

## AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES

**THIS AGREEMENT FOR PROFESSIONAL SERVICES** (“Agreement”) is made and entered into as of the date stated on City’s signature page below (the “Effective Date”) by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation (“City”), and **LEA+ELLIOTT, INC.** a Delaware Corporation authorized to do business in Colorado, (“Lea+Elliott” or “Consultant”) (collectively “Parties”) a corporation authorized to do business in Colorado.

### WITNESSETH:

**WHEREAS**, City owns, operates, and maintains Denver International Airport (“DEN”); and

**WHEREAS**, City desires to obtain Professional Aviation related consulting services for professional engineering support on an on-call basis for the Automated Guideway Transit System (AGTS) or Airside concourse train system at DEN; and

**WHEREAS**, City has undertaken a competitive process to solicit and receive proposals for such services, and has selected the proposal submitted by the Consultant; and

**WHEREAS**, Consultant’s proposal was selected for award of the on call professional services related to the DEN AGTS system and,

**WHEREAS**, Consultant is qualified, willing, and able to perform the services, as set forth in this Agreement in a timely, efficient, and economical manner;

**NOW, THEREFORE**, for and in consideration of the premises and other good and valuable consideration, the Parties hereto agree as follows:

### ARTICLE I LINE OF AUTHORITY

The Chief Executive Officer of the Department of Aviation (the “CEO”), her designee or successor in function, authorizes and directs all work performed under this Agreement. Until otherwise notified in writing by the CEO, the CEO has delegated the authority granted herein to the Senior Director, Operations (the “Director”). The Director will designate a Project Manager to coordinate Services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Consultant hereunder shall be processed in accordance with the Project Manager’s directions.

### ARTICLE II DUTIES AND RESPONSIBILITIES OF CONSULTANT

**A. Scope of Services.** Consultant will provide professional services and provide deliverables for the City as designated by the CEO, and/or her designee, from time to time and as described in the attached **Exhibit A** (“Scope of Work”) in accordance with schedules and budgets set by City.

**B. Deliverables.** As specified by Task Order.

**C. Standard of Performance.** Consultant shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge,

training, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement. Consultant hereby represents to City it will perform its services skillfully, carefully, diligently, and in a first-class manner. Consultant agrees and understands City, in its sole reasonably exercised discretion, shall determine whether services are provided in a first-class manner. Consultant acknowledges that time is of the essence in its performance of all work and obligations under this Agreement.

**D. Key Personnel Assignments.**

1. All key professional personnel identified in the Scope of Work, will be assigned by Consultant or subconsultants to perform work under this Agreement. Only the key personnel identified in the Exhibits will perform work under this Agreement, unless otherwise approved in writing by the Project Manager. It is the intent of the Parties that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that Consultant's and the subconsultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed.

2. If, during the term of this Agreement, the Project Manager determines that the performance of approved key personnel is not acceptable, the Project Manager shall notify Consultant, and may give Consultant notice of the period of time which the Project Manager considers reasonable to correct such performance. If the Project Manager notifies Consultant that certain of its key personnel will not be retained on this project, Consultant will use its best efforts to obtain adequate substitute personnel within twenty days from the date of the notice. Such substitute personnel shall be approved in writing by the Project Manager. Failure to obtain the requisite approval shall be grounds for termination for cause in accordance with the terms of this Agreement.

**E. Staff Augmentation**

1. The Consultant agrees that all personnel provided by it to perform services under this Agreement shall be, and remain during the time of their employment, competent and completely and fully qualified for the duties to which they are assigned. The qualification for certain specific duties have been set forth in writing by the Project Manager. The qualification set out are not intended as limitations on the maximum qualifications for each such position or function. The Project Manager reserves the right to advise the Consultant from time to time of further qualifications required of, and additional types of duties to be performed by, the Consultant's personnel assigned to DEN.

2. The Consultant shall not remove or reassign any approved personnel assigned to DEN and performing work under the Agreement without the express written approval of the Director.

3. The City may provide office space, office furnishing and equipment, telephones, office supplies and tools at DEN for use by the Consultant's personnel in performing most duties under this Agreement. Personnel assignments when DEN will provide office space and appurtenances will be identified on the task order.

4. City shall reimburse the Consultant at cost for the Consultant's reasonable and necessary expenses incurred in obtaining DEN access badges, vehicle permits, and parking for its employees and all subconsultant employees who perform services under this Agreement.

5. The standard work week will be comprised of 40 hours. The Consultant shall plan and schedule its resources such that the services to be provided under the terms of this Agreement are effectively implemented without causing overtime to its assigned staff unless specifically requested and pre-authorized in writing by the City. If authorized in writing by the City, the Consultant's personnel may be required to work overtime hours, Saturday, Sunday, or the holidays listed in this Section.

**F. Subcontractors.**

1. Although Consultant may retain, hire, and contract with outside subcontractors for work under this Agreement, no final agreement or contract with any such subcontractor shall be entered into without the prior written consent of the CEO or his/her designee. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided, the name, address and professional experience of the proposed subcontractor, and any other information requested by City. Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of the contract.

2. Because Consultant's represented qualifications are consideration to City in entering into this Agreement, the CEO shall have the right to reject any proposed outside subcontractor for this work deemed by the CEO, in the CEO's sole discretion, to be unqualified or unsuitable for any reason to perform the proposed services, and the CEO shall have the right to limit the number of outside subcontractors or to limit the percentage of work to be performed by them, all in the CEO's sole and absolute discretion.

3. Consultant is subject to D.R.M.C. § 20-112 wherein Consultant is to pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment from City. Any late payments are subject to a late payment penalty as provided for in the Prompt Pay Ordinance (§§ 20-107 through 20-118).

**G. Ownership and Deliverables.** Upon payment to Consultant, all records, data, deliverables, and any other work product prepared by the Consultant or any custom development work performed by the Consultant on or before the day of payment shall become the sole property of the City. Consultant, upon request by the City, or based on any schedule agreed to by Consultant and the City, Consultant shall provide City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Consultant or otherwise saved or maintained by Consultant as part of the services provided to the City under this Agreement. All such data/files shall be provided to the City electronically in a format agreed to by the Consultant and the City. Consultant also agrees to allow the City to review any of the procedures the Consultant uses in performing any work or other obligations under this Agreement, and to make available for inspection any and all notes, documents, materials, and devices used in the

preparation for or performance of any of the scope of work, for up to three years after termination of this agreement. Upon written request from the City, the Consultant shall deliver any information requested pursuant to this Article II, Section G within 10 business days in the event a schedule or otherwise agreed upon timeframe does not exist.

### **ARTICLE III TERM AND TERMINATION**

**A. Term.** The Term of this Agreement shall commence on January 1, 2020 (“Effective Date”) and shall terminate December 31, 2022 unless sooner terminated as provided in this Agreement. The election to extend, shall also extend all terms and conditions of the agreement and be memorialized in a writing issued to the Consultant by the SVP. Should for any reason the Term expire prior to the completion by Consultant of any outstanding work, which has previously been authorized, then in the CEO’s sole discretion this Agreement shall remain in full force and effect to permit completion of any work that was commenced prior to the date that otherwise would have been the termination date.

**B. Termination.**

1. City has the right to terminate this Agreement without cause on thirty (30) days prior written notice to Consultant, and with cause on ten (10) days prior written notice to Consultant. In the event of termination by City for cause, Consultant shall be allowed five (5) days to commence remedying its defective performance, and in the event Consultant diligently cures its defective performance to City’s satisfaction, within a reasonable time as determined solely by City, then this Agreement shall not terminate. However, nothing herein shall be construed as giving Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the CEO.

2. If Consultant is discharged before all the services contemplated hereunder have been completed, or if Consultant's services are for any reason terminated, stopped or discontinued because of the inability of Consultant to provide services in accordance with the terms of this Agreement, Consultant shall be paid only for those services deemed by the CEO satisfactorily performed prior to the time of termination.

3. Upon termination of this Agreement by City, Consultant shall have no claim of any kind whatsoever against City by reason of such termination or by reason of any act incidental thereto, except as follows: if the termination is for the convenience of City, Consultant shall be entitled to reimbursement for the reasonable cost of the work to the date of termination, and reasonable costs of orderly termination, provided request for such reimbursement is made no later than six (6) months from the effective date of termination. Consultant shall not be entitled to loss of anticipated profits or any other consequential damages as a result of any such termination for convenience, and in no event shall the total sums paid exceed the Maximum Contract Liability.

### **ARTICLE IV COMPENSATION AND PAYMENT**

**A. Maximum Contract Liability.** Notwithstanding any other provision of this Agreement, in no event shall the City be liable for payment for services rendered and expenses incurred by Consultant under the terms of this Agreement for any amount in excess of the sum of

Three Million Dollars and Zero Cents (\$3,000,000.00) (the "Maximum Contract Amount"). Consultant's fee is based on a per task order basis.

**B.** The obligations of City under this Agreement shall extend only to monies encumbered for the purposes of this Agreement. Consultant acknowledges and understands City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City.

**C.** Payment under this Agreement shall be paid from the Airport System Fund. City is not under any obligation to make future encumbrances or appropriations for this Agreement nor is City under any obligation to amend this Agreement to increase the Maximum Contract Liability above.

**D. Payment Schedule.** Subject to the Maximum Contract Amount set forth in Article IV, Section A of this Agreement, Consultant's fees and expenses shall be paid in accordance with this Agreement. Unless otherwise agreed to in writing, Consultant will invoice the City on a regular basis in arrears, and the City will pay each invoice in accordance with Denver's Prompt Pay Ordinance, Denver Revised Municipal Code ("D.R.M.C.") § 20-107, *et seq.*, subject to the Maximum Contract Liability set forth above. Consultant understands and agrees interest and late fees shall be payable by City only to the extent authorized and provided for in City's Prompt Payment Ordinance. Travel and any other expenses are not reimbursable unless Consultant receives prior written approval of the Project Manager and be related to and in furtherance of the purposes of the Consultant's engagement.

**E. Invoices.** Payments shall be based upon monthly progress invoices and receipts submitted by Consultant, audited and approved by City and this Section as follows:

(1) An executive summary and status reports that describe the progress of the services and summarize the work performed during the period covered by the invoice.

(2) A statement of hours spent where billing is based upon hourly rates. Time sheets shall be maintained by Consultant and shall be available for examination by City, at City's request.

(3) The amounts shown on the invoices shall comply with and clearly reference the relevant services, the hourly rate and multiplier where applicable, and allowable reimbursable expenses.

(4) Consultant shall submit itemized business expense logs or copies of receipts for all allowable reimbursable expenses, where billing is based upon such items.

(5) The signature of an officer of Consultant, along with such officer's certification they have examined the invoice and found it to be correct, shall be included on all invoices.

(6) Labor rates are found in Exhibit A Scope of Work.

The Consultant agrees that the City and Consultant may require deletions, additions, or modifications to the Job Categories listed in Exhibit A Scope of Work with the exception of Pricing.

Any changes to the Job Categories will be issued, in writing, and signed by the Project Manager. Those staffing changes will not require an executed Amendment to this agreement.

Any additions or modifications of the Job Categories shall be remunerated only on the "Hourly Rate Charged to the City" basis of the type of position listed in Exhibit A.

City reserves the right to reject and not pay any invoice or part thereof where the CEO determines the amount invoiced exceeds the amount owed based upon the work performed. City, however, shall pay any undisputed items contained in an invoice. Disputes concerning payments under this provision shall be resolved by administrative hearing pursuant to the procedures of D.R.M.C. § 5-17.

**F. Carry Over and Carry Back.** If Consultant's total fees for any of the services described above are less than the amount budgeted for, the amount by which the budget exceeds the fee may be used, with the written approval of the CEO or their designee, to pay fees for additional and related services rendered by Consultant in any other services if in the CEO or her designee's judgment, such fees are reasonable and appropriate.

**G. Fee:** In no event shall the City be liable for any amount in excess of the sum of the Maximum Contract Liability.

## **ARTICLE V INSURANCE, INDEMNIFICATION, AND DISPUTE RESOLUTION**

### **A. Insurance.**

1. Consultant shall obtain and keep in force during the entire term of this Agreement, all of the insurance policies described in City's form of insurance certificate which is attached to this Agreement as **Exhibit C** and incorporated herein. Such insurance coverage includes workers' compensation and employer liability, commercial general liability, business automobile liability, and professional liability. Upon execution of this Agreement, Consultant shall submit to City a fully completed and executed original of the attached insurance certificate form, which specifies the issuing company or companies, policy numbers and policy periods for each required coverage. In addition to the completed and executed certificate, Consultant shall submit a copy of a letter from each company issuing a policy identified on the certificate, confirming the authority of the broker or agent to bind the issuing company, and a valid receipt of payment of premium.

2. City's acceptance of any submitted insurance certificate is subject to the approval of City's Risk Management Administrator. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by City's Risk Management Administrator.

3. Consultant shall comply with all conditions and requirements set forth in the insurance certificate for each required coverage during all periods in which coverage is in effect.

4. Unless specifically excepted in writing by City's Risk Management Administrator, Consultant shall include all subcontracts performing services hereunder as insureds under each required policy or shall furnish a separate certificate (on the form

certificate provided), with authorization letter(s) for each subcontractor, or each subcontractor shall provide its own insurance coverage as required by and in accordance with the requirements of this section of the Agreement. All coverages for subcontractors shall be subject to all of the requirements set forth in the form certificate and Consultant shall insure that each subcontractor complies with all of the coverage requirements.

5. City in no way warrants and/or represents the minimum limits contained herein are sufficient to protect Consultant from liabilities arising out of the performance of the terms and conditions of this Agreement by Consultant, its agents, representatives, or employees. Consultant shall assess its own risks and as it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Consultant is not relieved of any liability or other obligations assumed or pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. In no event shall City be liable for any: (i) business interruption or other consequential damages sustained by Consultant; (ii) damage, theft, or destruction of Consultant's inventory, Improvements, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

6. The Parties hereto understand and agree that City and County of Denver, its officers, officials and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to City and County of Denver, its officers, officials and employees.

## **B. Defense and Indemnification.**

1. Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Consultant or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

2. Consultant's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Consultant's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

3. Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation.

Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

4. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

5. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**C. Dispute Resolution.** Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in D.R.M.C. §5-17. The parties agree that the determination resulting from said administrative hearing shall be final, subject only to Consultant's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

## **ARTICLE VI GENERAL TERMS AND CONDITIONS**

**A. Status of Consultant.** It is agreed and understood by and between the parties hereto that the status of Consultant shall be an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in §9.1.1(E)(x) of the Charter of City and County of Denver, and it is not intended, nor shall it be construed, Consultant or its personnel are employees or officers of City under D.R.M.C. Chapter 18 for any purpose whatsoever.

**B. Assignment.** Consultant shall not assign, pledge or transfer its duties, obligations, and rights under this Agreement, in whole or in part, without first obtaining the written consent of the Project Manager. Any attempt by Consultant to assign or transfer its rights hereunder without such prior written consent shall, at the option of the Project Manager, automatically terminate this Agreement and all rights of Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the Project Manager.

**C. Compliance with all Laws and Regulations.** All of the work performed under this Agreement by Consultant shall comply with all existing and future laws, rules, regulations and codes of the United States and the State of Colorado and with the charter, ordinances and rules and regulations of City and County of Denver.

### **D. Compliance with Patent, Trademark and Copyright Laws.**

1. Consultant agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. Consultant will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission and all releases and other necessary documents. If Consultant prepares any documents which specify any material, equipment, process or procedure which is protected, Consultant shall disclose such patents, trademarks and copyrights in the construction drawings or specifications.

2. Consultant further agrees to release, indemnify and save harmless City, its officers, agents and employees, pursuant to Article V, Section I, "Defense and Indemnification," from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

**E. Notices.** Notwithstanding the above, notices concerning termination of this Agreement, notices of alleged or actual violations of the terms of this Agreement, and other notices of similar importance shall be made as follows:

by Consultant to:

Chief Executive Officer  
Denver International Airport  
Airport Office Building  
8500 Peña Boulevard, 9th Floor  
Denver, Colorado 80249-6340

And by City to:

Lea+Elliott, Inc.  
Attn: Scott Kutchins, P.E.  
2505 N. State Hwy. 360, Suite 750  
Grand Prairie, TX 75050

Said notices shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification thereof.

**F. Rights and Remedies Not Waived.** In no event shall any payment by City hereunder constitute or be construed to be a waiver by City of any breach of covenant or default which may then exist on the part of Consultant, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any other breach.

**G. No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to City and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on this Agreement. It is the express intention of City and Consultant that any person other than City or Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

## **H. Nonexclusive Contract**

This is a non-exclusive Contractual Agreement. In the City's best interests, the City reserves the right to purchase the same materials and services through other procurements.

### **I. Governing Law; Bond Ordinances; Venue.**

1. This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision or condition herein is subject to the provisions of Colorado law, the Charter of City and County of Denver, and the ordinances and regulations enacted pursuant thereto.

2. This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances.

3. Venue for any action arising hereunder shall be in City and County of Denver, Colorado.

## **ARTICLE VII STANDARD CITY PROVISIONS**

### **A. Diversity and Inclusiveness.**

1. The City encourages the use of qualified small business concerns doing business within the metropolitan area that are owned and controlled by, economically or socially disadvantaged individuals.

2. The Consultant is encouraged, with respect to the goods or services to be provided under this Contract, to use a process that includes small business concerns, when considering and selecting any subcontractors or suppliers.

**B. Small Business Enterprises.** Consultant is subject to City's ordinance, DRMC Chapter 28, Article III (MBE/WBE Ordinance) which prohibits discrimination in the awarding of contracts and subcontracts and directs the DSBO Director to establish goals for MBE and WBE participation in the preconstruction and construction of City-owned facilities. The goal for this Agreement is 0%. Project goals must be met with certified MBE and WBE participants or by demonstrating good faith efforts under the MBE/WBE Ordinance. The Consultant must comply with the terms and conditions of the MBE/WBE Ordinance in soliciting and contracting with its sub-contractors and sub-contractors in administering the performance of the work hereunder. It shall be an ongoing, affirmative obligation of the Consultant to maintain, at a minimum, compliance with the originally achieved level of MBE/WBE participation upon which this Agreement was awarded 0%, for the duration of this Agreement, unless City initiates a material alteration to the Scope of Work.

**C. City's Non-Discrimination Policy.** In connection with the performance of Services under this Agreement, Consultant agrees not to refuse to hire, discharge, promote, demote, or to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, gender, age, military status, sexual

orientation, gender variance, marital status, and/or physical and mental disability. Consultant further agrees to insert the foregoing provision in all subcontracts hereunder

**D. Prevailing Wage.** Consultant shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, Sections 20-76 through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the date the bid or request for proposal was advertised. In the event a request for bids, or a request for proposal, was not advertised, Consultant shall pay every covered worker no less than the prevailing wages and fringe benefits in effect on the date funds for the contract were encumbered.

Prevailing wage and fringe rates will adjust on the yearly anniversary of the actual date of bid or proposal issuance, if applicable, or the date of the written encumbrance if no bid/proposal issuance date is applicable. Unless expressly provided for in this Agreement, Consultant will receive no additional compensation for increases in prevailing wages or fringe benefits.

Consultant shall provide the Auditor with a list of all subcontractors providing any services under the contract.

Consultant shall provide the Auditor with electronically-certified payroll records for all covered workers employed under the contract.

Consultant shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing [auditor@denvergov.org](mailto:auditor@denvergov.org).

If Consultant fails to pay workers as required by the Prevailing Wage Ordinance, Consultant will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Consultant fails to pay required wages and fringe benefits.

**E. Advertising and Public Disclosures.** Consultant shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Project Manager. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by City, and designs and renderings, if any, which have been accepted by City. The CEO shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Consultant's use of this contract and its component parts in GSA form 254 or 255 presentations, or the transmittal of any information to officials of City, including without limitation, the Mayor, the CEO, any member or members of City Council, and the Auditor.

**F. Colorado Open Records Act.** Consultant acknowledges that City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes § 24-72-201 et seq., and Consultant agrees that it will fully cooperate with City in the event of a request or legal process arising under such act for the disclosure of any materials or information which Consultant asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments and other documents incorporated into this

Agreement by reference, all materials, records and information provided by Consultant to City shall be considered confidential by City only to the extent provided in the Open Records Act, and Consultant agrees that any disclosure of information by City consistent with the provisions of the Open Records Act shall result in no liability of City.

In the event of a request to City for disclosure of such information, time, and circumstances permitting, City will make a good faith effort to advise Consultant of such request in order to give Consultant the opportunity to object to the disclosure of any material Consultant may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Consultant objects to disclosure, City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed prior to City's application, City will tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Consultant agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Consultant does not wish disclosed. Consultant agrees to defend, indemnify, and hold harmless City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Consultant's objection to disclosure, including prompt reimbursement to City of all reasonable attorney fees, costs, and damages City may incur directly or may be ordered to pay by such court.

**G. Examination of Records.**

1. In connection with any services performed hereunder on items of work toward which federal funds may be received the City, the Federal Aviation Administration ("FAA"), the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Consultant which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Consultant further agrees that such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

2. Consultant agrees until the expiration of three (3) years after the final payment under this Agreement, any duly authorized representative of City, including the CEO, City's Auditor or their representatives, shall have the right to examine any pertinent books, documents, papers and records of Consultant involving transactions related to this Agreement, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

**H. Use, Possession or Sale of Alcohol or Drugs.** Consultant shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in City's barring Consultant from City facilities or participating in City operations.

**I. City Smoking Policy.** Consultant and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99 and the Colorado Indoor Clean Air Act, prohibiting smoking in all City buildings and facilities.

**J. Conflict Of Interest.** Consultant agrees that it and its subsidiaries, affiliates, subcontractors, principals, or employees will not engage in any transaction, activity or conduct

which would result in a conflict of interest. Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions or work of Consultant by placing Consultant's own interests, or the interest of any party with whom Consultant has a contractual arrangement, in conflict with those of City. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this agreement if such a conflict exists, after it has given Consultant written notice which describes such conflict.

Consultant shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to City.

**K. Prohibition Against Employment of Illegal Aliens to Perform Work Under this Agreement.**

1. The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes and Den. Rev. Municipal Code 20-90 and the Consultant is liable for any violations as provided in said statute and ordinance.
2. The Consultant certifies that:
  - (a) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
  - (b) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
3. The Consultant also agrees and represents that:
  - (a) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
  - (b) It shall not enter into a contract with a subcontractor or subconsultant that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
  - (c) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
  - (d) It is not prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement and it has complied with all federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.
  - (e) If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and City within three days. The

Consultant will also then terminate such subcontractor or subconsultant if within three days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three day period the subcontractor or subconsultant provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.

(f) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of §8-17.5-102(5), C.R.S. or City Auditor under authority of D.R.M.C. §20-90.3.

**L. Force Majeure.** Neither party shall be liable for any failure to perform any of its obligations hereunder due to or caused by, in whole or in part, fire, strikes, lockouts, unusual delay by common carriers, unavoidable casualties, war, riots, acts of terrorism, acts of civil or military authority, acts of God, judicial action, or any other causes beyond the control of the parties. Both parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

**M. Payment of City Minimum Wage.** Consultant shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Consultant expressly acknowledges that they are aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Consultant or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

## ARTICLE VIII STANDARD FEDERAL PROVISIONS

**A. Sensitive Security Information.** Consultant acknowledges that, in the course of performing its work under this Agreement, Consultant may be given access to Sensitive Security Information ("SSI"), as material is described in federal regulations, 49 C.F.R. part 1520. Consultant specifically agrees to comply with all requirements of the applicable federal regulations specifically, 49 C.F.R. Parts 15 and 1520. Consultant understands any questions it may have regarding its obligations with respect to SSI must be referred to the DEN's Security Office.

**B. DEN Security.** Consultant, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Consultant or City by the FAA or TSA. If Consultant, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to any other remedies available to City, Consultant covenants to fully reimburse City any fines or penalties levied against City, and any attorney fees or related costs paid by City as a result of any such violation. This amount must be paid by Consultant within fifteen (15) days from the date of the invoice or written notice.

**C. Federal Rights.** This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between City and

the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to City for DEN purposes and the expenditure of federal funds for the extension, expansion or development of the Denver Municipal Airport System.

## **ARTICLE IX CONTRACT DOCUMENTS; ORDER OF PRECEDENCE**

This agreement consists of Articles I through X which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Appendix:	Standard Federal Assurances
Exhibit A:	Scope of Work and Labor Rates
Exhibit C:	Certificate of Insurance

In the event of an irreconcilable conflict between a provision of Articles I through X and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Appendix  
Articles I through X hereof  
Exhibit A  
Exhibit C

## **ARTICLE X CITY EXECUTION OF AGREEMENT**

**A. City Execution.** This Agreement is expressly subject to, and shall not become effective or binding on City, until it is fully executed by all signatories of City and County of Denver. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same, and it may be signed electronically by either party in the manner specified by City.

**B. Electronic Signatures and Electronic Records.** Consultant consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the city. The parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[SIGNATURE PAGES FOLLOW]**

**Contract Control Number:** PLANE-201947779-00

**Contractor Name:** LEA+ELLIOTT INC

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

Name: JACK NORTON  
(please print)

Title: PRESIDENT/CEO  
(please print)

**ATTEST: [if required]**

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

Name: SCOTT KUTCHINS  
(please print)

Title: ASSOCIATE PRINCIPAL  
(please print)



**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**EXHIBIT A SCOPE OF WORK**  
**On Call Technical Services and Design Contract**

1. Scope: The Consultant shall perform professional on-call technical services related to the Automated Guideway Transportation Systems (AGTS) at the Airport. The following services shall be performed at the direction of the Senior Vice President of Airport Operations or their delegate:

Such services will be assigned by task. Tasks shall include a scope of work, schedules and budgets to be mutually agreed upon between the City and the Consultant.

Generally, the services will be as follows:

- A. The Consultant may provide analysis, planning, and conceptual designs for project planning of any new Automated Guideway Transportation System (AGTS) guideway, facility, or component of the DEN AGTS.
  - B. The Consultant may provide on-call technical services related to the AGTS including but not limited to analysis, planning, conceptual design, and technical support of O&M activities as well as system updates, upgrades, revisions, and system and/or AGTS facility expansion.
  - C. The Consultant may also be authorized to provide services for other assignments which may include, but not limited to: passenger and vehicular traffic simulation modeling, identification and analysis of existing and emerging transit and Automated Guideway Transportation System (AGTS) technologies for future application and use at the Airport, airline schedule and equipment analysis, and benefit-cost and feasibility analyses for systems at the Airport.
2. Additional Services: The Consultant may also perform services, hereinafter referred to as "Additional Services," which are related to the subject matter of this Agreement, but which the Senior Vice President of Airport Operations determines to be not described in the Scope of Work or more than the requirements of the Scope of Work. The Consultant shall be compensated for such Additional Services, only if the services and the amount of fees and reimbursable expenses therefore have been authorized in writing in advance by the Senior Vice President of Airport Operations, in accordance with the billing rates set forth below. The total amount of fees and reimbursable expense costs for Additional Services shall not exceed \$50,000.00 per task and in no event shall the approval of Additional Services and the cost of performing them, be deemed to constitute an agreement by the City to an increase in the Maximum Contract Liability set forth herein.

The Consultant may be required to do some or all of the following as they relate to assigned tasks: attend meetings, chair meetings, prepare reports, make presentations to a wide variety of audiences, and be available to support and advise the City on significant issues or problems which arise with respect to the tasks and or the operation of the Airport.

3. Compensation and Payment: The City agrees to pay to the Consultant, and the Consultant agrees to accept as its sole compensation for its costs incurred and services rendered under this Agreement, compensation based on the Consultant's monthly invoices in accordance with this Contract.

- A. Fee based work: The consultant shall be paid a fixed fee for certain identified Tasks as developed and negotiated between the City and Consultant. If the parties revise or amend these fee-based tasks or amend this agreement, the basis for negotiations for increase or decrease in the fee to be paid to the Consultant on account of work added to or deleted from its Fee based tasks, as the case may be, shall be the hourly rates set out below, and the Consultant's fee shall not exceed such hourly rates.
  - B. Hourly based work, billing rate: The Consultant shall be paid a fee for its services rendered hereunder, at the hourly billing rate for the classification of the person performing such services and the Consultant's fee shall not exceed such hourly rates.
4. Expenses: The Consultant shall be reimbursed for expenses incurred in connection with its work under this Agreement and properly invoiced, in accordance with the following schedule:
- A. Reproduction, postage and courier services (when necessary) at cost.
  - B. Subconsultants at cost.
  - C. Other expenses related to the Consultant's services which have The Senior Vice President of Airport Operations' prior written approval at cost.
5. Travel expenses shall be reimbursed, at cost, for travel approved by the Senior Vice President of Airport Operations, as follows:
- A. All reimbursable travel shall have received prior written approval of the Senior Vice President of Airport Operations or his authorized representative.
  - B. Vehicle rental costs will be allowed only if it can be demonstrated that such rental costs afforded the most economical travel method available, taking into consideration the element of time. Use of such vehicle for personal travel shall not be included.
  - C. No reimbursement shall be approved for air fare costs greater than the most economical rate available to the traveler at the time of his or her trip. Hourly billing rates for the traveler shall not be billed for any period of time for which the trip was extended for personal convenience.
  - D. Meals for travelers shall be limited to the yearly Denver metro area U.S. General Services Administration ("GSA") per diem rate.
  - E. Sleeping accommodation costs shall be limited to a reasonable amount, taking into account costs of alternate accommodations in the location and other relevant factors.
  - F. Personal expenses such as personal telephone expenses and all entertainment shall not be included.
6. Any cost not listed in or incurred in accordance with this Section as a Reimbursable Expense, shall be presumed to be included in the Consultant's Hourly Billing Rate and therefore not separately reimbursable.
7. Monthly progress payments shall be made to the Consultant based upon City audited and approved monthly invoices submitted by the Consultant, based on the Consultant' monthly

invoices for services rendered hereunder, which invoices will be based on the Hourly Billing Rates specified herein. All invoices submitted for payment shall include the following items:

- A. Status reports identifying the progress of all work involved and pertinent data relative to the scope of work performed under each Task Order during the period covered by the invoice.
  - B. Adequate documentation to support each invoice, including the following:
    - (1) Detail by staff person for hours invoiced, indicating the individual's classification and billing rate and how the hours were spent. Individual salaries need not be submitted. Detailed billing worksheets shall only be required to be provided upon request of the City.
    - (2) Copies of receipts for all reimbursable expenses.
    - (3) Adequate documentation from subconsultants, in accordance with this section.
    - (4) The signature of an officer of the Consultant's organization, certifying that the invoice has been examined and has been found to be correct.
  - C. Amounts invoiced shall reflect and summarize the fee structure incorporated into this Agreement. The cost of preparing and submitting invoices shall not be billed.
  - D. Payments will be made to the Consultant within a reasonable time after City has received complete invoices from the Consultant and as required by law.
  - E. The City reserves the right to require such additional documentation as it deems appropriate to support the monthly statements of Consultant.
  - F. The City reserves the right to reject and not pay any invoice or part thereof where the Manager reasonably determines that the amount invoiced to date exceeds the amount which should be paid, based upon his determination of the work which has been completed. The City, however, shall pay any undisputed items contained in the invoice.
8. Coordination and Liaison: The Consultant agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the Senior Vice President of Airport Operations with any City agency, or any person or firm under contract with the City doing work which affects the Consultant's work.

<b>LEA+ELLIOTT RATE TABLE</b>		
<b>Category</b>	<b>2020 Raw Hourly Rate</b>	<b>Multiplier</b>
APM Project Advisor/Principal	\$108.00	2.984
APM Project Manager/ Associate Principal	\$94.00	2.984

Sr. APM Engineer/Architect/Planner	\$79.00	2.984
APM Engineer / Architect/Planner	\$62.00	2.984
APM Technical Document Specialist	\$43.00	2.984

9. Pricing and compensation: Pricing is firm and fixed for the first contract year.

A. Effective January 1, 2021 and each subsequent, the fees per employee hour paid to Consultant hereunder shall be increased annually for each Contract Year during the term of this Agreement by application of the following formulae, where “Index” shall mean the annual Consumer Price Index (CPI-U) for All Items and All Consumers for the Denver-Aurora-Lakewood, Colorado Metropolitan Area as maintained by the U.S. Bureau of Labor Statistics (1982-1984 = 100), based upon the September CPI-U percent change as compared to the September CPI-U from one year prior. If the United States Bureau of Labor Statistics shall discontinue issuing the Index for the Denver-Aurora-Lakewood Metropolitan, then the wage adjustments provided for in this Agreement using the Index shall be made on the basis of changes in the U.S. national city average CPI-U for all items and all consumers, if available, or if not, using the most comparable and recognized cost-of-living index then issued and available which is published by the United States Government.

B. Each “Original Fee” is the number stated by the proposer as the hourly fee per classification in their proposal:

$$\text{Fee per Employee Hour for 01/01/2021 – 12/31/2021 (2021 rate):} = \frac{\text{2020 rate} \times \text{Index for 2020}}{\text{Index for 2019}}$$

$$\text{Fee per Employee Hour for 01/01/2022 – 12/31/2022 (2022 rate):} = \frac{\text{2021 rate} \times \text{Index for 2021}}{\text{Index for 2020}}$$

The City shall calculate the CPI increase each year and notify the contractor of the change.



## II. ADDITIONAL COVERAGE

### Excess/Umbrella Liability

#### Minimum Limits of Liability (In Thousands):

Umbrella Liability Controlled Area	Each Occurrence and aggregate	\$9,000
Umbrella Liability Non-Controlled Area	Each Occurrence and aggregate	\$1,000

The policy must provide the following:

1. Coverage must be written on a "follow form" or broader basis.
2. Any combination of primary and excess coverage may be used to achieve required limits.
3. If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.

### Professional Liability, Design, Engineering and Construction Supervision

#### Minimum Limits of Liability (In Thousands)

Per Claim	\$1,000
Aggregate	\$1,000

The policy must provide the following:

1. Coverage shall extend to cover the full scope of all cost estimating work performed under the insured's contract with City.
2. Coverage shall apply for three (3) years after project is complete.
3. Coverage is to be on a primary basis, if other professional coverage is carried.

## III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein:

1. For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
2. All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
3. For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.
4. The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
5. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better.
6. For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
7. No changes, modifications or interlineations on this document shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

### NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.

## APPENDIX

### Federal Aviation Administration Required Contract Provisions

#### ALL CONTRACTS – NON-AIP FUNDED

Federal laws and regulations require that recipients of federal assistance (Sponsors) include specific contract provisions in certain contracts, requests for proposals, or invitations to bid.

Certain provisions must be included in all sponsor contracts, regardless of whether or not the contracts are federally-funded. This requirement was established when a sponsor accepted the Airport Improvement Program (AIP) grant assurances.

As used in these Contract Provisions, “Sponsor” means The City and County of Denver, Department of Aviation, and “Contractor” or “Consultant” means the Party of the Second Part as set forth in Contract Number PLANE 201947779.

#### GENERAL CIVIL RIGHTS PROVISIONS

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

This provision binds the contractor and subtier 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.

#### Compliance with Nondiscrimination Requirements

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **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 Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

## APPENDIX

### Federal Aviation Administration Required Contract Provisions

#### ALL CONTRACTS – NON-AIP FUNDED

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

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

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

- Title VI of the Civil Rights Act of 1964 (42 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);

## APPENDIX

### Federal Aviation Administration Required Contract Provisions

#### ALL CONTRACTS – NON-AIP FUNDED

- 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.*).

#### FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

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

The *consultant* has full responsibility to monitor compliance to the referenced statute or regulation. The *consultant* must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

## **APPENDIX**

### **Federal Aviation Administration Required Contract Provisions**

#### **ALL CONTRACTS – NON-AIP FUNDED**

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

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.