

**CONSTRUCTION AGREEMENT  
BY AND BETWEEN  
COUNTY OF HUMBOLDT  
AND  
MERCER, FRASER COMPANY**

**CALIFORNIA LICENSE NO. 105709**

**CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS PUBLIC WORKS  
CONTRACTOR REGISTRATION NO. 1000009518**

**PROJECT LOCATION:**

**California Redwood Coast-Humboldt County Airport, McKinleyville, California**

**AIP NO. 3-06-0010-053-2022**

This Construction Agreement (“Agreement”), is entered into, by and between the County of Humboldt, a political subdivision of the State of California (“COUNTY”), and Mercer, Fraser Company, a California corporation (“CONTRACTOR”), and is made on the last date signed below for the following considerations:

WHEREAS, COUNTY, by and through its Department of Aviation (“Aviation”), seeks to properly maintain, improve and operate the California Redwood Coast – Humboldt County Airport (“ACV”), and has sought federal funding to assist in financing various projects at ACV; and

WHEREAS, the Federal Aviation Administration (“FAA”) has offered COUNTY FAA Airport Improvement Program (“AIP”) Grant No. 3-06-0010-053-022 and FAA Airport Infrastructure Grant (“AIG”) No. 03-06-0055-2022 for the Runway 14/32 Rehabilitation and Electrical Improvements project at ACV (the “Project”); and

WHEREAS, as part of FAA AIP and AIG grant conditions and assurances, COUNTY is responsible for employing sound organization and management techniques to assure proper and efficient administration of federal funding awards; and

WHEREAS, on November 16, 2021, COUNTY entered into a Professional Services Agreement with Armstrong Consultants, Inc., a Colorado corporation authorized to do business in California (“Armstrong”), for the design, bidding and implementation of the Project; and

WHEREAS, COUNTY has no employees available to perform such Project specialized services and is unable to hire employees for the performance thereof for a temporary period; and

WHEREAS, COUNTY, now desires to retain a qualified professional for performance of the specialized construction activities necessary for the Project; and

WHEREAS, on March 1, 2022, COUNTY authorized the Clerk of the Board to advertise a public bidding process for the Project; and

WHEREAS, COUNTY received two (2) proposals when the public bidding period closed; and

WHEREAS, on September 27, 2022, the COUNTY awarded the Project to the lowest bidder recommended by Armstrong; and

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced and qualified to perform the specialized construction services required by COUNTY's Project; and

WHEREAS, the COUNTY and CONTRACTOR (the "Parties") now wish to document their agreement for CONTRACTOR to perform the specialized construction services for COUNTY and for COUNTY to compensate CONTRACTOR.

NOW THEREFORE, in consideration of the covenants and promises contained herein, the Parties agree as follows:

**1. SCOPE OF WORK:**

The work to be performed by CONTRACTOR shall be as described in Exhibit A – Scope of Work, which is attached hereto and incorporated herein by reference as if set forth in full.

**2. COMPENSATION:**

COUNTY shall pay to CONTRACTOR, and CONTRACTOR shall accept Sixteen Million Nine Hundred Sixty One Thousand Nine Hundred Sixty One Dollars and 00/100 (\$16,961,961.00) as full compensation for furnishing all materials and for doing all of the work contemplated and embraced in this Agreement; also including all loss or damage, arising out of the work aforesaid, or from the actions of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work; also including all expenses incurred by or in consequence of the suspension or discontinuance of the work and for well and faithfully completing the work, and the whole thereof, in the manner, and according to the requirements set forth in, Exhibit A – Scope of Work. CONTRACTOR shall be paid within thirty (30) days after completion and final acceptance by COUNTY of the work.

**3. AGREEMENT DOCUMENTS:**

**A. Complete Agreement.** The complete Agreement between the Parties shall consist of the following documents (the "Agreement Documents") which are incorporated by reference as if fully set forth herein:

1. This Agreement;
2. Exhibit A – Scope of Work;
3. General Prevailing Wage Rates, as published by the California Department of Industrial Relations;
4. Published public bidding documents for the Project (e.g., Agreement Documents Including Detailed Specifications, Schedule I; Project Construction Documents; Preliminary Construction Estimate); and
5. Any addenda to any of the above-referenced documents, all of which are on file in the office of the Humboldt County Director of Aviation.

**B. Rights and Obligations.** All rights and obligations of the Parties are fully set forth and described in the Agreement Documents. All of the Agreement Documents are intended to be complementary, so that any work called for in one and mentioned in another is to be performed and executed the same manner as if mentioned in all said documents.

**4. CONSTRUCTION SERVICES:**

CONTRACTOR agrees to perform all of the work required for the Project, as specified in the Agreement Documents. CONTRACTOR shall provide, furnish and supply all things necessary and incidental for the timely performance and completion of the work, including, without limitation, provision of all necessary labor, materials, equipment, transportation and utilities, unless otherwise specified in the Agreement Documents. CONTRACTOR further agrees to complete the work in a professional and expeditious manner and to meet or exceed the performance standards required by the Agreement Documents.

**5. BEGINNING OF WORK:**

CONTRACTOR's receipt of the fully executed Agreement Documents will serve as the "Notice to Proceed" from COUNTY. Contractor shall confirm in writing to the Director of Aviation receipt of the fully executed Agreement Documents. Under no circumstances shall CONTRACTOR enter upon the site of work until in receipt of the "Notice to Proceed" or unless so authorized in writing by the Director of Aviation or his or her designee.

**6. TIME OF COMPLETION:**

CONTRACTOR shall fully complete the work for the Project within one-hundred-fifty-five (155) calendar days for Schedule 1 (sixty (60) days for Phase 1, twenty (20) days for Phase 2, and seventy-five (75) days for Phase 3, as described in the Construction Safety and Phasing Plan) from the commencement date given in the Notice to Proceed unless an extension of time is granted by Sponsor in accordance with the provisions of Section 80.07 *Determination and Extension of Contract Time*, contained in the Project Specifications, page GP-38. By executing this Agreement, CONTRACTOR expressly waives any claim for delayed early completion.

**7. TIME LIMIT AND LIQUIDATED DAMAGES:**

It is agreed by the Parties to the Agreement that time is of the essence in the performance of this Agreement and in case all of the work called for under the Agreement in all parts and requirements is not finished or completed by the time of completion as set forth in Section 6 above, damage will be sustained by COUNTY, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which COUNTY will sustain in the event of and by reason of such delay; and it is therefore agreed that CONTRACTOR will pay to COUNTY the sum One Thousand Dollars (\$1,000) per each 15 minutes that any scheduled Runway 14/32 opening is delayed, not to exceed Fifteen Thousand Dollars (\$15,000) per day. In addition, CONTRACTOR shall be liable to COUNTY for payment of liquidated damages in the amount of Three Thousand Five-hundred Dollars (\$3,500) for each calendar day that the project completion date is delayed beyond the contract time of one hundred fifty five (155) calendar days as adjusted for any time extension that may be provided for in the Agreement Documents; and CONTRACTOR agrees to pay said liquidated damages herein provided for, and further agrees that COUNTY may deduct any owing liquidated damages from any moneys due or that may become due to CONTRACTOR under the Agreement.

**8. PREVAILING WAGE:**

**A. Prevailing Wage Rate.** CONTRACTOR is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects.

Since the services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and since the total compensation is one thousand dollars (\$1,000) or more, CONTRACTOR agrees to fully comply with such Prevailing Wage Laws. COUNTY shall provide CONTRACTOR with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. CONTRACTOR shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the CONTRACTOR’s principal place of business and at the project site. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE COUNTY, ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS FREE AND HARMLESS FROM ANY CLAIM OR LIABILITY ARISING OUT OF ANY FAILURE OR ALLEGED FAILURE TO COMPLY WITH THE PREVAILING WAGE LAWS. Complete Certified Payrolls must be submitted to the Department of Aviation together with each application for payment.

- B. Registration.** Pursuant to Section 1771.1(a) of the California Labor Code, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Sections 1770 et seq. of the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. It is not a violation of Section 1771.1(a) for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

**9. INDEMNIFICATION:**

- A. Hold Harmless, Defense and Indemnification.** CONTRACTOR SHALL HOLD HARMLESS, DEFEND AND INDEMNIFY COUNTY AND ITS AGENTS, OFFICERS, OFFICIALS, EMPLOYEES AND VOLUNTEERS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES AND LIABILITIES OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, ATTORNEY’S FEES AND OTHER COSTS OF LITIGATION, ARISING OUT OF, OR IN CONNECTION WITH, CONTRACTOR’S NEGLIGENT PERFORMANCE OF, OR FAILURE TO COMPLY WITH, ANY OF THE DUTIES AND/OR OBLIGATIONS CONTAINED HEREIN, EXCEPT SUCH LOSS OR DAMAGE WHICH WAS CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF COUNTY.
- B. Effect of Insurance.** Acceptance of the insurance required by this Agreement shall not relieve CONTRACTOR from liability under this provision. This provision shall apply to all claims for damages related to CONTRACTOR’s performance hereunder, regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder.

**10. INSURANCE REQUIREMENTS:**

This Agreement shall not be executed by COUNTY, and CONTRACTOR is not entitled to any rights hereunder, unless certificates of insurance, or other proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

- A. General Insurance Requirements.** Without limiting CONTRACTOR’s indemnification obligations set forth herein, CONTRACTOR, and its subcontractors hereunder, shall take out

and maintain, throughout the entire term of this Agreement, and any extensions thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of CONTRACTOR or its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one (1) incident, including, without limitation, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.
2. Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles, and be at least as broad as Insurance Service Offices Form Code 1 (any auto).
3. Workers' Compensation Insurance, as required by the California Labor Code, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY and its agents, officers, officials, employees and volunteers.
4. If applicable, Environmental Impairment Liability coverage appropriate for the hazardous materials/waste activity contemplated in this Agreement in the amount of One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) annual aggregate. The retroactive date, if any, is to be no later than the effective date of this Agreement.

**B. Special Insurance Requirements.** Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY or its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:
  - a. Includes contractual liability.
  - b. Does not contain exclusions as to property damage caused by explosion or collapse of structures or underground damage, commonly referred to as "XCU Hazards."
  - c. Is the primary insurance with regard to COUNTY.
  - d. Does not contain a pro-rata, excess only and/or escape clause.
  - e. Contains a cross liability, severability of interest or separation of insureds clause.

2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice requirements set forth herein. It is further understood that CONTRACTOR shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.
  3. The inclusion of more than one (1) insured shall not operate to impair the rights of one (1) insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one (1) insured shall not operate to increase the limits of the insurer's liability.
  4. For claims related to this Agreement, CONTRACTOR's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to CONTRACTOR's insurance and will not be used to contribute therewith.
  5. Any failure to comply with the terms and conditions of this Agreement shall not affect the coverage provided to COUNTY or its agents, officers, officials, employees and volunteers.
  6. CONTRACTOR shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to any other available remedies, take out the necessary insurance and deduct the cost of said insurance from the monies owed to CONTRACTOR under this Agreement.
  7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and CONTRACTOR shall be required to purchase additional coverage to meet the above-referenced aggregate limits.
- C. **Insurance Notices.** Any and all insurance notices required to be given pursuant to the terms and conditions of this Agreement shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

COUNTY: County of Humboldt  
Attention: Risk Management  
825 Fifth Street, Room 131  
Eureka, California 95501

AND

Humboldt County Department of Aviation  
Attention: Cody Roggatz C.M., Director of Aviation  
3561 Boeing Avenue  
McKinleyville, CA 95519

CONTRACTOR: Mercer-Fraser Company  
Attention: Mr. Mark Benzinger, Vice President  
77 W. 2<sup>nd</sup> Street  
Eureka, CA 95501

**11. TERMINATION OF AGREEMENT:**

- A. **Termination For Cause.** Should CONTRACTOR fail to perform any of the provisions of the Agreement, COUNTY shall have the right, whether or not an alternative right is provided, to declare the Agreement terminated. A written notice by COUNTY to CONTRACTOR that the Agreement is terminated shall be deemed a complete termination of same.
- B. **Effect of Termination.** On the Agreement being so terminated, CONTRACTOR shall, provided CONTRACTOR is ordered to do so by COUNTY, immediately remove from the premises all or any materials and personal property belonging to CONTRACTOR which have not been used in the construction of the work or which is not in place in the work; and CONTRACTOR shall be liable for all damages caused to COUNTY by reason of failure to complete the Agreement.

**12. NOTICES:**

Any and all notices required to be given pursuant to the terms and conditions of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County Department of Aviation  
Attention: Cody Roggatz C.M., Director of Aviation  
3561 Boeing Avenue  
McKinleyville, CA 95561

CONTRACTOR: Mercer-Fraser Company  
Attention: Mr. Mark Benzinger, Vice President  
77 W 2<sup>nd</sup> Street | PO Box 1006  
Eureka, CA 95502

**13. WARRANTY:**

CONTRACTOR shall be held responsible to promptly and at its own expense cost make good any defects due to faulty, improper or inferior workmanship or materials arising or discovered in any part of the work within one (1) year after the completion and final acceptance of the same by COUNTY unless a longer period is otherwise called for by law.

**14. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:**

CONTRACTOR agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards applicable to the work performed pursuant to the terms and conditions of this Agreement, including, without limitation, any and all applicable local, state and federal licensure, certification and accreditation standards. All work and materials provided pursuant to the terms and conditions of this Agreement shall be in full compliance with the latest rules and regulations of the Americans with Disabilities Act, State Fire Marshal, the Safety Orders of the Division of Industrial Safety, the National Electric Code, the Uniform Plumbing Code published by the Western Plumbing Officials Association, and other applicable state laws or regulations including all of Title 24, California Code of Regulations. Nothing in this Agreement and the plans or specifications is to be construed to permit work not conforming to these codes.

**15. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:**

By executing this Agreement, CONTRACTOR certifies that it is not a Nuclear Weapons Contractor, in that CONTRACTOR is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear-Free Humboldt County Ordinance. CONTRACTOR agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONTRACTOR subsequently becomes a Nuclear Weapons Contractor.

**16. ASSIGNMENT AND SUBCONTRACTING:**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, provided, however, that neither party shall have the right to transfer, delegate, subcontract or assign all or part of its interest in or duties under this Agreement without the prior written authorization of the other party. No assignment or subcontract shall be effective and/or binding upon COUNTY unless COUNTY has received advance actual notice thereof and grants its approval. Said approval shall not be unreasonably withheld. Should CONTRACTOR subcontract any portion of the work to be performed under this Agreement, said subcontractors shall be required by CONTRACTOR to: enter into a written contract with CONTRACTOR acknowledging that no employee/employer relationship exists between CONTRACTOR and subcontractor and that no Workers' Compensation, unemployment benefits, or other personnel benefits are required by or available to subcontractor through CONTRACTOR or COUNTY; and hold harmless, defend and indemnify CONTRACTOR and COUNTY from and against any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material suppliers, laborers, and any other person, firm or corporation who may be injured or damaged by subcontractor in the performance of this Agreement. CONTRACTOR shall remain fully responsible for compliance with all of the terms and conditions of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.

**17. NON-DISCRIMINATION COMPLIANCE:**

**A. Professional Services and Employment.** In connection with the execution of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any and all applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. Nothing herein shall be construed to require the employment of unqualified persons.

**B. Compliance with Anti-Discrimination Laws.** CONTRACTOR further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq.*;



California Government Code Sections 4450, *et seq.*; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state or federal laws, regulations or standards, all as may be amended from time to time.

**18. DRUG-FREE WORKPLACE CERTIFICATION:**

By executing this Agreement, CONTRACTOR certifies that neither CONTRACTOR, nor its agents, officials, employees, volunteers, licensees, invitees, assignees or subcontractors, shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in Section 812 of Title 21 of the United States Code, including, without limitation, cannabis, heroin, cocaine and amphetamines, at any COUNTY facility or work site. If CONTRACTOR, or any of its agents, officials, employees, volunteers, licensees, invitees, assignees or subcontractors is convicted or pleads nolo contendere to a criminal drug violation occurring at a COUNTY facility or work site, CONTRACTOR shall notify COUNTY of such conviction within five (5) days thereafter. Violation of this provision shall constitute a material breach of this Agreement.

**19. PROVISIONS REQUIRED BY LAW:**

This Agreement may be subject to additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or incorrectly stated, the Parties agree to amend the pertinent section to make such insertion or correction.

**20. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:**

In the event any law, regulation or standard referred to herein is amended during the term of this Agreement, the Parties agree to comply with the amended provision as of the effective date thereof.

**21. JURISDICTION AND VENUE:**

This Agreement shall be construed under the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

**22. ATTORNEY FEES:**

If either party shall commence any legal action, including, without limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform any of its obligations hereunder, the party prevailing in said action shall be entitled to recover court costs and reasonable attorneys' fees, including, but not limited to, the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, the term "prevailing party" means the party who dismisses an action in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

**23. WAIVER OF DEFAULT:**

The waiver by either party of any breach of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement which may then exist on the part of CONTRACTOR. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default. COUNTY shall have the right to demand repayment of, and CONTRACTOR shall promptly refund, any funds which COUNTY determines were not expended in accordance with the terms and conditions of this Agreement.

**24. RELATIONSHIP OF PARTIES:**

It is understood that this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agents, servant, employee, partnership, joint venture or any other similar collaborative association or legal entity. Both Parties further agree that CONTRACTOR is an independent contractor and shall not be entitled to any benefits to which COUNTY employees are entitled, including, without limitation, overtime, retirement, leave or workers' compensation benefits. CONTRACTOR shall be solely responsible for the acts and omissions of its agents, officers, employees, assignees and subcontractors. At no time shall CONTRACTOR's employees and representatives hold themselves out to be COUNTY employees or representatives.

**25. INTERPRETATION:**

This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular party based on a contention that the Agreement was drafted by one of the Parties including, without limitation, California Civil Code Section 1654, the provisions of which are waived. This Agreement shall be construed and interpreted in a neutral manner.

**26. AMENDMENT:**

This Agreement may be amended at any time during the term hereof upon the written consent of both Parties.

**27. SEVERABILITY:**

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

**28. INDEPENDENT CONSTRUCTION:**

The titles of the sections and subsections set forth herein are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

**29. FORCE MAJEURE:**

Neither party shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, third-party labor strikes or lockouts, riots, acts of war,

epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

**30. ENTIRE AGREEMENT:**

This Agreement contains all of the terms and conditions agreed upon by the Parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the Parties. In addition, this Agreement shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the Parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Agreement are ratified.

**31. COUNTERPART EXECUTION:**

This Agreement, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This Agreement, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement and any amendments hereto.

**32. AUTHORITY TO EXECUTE:**

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

**33. REQUIRED FEDERAL CONTRACT PROVISIONS**

**ARTICLE 1  
ACCESS TO RECORDS AND REPORTS  
(2 CFR § 200.333, 2 CFR § 200.336, and FAA Order 5100.38)**

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, excerpt and transcriptions. The Contract agrees to maintain all books, records, and reports required under this Agreement for a period of not less than three years after final payment is made and all pending matters are closed.

**ARTICLE 2  
AFFIRMATIVE ACTION REQUIREMENT  
(41 CFR part 60-4 and Executive Order 11246)**

**\*\*\*NOTE: SEE INSTRUCTIONS TO BIDDERS – SECTION 21 FOR SOLICITATION COMPLIANCE\*\*\***

**ARTICLE 3**  
**BREACH OF CONTRACT TERMS**  
**(2 CFR § 200 Appendix II(A))**

Any violation or breach of terms of this Agreement on the part of the CONTRACTOR or its subcontractors may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the Parties of this Agreement.

COUNTY (or "Sponsor"), will provide CONTRACTOR written notice that describes the nature of the breach and corrective actions the CONTRACTOR must undertake in order to avoid termination of the contract. Sponsor reserves the right to withhold payments to CONTRACTOR until such time the CONTRACTOR corrects the breach or the Sponsor elects to terminate the Agreement. The Sponsor's notice will identify a specific date by which the CONTRACTOR must correct the breach. Sponsor may proceed with termination of the Agreement if the CONTRACTOR fails to correct the breach by the deadline indicated in the Sponsor's notice.

The duties and obligations imposed by the Agreement 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.

**ARTICLE 4**  
**BUY AMERICAN PREFERENCE**  
**(Title 49 USC § 50101)**

\*\*\*SEE INSTRUCTIONS TO BIDDERS - SECTION 22 AND PROPOSAL FOR SOLICITATION COMPLIANCE.\*\*\*

**ARTICLE 5**  
**GENERAL CIVIL RIGHTS PROVISIONS**  
**(49 USC § 47123)**

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

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

**ARTICLE 6**  
**CIVIL RIGHTS - TITLE VI ASSURANCES**  
**(49 USC § 47123 and FAA Order 1400.11)**

\*\*\*NOTE: SEE INSTRUCTIONS TO BIDDERS - SECTION 23 FOR SOLICITATION COMPLIANCE.\*\*\*

**6.1 Title VI Clauses for Compliance with Nondiscrimination Requirements.** During the performance of this Agreement, the CONTRACTOR, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONTRACTOR"), agrees as follows:

**6.1.1 Compliance with Regulations:** The CONTRACTOR 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.

**6.1.2 Nondiscrimination:** The CONTRACTOR, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONTRACTOR will not participate directly or indirectly in the discrimination prohibited by the

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

**6.1.3 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 Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

**6.1.4 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.

**6.1.5 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 Agreement until the CONTRACTOR complies; and/or

(b) Cancelling, terminating, or suspending a contract, in whole or in part.

**6.1.6 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.

**6.2 Title VI List of Pertinent Nondiscrimination Acts and Authorities:** During the performance of this Agreement, the CONTRACTOR, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONTRACTOR") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

**ARTICLE 7**  
**CLEAN AIR AND WATER POLLUTION CONTROL**  
**(49 CFR § 200, Appendix II (G))**

CONTRACTOR agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The CONTRACTOR agrees to report any violation to the Sponsor immediately upon discovery. The Sponsor assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

CONTRACTOR must include this requirement in all subcontracts that exceeds one hundred fifty thousand dollars (\$150,000).

**ARTICLE 8**  
**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT REQUIREMENTS**  
**(2 CFR § 200, Appendix II (E))**

**8.1 Overtime Requirements.** No CONTRACTOR or subcontractor contracting for any part of the Agreement 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.

**8.2 Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in paragraph (1) of this clause, the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such

District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

**8.3 Withholding for Unpaid Wages and Liquidated Damages.** The Federal Aviation Administration (FAA) 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 moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

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

**ARTICLE 9**  
**COPELAND “ANTI-KICKBACK” ACT**  
**(2 CFR § 200, Appendix II (D) and 29 CFR parts 3 and 5)**

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

**ARTICLE 10**  
**DAVIS BACON REQUIREMENTS**  
**(2 CFR § 200, Appendix II (D) and 29 CFR Part 5)**

**10.1 Minimum Wages**

- (a) 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.

**(b)**

**(i)** 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 Agreement 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:

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

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

**(iii)** 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.

**(iv)** 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 Agreement from the first day on which work is performed in the classification.

**(v)** Whenever the minimum wage rate prescribed in the Agreement 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.

**(vi)** 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.

**10.2 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 Agreement 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 Sponsor, 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.

### 10.3 Payrolls and Basic Records

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

(b)

(i) 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 Sponsor, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.* the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm) or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. CONTRACTORS and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the CONTRACTOR will submit them to the applicant or Sponsor, 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 or Sponsor).

(ii) 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 Agreement and shall certify the following:

- a. 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;
  - b. Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the Agreement 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;
  - c. 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.
  - d. 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.
  - e. 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, or applicant, 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.

#### **10.4 Apprentices and Trainees.**

- (a) **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 ninety (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.

- (b) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the CONTRACTOR will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (c) **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.
- 10.5 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.
- 10.6 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.
- 10.7 Contract Termination: Debarment.** A breach of the Agreement 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.
- 10.8 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.
- 10.9 Disputes Concerning Labor Standards.** Disputes arising out of the labor standards provisions of this Agreement 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.
- 10.10 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 Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

**ARTICLE 11**  
**DEBARMENT AND SUSPENSION**  
**(2 CFR part 180 (Subpart C), 2 CFR part 1200, and DOT Order 4200.5)**

\*\*\*NOTE: SEE PROPOSAL FOR SOLICITATION COMPLIANCE.\*\*\*

**ARTICLE 12**  
**DISADVANTAGED BUSINESS ENTERPRISE**  
**(49 CFR part 26)**

**Prime Contracts (Projects Covered by a DBE Program)**

**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 all applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this Agreement or such other remedy as deems appropriate, which may include, but is not limited to:

- (a) Withholding monthly progress payments;
- (b) Assessing sanctions;
- (c) Liquidated damages; and/or
- (d) Disqualifying the CONTRACTOR from future bidding as non-responsible.

**Prompt Payment (§26.29)** – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than twenty (20) days from the receipt of each payment the prime contractor receives from the County of Humboldt. The prime contractor agrees further to return retainage payments to each subcontractor within twenty (20) 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 County of Humboldt. This clause applies to both DBE and non-DBE subcontractors.

**ARTICLE 13**  
**DISTRACTED DRIVING**  
**(Executive Order 13513 and DOT Order 3902.10)**

**Texting When Driving.** In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the 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.

In support of this initiative, the Sponsor encourages the CONTRACTOR to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The CONTRACTOR must include the substance of this clause in all sub-tier contracts exceeding three thousand five hundred dollars (\$3,500) that involve driving a motor vehicle in performance of work activities associated with the project.

**ARTICLE 14**  
**ENERGY CONSERVATION**  
**(2 CFR § 200 Appendix II(H))**

CONTRACTOR and Subcontractor agree 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 (42 USC 6201 *et seq.*).

**ARTICLE 15**  
**DRUG FREE WORKPLACE REQUIREMENTS**  
**(49 CFR part 32 and Drug-Free Workplace Act of 1988 (41 USC 701 *et seq.*, as amended))**

See Section 18, above.

**ARTICLE 16**  
**EQUAL OPPORTUNITY CLAUSES**  
**(2 CFR 200, Appendix II(C), 41 CFR § 60-1.4, 41 CFR § 60-4.3, Executive Order 11246)**

**16.1** During the performance of this contract, the CONTRACTOR agrees as follows:

- 16.1.1** The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 16.1.2** 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.
- 16.1.3** The CONTRACTOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 16.1.4** 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.
- 16.1.5** 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.

**16.1.6** In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement 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.

**16.1.7** 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.

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

**16.2.1** As used in these specifications:

- (a) "Covered area" means the geographical area described in the solicitation from which this Agreement 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:
  - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
  - (iii) 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
  - (iv) 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).

**16.2.2** 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 ten thousand dollars (\$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 Agreement resulted.

- 16.2.3** If the CONTRACTOR is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. CONTRACTORS shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- 16.2.4** The CONTRACTOR shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this Agreement 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.
- 16.2.5** 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.
- 16.2.6** 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.
- 16.2.7** The CONTRACTOR shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the CONTRACTOR's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The CONTRACTOR shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
- (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the CONTRACTOR's employees are assigned to work. The CONTRACTOR, where possible, will assign two or more women to each construction project. The CONTRACTOR shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the CONTRACTOR's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - (b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the CONTRACTOR or its unions have employment opportunities available, and maintain a record of the organizations' responses.

- (c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the CONTRACTOR by the union or, if referred, not employed by the CONTRACTOR, this shall be documented in the file with the reason therefore along with whatever additional actions the CONTRACTOR may have taken.
- (d) Provide immediate written notification to the Director when the union or unions with which the CONTRACTOR has a collective bargaining agreement has not referred to the CONTRACTOR a minority person or female sent by the CONTRACTOR, or when the CONTRACTOR has other information that the union referral process has impeded the CONTRACTOR's efforts to meet its obligations.
- (e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the CONTRACTOR's employment needs, especially those programs funded or approved by the Department of Labor. The CONTRACTOR shall provide notice of these programs to the sources compiled under 7b above.
- (f) Disseminate the CONTRACTOR's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the CONTRACTOR in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- (g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items, with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (h) Disseminate the CONTRACTOR's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the CONTRACTOR's EEO policy with other contractors and subcontractors with whom the CONTRACTOR does or anticipates doing business.
- (i) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the CONTRACTOR's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the CONTRACTOR shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.



- (k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
- (l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- (m) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the CONTRACTOR's obligations under these specifications are being carried out.
- (n) Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- (o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- (p) Conduct a review, at least annually, of all supervisor's adherence to and performance under the CONTRACTOR's EEO policies and affirmative action obligations.

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

**16.2.9** 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.

**16.2.10** 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.

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

**16.2.12** 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.

- 16.2.13** The CONTRACTOR, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the CONTRACTOR fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.
- 16.2.14** 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.
- 16.2.15** 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).

**ARTICLE 17**  
**FEDERAL FAIR LABOR STANDARDS ACT**  
(29 USC § 201, et seq.)

\*\*\*SEE INSTRUCTIONS TO BIDDERS - SECTION 24 FOR SOLICITATION COMPLIANCE.\*\*\*

**ARTICLE 18**  
**LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**  
(31 USC § 1352 – Byrd Anti-Lobbying Amendment, 2 CFR part 200, Appendix II(J),  
and 49 CFR part 20, Appendix A)

- 18.1** The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
- 18.1.1** 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.
- 18.1.2** 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.
- 18.1.3** The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under

grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

**ARTICLE 19**  
**PROHIBITION OF SEGREGATED FACILITIES**  
**(41 CFR § 60)**

- 19.1** The CONTRACTOR agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The CONTRACTOR agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.
- 19.2** “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- 19.3** The CONTRACTOR shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

**ARTICLE 20**  
**OCCUPATIONAL SAFETY & HEALTH ACT OF 1970**  
**(29 CFR part 1910)**

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

**ARTICLE 21**  
**PROCUREMENT OF RECOVERED MATERIALS**  
**(2 CFR § 200.322, 40 CFR part 247, and Solid Waste Disposal Act)**

CONTRACTOR and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this Agreement and to the extent practicable, the CONTRACTOR and subcontractors are to use of products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- (a) The contract requires procurement of ten thousand dollars (\$10,000) or more of a designated item during the fiscal year; or,

- (b) The contractor has procured ten thousand dollars (\$10,000) or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at [www.epa.gov/epawaste/conserva/tools/cpg/products/](http://www.epa.gov/epawaste/conserva/tools/cpg/products/)

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

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

**ARTICLE 22**  
**RIGHTS TO INVENTIONS**  
**(2 CFR § 200, Appendix II(F), 37 CFR § 401)**

NOT APPLICABLE

**ARTICLE 23**  
**SEISMIC SAFETY**  
**(49 CFR part 41)**

NOT APPLICABLE

**ARTICLE 24**  
**CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY**  
**CONVICTIONS**  
**(DOT Order 4200.6)**

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

**Certifications**

- (a) The applicant represents that it is (\_\_\_) is not ( X ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- (b) The applicant represents that it is (\_\_\_ ) is not ( X ) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

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

## **Term Definitions**

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

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

## **ARTICLE 25 TERMINATION OF CONTRACT (2 CFR § 200 Appendix II(B). FAA Advisory Circular 150/5370-10, Section 80-09)**

### **TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)**

The Sponsor may terminate this Agreement in whole or in part at any time by providing written notice to the CONTRACTOR. Such action may be without cause and without prejudice to any other right or remedy of Sponsor. Upon receipt of a written notice of termination, except as explicitly directed by the Sponsor, the CONTRACTOR shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

- (a) CONTRACTOR must immediately discontinue work as specified in the written notice.
- (b) Terminate all subcontracts to the extent they relate to the work terminated under the notice.
- (c) Discontinue orders for materials and services except as directed by the written notice.
- (d) Deliver to the Sponsor all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
- (e) Complete performance of the work not terminated by the notice.
- (f) Take action as directed by the Sponsor to protect and preserve property and work related to this Agreement that Sponsor will take possession.

Sponsor agrees to pay CONTRACTOR for:

- (a) completed and acceptable work executed in accordance with the Agreement documents prior to the effective date of termination;
- (b) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the Agreement documents in connection with uncompleted work;
- (c) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- (d) reasonable and substantiated expenses to the CONTRACTOR directly attributable to Sponsor's termination action.

Sponsor will not pay CONTRACTOR for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Sponsor's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

### **TERMINATION FOR DEFAULT (CONSTRUCTION)**

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights, and remedies associated with Sponsor termination of this Agreement due to default of the CONTRACTOR.

### **TERMINATION FOR DEFAULT (EQUIPMENT)**

The Sponsor may, by written notice of default to the CONTRACTOR, terminate all or part of this Contract if the CONTRACTOR:

- (a) Fails to commence the Work under the Contract within the time specified in the Notice- to-Proceed;
- (b) Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
- (c) Fails to make delivery of the equipment within the time specified in the Contract, including any Sponsor approved extensions;
- (d) Fails to comply with material provisions of the Contract;
- (e) Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
- (f) Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Sponsor will give notice in writing to the CONTRACTOR and Surety of its intent to terminate the Agreement for cause. At the Sponsor's discretion, the notice may allow the CONTRACTOR and Surety an opportunity to cure the breach or default.

If within ten (10) calendar days of the receipt of notice, the CONTRACTOR or Surety fails to remedy the breach or default to the satisfaction of the Sponsor, the Sponsor has authority to acquire equipment by other procurement action. The CONTRACTOR will be liable to the Sponsor for any excess costs the Sponsor incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Sponsor shall be at the Contract price. The Sponsor may withhold from amounts otherwise due the CONTRACTOR for such completed equipment, such sum as the Sponsor determines to be necessary to protect the Sponsor against loss because of CONTRACTOR default.

Sponsor will not terminate the CONTRACTOR's right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR. Examples of such acceptable causes include: acts of God, acts of the Sponsor, acts of another CONTRACTOR in the performance of a contract with the Sponsor, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the CONTRACTOR's right to proceed, the Sponsor determines that the CONTRACTOR was not in default, or that the delay was excusable, the rights and obligations of the Parties will be the same as if the Sponsor issued the termination for the convenience the Sponsor.

The rights and remedies of the Sponsor in this clause are in addition to any other rights and remedies provided by law or under this contract.

**ARTICLE 26  
TRADE RESTRICTION CLAUSE  
(49 USC § 50104, 49 CFR part 30)**

\*\*\*NOTE: SEE PROPOSAL FOR SOLICITATION COMPLIANCE.\*\*\*

**ARTICLE 27  
VETERAN’S PREFERENCE  
(49 USC § 47112(c))**

In the employment of labor (excluding executive, administrative, and supervisory positions), the CONTRACTOR and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

**ARTICLE 28  
CONTRACT DOCUMENTS**

The Agreement Documents consist of the following:

Invitation for Bids	Instructions to Bidders	Change Orders
Notice of Award	Agreement	Applications for Payment
Performance Bond	EEO Requirements in Subcontracts	Notice of CONTRACTOR’S Settlement
Proposal	Payment Bond	Wage Rates
Notice to Proceed	Certification of Inclusion of Labor	General Provisions
Technical Specifications	Special Provisions	Construction Safety and Phasing Plan
Plans and Drawings	Construction Management Plan	Addenda

These Agreement Documents are incorporated herein and are a part of this Agreement.

**ARTICLES 29, 30, AND 31**

Not Used.

**ARTICLE 32  
TERMS OF PAYMENT**

**32.1** Sponsor agrees to pay CONTRACTOR in accordance with the price or prices set forth in CONTRACTOR's Proposal, for the total cost of the Project, or the “Contract Price,” will be Sixteen Million Nine Hundred Thousand Sixty One Thousand Nine Hundred Sixty One Dollars and 00/100 (\$16,961,961.00). Partial payments will be made for work completed on the Project during the previous month, as well as for materials (invoice cost only) delivered to the site of the Project and which are properly and suitably stored.

**32.2** Application for partial payments for stored materials must be accompanied by certified invoices showing all pertinent data that may be required by Armstrong Consultants, Inc. (“Engineer”), to verify the accuracy of the invoices and their relation to the stored materials. Failure to provide certified invoices will disqualify the materials in question from consideration for partial payment. Partial payments for work completed on the Project during the previous month will be made based on the CONTRACTOR's Application for Payment and any Recommendation of Payment made by Engineer. Sponsor will retain, from any partial payments, ten percent (10%) of the total amount due to CONTRACTOR based on the CONTRACTOR's Application for Payment and any Recommendation of Payment made by Engineer. However, nothing herein shall be construed as relieving CONTRACTOR and his, her, or its Sureties on the CONTRACTOR's Bond from any

claim or claims for work or labor done, or materials or supplies furnished, as part of this Agreement and the completion of the Project.

**32.3** It is the intent of Sponsor to make any partial payments in the following manner:

**32.3.1** The CONTRACTOR shall submit to Engineer his Application for Payment no later than the next to last Friday of the month.

**32.3.2** Engineer will, within 7 days after receipt, submit the Application for Payment to Sponsor for payment along with its Recommendation of Payment, noting any changes. The Sponsor will then make payment to CONTRACTOR when funds are received from the FAA and are available to Sponsor for payment to CONTRACTOR.

**32.4** Sponsor shall have the right to reasonably and in good faith dispute any portion of any amount billed by CONTRACTOR. If Sponsor believes that CONTRACTOR has billed Sponsor incorrectly, Sponsor must contact CONTRACTOR's customer support department no later than thirty (30) days after the date on the invoice in which the error or problem appeared, in order to receive an adjustment or credit. Such notification shall include written documentation which identifies and substantiates the disputed amount. Notwithstanding the foregoing, Sponsor shall submit to CONTRACTOR, prior to the invoice due date, full payment of the undisputed portion of any fees billed by CONTRACTOR.

### **ARTICLE 33 BONDS**

**33.1** At the time of the execution of this Agreement, CONTRACTOR shall provide the bonds that are required by the Agreement Documents. The Performance Bond will be in an amount not less than one hundred percent (100%) of the Contract Price and shall provide for the completion of the Project in accordance with the Agreement Documents, without additional cost to Sponsor. The obligation period of the Performance Bond will provide for the correction or replacement of any portion of the Project that is considered by Sponsor and/or Engineer to be defective in materials and workmanship for a period of one year following final acceptance of the Project, and it shall fully cover any and all of the costs of removal, correction, reconstruction, and any and all other related expenses in repairing or correcting the defective portions of the Project, without additional cost to Sponsor. The Payment Bond will be in an amount not less than one hundred percent (100%) of the Contract Price and it shall provide for the payment of all Project costs in accordance with the Agreement Documents, without additional cost to Sponsor.

### **ARTICLE 34 BONDING CLAUSES**

**34.1** CONTRACTOR agrees to furnish a performance bond for one hundred percent (100%) of the Contract Price. This bond is to be executed in connection with this Agreement in order to secure fulfillment of all of CONTRACTOR's obligations under this Agreement.

**34.2** CONTRACTOR agrees to furnish a payment bond for one hundred percent (100%) of the Contract Price. This bond is to be executed in connection with this Agreement to ensure payment of all monies owed by CONTRACTOR under this Agreement and other Agreement Documents.

### **ARTICLE 35 CHANGE ORDERS**

Changes in the scope of work for the Project or the performance of the work under this Agreement and any materials used may be accomplished after execution of the Agreement and without invalidating the Agreement. However, a change order shall be in writing and signed by Sponsor, CONTRACTOR, Engineer, and other Funding Agencies as required. Change orders shall include notice to the Sponsor of the increase in cost as a result thereof. Any revision to



the Plans and Specifications that are approved by Sponsor, if any, shall be considered to be a change order that has been approved by Sponsor when delivered to CONTRACTOR, requiring no further approval by Sponsor.

**ARTICLE 36  
DEBRIS REMOVAL**

CONTRACTOR shall, at all times, keep the work site reasonably free from the accumulation of waste materials or rubbish caused by its operations during its work on the Project. All waste and debris, tools or equipment, and surplus materials or machinery shall be removed as a condition of the substantial completion of the Project.

**ARTICLE 37  
ATTORNEY'S FEES & PUNITIVE DAMAGES**

In the event of litigation or arbitration to resolve any claim made by either party to this Agreement, the prevailing party shall be entitled to its costs and attorney fees incurred as a result of such litigation or arbitration. If the Sponsor is the prevailing party, this shall also include time and expenses of the Sponsor's County Counsel's office. Each party hereto also intentionally waives all rights to recover punitive or exemplary damages from the other.

**ARTICLE 38  
GOVERNING LAW**

This Agreement shall be interpreted and governed under the laws of the State of California.

**ARTICLE 39  
MODIFICATION OF AGREEMENT**

No subsequent modification of the terms of this Agreement shall be valid, binding on the Parties, or enforceable unless made in writing and signed by the Parties during the term of this Agreement.

**ARTICLE 40  
SEVERABILITY**

In the event any part of this Agreement is found to be void, illegal, invalid, or unenforceable under any present or future law, then the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though such part was deleted.

**ARTICLE 41  
BINDING EFFECT**

This Agreement shall be binding upon and insure to the benefit of the Parties and their respective heirs, successors, and assigns.

**ARTICLE 42  
HOLD HARMLESS**

CONTRACTOR shall release Sponsor and Engineer, and all of their agents, representatives, officers, employees, boards, directors, committees, and commissions, of any liability for, and shall protect, defend, indemnify, and hold Sponsor and Engineer harmless from and against all claims, demands, and causes of action of every kind and character that are asserted or brought on account of bodily injury, death, or damage to property as a result of the actions, omissions, negligence, gross negligence, and/or recklessness of CONTRACTOR or CONTRACTOR's agents, employees, representatives, invitees, licensees, subcontractors, or subcontractor's subcontractors. CONTRACTOR's indemnification obligations under this section shall be without regard to, and without any right to contribution from, any insurance maintained by CONTRACTOR. Additionally, CONTRACTOR's indemnity obligations under this section shall be supported by insurance, but this insurance requirement shall be a separate and distinct obligation

from CONTRACTOR’s indemnity obligations, and the insurance and indemnity obligations shall be separately and independently enforceable. Further, CONTRACTOR’s indemnity obligations hereunder are not limited by any insurance coverage CONTRACTOR may have.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the last date written below.

**TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:**

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

**MERCER, FRASER COMPANY**

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**COUNTY OF HUMBOLDT:**

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

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

Virginia Bass  
Chair, Board of Supervisors

**INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:**

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

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

Risk Management

**LIST OF EXHIBITS:**

Exhibit A – Scope of Work

## **EXHIBIT A SCOPE OF WORK**

The work to be performed by CONTRACTOR shall be as described below.

CONTRACTOR shall furnish all Labor, Tools, Equipment and Materials and perform all the work to provide a complete functional system including, but not limited to:

Rehabilitation of Runway 14/32 and Associated Connector Taxiways, and Improvements to the Electrical System.

### **LIST OF ATTACHMENTS TO EXHIBIT A:**

Attachment A – Construction Drawings

Attachment B – Agreement Documents Including Detailed Specifications