOUS REQUIREMENTS

Hard hats will be required at construction site in this Contract from start to completion of work (OSHA CFR 1926.100/OSHA CFR 1910.135). Each contractor, employee, and visitor at the construction site in this Contract will be required to wear a hard hat. The Contractor shall enforce the wearing of hard hats by contractors, employees and visitors. The Contractor shall post notice of "Hard Hat Area".

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Final Completion of the Work, as defined in Subparagraph 8.1.4, including adjustments under written change orders, if any. The Contractor shall complete the Work within the Contract Time.

8.1.2 The date of commencement of the Work is the date of the Notice to Proceed. The Contractor shall not mobilize, commence Work or store materials or equipment on site until: (1) written Notice to Proceed is issued; (2) all Bonds and Certificates of Insurance have been executed, delivered to and accepted by the Owner; and (3) Contractor has delivered to Owner the Contractor's as-planned schedule, original job cost estimate, list of sub-contractors with 24 hour emergency phone numbers (general contractor, etc.), and corporate resolution designating the Contractor's representative.

8.1.3 The Date of Substantial Completion of the Work is the Date certified by the Owner when the Work is sufficiently complete, in accordance with the Contract Documents, so the Owner can take beneficial occupancy and use the Work for the use for which it is intended, with all of the Project's parts and systems operable as required by the Contract Documents, and with only incidental corrective work and any final cleaning beyond that needed for the Owner's full use.

8.1.4 The date of Final Completion of the Work is the date certified by the Owner when the Work is totally complete, to include all items listed on the inspection report following substantial completion inspection, in accordance with the Contract

Documents, and the Owner may fully occupy and use all of the Work for the use for which it is intended.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion within the time frames stated in the Contract Documents.

8.2.3 SPECIFIC DATES

The schedule below contains certain specific dates in addition to date of Notice to Proceed and Time for Substantial and Final Completion. These dates shall be adhered to and are the last acceptable dates unless modified, in writing, by mutual agreement between the Contractor and the Owner. All dates indicate midnight unless otherwise stipulated. The only exceptions to this schedule are defined in paragraph 8.3, DELAYS AND EXTENSIONS OF TIME.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 The time during which the Contractor is delayed in the performance of the Work, by the acts or omissions of the Owner or the Design Consultant or their employees or agents, acts of god, unusually severe and abnormal climatic conditions, fires, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, or other conditions beyond the Contractor's control and which the Contractor could not reasonably have foreseen and provided against, shall be added to the time for completion of the Work (i.e., the Contract Time) stated in the Agreement; provided, however, that no claim by the Contractor for an extension of time for delays will be considered unless made in compliance with the requirements of this Article and other provisions of the Contract Documents. Contractor agrees that a change in the Contract Time may only be authorized by a written Change Order authorized and executed by the Brevard County Board of County Commissioners. No person has authority to orally, or in writing, grant any change in the Contract Time except as stated herein.

8.3.2 Neither the Owner nor the Design Consultant shall be obligated or liable to the Contractor for, and the Contractor hereby expressly waives and releases, any claims against the Owner and the Design Consultant on account of any indirect or direct damages, costs or expenses of any nature which the Contractor, its Subcontractors, or Sub-subcontractors, or any other person may incur as a result of any delays, interferences, changes in sequence or the like, which are reasonable, foreseeable, contemplated, or avoidable by Contractor, arising from or out of any act or omission of the Owner or its agents, employees, consultants, independent contractors or any governmental representative. **The Contractor's sole and exclusive remedy, in any such events, shall be an extension of the Contract Time, as determined under the provisions of these Contract Documents**.

8.3.3 The Contract Time shall be adjusted only pursuant to Paragraph 8.3.1 and Article 12. Contract Time may only be adjusted if the work is suspended pursuant to Paragraph 3.4 or the Contractor has experienced an excusable delay described in Subparagraphs 8.3.1 and 8.3.4. To request an extension of the Contract Time,

the Contractor shall furnish such justification and supporting evidence as the Owner may deem necessary for a determination of whether or not the Contractor is entitled to an extension of time under the provisions of the Contract, and shall further conform to all of the requirements set forth below. The burden of proof to substantiate a claim for an extension of the Contract Time shall rest with the Contractor, including evidence that the cause was beyond the Contractor's control. If the Owner finds that the Contractor is entitled to any extension of the Contract Time, determination and all relevant data will be incorporated into the schedule in the first update after an Agreement is reached. The Contractor acknowledges and agrees that actual delays in activities which, according to the schedule do not affect the Contract Time, will not be the basis for a change in Contract Time. The Contractor acknowledges and agrees that contract time extensions will be granted only to the extent that excusable delays exceed the available float in the Contractor's schedule. The Contractor acknowledges and agrees that all available float in the Contractor's schedule belongs to the Owner and may be utilized, without additional cost, by the Owner.

8.3.3.1 When change orders or delays are experienced by the Contractor and the Contractor requests an extension of time, the Contractor shall submit to the Owner a written Time Impact Analysis illustrating the influence of each change or delay on the current contract schedule completion date. Each Time Impact Analysis shall include a fragnet demonstrating how the Contractor proposes to incorporate the change order or delay into the Project Schedule. A fragnet is defined as a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule to demonstrate the influence of delay and the method for incorporating delays and impacts into the schedule as they are encountered.

8.3.3.2 Each Analysis shall demonstrate the estimated time impact based on the events of delay, the date the change was given to the Contractor, the status of construction at that point in time, and the event time computation of all activities effected by the change or delay. The event times used in the analysis shall be those included in the latest update of the Project Schedule or as adjusted for the events of delay.

8.3.3.3 Time extensions will be granted only to the extent that equitable time adjustments for the activity or activities affected exceed the total or remaining float along the path of activities at the time of actual delay or at the time notice to proceed was issued for a change. Each Time Impact Analysis shall be submitted within ten (10) calendar days after a delay occurs or notice of direction for proceeding with a change order is given to the Contractor. In cases where the Contractor does not submit a Time Impact Analysis for a specific change order or delay within the specified period of time, the Contractor shall be deemed to have irrevocably waived its rights to any additional time and cost.

8.3.3.4 Approval or rejection of each Time Impact Analysis by the Owner shall be made, in writing, within fifteen (15) calendar days after receipt of each Time Impact Analysis, unless subsequent meetings and negotiations are necessary. Upon approval by change order, a copy of a Time Impact Analysis shall be returned to the Contractor for incorporation into the schedule.

8.3.3.5 Upon mutual agreement by both parties, fragnets illustrating the influence of change orders and delays shall be incorporated into the Project Schedule during the first update after agreement is reached.

8.3.3.6 Extensions in the Contract Time and Change Orders are subject to extension-in-

time audit by the Owner or Design Consultant at the discretion of the Owner.

The Contractor agrees that, even though the Owner, Contractor and Design Consultant have previously signed a Change Order containing an extension-in-time resulting from a change in or addition to the Work that said extension in the Contract Time may be adjusted by an audit after the fact by the Construction Program Manager. If such an audit is to be made, the Construction Program Manager must undertake the audit and make a ruling within thirty (30) days after the completion of the Work under the Change Order.

The Contractor agrees that any extension of the Contract Time to which the Contractor is entitled arising out of a change order undertaken on a force accounting (labor and materials) basis, shall be determined by an extension-in-time audit by the Owner after the Work of the change order is completed. Such rulings shall be made by the Owner within thirty (30) days after a request for same is made by the Contractor, except said thirty (30) days will not start until the Work under the Change Order is completed.

8.3.4 Subject to other provisions of the Contract, the Contractor may be entitled to an extension of the Contract Time (but no increase in the Contract Sum) for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, Subcontractors or suppliers as follows:

.1 labor disputes and strikes (including strikes affecting transportation), that do, in fact, directly and critically affect the progress of the Work; however, an extension of Contract Time on account of an individual labor strike shall not exceed the number of days of said strike:

.2 acts of God, tornado, fire, hurricane, blizzard, earthquake, or typhoon that damage completed work or stored materials:

.3 unusually severe and abnormal inclement weather; however, the Contract Time will not be extended due to normal inclement weather. The time for performance of this Contract, as stated in the Contract Documents, includes an allowance for calendar days which may not be available for construction out-of-doors. For the purposes of this Contract, the Contractor agrees that this allowance of calendar days per month are to be considered as normal inclement weather. Unless the Contractor can substantiate to the satisfaction of the Owner that there was greater than normal inclement weather considering the full term of the Contract Time using a ten year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the locale of the Project, and that such alleged greater than normal inclement weather actually delayed the Work or portions thereof which had an effect upon the Contract Time, the Contractor shall not be entitled to an extension of time. If the total accumulated number of calendar days lost due to inclement weather, from the start of Work until Substantial Completion, exceeds the total accumulated number to be expected for the same period from the aforesaid table, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost.

.4 acts of the public enemy, acts of the state, Federal or local government in its sovereign capacity, and acts of another contractor in the performance of a contract with the Owner relating to the Project.

8.3.5 The Contractor shall not be entitled to and hereby expressly waives any extension of time resulting from any condition or cause unless said claim for extensions of time is made in writing to the Owner and Design Consultant within ten (10) days of the first instance of delay. Circumstances and activities leading to such claim shall be indicated or referenced in a daily field inspection report for the day(s) affected; otherwise, all such claims are waived and released by the Contractor. In every such written claim, the Contractor shall provide the following information:

.1 Nature of the delay;

.2 Date (or anticipated date) of commencement of delay;

.3 Activities on the progress schedule affected by the delay, and/or new activities created by the delay and their relationship with existing activities; (Fragnet)

.4 Identification of person(s) or organization(s) or event(s) responsible for the delay;

.5 Anticipated extent of the delay; and

.6 Recommended action to avoid or minimize the delay.

8.3.6 No change in Contract Sum will be authorized because of adjustment of Contract Time due to unusually severe and abnormal, inclement weather (tornado, hurricane, typhoon or flood).

8.3.7.1 If the said Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay the Owner the amount specified in the Owner-Contractor Agreement, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work.

8.3.7.2 The Liquidated Damages amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Owner-Contractor Agreement and, including change orders thereto, is the total amount payable by the Owner to the Contractor for the Performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 **Fifteen (15) days prior to the first Application for Payment, the Contractor shall submit to the Owner, through the Design Consultant, a Schedule of**

Values allocated to the various portions of the Work, and any other supporting data the Owner may require. This Schedule of Values, unless objected to by the Owner, shall be used as a basis for the Contractor's Applications for Payment and only for this purpose. If no agreement can be reached as to the accuracy of the Schedule of Values, the Owner will determine the value and this will become the basis for the Contractor's Applications for Payment. **If approved by the Owner**, the Contractor may include in his Schedule of Values a line item for mobilization which shall include a reasonable amount of mobilization for the Contractor. Surety hereby consents to, agrees and accepts Contractor's Schedule of Values.

9.3 PAYMENTS TO THE CONTRACTOR

9.3.1 All requests for monthly payments must be submitted, in triplicate, in an AIA Form G702 "format" to the office of the Owner's Representative. If Contractor is using a format other than AIA G702 for submittal of payment applications, the format must be submitted to Owner's Representative for review and approval prior to submission of the first Application for Payment. The Facilities Construction Division shall be the office of the Owner's Representative.

9.3.2 The Contractor is required to pay all money due subcontractors and material dealers promptly. Each application for payment issued by the Contractor shall contain an affidavit which states "This is to certify that all subcontractors supplying services or items provided under previous Certificates for Payment are paid."

In addition, **NOTARIZED, ORIGINAL, "Waivers of Rights Against Payment Bond" will be required from all subcontractors, material suppliers and vendors (whether the County was sent a "Notice to Owner" or not) with each monthly payment request which waives any claim the subcontractor, supplier or vendor might have against the payment bond through the previous month's pay request. NO "CONDITIONAL" WAIVERS WILL BE ACCEPTED**.

Waivers of Rights Against Payment Bond must be submitted for anyone that has delivered materials or performed a service during the prior month's payment application period.

If a supplier/subcontractor/materialman **did not** provide materials or services for the period covered by the prior months payment application period, the Contractor will be required to provide the following to the Owner:

- a "certified", notarized list, including a statement that no deliverables have been received or services performed in the prior payment application period for the following:
- anyone that has submitted a Notice to Owner during any prior months payment application period;
- suppliers/subcontractors/materialmen that submitted a Partial Waiver in a prior months payment application period.

The Contractor shall provide such "certified", notarized list until a Final Waiver of Rights Against Payment Bond is received.

If a supplier/subcontractor/materialmen submits an affidavit which

contradicts the Contractor's assertion that no deliverables or services were provided, a Waiver will be required.

The General Contractor shall inform subcontractors not to execute Affidavit of Payments unless the subcontractor has in fact been paid.

Notwithstanding the foregoing, pursuant to section 255.05(11), Florida Statutes, when the Contractor has furnished and recorded a payment and performance bond and provided the County with a written consent from the Surety regarding the Project or payment in question, no such waivers shall be required. The Surety may, in a writing served on the County, revoke its consent or direct that the County withhold a specified amount from a payment, which shall be effective upon receipt.

9.3.3 Per Brevard County Policy BCC-07, no Change Order or Change Directive work is to be started without proper signatures and paperwork being completed.

9.3.4 **Waivers of Claims**: Upon completion of the Contract and **before final payment is made**, the Contractor shall submit **notarized, original final Waivers of Rights Against Payment Bond**, satisfactory to the Owner's representative, certifying all payrolls, material bills, supplier's bills and other indebtedness incurred by the Contractor in connection with the construction of the project have been paid in **full**. NO "CONDITIONAL" WAIVERS WILL BE ACCEPTED. Contractor shall comply with standard closeout procedures of Brevard County Facilities Construction Division, a copy of which is *attached hereto*, and also issued to the Contractor for signature at the pre-construction meeting.

Notwithstanding the foregoing, pursuant to section 255.05(11), Florida Statutes, when the Contractor has furnished and recorded a payment and performance bond and provided the County with a written consent from the Surety regarding the Project or payment in question, no such waivers shall be required. See Subparagraph 9.3.2 herein.

9.4 APPLICATIONS FOR PAYMENT

9.4.1 Prior to the date for each progress payment established in the Owner-Contractor Agreement, the Contractor, in accordance with the provisions herein, shall submit to the Owner, in the form specified by the Owner, an itemized Application for Payment. This Application shall be notarized, supported by such data substantiating the Contractor's right to payment as the Owner may require, including but not limited to, the Contractor's certification that all work for which payment is requested has been completed in full in accordance with the Contract Documents, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. The Contractor shall also swear to and certify that the Contractor has paid all due and payable amounts due to subcontractors and material suppliers for which previous certificates for payment were issued and payments received from the Owner.

9.4.2 The Owner will hold retainage in accordance with Florida Statutes on the amount of all progress payments until acceptance and Final Completion of the Work, whether or not the Owner has occupied any or all of the Project before such time.

9.4.3 Payments **may** be made by the Owner at Owner's discretion, on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site by the Contractor. Payments for materials or equipment stored on the site shall only be considered upon submission by the Contractor of

satisfactory evidence (for example, releases or paid invoices from the Seller) that the Contractor has acquired title to such material, an itemized inventory of materials and certification that the materials will be utilized on the Work prior to the next Payment Application under this Contract and that it is satisfactorily stored, protected, and insured or that other procedures satisfactory to the Owner that will protect the Owner's interests have been taken. Materials once paid for by the Owner become the property of the Owner and may not be removed from the work site without the Owner's written permission.

9.4.3.1 Owner will be under no obligation to make payment to the Contractor on account of materials or equipment not incorporated in the Work but delivered and stored at the site unless the Contractor, in the Contractor's Schedule of Values, includes line items for such delivered and stored materials or equipment.

9.4.3.2 It is specifically understood and agreed that an inspection of the materials by the Owner and/or Construction Program Manager, the Design Consultant, or any agency retained by any of them, shall not in any way subject the Owner to pay for the inspected materials, or any portion thereof, even though incorporated in the Work, if the inspected materials shall in fact turn out to be unfit to be used in the Work, nor shall such inspection be considered as any waiver of objection to the Work on account of the unsoundness or imperfection of the material used.

9.4.3.3 Unless otherwise provided for elsewhere in the Contract Documents, no payments will be made for any materials or equipment stored off or away from the Work Site.

9.4.4 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.5 CERTIFICATES FOR PAYMENT

9.5.1 The Design Consultant will, after receipt of the Contractor's Application for Payment, issue a Certificate for Payment to the Owner, with a copy to the Contractor, for such amount as the Design Consultant determines is properly due, or notify the Contractor in writing of their reasons for withholding a Certificate as provided herein.

9.5.2 The Owner's approval of the Contractor's submitted progress schedule and monthly updates as required herein shall be a condition precedent to the processing and payment of any Application for Payment. The Contractor shall be entitled to progress payments only as determined from the currently approved and updated schedule.

The submission of Superintendent Daily Reports, evidence of up-to-date as-built documents and updated Schedule shall also be a condition precedent of the processing and payment of any Application for Payment.

9.6 PROGRESS PAYMENTS

9.6.1 After a **complete and properly submitted** Certificate for Payment has been delivered to the Design Consultant, the Owner shall make payment in a manner consistent with the Florida Prompt Payment Act (Florida Statute 218.735).

9.6.2 The Contractor shall promptly pay each Subcontractor (including suppliers, laborers, and material suppliers) performing labor or furnishing material for the Work out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, also require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

9.6.3 The Owner may, on request and at its discretion, furnish to any subcontractor information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Design Consultant on account of Work done by such subcontractor.

9.6.4 Neither the Owner and/or the Design Consultant shall have any obligation to pay or to see to the payment of any monies to any subcontractor or materialman.

9.6.5 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6.6 Contractor acknowledges that the Contractor may not lien Owner's interest in the Project site, pursuant to Florida law. Contractor agrees to advise all subcontractors and material suppliers of the non-lienable nature of the project and to further furnish each such person or entity a copy of the Labor and Material Payment Bond for the project.

9.7 PAYMENTS WITHHELD

9.7.1 The Owner and/or Design Consultant may decline to certify payment and may withhold their Certificate, in whole or in part, to the extent necessary to protect the Owner. If the Design Consultant is unable to certify payment in the amount of the Application, they will notify the Contractor. If the Contractor and the Design Consultant cannot agree on a revised Payment Application, the Owner will issue payment for the percentage of work the Owner reasonably determines the Contractor has completed to date. The Design Consultant may decline to certify payment because of evidence or observations and may make adjustments in future certificates to such extent as may be necessary in their opinion to protect the Owner from loss, because of:

.1 defective work not remedied,
.2 third party claims filed, whether in court, in arbitration or otherwise, or reasonable evidence indicating the probability of filing of such claims,
.3 failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment,
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
.5 damage to the Owner or another contractor,
.6 reasonable evidence that the Work will not be completed within the Contract Time, or within any Contract Milestones as established in the Contract Documents,
.7 failure or refusal of the Contractor to carry out the Work in accordance

with the Contract Documents, or

.8 failure or refusal of the Contractor to properly schedule and coordinate the Work, to provide progress schedules, reports and updates, or to otherwise fully comply with Division 1 entitled "Schedules and Reports";

9.7.2 When the above grounds in Subparagraph 9.7.1 are resolved, payment shall be made for amounts withheld because of them.

9.8 FAILURE OF PAYMENT

9.8.1 If the Owner does not make payment to the Contractor, as required under Florida Prompt Payment Act (Florida Statute 218.735), upon receipt of the Contractor's **approved** Application for Payment by the Design Consultant, through no fault of the Contractor, and the Owner otherwise not being entitled under the Contract Documents or applicable law to withhold payment, then the Contractor may, upon seven (7) additional days' written notice to the Owner, stop the Work until payment of the amount owing according to the Contract Documents has been received .

9.9 SUBSTANTIAL COMPLETION

The Contractor shall notify the Owner, in writing, that the Work will be ready for inspection to determine if it is substantially complete on or after a date stated in the notice. The notice shall be given at least seven (7) calendar days in advance and shall be forwarded to the Owner through the Design Consultant. Inspection and testing shall take place at a time(s) mutually agreeable to the Contractor, Design Consultant, and Owner. The Owner shall determine if Substantial Completion has been accomplished as defined in Subparagraph 8.1.3, and the Design Consultant shall produce a written list of unfinished Work and defective Work, commonly referred to as a "punchlist".

9.9.1 Prior to the Substantial Completion inspection, the Contractor shall provide the Owner with a list of items which, in the Contractor's opinion, are to be completed or corrected. This list is for the Owner's information only and does not waive the Owner's right to complete performance of the Contract. When the Design Consultant determines that the Work is substantially completed, then the Design Consultant will issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion. *Warranties required by the Contract Documents shall commence on the Date of Final Completion of the Work.*

9.9.2 The acceptance of any payment after the Certificate of Substantial Completion has been issued shall constitute a waiver and full release of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at Final Completion and acceptance.

9.9.3 The issuance of the Certificate of Substantial Completion does not indicate final acceptance of the project by the Owner, and the Contractor is not relieved of any responsibility for the Work and meeting the Contract Document requirements.

9.9.4 Should the Design Consultant determine that the Work is not substantially complete, they shall provide the Contractor with written notice stating why the Work is not substantially complete. The Contractor shall re-request in writing that the Owner and Design Consultant perform a Substantial Completion inspection. Costs, if any, associated with such reinspections shall be assessed to the

Contractor.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of the documentation required by Article 9.9, and of written notice and certification by the Contractor that the Work is ready for final inspection, and acceptance, and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will issue a final Certificate of Payment stating that, to the best of their knowledge, information and belief, the Work has been completed in accordance with the terms and conditions of the Contract Documents, and that the entire balance found to be due the Contractor, and noted in said Final Certificate, is due and payable. The Final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9 and 9.10.2 have been fulfilled. Payment shall be made in full to the Contractor, in accordance with Florida's Prompt Payment Act (Florida Statute 218.735), provided that the requirements of Article 9 have been fulfilled.

9.10.2 Neither the final payment nor the remaining retained percentage shall become due until the Work is free and clear of any and all liens and the Contractor submits to the Owner:

.1 an affidavit from Contractor and all subcontractors, sub-subcontractors and material suppliers that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied;

.2 Consent of Surety, if any, to final payment;

.3 if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner;

.4 as-built drawings in the form and quantity required by the Contract Documents and approved by the Design Consultant, operation and maintenance manuals, and other project close-out submittals, as required by the contract Documents; and

.5 a written certification that:

.a the Contractor has reviewed the requirements of the Contract Documents,

.b the Work has been inspected by the Contractor for compliance with all requirements of the Contract Documents,

.c pursuant to this inspection, the Contractor certifies and represents that the Work complies in all respects with the requirements of the Contract Documents, and

.d the Contractor further certifies and represents that all equipment and systems have been installed in accordance with the Contract Documents and have been tested in accordance with specification requirements and are operational.

9.10.3 If any Subcontractor refuses to furnish an **original, notarized** release or waiver

required by the Owner, the Owner may withhold from the final payment any sum that the Owner has reason to believe may be needed to satisfy any claim arising from the Work and instead pay those monies to the Surety, who shall disburse funds as the Surety deems approvable. Notwithstanding the foregoing, when the Contractor has furnished and recorded a payment and performance bond and provided the County with a written consent from the Surety regarding the Project or payment in question, no such release or waiver shall be required. See Subparagraph 9.3.2 herein.

9.10.4 The making of final payment **shall not** constitute a waiver of any claims by the Owner against the Contractor.

9.10.5 The acceptance of final payment **shall** constitute a waiver and release of all claims by the Contractor that have not been already made to the Owner, in writing, and are stated as unsettled in the Application for Final Payment.

9.11 OWNER'S RIGHT TO OCCUPY INCOMPLETE WORK

9.11.1 Should the Project, or any portion thereof, be incomplete for Beneficial Occupancy or Final Completion at the scheduled dates, the Owner shall have the right to occupy any remaining portion of the Project. In such an event, the Contractor shall not be entitled to any extra compensation, nor shall the Contractor interfere in any way with said normal full use of that portion of the Project. In such event the Contractor shall not be relieved of any responsibilities of the Contract, including the required times of completion. Such occupancy by the Owner does not constitute Beneficial Occupancy or Final Completion.

9.12 LIQUIDATED DAMAGES

9.12.1 Should the Contractor fail to substantially complete the Work on or before the date stipulated for Substantial Completion (or such later date as may result from extension of time granted by Owner), the Contractor shall, upon staff's recommendation to and approval by the Board of County Commissioners, pay the Owner as liquidated damages the sum of $500 for each consecutive calendar day that Substantial Completion remains unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which the Owner will sustain per day by failure of the Contractor to complete work within time stipulated. It is recognized by the Owner and the Contractor that the injury to the Owner which could result from a failure of the Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs for liquidated damages be construed as a penalty on the Contractor. The Owner may deduct any Liquidated Damages incurred under this paragraph from pending Payment Applications.

9.12.2 For each consecutive calendar day that the Work remains incomplete after the date established for Final Completion, the Owner shall, upon staff's recommendation to and approval by the Board of County Commissioners, retain from the compensation otherwise to be paid to the Contractor the sum of $500. This amount is the minimum measure of damages the Owner will sustain by failure of the Contractor to complete all remedial work, correct deficient work, clean up the project and other miscellaneous tasks as required to complete all work specified. This amount is in addition to the liquidated damages prescribed above and shall be added to such damages for any period of time that the Contractor is late in achieving both Substantial and Final Completion.

CONTRACTOR INSTRUCTIONS FOR CONTRACT COMPLIANCE

PROCEDURE FOR CHANGE ORDERS
OR
CONSTRUCTION CHANGE DIRECTIVES

(**NO** changes are to be undertaken without **signed authorization**.)

A **CHANGE ORDER** is a written order to the Contractor signed by the Owner and/or Design Consultant issued after the execution of the Contract, authorizing a change in the terms of the Contract, the project scope of work, the contract price, and/or the construction completion date.

A **CONSTRUCTION CHANGE DIRECTIVE** is a change directive signed by the Airport Manager. Department of Transportation and the County Manager directing an addition, deletion or revision in the Scope of Work. The Construction Change Directive is necessary when no Agreement exists among the Architect/Engineer of Record, Brevard County and the Contractor on the dollar amount of a necessary change in the scope of work and/or extension of time to the construction contract. The Construction Change Directive is used (1) when an unsafe, hazardous or other similar condition exists, (2) when failure to achieve prompt resolution of the change will result in a demobilization of the Contractor, its subcontractors and/or agents, (3) when failure to achieve prompt resolution will result in additional cost, and/or a significant delay in completing the project. A Construction Change Directive may identify the cost or method of determining the cost and the impact to the construction schedule, but does not change the contract price or the contract time. It is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order.

The Contractor's proposal substantiating a Change Order and/or Construction Change Directive shall be itemized and segregated by labor and materials for the various components of the change in work (no aggregate labor or material totals will be acceptable), and shall be accompanied by similarly detailed and signed proposals of any subcontractors and/or persons who will furnish materials or equipment for incorporation in the project. The proposal shall also include the Contractor's estimate of the time required to perform the change, the last date that Authorization to Proceed can be issued which will not impact the date of Substantial Completion or cause additional material or mobilization expenses, and its impact on the critical path.

PROCEDURE FOR MONTHLY PAY REQUEST

Processing of a **complete and correct** monthly pay requests is based on the following:

- Certification (signed and sealed) by the Project Architect or Engineer, if applicable.
- **Notarized, ORIGINAL** "Waivers of Rights Against Payment Bond" will be required from all subcontractors, material suppliers and vendors (whether the County was sent a "Notice to Owner" or not) with each monthly payment application which waives any claim the subcontractor, supplier or vendor might have against the payment bond through the previous month's pay request. Partial Releases must include a release date through the

prior pay period (NO "CONDITIONAL" WAIVERS WILL BE ACCEPTED). A Partial Release will be required with each Pay Application until a Final Waiver is received.

Waivers of Rights Against Payment Bond must be submitted for anyone that has delivered materials or performed a service during the prior months payment application period.

I. If a supplier/subcontractor/materialman **did not** provide materials or services for the period covered by the prior months payment application period, the Contractor will be required to provide the following to the Owner:

a "certified", notarized list, including a statement that no deliverables have been received or services performed in the prior payment application period for the following:

anyone that has submitted a Notice to Owner during any prior months payment application period;

suppliers/subcontractors/materialmen that submitted a Partial Waiver in a prior months payment application period.

The Contractor shall provide such "certified", notarized list until a Final Waiver of Rights Against Payment Bond is received.

If a supplier/subcontractor/materialmen submits an affidavit which contradicts the Contractor's assertion that no deliverables or services were provided, a Waiver will be required.

The General Contractor shall inform subcontractors not to execute Affidavit of Payments unless the subcontractor has in fact been paid.

Notwithstanding the foregoing, pursuant to section 255.05(11), Florida Statutes, when the Contractor has furnished and recorded a payment and performance bond and provided the County with a written consent from the Surety regarding the Project or payment in question, no such waivers or releases shall be required. The Surety may, in a writing served on the County, revoke its consent or direct that the County withhold a specified amount from a payment, which shall be effective upon receipt.

- Executed Change Orders, updated CPM Schedule, Daily Work Logs, Submittal Log from General Contractor and Subcontractors for the application period.
- Any other documentation that may be required by the Owner or Design Consultant to substantiate the Contractor's Application for Payment, as outlined in Contract & Bidding Documents.

The Pay Application **will not** be processed until **ALL** items are satisfactorily submitted to the Owner. After a **complete and properly submitted** Pay Application has been submitted, the Owner shall make payment in a manner consistent with the Florida Prompt Payment Act (Florida Statute 218.735). Pay Application may be affected by Holidays.

PROCEDURES AND FORMS FOR FINAL PAY

You need to have all required forms and original, notarized waivers submitted to Valkaria Airport Construction, with copies submitted to the Design Consultant. As a minimum, the following

documents are needed to receive **FINAL PAY** on a project:

Δ	AIA DOCUMENT G-701	CHANGE ORDERS - ALL FOR PROJECT
Δ	AIA DOCUMENT G-702	APPLICATION & CERTIFICATE FOR PAYMENT
Δ	AIA DOCUMENT G-703	CONTINUATION SHEET
Δ	AIA DOCUMENT G-704	CERTIFICATE OF SUBSTANTIAL COMPLETION
Δ	AIA DOCUMENT G-707	CONSENT OF SURETY TO FINAL PAY W/ NO EXCEPTIONS

Note: If exceptions are listed on the Consent of Surety, a letter will be required from the Surety acknowledging ALL exceptions.

⌋	VALKARIA AIRPORT	CERTIFICATE OF FINAL COMPLETION
⌋	AIA DOCUMENT G706	CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBTS & CLAIMS
⌋	AIA DOCUMENT G706A	CONTRACTOR'S AFFIDAVIT OF RELEASE OF LIENS

⌋ Three (3) sets of Warranties, Guarantees and O&M Manuals required by Contract, including a **complete** list of all such items under warranty, length of warrantee/guarantee, contact name for service with phone number and address.

⌋ "As-Built" drawings (AutoCad format acceptable to the County) from job, including red-lined site plan.

⌋ Survey Drawing showing the finished floor elevation of all buildings and walkways, the location of all buildings, walks, paving, walls, catch basins, and manholes. The survey work shall also include all retention/detention structures, parking structures and related work. A permanent bench mark shall be established at the direction of the Design Consultant. The survey shall be performed by a registered land surveyor with a Florida license. The survey will not be made until all improvements have been completed and shall be marked **"As-Built Survey"**.

⌋ **Notarized**, **ORIGINAL** Waivers of Rights Against Payment Bond from all subcontractors and/or material and equipment suppliers. NO "CONDITIONAL" WAIVERS WILL BE ACCEPTED. When the Contractor has furnished and recorded a payment and performance bond and provided the County with a written consent from the Surety regarding the Project or payment in question, no such waivers shall be required.

⌋ Certification that all Utility bills (ie; FP&L, local water) have been paid.

⌋ A complete list of subcontractors with addresses, phone numbers and contact person.

⌋ Any other documentation required by the Contract Documents.

It is the Contractor's responsibility to ensure the completeness of the **FINAL PAY PACKAGE**. An incomplete package will result in delay of **FINAL PAY**. **FINAL PAY REQUESTS** will not be processed until ALL Substantial Completion punchlist work is complete and the required documents are received by Valkaria Airport. **FINAL PAY REQUEST** must be submitted no later than **30 DAYS** after Substantial Completion.

Steve Borowski
Brevard County Board of County Commissioners
Airport Manager
Valkaria Airport (X59)

_____

Contractor's Signature Date

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Neither the Owner, the Design Consultant, nor their agents, employees or representatives are responsible for the means, methods, techniques, sequences or procedures utilized by the Contractor, or for safety precautions and programs in connection with the Work. Contractor shall be solely responsible for initiating, maintaining and supervising means, methods, techniques, sequences, procedures and all safety precautions and programs in connection with the Work. This requirement applies continuously throughout Contract performance, until Final Payment is made, and is not limited to regular working hours.

Contractor shall comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 (OSHA Code of Federal Regulations), April 2001 Edition or later. Failure to comply with said standards will result in the following:

1. Owner will issue a "verbal" warning to Contractor of non-compliance;
2. Owner will issue a "written" warning to Contractor of non-compliance;
3. Owner will contact OSHA and send notice to the Contractor's insurance carrier.
4. Contractor is referred to the Construction Safety and Phasing Plan for safety information that applies to Airport Construction.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

.1 all employees on the Work and all other persons who may be affected thereby;

.2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors, machinery, equipment and all hazards shall be guarded or eliminated in accordance with all applicable safety regulations; and

.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, permits, rules, regulations and lawful orders of any public authority bearing on the safety or persons or property or their protection from damage, injury or loss. Contractors shall comply with the requirements of the Trench Safety Act, Chapter 553, Florida Statutes. Each specific subcontract within the scope of such act shall be in compliance with the Act and Contractor hereby acknowledges the Bid complies with and was prepared in accordance with the Act.

10.2.2.1 The Contractor shall at all times safely guard the Owner's property from injury or losses in connection with the Contract. Contractor shall at all times safely guard

and protect work and adjacent property from damage as provided by law and the Contract Documents. All passageways, guard fences, lights and other facilities required for protection by applicable safety regulations must be provided and maintained by the Contractor.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy, at the Contractor's own cost and expense, all damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible. The foregoing obligations of the Contractor are in addition to obligations under Paragraph 4.22 and 6.2. In case of failure on the part of the Contractor to make good such damage, the Owner may, upon two (2) calendar days written notice, proceed to repair, rebuild or otherwise restore such property as may be necessary, and the cost thereof will be deducted from any monies due or to become due the Contractor.

10.2.6 The Contractor is responsible for the proper packing, shipping, handling and storage (including but not limited to shipment or storage at the proper temperature and humidity) of materials to be incorporated in the Work, so as to insure the preservation of the quality and fitness of the material for proper installation and incorporation in the Work. For example, but not by way of limitation, Contractor shall, when necessary, place material on wooden platforms or other hard and clean surfaces and not on the ground, and place material under cover in any appropriate shelter or facility. Stored materials or equipment shall be located so as to facilitate proper inspection. Material and equipment which is delivered crated shall remain crated until ready for installation. Lawns, grass plots or other private property shall not be used for storage purposes without written permission of owner or lessee unless otherwise within terms of the easements obtained by the Owner.

10.2.7 The Contractor shall give notice in writing at least 48 hours before breaking ground, to all persons, Public Utility Companies, owners of property having structures or improvements in proximity to site of the Work, superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise, who may be affected by the Contractor's operation, in order that they may remove any obstruction for which they are responsible and have representative on site to see that their property is properly protected.

10.2.8 Contractor shall field locate all utilities and acknowledges that all utilities are not necessarily shown in the Contract Documents, or may be incorrectly located thereon. The Contractor shall protect all utilities encountered while performing its work, whether indicated on the Contract Drawings or not. The Contractor shall maintain utilities in service until moved or abandoned. The Contractor shall exercise due care when excavating around utilities and shall restore any damaged utilities to the same condition or better as existed prior to starting the

Work, at no cost to the Owner. The Contractor shall maintain operating utilities or other services, even if they are shown to be abandoned on the Contract Drawings, in service until new facilities are provided, tested and ready for use .

10.2.9 The Contractor shall return all improvements on or about the site and adjacent property which are not shown to be altered, removed or otherwise changed to conditions which existed prior to starting work.

10.2.10 The Contractor shall protect the Work, including but not limited to, the site, stored materials and equipment, excavations, and excavated or stockpiled soil or other material, intended for use in the Work, and shall take all necessary precautions to prevent or minimize damage to same or detrimental effect upon performance caused by or due to rain, snow, ice, run-off, floods, temperature, wind, dust, sand and flying debris.

10.2.11 The Contractor's superintendent shall take all steps reasonably necessary to prevent accidents and protect workers, material, equipment and property.

10.2.12 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.3 EMERGENCIES

In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. The Contractor shall notify the Owner of the situation and all actions taken immediately thereafter. If, in the opinion of the Contractor, immediate action is not required, the Contractor shall notify the Owner of the emergency situation and proceed in accordance with the Owner's instructions. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

ARTICLE 11

INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase and maintain in companies properly licensed and qualified to do business in the State of Florida, and acceptable to the Owner, such insurance as will protect the Contractor, the Owner, the Design Consultant and their agents, representatives, and employees from claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be primary and non-contributing to any insurance possessed or procured by the Owner, and limits of liability shall be not less than those set forth in the General Provisions of this Contract or required by law, whichever is greater.

11.1.3 The insurance required by Subparagraph 11.1.1 shall include contractual liability insurance applicable to the Contractor's obligations.

11.1.4 All certificates of Insurance acceptable to the Owner shall be filed with the Owner

prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days' prior written notice has been given to the Owner.

11.2 EFFECT OF SUBMISSION OF CERTIFICATES

11.2.1 The Owner shall be under no obligation to review any Certificates of Insurance provided by the Contractor or to check or verify the Contractor's compliance with any and all requirements regarding insurance imposed by the Contract Documents. The Contractor is *fully liable* for the amounts and types of insurance required herein and is not excused should any policy or certificate of insurance provided by the Contractor not comply with any and all requirements regarding insurance imposed by the Contract Documents.

11.3 FAILURE OF COMPLIANCE

11.3.1 Should the Contractor fail to provide and maintain in force any and all insurance, or insurance coverage required by the Contract Documents or by law, the Owner shall be entitled to recover from the Contractor all amounts payable, as a matter of law, to Owner or any other parties, including but not limited to the Construction Program Manager and the Design Consultant, had the required insurance or insurance coverage been in force. Said recovery shall include, but is not limited to interest for the loss of use of such amounts of money, plus all attorney's fees, costs and expenses incurred in securing such determination and any other consequential damages arising out of the failure of the Contractor or insurance company to comply with the provisions of the Contract Documents, or any policy required hereby, or any other requirements regarding insurance imposed by law. Nothing herein shall limit any damages for which Contractor is responsible as a matter of law.

11.4 LICENSED INSURANCE COMPANIES

11.4.1 All insurance companies providing the above insurance shall be licensed in compliance with the laws of the State of Florida and shall be general lines of insurance.

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGES IN THE WORK

12.1.1 Changes in the Work may be accomplished after execution of the Contract and without invalidating the Contract, by Change order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 12 and elsewhere in the Contract Documents.

12.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Design Consultant; a Construction Change Directive requires agreement by the Owner and Design Consultant and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Design Consultant only.

12.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order

for a minor change in the Work.

12.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted. For the purposes of this section changes that alter the total contract price by more than 25% or the cost of any item that individually represents at least 20% of the total project cost shall be subject to adjustment. The Bid unit prices shall otherwise be used for quantity adjustments.

12.2 CHANGE ORDERS

12.2.1 A Change Order is a written instrument prepared by Design Consultant and signed by Owner, Contractor and Design Consultant, stating their agreement upon all of the following:

.1 a change in the Work;
.2 the amount of the adjustment in the Contract Sum, if any; and
.3 the extent of the adjustment in the Contract Time, if any.

12.3 CONSTRUCTION CHANGE DIRECTIVES

12.3.1 A Construction Change Directive is a written order prepared by the Design Consultant and signed by the Owner and Design Consultant, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

12.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

12.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one (1) of the following methods:

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 unit prices stated in the Contract Documents or subsequently agreed upon;
.3 cost to be determined in a manner agreed upon by the parties and mutually acceptable fixed or percentage fee; or
.4 as provided in Subparagraph 12.3.6.

12.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design Consultant of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

12.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

12.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Design Consultant on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 12.3.3, the Contractor shall keep and present, in such form as the Design Consultant shall prescribe, an itemized accounting together with appropriate supporting data (including receipts, invoices, and records including but not limited to payroll, equipment, ownership or rental records). Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 12.3.6 shall be limited to the following:

.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's or workmen's compensation insurance;

.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 costs of premiums for all bonds and insurance, permit fees and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field office personnel directly attributable to the change.

12.3.7 **ON ALL CHANGE ORDERS, THE MAXIMUM ALLOWABLE CHARGE FOR OVERHEAD SHALL BE FIVE PERCENT (5%), THE MAXIMUM PROFIT SHALL BE FIVE PERCENT (5%) AND THE MAXIMUM BOND CHARGE SHALL BE TWO PERCENT (2%) OF THE NET INCREASE IN ANY ONE CHANGE ORDER.**

12.3.8 Pending final determination of cost to Owner, amounts NOT IN DISPUTE may be included in Applications for payment. The amount of credit to be allowed by Contractor to Owner for a deletion or change which results in a net decrease in Contract Sum shall be actual net cost as confirmed by Design Consultant. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

12.3.9 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Design Consultant for determination.

12.3.10 When the Owner and the Contractor agree with the determination made by the Design Consultant concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

12.3.11 Allowable costs for net changes in the work may include labor, material, sales tax, the rental of power tools and equipment actually used or a reasonable price for the use of power tools and equipment owned by the Contractor, based upon their life expectancy and purchase price, utilities, pro rata charges for forepersons, and payroll charges such as employer's FICA contribution, Public Liability and Worker's Compensation Insurance, but only if all such costs are

incurred as the direct result of the changes in the Work. Items considered as overhead, which are included in the percentage markup allowed by this Article, and which cannot therefore be allowed as cost items, shall include such things as insurance other than that mentioned above, superintendent, timekeeper, clerks, security, use of small tools, incidental job costs, home office expenses, charges for estimating change proposals, and all other expenses of whatever type. The change in cost for labor and material bonds and for performance bond relative to the value of the change order shall be allowable costs, but no overhead or profit shall be applied. Percentages for overhead and profit shall be applied only to the **net cost** of the changed Work (difference in cost between original and revised Work).

12.4 CONTRACTOR NOTICE OF CHANGE

12.4.1 If the Contractor asserts that any instructions, information, event or occurrence has caused a change in or addition to the Work which change causes an increase or decrease in the Contractor's cost or time required for the performance of any part of the Work under the Contract, the Contractor shall give the Owner written notice before conditions are disturbed and before proceeding to execute the Work. Contractor's notice shall be given promptly enough to avoid delaying the Work and in no instance later than ten (10) working days after such instructions, information, event or occurrence has caused a change. If the Owner agrees that the Work involved is extra Work, a Change Order shall be issued as provided in this Article. No claims for extra Work shall be allowed unless the notice required by this Article is given by the Contractor within the time allowed, unless the Work is performed pursuant to the written order of the Owner as provided in this Article. Contractor's notice shall include the instructions or circumstances that are the basis of the claim and the Contractor's best estimate of the cost and time involved.

12.5 GENERAL PROVISIONS RELATED TO CHANGES

12.5.1 The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of Article 12, and which the Contractor, its Subcontractors or Sub-subcontractors or any other person may incur as a result of delays, interferences, suspensions, accelerations, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all changes in the Work performed pursuant to this Article 12. It is understood and agreed that the Contractor's sole and exclusive remedy in such event shall be recovery of the Contractor's direct costs as compensable hereunder and an extension of the Contract Time, but only in accordance with the provisions of the Contract Documents.

12.5.2 **CHANGES REQUIRING A DECREASE IN CONTRACT SUM**. If a Change in the Work will result in a decrease in the Contract Sum, the Owner may request a quotation by the Contractor of the amount of such decrease for use in preparing a Change Order. The Contractor's quotation shall be forwarded to the Owner within five (5) days of the Owner's request and, if acceptable to the Owner, shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the Contract Documents, and/or on such other basis as the parties may mutually determine. If

the parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the Work, as determined by the Owner, plus ten percent (10%) thereof as overhead and profit.

12.5.3 No claim by the Contractor for an increase in the contract sum or time hereunder shall be allowed if asserted after final payment under this Contract. No claim relating to or flowing from a particular change shall be allowed after execution of the Change Order relating to that change.

12.5.4 ALL CHANGE ORDERS MUST BE AUTHORIZED AND/OR APPROVED BY THE BOARD OF COUNTY COMMISSIONERS. AND, UNLESS OTHERWISE STATED ON THE CHANGE ORDER DOCUMENT, BY THE FLORIDA DEPARTMMENT OF TRANSPORTATION. THE BOARD OF COUNTY COMMISSIONERS HAS ALSO DELEGATED THE AUTHORITY TO THE COUNTY MANAGER TO AUTHORIZE THE INITIATION OF WORK PRIOR TO BOARD APPROVAL WHEN IN COMPLIANCE WITH THE FOLLOWING CRITERIA DESCRIBED IN BREVARD COUNTY POLICY BCC-27:

.1 Authorize work associated with Construction Contract Change Orders in an amount up to $100,000.00, when within budgeted amount for the project.

.2 Authorize work associated with Change Orders to construction contracts when an unsafe, hazardous condition exists and/or when failure to achieve prompt resolution of the change will result in a demobilization of the contractor, or a significant delay in completing the project, in an amount not to exceed $100,000.00 and when within the budgeted amount of the project.

.3 Authorize work associated with Construction Change Directives equal to $100,000.00 when within the budgeted amount of the project.

The Construction Change Directive is used when an unsafe, hazardous or other similar condition exists, and/or when failure to achieve prompt non-resolution of the change will result in a demobilization of the contractor, or a significant delay in completing the project. A Construction Change Directive does not change the contract price or the contract time, but is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order following negotiations by the parties.

12.6 ADMINISTRATIVE CHANGES IN THE WORK

12.6.1 The Design Consultant shall have authority to order administrative changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by the issuance of an Architectural Supplemental Instruction (ASI) and shall be binding on the Owner and the Contractor. The Contractor shall carry out such instructions promptly.

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the Work should be covered contrary to the request of the Owner, or to requirements specifically expressed in the Contract Documents, or to requirements of applicable Construction Permits, it must, if required in writing by the Owner, be uncovered for the Owner's observation and replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Owner has not specifically requested to observe prior to being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such work is found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is found not in accordance with the Contract Documents, the Contractor shall pay costs of uncovering and replacement.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly reconstruct, replace or correct all Work rejected by the Owner as defective, as failing to conform to the Contract Documents, or as not in accordance with the guarantees and warranties specified in the Contract Documents, whether observed before or after Substantial or Final Completion, and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Design Consultant's additional services made necessary thereby.

13.2.2 If the Contractor does not proceed with the correction of rejected Work within a reasonable time fixed by written notice from the Owner, the Owner may elect to (1) replace or correct such Work and charge the Contractor the cost incurred by the Owner, or (2) terminate this Contract for default as provided in Paragraph 14.3. If the Contractor does not pay the cost of such replacement or correction and the removal and storage within ten (10) calendar days thereafter, the Owner may charge the Contractor by an appropriate Change Order. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.3 Nothing contained in Article 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.6 hereof. The establishment of the time period of one year after the Date of Final Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work which became deficient within such period of time, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Owner prefers to knowingly accept defective or non-conforming Work, the Owner may do so. In which case, a Change Order must be issued to reflect a reduction in the Contract sum. If the amount of a reduction is determined after final payment, it shall be paid to the Owner by the Contractor. The only method for the Owner to accept defective or non-conforming Work shall be by a written change order signed by the Brevard County Board of County Commissioners. Absent such a change order, no acceptance of defective or non-conforming Work

is permitted.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If the Work is stopped for a period of one hundred twenty (120) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees, or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon seven (7) additional days' written notice to the Owner terminate the Contract and recover from the Owner payment on a quantum meruit basis, for all Work executed. The Contractor shall not be entitled to collect and hereby expressly waives and releases any claim to any profit on work not performed and any damages related to that portion of the Contract which has been terminated.

14.2 TERMINATION FOR CONVENIENCE OF THE OWNER

14.2.1 The Owner may, at any time upon ten (10) days' written notice to the Contractor and to the Contractor's surety, which notice shall specify that portion of the Work to be terminated and the date said termination is to take effect, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the work for the convenience of the Owner. The Contractor's sole remedy, in the event of such termination, will be the allowable termination costs permitted by Article 14.4. Contractor shall include termination clauses identical to Article 14 in each of his Subcontracts.

14.3 DEFAULT TERMINATION

14.3.1 The Owner may, upon five (5) days' written notice to the Contractor and to the Contractor's surety, terminate (without prejudice to any right or remedy of the Owner or any subsequent buyer of any portion of the Work) this contract and may take possession of the Work and complete the Work by contract or otherwise in any one of the following circumstances:

.1 if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure the Substantial or Final Completion of the Work within the Contract Time, or fails to complete the Work within said periods;

.2 if the Contractor is in material default in carrying out any provisions of the Contract;

.3 if the Contractor fails to supply a sufficient number of properly skilled worker's or proper equipment or materials;

.4 if the Contractor fails to make prompt payment to Subcontractors or material suppliers or for materials or labor;

.5 if the Contractor disregards laws, permits, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to follow the instructions of the Owner:

.6 if the Contractor violates any provisions of the Contract Documents; or

14.3.2 If, after the Contractor has been terminated for default pursuant to Paragraph 14.3, it is determined that none of the circumstances set forth in Subparagraph 14.3.1 exist, then such termination shall be considered a termination for convenience pursuant to Paragraph 14.2. In such case, the Contractor's sole remedy will be costs permitted by Article 14.4.

14.3.3 If the Owner terminates the employment of the Contractor, pursuant to Article 14.3, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the compensation to be paid to the Contractor hereunder exceeds the expense of completing the Work (including compensation for additional managerial, design, administrative and inspection services and any damages for delay), such excess shall be paid to the Contractor.

14.3.4 If Owner's expenses to complete the Work shall exceed the unpaid balance, the Contractor and sureties shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the Work is partially or fully terminated, the Owner may take possession of and use in completing the Work any materials, appliances, supplies, plant and equipment as may be on the site of the terminated portion of the Work and necessary for the completion of the Work. If the Owner does not fully terminate the right of the Contractor to proceed, the Contractor shall continue to perform the part of the work that is not terminated.

14.4 ALLOWABLE TERMINATION COSTS

14.4.1 If the Owner terminates the whole or any portion of the Work pursuant to Paragraph 14.2, then the Owner shall only be liable to the Contractor for those costs reimbursable to the Contractor in accordance with Subparagraph 14.4.2, plus a markup of ten percent for profit and overhead on the actual, fully accounted costs recovered under 14.4.2; provided however, that if there is evidence that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of the allowable termination payment to reflect the indicated amount of loss. Contractor shall submit any claim of reimbursable cost, as stated in this paragraph, within 10 days of receipt of Notice of Termination, or such claims are waived, released and forever barred.

14.4.2 If the Owner terminates the whole or any portion of the Work pursuant to Paragraph 14.2, the Owner shall pay the Contractor the amounts determined as follows:

.1 an amount for supplies, services, or property accepted by the Owner pursuant to Clause 14.5.1.6, or acquired pursuant to Clause 14.5.1 and not heretofore paid for, and to the extent provided in the Contract, such amount shall be equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges; and

.2 the total of:

(a) the cost incurred in the performance of the Work terminated,

including initial costs and preparatory expense allocatable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under Paragraph 14.4.2.1;

(b) the cost of settling and paying claims arising out of the termination of Work under Subcontracts or orders, pursuant to Paragrph 14.5.1.5, which are properly chargeable to the terminated portion of the Work (exclusive of amounts paid or payable on account of completed items of equipment delivered or services furnished by Subcontractors or vendors prior to the effective date of the notice of termination), unless otherwise paid under Paragraph 14.2.1; and

(c) the reasonable costs of settlement, including accounting, legal, clerical and all other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Work and for the termination and settlement of Subcontracts thereunder, together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of property allocatable to the Contract.

.3 Provided, however, that the Owner will not be liable for payments to subcontractors pursuant to Article 14.4.2.2.

14.4.3 In arriving at any amount due the Contractor pursuant to Paragraph 14.4, there shall be deducted the following:

.1 all unliquidated advance or other payments on account theretofore made to the Contractor applicable to the terminated portion of the Contract;

.2 any claim which the Owner may have against the Contractor;

.3 such amount as the Owner determines to be necessary to protect the Owner against loss because of outstanding or potential liens or claims; and

14.4.4 The total sum to be paid to the Contractor under Paragraph 14.4 shall not exceed the Contract Sum reduced by the amount of payments otherwise made or to be made for Work not terminated and as otherwise permitted by the Contract. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor, as provided in Subparagraph 14.4.2, the fair value, as determined by the Owner, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to Clause 14.5.1.7.

14.4.5 If the Owner terminates the whole or any part of the Work pursuant to Paragraph 14.3, the Owner may procure, upon such terms and in such manner as the Owner and/or Construction Program Manager may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Owner for any excess costs for such similar supplies or services. The Contractor shall continue the performance of the Contract to the extent not terminated hereunder.

14.5 GENERAL TERMINATION PROVISIONS

14.5.1 After receipt of a notice of termination from the Owner, pursuant to Paragraph 14.2 or 14.3, and except as otherwise directed by the Owner, the Contractor shall:

.1 stop Work under the Contract on the date and to the extent specified in the notice of termination;

.2 place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;

.3 terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination;

.4 at the option of the Owner, assign to the Owner in the manner, at the times and to the extent directed by the Owner, all of the rights in the contracts so terminated, in which case the Owner shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

.5 settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts, with the approval or ratification of the Owner, to the extent required;

.6 transfer title and deliver to the entity or entities designated by the Owner, in the manner, at the times and to the extent directed by the Owner, to the extent specifically produced or specifically acquired by the Contractor for the performance of the terminated Work, the following:

(a) the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of the Work terminated by the notice of termination;

(b) the completed or partially completed plans, drawings, information, releases, manuals and other property related to the Work and which, if the Contract had been completed, would have been required to be furnished to the Owner:

.7 complete performance of such part of the Work as shall not have been terminated by the notice of termination; and

.8 take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

14.5.2 The Contractor shall, from the effective date of termination until the expiration of three (3) years after final settlement under the Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, but without direct charge to the Owner, all the Contractor's books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the Work terminated hereunder, or, to the extent approved by the Owner, photographs, micro-photographs or other

authentic reproductions thereof.

14.6 If award was made as a result of application of local preference criteria as defined in Brevard County Resolution No. 2009-146, and the Contractor either falsified or misrepresented information that lead to the award by application of local preference criteria, or fails to maintain the requirements of the vendor category stated on the Local Vendor Affidavit of Eligibility through completion of the Agreement, the County may terminate the Agreement immediately. Such termination is effective upon the party's receipt of the Notice of Termination. Termination for nonperformance and/or failure to maintain the requirements of a local vendor category upon which the Contractor was awarded a contract may be used for consideration for future awards.

FEDERAL CONTRACT PROVISIONS.

ACCESS TO RECORDS AND REPORTS. (Reference: 2 CFR § 200.326, 2 CFR §200.333)

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.

AFFIRMATIVE ACTION REQUIREMENT. (Reference:41 CFR part 60-4,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:

A. Timetables

B. Goals for minority participation for each trade (Vol. 45 Federal Register pg. 65984 10/3/80)

C. Goals for female participation in each trade (6.9%)

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

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

3. The contractor shall provide written notification to the Director, 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 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 [insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any].

AFFIRMATIVE ACTION PLAN.

The Department of Labor is responsible for administering the Executive Order 11246, which contains requirements for an Affirmative Action Plan. This Plan is similar in content and requirements to the affirmative action plan required in 49 CFR Part 152 subpart e. 49 CFR Part 152 applied to grants issued under the Airport Development Aid Program, which was replaced by the Airport Improvement Program.

BREACH OF CONTRACT TERMS. (Reference 2 CFR § 200 Appendix II(A))

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. (Reference: 49 USC § 50101)

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.

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.

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.

CIVIL RIGHTS – TITLE VI ASSURANCES.

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 Brevard County Board of County Commissioners 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 Brevard County Board of County Commissioners_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.

TO HAVE AND TO HOLD said lands and interests therein unto Brevard County Board of County Commissioners 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 Brevard County Board of County Commissioners, its successors and assigns.

The Brevard County Board of County Commissioners, 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 Brevard County Board of County Commissioners 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.)

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 ***Brevard County Board of County Commissioners*** 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, Brevard County Board of County Commissioners 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 Brevard County Board of County Commissioners 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 Brevard County Board of County Commissioners 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 Brevard County Board of County Commissioners 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, Brevard County Board of County Commissioners 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, Brevard County Board of County Commissioners will there upon revert to and vest in and become the absolute property of Brevard County Board of County Commissioners 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 non-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).

CLEAN AIR AND WATER POLLUTION CONTROL. (Reference: 49 CFR §18.36(i)(12))

Contractors and subcontractors agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;

3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;

4. To include or cause to be included in any construction contract or subcontract which exceeds $100,000 the aforementioned criteria and requirements.

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS.
(Reference: 2 CFR § 200 Appendix II (E))

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.

COPELAND "ANTI-KICKBACK" ACT (Reference: 2 CFR § 200 Appendix II(D), 29 CFR parts 3 & 5)

The United States Department of Labor Wage and Hours Division oversees the Copeland "Anti-Kickback" Act requirements. All contracts and subcontracts must meet comply with the Occupational Safety and Health Act of 1970.

United States Department of Labor Wage and Hours Division can provide information regarding any specific clauses or assurances pertaining to the Copeland "Anti-Kickback" Act requirements required to be inserted in solicitations, contracts or subcontracts.

DAVIS-BACON REQUIREMENTS. (Reference: 2 CFR § 200 Appendix II(D))

1. Minimum Wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

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

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

2 Withholding.

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

3. Payrolls and basic records.

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.* , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at *http://www.dol.gov/esa/whd/forms/wh347instr.htm* or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

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

(1) 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 owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

5. Compliance With Copeland Act Requirements.

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

6. Subcontracts.

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

7. Contract Termination: Debarment.

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

8. Compliance With Davis-Bacon and Related Act Requirements.

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

9. Disputes Concerning Labor Standards.

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

10. Certification of Eligibility.

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

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

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

DEBARMENT AND SUSPENSION (NON-PROCUREMENT). (Reference: 2CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5 DOT Suspension & Debarment Procedures & Ineligibility)

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.

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 ENTERPRISE. (Reference:49CFR part 26) APPLICABILITY.

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.

ENERGY CONSERVATION REQUIREMENTS. (Reference 2 CFR § 200Appendix II(H))

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

EQUAL OPPORTUNITY CLAUSE AND SPECIFICATIONS. (Reference 41 CFR§ 60-1.4, Executive Order 11246)

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under

this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

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

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS.

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;

d. "Minority" includes:

(1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

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

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

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 18.7a through 18.7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

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

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its

effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

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

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

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

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

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

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

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

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written

notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

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

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

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

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

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

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

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

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

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (18.7a through 18.7p). 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 18.7a through 18.7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority

and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

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

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

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

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 18.7 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).

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)
(Reference: 29 USC § 201, et seq.)

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. (Reference: 49CFR part 20, Appendix A):

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.

NONSEGREGATED FACILITIES REQUIREMENT. (Reference: 41 CFR § 60-1.8)
Notice to Prospective Federally Assisted Construction Contractors

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a federally-assisted construction contract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

2. 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.

3. 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.

3. The penalty for making false statements in offers is prescribed in 18 U.S.C. § 1001.

CERTIFICATION OF NONSEGREGATED FACILITIES

The federally-assisted construction contractor certifies that she or he does not maintain or provide, for his employees, any segregated facilities at any of his establishments and that she or 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 that she or he will not maintain or provide, for his employees, segregated facilities at any of his establishments and that she or he will not permit his employees to perform their services at any location under his 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 rooms, work areas, restrooms, and washrooms, 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 which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. The federally-assisted construction contractor agrees that (except where she or he has obtained identical certifications from proposed subcontractors for specific time periods) she or 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 she or he will retain such certifications in his files.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (Reference 20 CFRpart 1910)

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 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

RIGHT TO INVENTIONS. (Reference 2 CFR § 200 Appendix II(F))

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. (Reference 2 CFR § 200 Appendix II(B))

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 (Reference: 49 CFR part 30)

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.

TEXTING WHEN DRIVING (References: Executive Order 13513, and DOT Order 3902.10)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

VETERAN'S PREFERENCE (Reference: 49 USC § 47112(c))

In the employment of labor (except in executive, administrative, and supervisory positions), preference must be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Title 49 United States Code, Section 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

U.S. Department
of Transportation
**Federal Aviation
Administration**

FAA ORL ADO
5950 Hazeltine National Drive
Suite 400
Orlando, FL 32822

September 13, 2017

Mr. Stephen Borowski
Airport Manager
Valkaria Airport
#1 Pilots' Place
Grant Valkaria, Florida 32950

Dear Mr. Borowski:

We are enclosing the original and one copy of the Grant Offer for Airport Improvement Program (AIP) Project No. 3-12-0144-009-2017 at Valkaria Airport in Valkaria, Florida. This letter outlines expectations for success. Please read the conditions and assurances carefully.

To properly enter into this agreement, you must do the following:

a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.

b. The sponsor's authorized representative must execute the grant, followed by the attorney's certification, no later than September 20, 2017, in order for the grant to be valid.
   - The date of the attorney's signature must be on or after the date of the sponsor's authorized representative's signature.
   - All signatures must be made with blue or black ink; Signature stamps will not be accepted.

c. You may not make any modification to the text, terms or conditions of the grant offer.

d. After you properly execute the grant agreement:
   - Return one executed original Grant Agreement to our office via US mail or commercial courier.
   - Retain one copy of the executed Grant Agreement for your records.

e. Because time is now critical for entering the executed grant into the FAA system, we request you send a copy of the signed agreement to our office by facsimile or email (pdf document) prior to sending the hardcopy document through U.S. mail or commercial courier.

Subject to the requirements in 2 CFR §200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

The terms and conditions of this agreement require you to complete the project without undue delay. We will be monitoring your progress to ensure proper stewardship of these Federal funds. **We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress.** Should you fail to make draws on a regular basis, your grant may be placed in "inactive" status, which will affect your ability to receive future grant offers.

Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- A signed/dated SF-270 (non-construction projects) or SF-271 or equivalent (construction projects) and SF-425 annually, due 90 days after the end of each federal fiscal year in which this grant is open (due December 31 of each year this grant is open); and
- Performance Reports, which are due within 30 days of the end of a reporting period as follows:
    1. Non-construction project: Due annually at end of the Federal fiscal year.
    2. Construction project: Submit FAA form 5370-1, Construction Progress and Inspection Report at the end of each fiscal quarter.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend $750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

Once the project(s) is completed and all costs are determined, we ask that you close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

William Farris, (407) 812-6331, is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,

Bart Vernace, P.E.
Manager

Deborah Thomas

From:	Tammy Rowe
Sent:	Monday, November 06, 2017 9:55 AM
To:	Deborah Thomas
Subject:	FW: Valkaria Airport Signed & Completed FDOT SJPA for Runway 14 32 Rehabilitation
Attachments:	FDOT SJPA RWY 14 32 Final.pdf

FYI

From: Borowski, Steve [mailto:steve.borowski@brevardcounty.us]
Sent: Monday, November 06, 2017 9:51 AM
To: Soss, Matthew; Lea, Constance; Tammy Rowe; Janet Whittimore
Cc: Hambrecht, Robert
Subject: Valkaria Airport Signed & Completed FDOT SJPA for Runway 14 32 Rehabilitation

Hello All,
For your files.
Attached is the completed and signed FDOT JPA for the Valkaria Airport Runway 14 32 Rehabilitation Project.

Thank You,
Steve
Valkaria Airport
"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

PUBLIC TRANSPORTATION
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT
Number 1

Financial Project No(s): 429829-1-94-01 429829-1-94-02 (item-segment-phase-sequence) Contract No.: AS211	Fund: DPTO/DS Function: 215 Federal No.: N/A DUNS No.: 80-939-7102	FLAIR Category: 088719 Object Code: 740100 Org. Code: 55052000531 Vendor No.: F596 000 523 038

Catalog of Federal Domestic Assistance Number: N/A
CFDA Title: N/A

Catalog of State Financial Assistance Number: N/A
CSFA Title: N/A

THIS AGREEMENT, made and entered into this 3rd day of November, 2017, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter referred to as the Department, and Brevard County Board of County Commissioners P.O. Box 1496, Titusville, Florida 32781 hereinafter referred to as Agency.

WITNESSETH:

WHEREAS, the Department and the Agency heretofore on the 24th day of May 2016 entered into a Joint Participation Agreement; and

WHEREAS, the Agency desires to accomplish certain project items as outlined in the Attachment "A" appended hereto; and

WHEREAS, the Department desires to participate in all eligible items for this project as outlined in Attachment "A" for a total Department Share of $375,793.00.

NOW, THEREFORE THIS INDENTURE WITNESSETH: that for and in consideration of the mutual benefits to flow from each to the other, the parties hereto agree that the above described Joint Participation Agreement is to be amended and supplemented as follows:

1.00 Project Description: The project description is amended
No Change

2.00 Project Cost:

Paragraph 3.00 of said Agreement is ☒ increased/ ☐ decreased by $4,449,005.00 bringing the revised total cost of the project to $4,697,415.00.

Paragraph 4.00 of said Agreement is ☒ increased/ ☐ decreased by $355,920.00 bringing the Department's revised total cost of the project to $375,793.00.

3.00 Amended Exhibits:

Exhibit(s) "A", "B", and "D" of said Agreement is amended by Attachment "A".

4.00 Contract Time:

Paragraph 16.00 of said Agreement February 1st, 2019

5.00 E-Verify

Vendors/Contractors:

1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and

2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

429829-1-94-01

Financial Project No(s) 429829-1-94-02

Contract No. AS211

Agreement Date November 3, 2017

Except as hereby modified, amended or changed, all other terms of said Agreement dated May 24th 2016 and any subsequent supplements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

AGENCY

Brevard County Board of County Commissioners
AGENCY NAME

RITA PRITCHETT
SIGNATORY (PRINTED OR TYPED)

SIGNATURE

VICE CHAIRPERSON BOCC
TITLE

Reviewed for legal form and content:

(Assistant) County Attorney

FDOT

See attached Encumbrance Form for date of Funding Approval by Comptroller

LEGAL REVIEW
DEPARTMENT OF TRANSPORTATION

Richard B. Morrow, P.E.
DEPARTMENT OF TRANSPORTATION

Director of Transportation Development
TITLE

Financial Project No(s) 429829-1-94-01
429829-1-94-02

Contract No. AS211
Agreement Date November 3, 2017

ATTACHMENT "A"
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT

This Attachment forms an integral part of that certain Supplemental Joint Participation Agreement between the State of Florida, Department of Transportation and Brevard County Board of County Commissioners P.O. Box 1496, Titusville, Florida 32781

dated Nov 3, 2017

DESCRIPTION OF SUPPLEMENT (Include justification for cost change):

Adds additional scope and funds for the Construction of the Rehabilitation of Runway 14-32 and Installation of Electrical Vault. Updates Exhibit "A", "B", and "D". Extends project from June 1, 2018 to February 1, 2019. No other changes.

I.	Project Cost:	As Approved	As Amended	Net Change
		$248,410.00	$4,697,415.00	$4,449,005.00
	Total Project Cost	$248,410.00	$4,697,415.00	$4,449,005.00

II.	Fund Participation:	As Approved	As Amended	Net Change
	Department:	$19,873.00	$375,793.00	$355,920.00
	Agency:	$4,968.00	$93,948.00	$88,980.00
	FAA	$223,569.00	$4,227,674.00	$4,004,105.00
	Total Project Cost	$248,410.00	$4,697,415.00	$4,449,005.00

Comments:

FINANCIAL PROJECT NO. 429829-1-94-01
429829-1-94-02

EXHIBIT "A"
PROJECT DESCRIPTION AND RESPONSIBILITIES

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and the Brevard County Board of County Commissioners P.O. Box 1496, , Titusville, Florida 32781-1496 referenced by the above Financial Project Number.

PROJECT LOCATION: Valkaria Airport
2865 Greenbrooke Street
Valkaria, Florida 32950

PROJECT DESCRIPTION: Rehabilitate Runway 14-32 and Installation of Electrical Vault Per Attached Scope of Services

SPECIAL CONSIDERATIONS BY AGENCY:

1) The audit report(s) required in paragraph 6.50 of the Agreement shall include a schedule of project assistance that will reflect the Department's contract number, Financial Project Number and the Federal Identification number, where applicable, and the amount of state funding action (receipt and disbursement of funds) and any federal or local funding action and the funding action from any other source with respect to the project.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

1) Method of Compensation:

For the satisfactory performance of the services and deliverables detailed in the Scope of Services, the AGENCY shall be paid up to a maximum amount of $375,793 for actual costs incurred. The AGENCY may receive progress payments for the actual costs of deliverables based on the Schedule of Values and on a percentage of services that have been completed, approved and accepted to the satisfaction of the DEPARTMENT when properly supported by detailed invoices and acceptable evidence of payment. The final balance due under this Agreement will be reimbursed upon the completion of all Project services, receipt of final cost documentation and proper submission of a detailed invoice, and when the Project has been inspected, approved and accepted to the satisfaction of the DEPARTMENT in writing. All costs charged to the Project shall be supported by detailed invoices, proof of payments, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.

EXHIBIT "A"

SCOPE OF SERVICES FOR

VALKARIA AIRPORT
Rehabilitate Runway 14-32 and Installation of Electrical Vault
CONSTRUCTION SERVICES AND CONSTRUCTION

FDOT ITEM NO. 429829-1-94-02

PROJECT DESCRIPTION:

The Project can be generally described as the construction for the **Runway 14-32 Rehabilitation** at Valkaria Airport. Runway 14-32 is the primary runway servicing the airport. The objectives of the Project are to extend the useful life of the existing pavements, to update the pavement geometry and to enhance the safety of air operations at the airport.

Runway 14-32 is 75 feet wide and 4,000 feet long. The paved shoulders are approximately 55 feet wide. There are five (5) connecting taxiway and one crossing Runway (Runway 10-28). The Project includes the rehabilitation of the pavement for the length of the runway, including the connector taxiways to the limits of the Runway Object Free Area or to the limits required for grading. The Project also includes the removal of the 55 foot shoulders and the rehabilitation of a 10 foot wide shoulder on each side of the runway. New base mounted LED runway edge lights with new cable in conduit will also be included.

Another component of the project involves installing a complete FAA Medium Intensity Runway Lighting (MIRL) system using LED technology for Runway 14-32. In addition, a new electrical vault with new electrical service connection will be constructed. Existing runway threshold lights on Runway 10-28 will be located and connected to the new electrical vault. The lighting, marking and signage shall also be replaced/upgraded.

The geometry of the runway and the taxiway connectors are non-standard and in accordance with the FAA AC 150/5300-13A, Airport Design. The runway and the intersection taxiways will be redesigned in accordance with the latest Advisory Circular.

TASKS AND DELIVERABLES

This Scope of Services includes the Construction Phase services and Construction.

The construction phase services and construction will be performed by:

Engineer: AVCON, Inc.

Quality Assurance Testing: Cal-Tech Testing, Inc. (Cal Tech) and Universal Engineering Sciences, Inc. (UES)

Contractor: Dickerson Florida, Inc.

The total project cost for this scope of services is $4,449,006. The Department agrees to reimburse 8 percent of the eligible costs incurred up to the amount in the grant for services described in this scope of services. Additional funds may be added to the project based on availability and upon approval by the Department. There is no provision for payment of stored materials unless approved by FDOT in advance.

CONSTRUCTION PHASE SERVICES

A. **Construction Administration -** (by Engineer): These services include, but are not limited to: Participating in meetings; review and processing of submittals; review and processing of periodic pay requests; visits to the job site; general coordination and correspondence with the Contractor and Owner; processing changes; and assisting with project close-out.

B. **Construction Materials Testing** - (by Cal Tech and UES): The Consultant shall assign Cal Tech and UES to provide qualified Geotechnical services throughout the construction phase of the project. During the construction phase, Cal Tech or UES shall consult with and advise the Consultant concerning geotechnical considerations affecting construction of those portions of the Project for which Cal Tech or UES is to render Quality Assurance Material Testing services. In connection with observations of the Contractor's work in progress, Cal Tech or UES shall: Make visits to the site at intervals appropriate to the various stages of construction as requested by the Consultant to perform on-site quality control inspections and/or field tests to insure compliance of the Contractor's work with Contract Documents. Cal Tech or UES shall notify the Consultant of its findings on a daily basis. If compliance is not being met, Cal Tech or UES shall notify the Consultant immediately. Collect such samples and perform such tests as are necessary to check the Contractor's work for compliance with the Contract Documents. Cal Tech or UES shall provide the following: Laboratory Supervisor. The Laboratory Supervisor shall be an employee of Cal Tech or UES and shall have prior quality control experience on a project of comparable size and scope. Asphalt Technician. Cal Tech or UES shall provide a sufficient number of Asphalt Technicians to adequately inspect the contractor's production. Soils/Concrete Technician. Cal Tech or UES shall provide a sufficient number of Soils/Concrete Technicians to adequately inspect the contractor's operations. Field and laboratory reports covering the investigations and analyses. Cal Tech or UES shall advise the Consultant concerning special monitoring, testing or redesign required because of unforeseen conditions encountered during construction. Cal Tech or UES shall communicate with Contractor(s) only through, or with the knowledge of, the Consultant.

C. **Resident Project Engineer –** (by Engineer): These services include but are not limited to: Maintaining project records and documentation in accordance with FAA and FDOT requirements. Reviewing documents and submissions by Contractor(s) pertaining to scheduling and advise the County as to their acceptability. Observing the Work to determine general conformity with the Contract Documents and to ascertain the need for correction or rejection of the Work. Attending and conducting pre-paving and pre-installation conferences and weekly progress meetings. Observing testing and inspection. Arranging for, conduct, or witness field, laboratory, or shop tests of construction materials as required by the plans and specifications for the Project. Preparing and submitting inspection reports of construction activity and problems encountered as required by the County, FAA and FDOT. Collecting weekly payrolls for Davis Bacon Act Compliance and review prior to each pay estimate.

D. **Record Drawings -** (by Engineer): Services include the preparation of record drawings based on information supplied by the contractor and submission of electronic documents to the Owner.

E. **PCN Report** – Upon completion of the project, consultant will use 150/5335-5C STANDARDIZED METHOD OF REPORTING AIRPORT PAVEMENT STRENGTH - PCN to report the new Runway 14-32 pavement strength. PCN is a number that expresses the load-carrying capacity of a pavement for unrestricted operations

CONSTRUCTION PHASE SERVICES PAYMENT DELIVERABLES / MILESTONES

- May be invoiced on a monthly basis, in proportion to the percentage of completion when accompanied by a progress report outlining work performed.
- Closeout documents to be uploaded into JACIP prior to payment of final invoice to include:
  - Site Visit Reports.
  - Monthly Construction Summary and Inspection Reports.
  - Closeout Documentation Checklist.
  - Record Drawings and Closeout documents as required.
  - Provide a report including supporting documents and calculations of the new Runway 14-32 PCN

CONTRACTOR'S SCOPE OF SERVICES

The project generally consists of the rehabilitation of the pavement for the length of Runway 14-32 and associated work to include airfield electrical updates.

Construction will be accomplished based on Sponsor and Engineer approved plans and specifications. The Contractor's services to be provided shall include:

- Furnishing all materials, labor, incidentals, and supplies required to construct the Project and deliver the same to the Owner, ready for use, approved for use by the authority having jurisdiction.
- All work required to maintain traffic and meet the construction safety requirements; final clean-up and restoration, and all paperwork that is required from the Contractor.
- Provide 100% payment and performance bond for the Project.

Contractor's Payment Deliverables/Milestones

- Periodic Pay Requests listing all work in-place.

Upon completion of the work, submittal of all required project completion documents, and final site visit by FDOT and Sponsor, the final (100%) payment will be made.

FINANCIAL PROJECT NO. 429829-1-94-01
429829-1-94-02

EXHIBIT "D"

STATE FINANCIAL ASSISTANCE (FLORIDA SINGLE AUDIT ACT)

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and the Brevard County Board of County Commissioners
P.O. Box 1496, Titusville, Florida 32781-1496

THE STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

Awarding Agency: Florida Department of Transportation
State Project Title: N/A
CSFA Number: N/A
***Award Amount:** N/A

*The state award amount may change with supplemental agreements

Specific project information for CSFA Number 55.004 is provided at: https://apps.fldfs.com/fsaa/searchCatalog.aspx

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT:

State Project Compliance Requirements for CSFA Number 55.004 are provided at: https://apps.fldfs.com/fsaa/searchCompliance.aspx

The State Projects Compliance Supplement is provided at: https://apps.fldfs.com/fsaa/compliance.aspx

To: holly.lopenski@dot.state.fl.us

FLORIDA DEPARTMENT OF TRANSPORTATION
FUNDS APPROVAL

AS211

10/31/2017

CONTRACT INFORMATION

Contract:	AS211
Contract Type:	AK - PROJ PARTICIPATION (PROJ PART)
Method of Procurement:	G - GOVERMENTAL AGENCY (287.057,F.S.)
Vendor Name:	BREVARD COUNTY BOCC
Vendor ID:	F596000523198
Beginning Date of This Agreement:	05/24/2016
Ending Date of This Agreement:	06/01/2018
Contract Total/Budgetary Ceiling:	ct = $375,793.00
Description:	Rehabilitate Runway 14-32 and Installation of Electrical Vault at Valkaria Airport

FUNDS APPROVAL INFORMATION

FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER ON 10/31/2017

Action:	Supplemental
Reviewed or Approved:	APPROVED
Organization Code:	55052000531
Expansion Option:	A1
Object Code:	740100
Amount:	$355,920.00
Financial Project:	42982919402
Work Activity (FCT):	215
CFDA:	
Fiscal Year:	2018
Budget Entity:	55100100
Category/Category Year:	088719/18
Amendment ID:	S001
Sequence:	00
User Assigned ID:	SA1
Enc Line (6s)/Status:	0001/04

Total Amount: $355,920.00

U.S. Department
of Transportation
Federal Aviation
Administration

COPY

GRANT AGREEMENT

PART I –OFFER

Date of Offer	September 13, 2017
Airport/Planning Area	Valkaria Airport
AIP Grant Number	3-12-0144-009-2017
DUNS Number	783248370

TO: Brevard County Board of County Commissioners
(herein called the "Sponsor")

FROM: **The United States of America**(acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated August 15, 2017, for a grant of Federal funds for a project at or associated with the Valkaria Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Valkaria Airport (herein called the "Project") consisting of the following:

Rehabilitate Runway 14-32; Install Runway 14-32 Lighting

which is more fully described in the Project Application.

NOW THEREFORE, According to the applicable provisions of the former Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. § 40101, et seq., and the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. § 47101, et seq., (herein the AAIA grant statute is referred to as "the Act"), the representations contained in the Project Application, and in consideration of (a) the Sponsor's adoption and ratification of the Grant Assurances dated March 2014,and the Sponsor's acceptance of this Offer; and, (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurances and conditions as herein provided.

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay ninety (90) percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS**:

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is $4,004,105.

The following amounts represent a breakdown of the maximum obligation for the purpose of establishing

allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

$4,004,105 airport development.

The source of this Grant may include funding from the Small Airport Fund.

2. **Period of Performance.** The period of performance begins on the date the Sponsor formally accepts this agreement. Unless explicitly stated otherwise in an amendment from the FAA, the end date of the period of performance is 4 years (1,460 calendar days) from the date of formal grant acceptance by the Sponsor.

   The Sponsor may only charge allowable costs for obligations incurred prior to the end date of the period of performance (2 CFR §200.309). Unless the FAA authorizes a written extension, the sponsor must submit all project closeout documentation and liquidate (pay off) all obligations incurred under this award no later than 90 calendar days after the end date of the period of performance (2 CFR §200.343).

   The period of performance end date does not relieve or reduce Sponsor obligations and assurances that extend beyond the closeout of a grant agreement.

3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.

4. **Indirect Costs - Sponsor.** Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.

5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with the regulations, policies, and procedures of the Secretary. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.

6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this agreement, and the regulations, policies, and procedures of the Secretary. The Sponsor also agrees to comply with the assurances which are part of this agreement.

7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.

8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before September 20, 2017, or such subsequent date as may be prescribed in writing by the FAA.

9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.

11. **System for Award Management (SAM) Registration And Universal Identifier.**

    A. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at http://www.sam.gov).

    B. Data Universal Numbering System: DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866–705–5771) or on the web (currently at http://fedgov.dnb.com/webform).

12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by $25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.

    The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of condition No. 1.

    The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.

    An informal letter amendment has the same force and effect as a formal grant amendment.

14. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this agreement.

15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

16. **Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.

17. **Maximum Obligation Increase For Nonprimary Airports.** In accordance with 49 U.S.C. § 47108(b), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:

    A. May not be increased for a planning project;

    B. May be increased by not more than 15 percent for development projects;

C. May be increased by not more than 15 percent or by an amount not to exceed 25 percent of the total increase in allowable costs attributable to the acquisition of land or interests in land, whichever is greater, based on current credible appraisals or a court award in a condemnation proceeding.

18. Audits for Public Sponsors. The Sponsor must provide for a Single Audit or program specific audit in accordance with 2 CFR part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at http://harvester.census.gov/facweb/. Provide one copy of the completed audit to the FAA if requested.

19. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR §180.200, the Sponsor must:

A. Verify the non-federal entity is eligible to participate in this Federal program by:

1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-federal entity is excluded or disqualified; or
2. Collecting a certification statement from the non-federal entity attesting they are not excluded or disqualified from participating; or
3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.

B. Require prime contractors to comply with 2 CFR §180.330 when entering into lower-tier transactions (e.g. Sub-contracts).

C. Immediately disclose to the FAA whenever the Sponsor (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debars a contractor, person, or entity.

20. Ban on Texting While Driving.

A. 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 Sponsor is encouraged to:

1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
   a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
   b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

B. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts and subcontracts.

21. AIP Funded Work Included in a PFC Application.

Within 90 days of acceptance of this award, Sponsor must submit to the Federal Aviation Administration an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this grant award. The airport sponsor may not make any expenditure under this award until project work addressed under this award is removed from an approved PFC application by amendment.

22. Exhibit "A" Property Map. The Exhibit "A" Property Map dated April 2016, is incorporated herein by reference or is submitted with the project application and made part of this grant agreement.

23. Employee Protection from Reprisal.

A. Prohibition of Reprisals –

1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (A)(2), information that the employee reasonably believes is evidence of:

   i. Gross mismanagement of a Federal grant;
   ii. Gross waste of Federal funds;
   iii. An abuse of authority relating to implementation or use of Federal funds;
   iv. A substantial and specific danger to public health or safety; or
   v. A violation of law, rule, or regulation related to a Federal grant.

2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:

   i. A member of Congress or a representative of a committee of Congress;
   ii. An Inspector General;
   iii. The Government Accountability Office;
   iv. A Federal office or employee responsible for oversight of a grant program;
   v. A court or grand jury;
   vi. A management office of the grantee or subgrantee; or
   vii. A Federal or State regulatory enforcement agency.

3. Submission of Complaint – A person who believes that they have been subjected to a reprisal prohibited by paragraph A of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.

4. Time Limitation for Submittal of a Complaint - A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

5. Required Actions of the Inspector General – Actions, limitations and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b)

6. Assumption of Rights to Civil Remedy - Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under41 U.S.C. § 4712(c).

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION

(Signature)

Bart Vernace
(Typed Name)

Manager
(Title of FAA Official)

PART II - ACCEPTANCE

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

I declare under penalty of perjury that the foregoing is true and correct.[1]

Executed this_____day of _____,_____.

Brevard County Board of County Commissioners

(Name of Sponsor)

(Signature of Sponsor's Authorized Official)

By: _____

(Typed Name of Sponsor's Authorized Official)

Title: _____

(Title of Sponsor's Authorized Official

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of_____. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____(location) this _____day of _____,_____

By: _____

(Signature of Sponsor's Attorney)

[1]Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

PART II - ACCEPTANCE

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

I declare under penalty of perjury that the foregoing is true and correct.[1]

Executed this 19 day of Sept., 2017.

ATTEST:

SCOTT ELLIS, CLERK

Brevard County Board of County Commissioners
(Name of Sponsor)

(Signature of Sponsor's Authorized Official)

By: CURT SMITH
(Typed Name of Sponsor's Authorized Official)

Title: CHAIRMAN
(Title of Sponsor's Authorized Official

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of_____. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____(location) this _____day of _____, _____

By: _____
(Signature of Sponsor's Attorney)

[1]Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

ASSURANCES

AIRPORT SPONSORS

A. General.

a. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.

b. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.

c. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

   The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

   The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

   Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.**

   It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

FEDERAL LEGISLATION

a. Title 49, U.S.C., subtitle VII, as amended.

b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.[1]

c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.

d. Hatch Act – 5 U.S.C. 1501, et seq.[2]

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.[1 2]

f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).[1]

g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.[1]

h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.

i. Clean Air Act, P.L. 90-148, as amended.

j. Coastal Zone Management Act, P.L. 93-205, as amended.

k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.[1]

l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))

m. Rehabilitation Act of 1973 - 29 U.S.C. 794.

n. 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);

o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).

p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.

q. American Indian Religious Freedom Act, P.L. 95-341, as amended.

r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.[1]

s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.[1]

t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.[1]

u. Copeland Anti-Kickback Act - 18 U.S.C. 874.1

v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.[1]

w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.

x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.[2]

y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

a. Executive Order 11246 - Equal Employment Opportunity[1]

b. Executive Order 11990 - Protection of Wetlands

c. Executive Order 11998 –Flood Plain Management

d. Executive Order 12372 - Intergovernmental Review of Federal Programs

e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction[1]

f. Executive Order 12898 - Environmental Justice

FEDERAL REGULATIONS

a. 2 CFR Part180 - OMBGuidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).

b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].[4, 5, 6]

c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment

d. 14 CFR Part 13 - Investigative and Enforcement Procedures14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.

e. 14 CFR Part 150 - Airport noise compatibility planning.

f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.

g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.

h. 29 CFR Part 1 - Procedures for predetermination of wage rates.[1]

i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.[1]

j. 29 CFR 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).[1]

k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).[1]

l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.[3]

m. 49 CFR Part 20 - New restrictions on lobbying.

n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.

o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.[1 2]

q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.

r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.[1]

s. 49 CFR Part 28 –Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.

t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.

u. 49 CFR Part 32 –Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)

v. 49 CFR Part 37 –Transportation Services for Individuals with Disabilities (ADA).

w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

FOOTNOTES TO ASSURANCE C.1.

[1] These laws do not apply to airport planning sponsors.

[2] These laws do not apply to private sponsors.

[3] 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

[4] On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally, it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

[5] Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

[6] Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. **Responsibility and Authority of the Sponsor.**

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. **Sponsor Fund Availability.**

   It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. **Good Title.**

   a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

   b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. **Preserving Rights and Powers.**

   a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

   b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

   c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.

g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. **Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. **Consideration of Local Interest.**

It has given fair consideration to the interest of communities in or near where the project may be located.

8. **Consultation with Users.**

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. **Public Hearings.**

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. **Metropolitan Planning Organization.**

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy

of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. **Pavement Preventive Maintenance.**

    With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. **Terminal Development Prerequisites.**

    For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. **Accounting System, Audit, and Record Keeping Requirements.**

    a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

    b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. **Minimum Wage Rates.**

    It shall include, in all contracts in excess of $2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. **Veteran's Preference.**

    It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title

49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. **Conformity to Plans and Specifications.**

    It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. **Construction Inspection and Approval.**

    It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. **Planning Projects.**

    In carrying out planning projects:

    a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.

    b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.

    c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

    d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

    e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

    f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

    g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

    h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. **Operation and Maintenance.**

    a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be

required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

1) Operating the airport's aeronautical facilities whenever required;

2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. **Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. **Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. **Economic Nondiscrimination.**

a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

2) charge reasonable, and not unjustly discriminatory, prices for each unit or service,

provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

a.) Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

b.) Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

c.) Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

d.) It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.

e.) In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

f.) The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

g.) The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. **Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and

b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental

and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. **Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. **Airport Revenues.**

a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:

1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.

3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.

a.) As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a

manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

b.) Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. **Reports and Inspections.**

It will:

a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
   1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
   2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. **Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

a. by gross weights of such aircraft) is in excess of five million pounds Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied.

28. **Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at

Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. **Airport Layout Plan.**

a. It will keep up to date at all times an airport layout plan of the airport showing:

1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;

2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;

3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and

4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

a.) If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. **Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.

b. Applicability

1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the

sponsor's programs and activities.

2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or

2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"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 and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

e. Required Contract Provisions.

1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.

2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.

3) It will insert non-discrimination contract clauses 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.

4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

a.) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and

b.) 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.

f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. **Disposal of Land.**

a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was

notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. **Engineering and Design Services.**

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. **Foreign Market Restrictions.**

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. **Policies, Standards, and Specifications.**

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated January 24, 2017 and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

35. **Relocation and Real Property Acquisition.**

a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.

b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.

c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. **Access By Intercity Buses.**

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. **Disadvantaged Business Enterprises.**

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure

nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. **Hangar Construction.**

    If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. **Competitive Access.**

    a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-

        1) Describes the requests;

        2) Provides an explanation as to why the requests could not be accommodated; and

        3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.

    b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

FAA
Airports

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

Updated: 1/24/2017

View the most current versions of these ACs and any associated changes at:
http://www.faa.gov/airports/resources/advisory_circularsand
http://www.faa.gov/regulations_policies/advisory_circulars/

NUMBER	TITLE
70/7460-1L Change 1	Obstruction Marking and Lighting
150/5020-1	Noise Control and Compatibility Planning for Airports
150/5070-6B Changes 1- 2	Airport Master Plans
150/5070-7 Change 1	The Airport System Planning Process
150/5100-13B	Development of State Standards for Nonprimary Airports
150/5200-28F	Notices to Airmen (NOTAMS) for Airport Operators
150/5200-30D	Airport Field Condition Assessments and Winter Operations Safety
150/5200-31C Changes 1-2	Airport Emergency Plan
150/5210-5D	Painting, Marking, and Lighting of Vehicles Used on an Airport
150/5210-7D	Aircraft Rescue and Fire Fighting Communications
150/5210-13C	Airport Water Rescue Plans and Equipment
150/5210-14B	Aircraft Rescue Fire Fighting Equipment, Tools and Clothing
150/5210-15A	Aircraft Rescue and Firefighting Station Building Design

NUMBER	TITLE
150/5210-18A	Systems for Interactive Training of Airport Personnel
150/5210-19A	Driver's Enhanced Vision System (DEVS)
150/5220-10E	Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles
150/5220-16D	Automated Weather Observing Systems (AWOS) for Non-Federal Applications
150/5220-17B	Aircraft Rescue and Fire Fighting (ARFF) Training Facilities
150/5220-18A	Buildings for Storage and Maintenance of Airport Snow and Ice Control Equipment and Materials
150/5220-20A	Airport Snow and Ice Control Equipment
150/5220-21C	Aircraft Boarding Equipment
150/5220-22B	Engineered Materials Arresting Systems (EMAS) for Aircraft Overruns
150/5220-23	Frangible Connections
150/5220-24	Foreign Object Debris Detection Equipment
150/5220-25	Airport Avian Radar Systems
150/5220-26 Changes 1-2	Airport Ground Vehicle Automatic Dependent Surveillance - Broadcast (ADS-B) Out Squitter Equipment
150/5300-7B	FAA Policy on Facility Relocations Occasioned by Airport Improvements of Changes
150/5300-13A Change 1	Airport Design
150/5300-14C	Design of Aircraft Deicing Facilities
150/5300-16A	General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey
150/5300-17C	Standards for Using Remote Sensing Technologies in Airport Surveys
150/5300-18B Change 1	General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards
150/5320-5D	Airport Drainage Design
150/5320-6F	Airport Pavement Design and Evaluation

NUMBER	TITLE
150/5320-12C Changes 1-8	Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces
150/5320-15A	Management of Airport Industrial Waste
150/5235-4B	Runway Length Requirements for Airport Design
150/5335-5C	Standardized Method of Reporting Airport Pavement Strength - PCN
150/5340-1L	Standards for Airport Markings
150/5340-5D	Segmented Circle Airport Marker System
150/5340-18F	Standards for Airport Sign Systems
150/5340-26C	Maintenance of Airport Visual Aid Facilities
150/5340-30H	Design and Installation Details for Airport Visual Aids
150/5345-3G	Specification for L-821, Panels for the Control of Airport Lighting
150/5345-5B	Circuit Selector Switch
150/5345-7F	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits
150/5345-10H	Specification for Constant Current Regulators and Regulator Monitors
150/5345-12F	Specification for Airport and Heliport Beacons
150/5345-13B	Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits
150/5345-26D	FAA Specification For L-823 Plug and Receptacle, Cable Connectors
150/5345-27E	Specification for Wind Cone Assemblies
150/5345-28G	Precision Approach Path Indicator (PAPI) Systems
150/5345-39D	Specification for L-853, Runway and Taxiway Retro reflective Markers
150/5345-42H	Specification for Airport Light Bases, Transformer Housings, Junction Boxes, and Accessories
150/5345-43H	Specification for Obstruction Lighting Equipment
150/5345-44K	Specification for Runway and Taxiway Signs
150/5345-45C	Low-Impact Resistant (LIR) Structures

NUMBER	TITLE
150/5345-46E	Specification for Runway and Taxiway Light Fixtures
150/5345-47C	Specification for Series to Series Isolation Transformers for Airport Lighting Systems
150/5345-49C	Specification L-854, Radio Control Equipment
150/5345-50B	Specification for Portable Runway and Taxiway Lights
150/5345-51B	Specification for Discharge-Type Flashing Light Equipment
150/5345-52A	Generic Visual Glideslope Indicators (GVGI)
150/5345-53D	Airport Lighting Equipment Certification Program
150/5345-54B	Specification for L-884, Power and Control Unit for Land and Hold Short Lighting Systems
150/5345-55A	Specification for L-893, Lighted Visual Aid to Indicate Temporary Runway Closure
150/5345-56B	Specification for L-890 Airport Lighting Control and Monitoring System (ALCMS)
150/5360-12F	Airport Signing and Graphics
150/5360-13 Change 1	Planning and Design Guidelines for Airport Terminal Facilities
150/5360-14	Access to Airports By Individuals With Disabilities
150/5370-2F	Operational Safety on Airports During Construction
150/5370-10G	Standards for Specifying Construction of Airports
150/5370-11B	Use of Nondestructive Testing in the Evaluation of Airport Pavements
150/5370-13A	Off-Peak Construction of Airport Pavements Using Hot-Mix Asphalt
150/5370-15B	Airside Applications for Artificial Turf
150/5370-16	Rapid Construction of Rigid (Portland Cement Concrete) Airfield Pavements
150/5370-17	Airside Use of Heated Pavement Systems
150/5390-2C	Heliport Design
150/5395-1A	Seaplane Bases

THE FOLLOWING ADDITIONAL APPLY TO AIP PROJECTS ONLY

Updated: 01/24/2017

NUMBER	TITLE
150/5100-14E Change 1	Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects
150/5100-17 Changes 1 - 6	Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects
150/5300-15A	Use of Value Engineering for Engineering Design of Airport Grant Projects
150/5320-17A	Airfield Pavement Surface Evaluation and Rating Manuals
150/5370-12B	Quality Management for Federally Funded Airport Construction Projects
150/5380-6C	Guidelines and Procedures for Maintenance of Airport Pavements
150/5380-7B	Airport Pavement Management Program
150/5380-9	Guidelines and Procedures for Measuring Airfield Pavement Roughness