

***MAPCO AUTO PARKS LTD AS AGENT FOR
THE MONROE COUNTY AIRPORT AUTHORITY***



REQUEST FOR PROPOSAL

**Merchant Services and Credit Card Processing for
the Frederick Douglass Greater Rochester
International Airport**

**Release Date: October 25, 2021
Response Deadline: November 18, 2021**

**488 White Spruce Blvd
Rochester, New York 14623**

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SECTION 1 – INVITATION TO PARTICIPATE

Purpose and Objective

MAPCO Auto Parks Ltd as Agent for the Monroe County Airport Authority (Authority), owner and operator of the Frederick Douglass Greater Rochester International Airport, is seeking proposals from Companies wishing to provide merchant services, credit card transaction processing and related ancillary services at the Frederick Douglass Greater Rochester International Airport (ROC) parking and ground transportation facilities. Prospective Respondents must offer a proposal that will meet the scope of services, qualifications and general description of work activities identified in the Request for Proposals (“RFP”).

In responding to this RFP, Respondents must follow the prescribed format as outlined in Section 3. By so doing, each Respondent will be providing Mapco with data comparable to that which was submitted by other Respondents and, thus, be assured of fair and objective treatment in the review and evaluation process.

This RFP is only available electronically; paper copies will not be available. Interested parties may download the Request for Proposals from the MAPCO website: www.mapcoparking.com under Procurement, Merchant Services and Credit Card Processing RFP.

The Agent will receive and review Proposals from Respondent(s) and intends to select one (1) Company to provide merchant services and credit card processing for the parking transaction processing. The Agent intends to enter into a (3) year Agreement with two (2), one (1) year options, commencing no later than January 1, 2022, with renewal options subject to mutual agreement.

RFP Coordinator; Issuing Office

The RFP Coordinator, identified below, is the sole point of contact regarding this RFP from the date of issuance until the selection of the successful Respondent.

Jillian Gauer
Purchasing Coordinator
E-mail: purchasing@mapcoparking.com

MAPCO Auto Parks as Agent for the Monroe County
Airport Authority
488 White Spruce Blvd
Rochester, New York 14623

Only those Respondents who have registered for this RFP by emailing their contact information to purchasing@mapcoparking.com will receive addenda, if issued.

Presentation and Clarification of the Authority’s Intentions

As a result of this RFP, Mapco intends to enter a contract with the selected Respondent to supply the services described in Section 2. However, this intent does not commit Mapco to award a contract to any responding Respondent, or to pay any costs incurred in the preparation of the proposal in response to this request, or to procure or contract for any services. Mapco

reserves the right, in its sole discretion, to (a) accept or reject in part or in its entirety any proposal received as a result of this RFP if it is in the best interest of Mapco to do so; (b) award one or more contracts to one or more qualified Respondents if necessary, to achieve the objectives of this RFP and if it is in the best interest of Mapco to do so. Mapco maintains the option to expand these types of services to other projects, departments, and divisions as needed.

Timeline

The schedule of events for this RFP is **anticipated** to proceed as follows:

- This RFP will be distributed to registered emails on October 25, 2021 by 10:30AM EST. A copy of the RFP will be posted on <https://www.mapcoparking.com/procurement/>
- All requests for RFP clarification must be submitted in writing to the RFP Coordinator at the email address provided in Section 1 and received no later than 3:00 PM EST on October 29, 2021.
- All questions will be answered and documented in writing as an Addendum to the RFP and posted on the County website along with Mapco's website. Addenda will be sent out to all Respondents who received the original RFP and all respondents who reached out with an interest of the RFP on or before November 3, 2021.
- **Final RFP submissions must be received by 3:00 PM EST on November 18, 2021** at the address shown in Section 3. The right to withdraw will expire on this date and time.

Background

MAPCO Auto Parks Ltd as Agent for the Monroe County Airport Authority (hereinafter called the "Authority"), owner and operator of the Frederick Douglass Greater Rochester International Airport (hereinafter called the "Airport") in Rochester, New York.

The equipment used for parking transactions (excluding Zoom Lane transactions) at ROC is ZEAG equipment installed approximately seven (7) years ago.

Parking credit card transactions run through a ZEAG system in conjunction with WEBPARCS (HUB Parking Technology). When a credit card is used at a piece of parking equipment, the information on the card is sent to WEBPARCS which then passes the transaction to Vantiv Card Services (internet based) and then to the bank processor.

SECTION 2 – SCOPE OF SERVICES

Scope of Services

The Agent and Authority desires to engage the services of a qualified company to provide merchant services and credit card processing for the parking operations at the Frederick Douglass Greater Rochester International Airport. A successful bidder should be experienced in offering these services, preferably to other similar clients. The Agent and Authority expect a reliable partner who will be focused on providing a dependable service to airport customers.

Submittal Requirements

Respondent(s) that submit a proposal must include sufficient details as outlined in section 3.5

Definitions

"Airport"	Frederick Douglass Greater Rochester International Airport
"Agent"	MAPCO Auto Parks, Ltd as Agent for the Monroe County Airport Authority
"Agreement"	the document allowing the company to provide merchant services and credit card services for the Authority
"Authority"	the Monroe County Airport Authority
"Company"	the successful company
"Credit Card Transactions"	summary/example of credit card transactions that the Company will provide services
"Proposal"	document submitted by Respondent(s) to be considered for the agreement; the overall proposal shall include Respondents' required information (Section 3) including Exhibits 5 and 6
"Respondent"	any company or organization submitting a Proposal for the services requested in this RFP
"RFP"	Request for Proposals
"Transactions"	includes the total cash and credit parking transactions

Qualifications to Propose

The Company must possess the necessary certifications established by the credit card associations, including Payment Card Industry (PCI), and front-end processors to process the

Airport's parking transactions. The Company agrees to maintain these mandated certifications in the future as the requirements change.

Parking Facilities

AIRPORT INFORMATION

Owner: Monroe County Airport Authority (MCAA)
Location: Monroe County
Rochester, New York
Identifier: ROC

The parking facilities and lot counts are as follows:

- Surface Lots - 2,153
- Garage - 2,080
- Weekly - 575
- Employee – 365
- Overflow - 1,580
- Valet – 150

Attached Exhibit 2 is a map of the Frederick Douglass Greater Rochester International Airport parking facilities.

Attached Exhibit 3 summarizes the number of parking Transactions for calendar years 2019 and year to date 2021.

Exhibit 4 is a summary of annual revenue by card type for years 2017 to 2021 year to date.

SECTION 3 – SPECIFIC PROPOSAL REQUIREMENTS

Submission of Proposal

- A. Acceptance Period and Location.** To be considered, Respondents must submit a complete response to this RFP. Respondents not responding to all information requested in this RFP or indicating exceptions to those items not responded to may have their proposals rejected as being non-responsive.

Sealed proposals must be received at the address below on or before 3:00 PM Eastern Time, on November 10, 2021.

Jillian Gauer
Purchasing Coordinator
MAPCO Auto Parks as Agent for the Monroe
County Airport Authority
488 White Spruce Blvd
Rochester, New York 14623

Refer to Section 3 for further detail regarding response formats and requirements. There will be no public opening of the proposals.

- B. Required copies.** Required copies. Respondents must submit one (1) signed original Proposal and two (2) complete copied sets of the signed original Proposal. Proposals should be clearly marked as **“Proposal for Merchant Services and Credit Card Processing.”** The Respondent must also include a copy of its full proposal on a USB Flash Drive or CD. The Respondent will make no other distribution of proposals. An official authorized to bind the Respondent to its provisions must sign the Proposal.
- C. Pricing Period.** For this RFP, the proposal must remain valid for a minimum of 120 days past the due date for receipt of RFPs.
- D. Economy of Preparation.** Proposals should be prepared as simply as possible and provide a straightforward, concise description of the Respondent's capabilities to satisfy the requirements of the RFP. Expensive bindings, color displays, promotional material, etc. are not necessary or desired. Emphasis should be concentrated on accuracy, completeness, and clarity of content. All parts, pages, figures, and tables should be numbered and clearly labeled. Vague terms such as "Respondent complies" or "Respondent understands" should be avoided.

Response Date

To be considered, sealed proposals must arrive to the location on or before the time and date specified in Section 3. *Requests for extension of the submission date will not be granted.* Respondents mailing proposals should allow ample delivery time to assure timely receipt of their proposals.

Clarification of RFP and Questions

Questions that arise prior to or during proposal preparation must be submitted **in writing or via email** pursuant to the instructions in Section 1 of this RFP. Questions and answers will be provided to all registered Respondents who have received RFPs and must be acknowledged in the RFP response. No contact will be allowed between the Respondent and any other member of the County or Agent about this RFP during the RFP process unless specifically authorized in writing by the RFP Coordinator. Prohibited contact may be grounds for Respondent disqualification.

Addenda to the RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be provided to all Respondents that received the original RFP and registered their contact information. **An acknowledgment of such addenda, if any, must be submitted with the RFP response. Only those Respondents who have registered for this RFP by emailing their contact information to purchasing@mapcoparking.com will receive addenda, if issued.** Addendums will also be posted on <https://www.mapcoparking.com/procurement/>

Organization of Proposal

This section outlines the information that must be included in your response. Please respond with your information in the same order as the items in the section. Information considered “confidential” or “proprietary” must be stamped so on each page.

- A. Transmittal Letter.** Each response to the RFP should be accompanied by a letter of transmittal not exceeding two (2) pages that summarizes key points of the proposal and which is signed by an officer of the firm authorized to commit the Respondent to the obligations contained in the proposal. The transmittal letter should also include a phone number, fax number and e-mail address for the Respondent's contact person.
- B. Table of Contents.** Include a Table of Contents at the beginning, which clearly outlines the contents of your proposal.
- C. Company Information.** Provide information related to your company and any companies you are proposing to use as sub-contractors. Specifically address the following:
 - 1. Year the company was organized.
 - 2. Identification of company ownership.
 - 3. Financial Information:
 - a. Publicly Owned or Not for Profit Organizations: Financial history of the company covering the last three (3) years. Attach the most recent copy of your latest financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles. Also include the following information: current balance sheet, statement of revenues and expenses, statement of cash flows, and appropriate notes to these documents. 501(c)(3) organizations must

submit their most recent Form 990.

- b. Privately Held Companies: Total gross revenues of the company covering the last three (3) years.

- 4. Functions and location of your nearest regional office to Monroe County. Identify the location of your company's headquarters.
- 5. Anticipated growth of your organization including expansion of the client base and acquisitions.
- 6. Any conflicts of interest that may affect the County's potential selection of, or entering into an agreement with, your organization, i.e. your organization currently holds an agreement with the County for other services, a relative of any employee of the Respondent is a member of the selection committee, etc.

D. Experience. Provide information that clearly demonstrates your organization's prior experience and background (both business and technical) in providing experience of merchant services and credit card processing. This section must include:

A list of all public sector clients in the State of New York over the last three (3) years, along with the dates of engagement for each client. Include the following information for each public sector client:

- a. Name and address of the client;
- b. Approximate annual budget;
- c. Name and telephone number of contact person;
- d. Summary of the services provided to each client.

E. Qualifications. Provide information that clearly demonstrates your organization is qualified and competent to provide the requested services:

- 1. Résumés for the key personnel to be involved in providing services to the County.
- 2. List any licenses, certifications, or education required to perform these services.
- 3. Availability and method(s) of contact of account representative(s) and/or customer service

F. References. A list of at least three (3) references (name, title, business, address, telephone number, e-mail address) each of whom can confirm the applicant's ability to provide the Scope of Services listed in this RFQ.

G. Transaction flow chart representing a transaction from the sale to settlement of the funds at the depository bank.

H. Cost Sheet. A detailed sheet specifying any and all fees that are associated with accepting Visa, MasterCard, Discover, American Express, Google Pay and Apple Pay as form(s) of payment for parking at the Airport (including Exhibit 6).

I. Exceptions to the Standard Professional Services Contract. For all

exceptions to the Standard Professional Services Contract, the Respondent must indicate on a separate sheet labeled "Exceptions Taken to the Professional Services Contract," the section number of any requirement to which an exception is being taken and an explanation of their position. It is not intended that new contract wording be proposed by the Respondent, but rather that the Respondent explain their position so that the conflict can be evaluated. If no exceptions are noted, the Respondent is presumed to have agreed with all sections of the standard contract.

- J. An executed **Offerer Disclosure of Prior Non-Responsibility Determinations** in the form attached hereto.
 - K. An executed **Affirmation of Understanding and Agreement of Permissible Contracts** in the form attached hereto.
 - L. An executed **Certification Regarding Debarment, Suspension and Responsibility** in the form attached hereto.
 - M. An executed **Non-Collusion Certificate** in the form attached hereto.
 - N. An executed **Statement of Qualifications Acknowledgement** in the form attached hereto
 - O. Sample Agreement.
 - P. Description or samples of reports, information and services available online.
-
- J. Cost Sheet detailing any and all fees that are associated with accepting Visa, MasterCard, Discover, American Express as form(s) of payment for parking at the Airport (including Exhibit 6).
 - K. Completed Exhibits 5, 6 and 7.

Evaluation and Respondent Responsibility

A. Method of Evaluation

A. Evaluation Committee. Selected personnel from Mapco and Authority will form the evaluation committee for this RFP. It will be the responsibility of this committee to evaluate all properly prepared and submitted proposals for the RFP and make a recommendation for award.

B. Evaluation and Selection Criteria. All properly prepared and submitted proposals shall be subject to evaluation deemed appropriate for the purpose of selecting the Respondent with whom a contract may be signed. Responses to this RFP will be evaluated according to criteria that MAPCO and the Authority deems pertinent to these services and each criteria will be weighted 1-3 (3 being the highest weight and most important). Each criteria will be rated on a scale of 0/1 to 5, with 5 being the highest score. Criteria may include, but not be limited to, the following:

- Revenue Share (weight 3)
- Understanding of and Approach to the Project (weight 3)
- Specific Experience on Similar Projects (weight 2)
- Capacity and Availability to Perform All Services (weight 3)
- Local Office/Support (weight 1)
- Furnishings/Materials (weight 3)

The selection committee may consider other pertinent criteria if it deems appropriate. Weights will be assigned by the selection committee. Examples of other pertinent criteria include the following:

- Previous Performance Record (County Projects)
- Knowledge of County Facilities and Operations
- MWBE/DBE Utilization, if applicable
- Veteran Owned Business (VOSB/SDVOSB)
- Other Pertinent Criteria

C. Contract Approval Process. Respondents must be aware that any contract resulting from this request for proposals is subject to prior approval by the Monroe County Airport Authority.

Oral Presentation

Respondents who submit a proposal may also be required to make an oral presentation of their proposal. These presentations will provide an opportunity for the Respondent to clarify their proposal to ensure a thorough mutual understanding. At the same time, Mapco is under no obligation to offer any Respondent the opportunity to make such a presentation.

Investigations

Mapco reserves the right to conduct any investigations necessary to verify information submitted by the Respondent and/or to determine the Respondent's capability to fulfill the terms and

conditions of the RFP contract document. Mapco reserves the right to visit a prospective Respondent's place of business to verify the existence of the company and the management capabilities required to administer this agreement. Mapco will not consider Respondents that are in bankruptcy or in the hands of a receiver at the time of tendering a proposal or at the time of entering a contract.

SECTION 4 - GENERAL INFORMATION FOR THE RESPONDENT

Reservation of Rights

Mapco reserves the right to refuse any and all proposals, in part, or in their entirety, or select certain products from various Respondent proposals, or to waive any informality or defect in any proposal should it be deemed to be in the best interest of Mapco. Mapco is not committed, by virtue of this solicitation, to award a contract, or to procure or contract for services. The proposals submitted in response to this solicitation become the property of Mapco. If it is in its best interest to do so, the Mapco reserves the right to:

- A. Make selections based solely on the proposals or negotiate further with one or more Respondents. The Respondent selected will be chosen on the basis of greatest benefit to Mapco as determined by an evaluation committee.
- B. Negotiate contracts with the selected Respondents.
- C. Award a contract to more than one Respondent.

Contract Negotiation

Negotiations may be undertaken with those Respondents whose proposals prove them to be qualified, responsible, and capable of fulfilling the requirements of this solicitation. The contract that may be entered into will be the most advantageous to Mapco, price and other factors considered. Mapco reserves the right to consider proposals or modifications thereof received at any time before a contract is awarded, if such action is in the best interest of the Authority.

Acceptance of Proposal Content

The contents of the proposal of the successful Respondent may become contractual obligations, should a contract ensue. Failure of a Respondent to accept these obligations may result in cancellation of the award. The awarded Respondent will be required to provide Mapco with a *Word* version of its final proposal.

Prime Responsibilities

The selected Respondent will be required to assume responsibility for all services offered in its proposal whether or not provided by them. The selected Respondent will be liable, both individually and severally, for the performance of all obligations under the awarded contract and will not be relieved of non-performance of any of its subcontractors. Further, the Mapco shall approve all subcontractors and will consider the selected Respondent to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

Property Rights

For purposes of this document and for the contract, the term "Work" is defined as all data, records, files, information, work products, discs or tapes developed, produced or generated in connection with the services to be provided by the Respondent. The Authority and the Respondent intend the contract to be a contract for services and each considers the Work and all documentation or other products and results of the services to be rendered by the Respondent to be a work made for hire. In submitting a proposal in response to this solicitation, the Respondent acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of the Authority.

The Respondent and the Respondent's employees shall have no rights in or ownership of the Work and all documentation or other products and results of the services or any other property of the Authority. Any property or Work not specifically included in the Contract as property of the Respondent shall constitute property of the Authority.

In addition to compliance with the right to audit provisions of the contract, the Respondent must deliver to the Authority, no later than the twenty-four (24) hours after receipt of the Authority's written request for same; all completed, or partially completed, Work and any and all documentation or other products and results of the services under such contract. The Respondent's failure to timely deliver such work or any and all documentation or other products and results of the services will be considered a material breach of the contract. With the prior written approval of the Authority, this twenty-four (24) hour period may be extended for delivery of certain completed, or partially completed, work or other such information, if such extension is in the best interests of the Authority.

The Respondent will not make or retain any copies of the Work or any and all documentation or other products and results of the services provided under such Contract without the prior written consent of Mapco.

Contract Payment

Actual terms of payment will be the result of agreements reached between Mapco and the Respondent selected.

Notification of Respondent Selection

All Respondents who submit proposals in response to this solicitation will be notified by the Coordinator of acceptance or rejection of their proposal.

Independent Price Determination

- A. By submission of a proposal, the Respondent certifies, and in case of a joint proposal, each party thereto certifies as to its own organization, that in connection with the proposal:

- (1) The prices in the proposal have been arrived at independently without consultation, communication, or agreement, with any other Respondent or competitor for the purpose of restricting competition; and
- (2) No attempt has been made or will be made by the Respondent to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

B. Each person signing the proposal certifies that:

1. They are the person in the Respondent's organization responsible within that organization for the decision as to prices being offered in the proposal and they have not participated and will not participate in any action contrary to A.1 and A.2 above; or
2. They are not the person in the Respondent's organization responsible within that organization for the decision as to prices being offered in the proposal but that he has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated, and will not participate, in any action contrary to A.1 and A.2 above, and that as their agent, does hereby so certify; and that he has not participated, and will not participate in any action contrary to A.1 and A.2 above.

C. A proposal will not be considered for award if the sense of the statements required in the proposal has been altered to delete or modify A.1 and A.2 above.

Incurring Costs

Mapco is not liable for any costs incurred by Respondent prior to the effective date of the contract.

Material Submitted

All right, title and interest in the material submitted by the Respondent as part of a proposal shall vest in Authority upon submission of the Respondent's proposal to Authority without any obligation or liability by Authority to the Respondent. Authority has the right to use any or all ideas presented by a Respondent.

Authority reserves the right to ownership, without limitation, of all proposals submitted. However, because Authority could be required to disclose proposals under the New York Freedom of Information Law (Public Officers Law §§ 84 – 90), Authority will, to the extent permitted by law, seek to protect the Respondent's interests with respect to any trade secret information submitted as follows:

Pursuant to Public Officers Law § 87, Authority will deny public access to Respondent's proposal to the extent the information constitutes a trade secret, which if disclosed would cause substantial harm to the Respondent's competitive position, provided the Respondent identified the information it considers to be a trade secret and explains how disclosure would cause harm to the Respondent's competitive position.

MWBE/DBE Requirements

The Authority's goal is to increase the number of Minority and Women Owned Business Enterprises (MWBE) and Disadvantaged Business Enterprises (DBE) in all possible areas of Monroe County procurement. In furtherance of those efforts, Respondents should utilize best efforts in achieving the goals for MWBE/DBE participation. The Authority's percentage goals for projects are as follows:

- **Twelve percent (12%) MBE** of the total cost of construction related Architectural and Engineering services.
- **Three percent (3%) WBE** of the total cost of construction related Architectural and Engineering services.
- **Twenty percent (20%) DBE** of the total cost of engineering services provided for certain Department of Transportation Agreements.

Whether or not Respondents propose MWBE/DBE utilization will be considered in the rating of proposals. If Respondents elect to meet the participation requirements by utilizing MWBE and/or DBE subcontractors, the specific subcontractors are to be identified in the proposal. Respondents may substitute Minority or Women CO-OP Student Employment for MWBE Utilization. CO-OP Students must be utilized for these services for at least 50% of their work hours. Student credit shall equal the student's billing rate times the hours worked on the services.

The selected Respondent shall abide by the following requirements:

- A. The vendor shall submit the MWBE/DBE Utilization Plan for approval prior to execution of the resulting contract. The Utilization Plan should be accompanied by executed sub-contracts or signed letters of intent from the MWBE/DBE subcontractors identified in the plan.
- B. The vendor shall submit by February 1 an Annual Utilization Report indicating MWBE/DBE payments made during the previous year.
- C. When submitting the request for payment, the vendor shall list MWBE/DBE firms scheduled for payment for the specific period. The vendor shall identify the portion of the payment that is attributed to the MWBE/DBE firm(s). The vendor shall also submit payment records which demonstrate payment by the vendor to MWBE/DBE firms used.
- D. Prior to final payment the vendor shall submit to the Authority affidavits certifying payments to subcontractors, and the Final Utilization Report.

Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program

It is the policy of the Authority that maximum opportunity to participate in the performance of its services is available to certified ACDBE firms. **The Authority has established a goal for ACDBE participation equal to 3.27% of Respondent's gross sales.** Please note that the percentage goal has been submitted to the FAA for review and is subject to change upon approval from the FAA. Respondents may utilize a combination of ownership participation

and/or provision of goods and services to achieve its participation goal. ACDBE Participation is included as an evaluation criteria and the Authority expects a good faith effort to seek participation per this request.

Proposal Certification

The Respondent must certify that all material, supervision, and personnel will be provided as proposed, at no additional cost above the proposal price. Any costs not identified and subsequently incurred by the Authority must be borne by the Respondent. This certification is accomplished by having the Proposal signed by an individual who has the authority to bind the Respondent.

EXHIBITS

EXHIBIT 1 – CERTIFIED NETWORK PROCESSORS

Alliance Data/Heartland (SPS Host)
Cardnet (FDMS North)
Elavon (Nova Host)
Envoy (FDMS Nashville)
EPX – Phoenix Payments
FDMS Buypass
FDR (FDMS Omaha)
Global Payment Sys (NDC Host)
Global Payment Sys (NDC Terminal)
Heartland Exchange
Paymentech (Host)
Paymentech (Terminal)
WorldPay (Host)
WorldPay (Terminal)
Vantiv
Vital/TSYS

EXHIBIT 2 – PARKING FACILITIES



FREDERICK DOUGLASS GREATER ROCHESTER INTERNATIONAL AIRPORT PARK

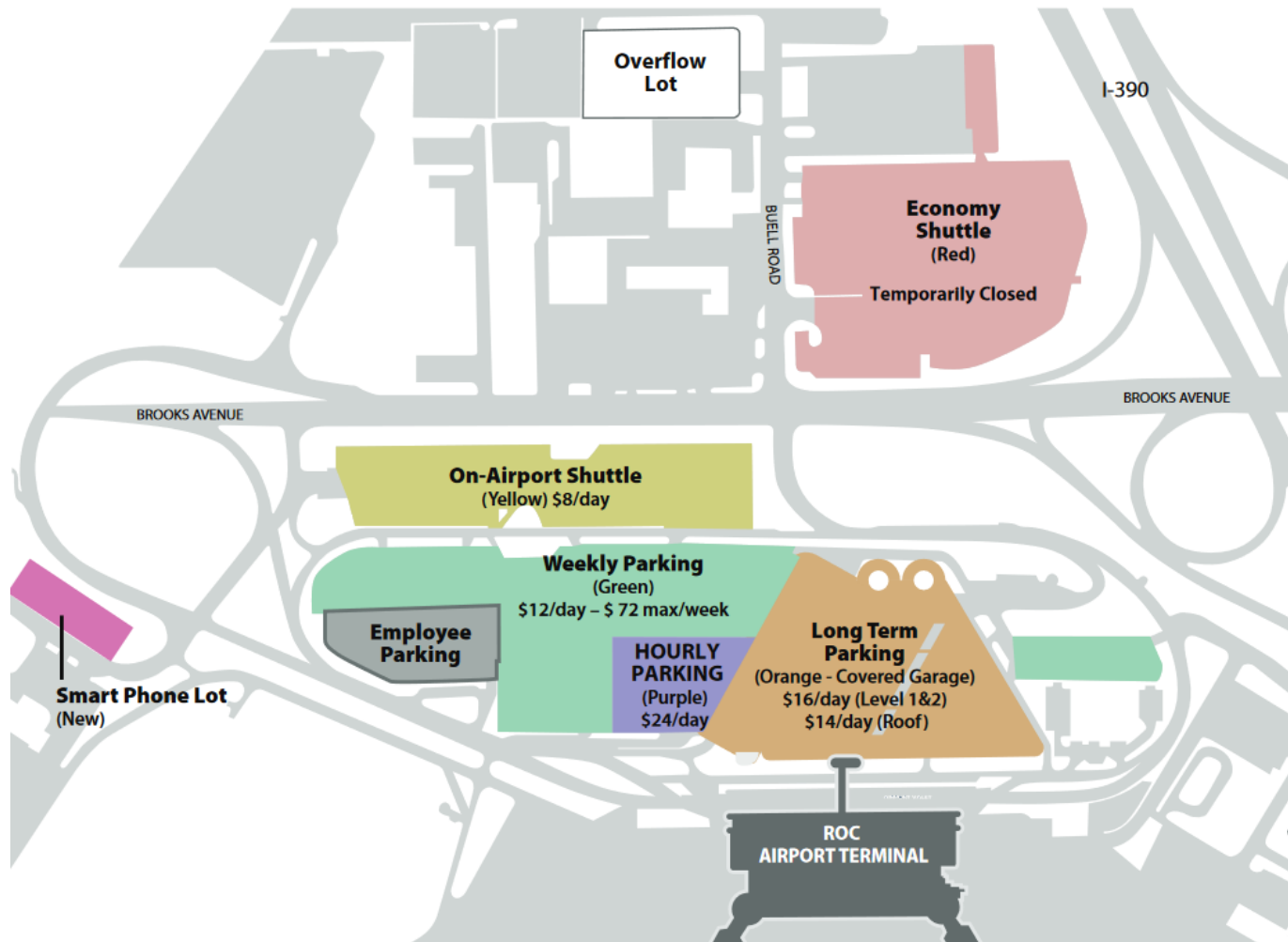


EXHIBIT 3 - PARKING TRANSACTIONS

Credit Transactions Only

There are four primary areas that receive credit card payments. The four locations are profiled below, with average transaction prices.

	MAIN EXIT PLAZA		TERMINAL PAY ON FOOT		SHUTTLE LOTS		VALET	
	Transactions	Amount	Transactions	Amount	Transactions	Amount	Transactions	Amount
2017	201360	\$ 7,757,870.78	18533	\$ 473,284.06	72369	\$ 2,778,313.17	4670	\$ 353,612.50
2018	212321	\$ 8,722,074.56	12174	\$ 379,292.25	69427	\$ 2,682,378.35	1459	\$ 136,538.52
2019	503083	\$ 8,491,102.00	12939	\$ 481,252.00	64611	\$ 2,508,149.75	2717	\$ 235,881.00
2020	73675	\$ 2,941,092.06	11703	\$ 187,954.52	13390	\$ 560,172.30	748	\$ 74,510.00
2021	63424	\$ 2,669,043.55	4055	\$ 139,272.50	2290	\$ 103,228.50	0	\$ -
	2021 IS YTD JULY							

	Main	Terminal Pay on Foot	Shuttle Lots	Valet
Transaction Average 2018	\$ 41.08	\$ 31.16	\$ 38.64	\$ 93.58
Transaction Average 2019	\$ 16.88	\$ 37.19	\$ 38.82	\$ 86.82
Transaction Average 2020	\$ 39.92	\$ 16.06	\$ 41.84	\$ 99.61
Transaction Average 2021*	\$ 42.08	\$ 34.35	\$ 45.08	\$ -
*2021 is YTD July				

EXHIBIT 4 – PARKING REVENUE

Below is the annual detail of transaction payment amounts and types for the years 2017 through July 2021.

Year	Amex	Visa	Master	Discover
2017	\$ 2,438,030.35	\$ 5,949,639.50	\$ 2,600,624.20	\$ 328,583.75
2018	\$ 2,512,201.51	\$ 6,308,400.90	\$ 4,220,192.25	\$ 315,561.00
2019	\$ 2,471,774.00	\$ 6,177,877.75	\$ 2,784,549.00	\$ 299,759.00
2020	\$ 704,535.64	\$ 2,068,422.73	\$ 908,785.53	\$ 100,976.50
YTD 2021	\$ 440,952.50	\$ 1,676,147.50	\$ 706,924.55	\$ 87,520.00

**YTD is through July*

EXHIBIT 5 - QUESTIONNAIRE

The following questions must be completed in their entirety and submitted with Respondent(s) proposal.

1. At what time does your batch close for the day and can this be done automatically? If no specific time, are there any time restrictions?
2. If there is a communication error on your end and we are unable to process Credit Card Transactions, what steps are in place to get your system operational?
3. How does your Company handle charge backs?
4. Can you provide next day settlement? If not, what are the settlement options?
5. How is settlement made to MCAA's account and how is this information described on the bank statement?
6. How are your fees charged to MCAA (i.e. are they netted against a settlement, automatically withdrawn, etc.)?
7. Are there any fees associated with the initial set-up? If so, please provide a list of all charges.
8. Are there any limitations to the number or dollar amount of Credit Card Transactions that are batched?
9. How to you handle multiple merchant accounts?
10. Do you currently have the proper certifications to process Credit Card Transactions with HUB Parking Technologies? Please provide any information you deem necessary.
11. Do you currently use a third-party processor?
12. Describe your PCI-DSS compliance status and how you maintain compliance.

EXHIBIT 6 – QUOTED FEES (CONTINUED ON NEXT PAGE)

Please provide the fees MCAA would be charged by your company for the following transactions:

Description	Proposed Fees
MC CORPORATE PRODUCT INTERNATIONAL PURCHASING MC DATA RATE I BUSINESS DEBIT	
MC ENHANCED MERIT III	
MC INTERREGIONAL CONSUMER PREMIUM ELECTRONIC MC WORLD ELITE MERIT III	
MC WORLD HIGH VALUE MERIT III	
MC WORLD MERIT III - 1330	
VS BUSINESS CARD - CARD PRESENT DEBIT	
VS BUSINESS CARD - STANDARD DEBIT	
VS BUSINESS CARD-RETAIL	
VS BUSINESS ENHANCED - RETAIL	
VS BUSINESS ENHANCED - STANDARD	
VS BUSINESS TIER 4 RETAIL	
VS BUSINESS TIER 4 ST AND ARD	
VS COMMERCIAL CARD STANDARD (BUSINESS)	
VS COMMERCIAL CARD STANDARD (PURCHASING)	
VS COMMERCIAL STANDARD	
VS CORPORATE CARD-RETAIL	
VS CPS SMALL TICKET - CK-DURBIN	
VS CPS SMALL TICKET - DEBIT	
VS EIRF - 1220	
VS EIRF - CK-DURBIN FRAUD	
VS EIRF DEBIT	
VS HNWRTL	
VS INTL MERCHANT - COMMERCIAL CARD - 1605	
VS PREMIUM CARD INTERREGIONAL	
VS PURCHASE CARD-RETAIL	
VS SIGNATURE BUSINESS - RETAIL	
VS SIGNATURE BUSINESS - STANDARD	
VS SIGNATURE PREFERRED COMMERCIAL STANDARD VS SIGNATURE PREFERRED RETAIL	
DS COMMERCIAL ELECTRONIC	
DS PSL - EXPRESS SERVICES (PREMIUM PLUS)	
DS PSL - EXPRESS SERVICES (PREMIUM)	
DS PSL - EXPRESS SERVICES (REWARDS)	
DS PSL -RETAIL (PREMIUM PLUS)	
DS PSL - RETAIL (PREMIUM)	
DS PSL - RETAIL (REWARDS)	

EXHIBIT 7 - ADDITIONAL REQUIRED INFORMATION

Structure

	<u>Check One</u>	<u>Since (Date)</u>
Processor		
Independent Sales Organization (ISO)		
Agent/Employee of ISO		
Agent/employee of Processor		

Location

Distance from Frederick Douglass Greater Rochester International Airport?

Years at this location?

Number of Rochester NY Representatives

Is phone customer service provided during business hours at this location?

How many customer service personnel work at this location?

Are replacement credit card terminals available locally?

What number will we call for billing questions from 8-5?

what number will we call for Equipment questions from 8-5?

Processor

Please list the processors you work with.

What front end networks can you board merchants on?

Who is the sponsor bank?

What equipment manufacturers are class A certified with each Front End?

What is the batch out time to receive next day funding on each Front End?

PCI Compliance

What is the name of the PCI compliance assessment company you use?

What help, if any, do you provide to get us compliant each year?

What level of PCI compliance is your Agent or ISO office?

Does your local office have the Report on Compliance (ROC) certification?

Contract/Agreement

What is the term of your agreement?

What is the Early Termination Fee Amount?

Pricing

Does Your company alter or markup Interchange or Assessments (Costs)?

How long is your pricing over cost guaranteed?

How much (%) over our stated volume before a price reduction happens?

Aside from a Percentage and transaction fee over interchange and Assessment, what other costs would we have?

Do you have an annual fee?

Cost for PCI Compliance?

Cost for PCI Non-Compliance?

Cost for a voice authorization?

Monthly Fees?

Batch Fee Cost?

Reporting

What online reporting will we receive for each of our merchant accounts?

Can we access multiple merchant accounts with one login?

Is there a cost for this service?

Can we upload and view chargeback data within this same portal?

Can we view previous statements and download them from this portal?

APPENDIX A

**STANDARD CLAUSES FOR COUNTY AGREEMENTS STANDARD CLAUSES
FOR
MONROE COUNTY (the “County”)
AND
MONROE COUNTY AIRPORT AUTHORITY (the “Authority”)
(collectively and singularly the “Owner”)
FOR
PROJECTS AT
FREDERICK DOUGLASS GREATER ROCHESTER INTERNATIONAL AIRPORT**

The County and Monroe County Airport Authority (collectively the “Owner”) and Contractor to the attached Agreement (hereinafter, "the Agreement") agree to be bound by the following clauses which are hereby made a part of the Agreement (the word "Contractor" herein refers to any party other than the Owner whether a Contractor, licensor, licensee, lessor, lessee, consultant or any other party). In the event of a conflict between this document and the Agreement, the terms of this document shall prevail.

Section 1. ACCESS TO RECORDS AND BOOKS

If the Agreement is an AIP funded project then Contractor must maintain an acceptable cost accounting system. Contractor agrees to provide Owner, 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 Contractor which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts and transcriptions. Contractor 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.

Contractor shall, upon request of Owner, provide Owner such documentation, records, information and data and response to such inquiries as the County may deem necessary or appropriate and shall fully cooperate with internal and/or independent auditors designated by Owner and permit such auditors to have access to, examine and copy all records, documents, reports and financial statements as Owner deems necessary to assure or monitor payments to Contractor under this Agreement.

Section 2. AFFIRMATIVE ACTION REQUIREMENT

If the Agreement is for: (1.) AIP funded construction work, including construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility service, as well as the supervision, inspection and other onsite functions incidental to the actual construction, that exceed \$10,000; (2.) any equipment project exceeding \$10,000 that involves installation of equipment onsite (e.g. electrical vault equipment) but is not an equipment acquisition projects where the manufacture of the equipment takes place offsite at a manufacturer’s plant; or (3.) professional services which include tasks that meet the definition of construction work [as defined by the U.S. Department of Labor (DOL)] and exceeds \$10,000 then:

1.) The “Equal Opportunity Clause” and the “Standard Federal Equal Employment Opportunity Construction Agreement Specifications” set forth herein shall apply.

2.) The goals and timetables for minority and female participation, expressed in percentage terms for Contractor’s aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables:

Goals for minority participation for each trade: Monroe County Goal is __%

Goals for female participation in each trade: 6.9%

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

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

3.) Contractor shall provide written notification to the Director of the Office of Federal Agreement Compliance Programs (OFCCP) within 10 working days of award of any construction sub-contract in excess of \$10,000 at any tier for construction work under the Agreement resulting from this solicitation. The notification shall list the name, address, and telephone number of the sub-contractor; employer identification number of the sub-contractor; estimated dollar amount of the sub-contract; estimated starting and completion dates of the sub-contract; and the geographical area in which the sub-contract is to be performed.

4.) As used in this Agreement resulting, the “covered area” is Monroe County, New York.

Section 3. BREACH OF AGREEMENT TERMS

If the Agreement exceeds the simplified acquisition threshold of \$150,000, as stated in 2 CFR Part 200, Appendix II (A) then any violation or breach of terms of this Agreement on the part of Contractor or its sub-contractors 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.

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

Section 4. BUY AMERICAN PREFERENCE

If the Agreement for an AIP funded project that: (1.) require steel or manufactured goods; or (2.) professional services when task deliverables thereunder include a manufactured product as a deliverable, then Contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

Contractor certifies that the Buy America certification and the certification which indicated how it intends to comply with 49 USC § 50101 submitted to Owner during the procurement process were true and accurate when delivered to Owner and are still true and accurate at the time of execution of this Agreement.

Contractor reaffirms the commitment to:

- Provide to Owner evidence that documents the source and origin of the steel and manufactured product.
- Faithfully comply with providing U.S. domestic products.
- Refrain from seeking a waiver request after this Agreement is executed, unless extenuating circumstances emerge that the FAA determines justified.

Section 5. CIVIL RIGHTS-GENERAL

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

This provision binds Contractor and sub-contractors from the bid solicitation period through the completion of the Agreement. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Section 6. CIVIL RIGHTS-TITLE VI ASSURANCE

If the Agreement is for: (1.) any AIP funded work subject to Title VI regulations; or (2.) any negotiated agreements regardless of funding source then during the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees that during the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

A. Compliance with Nondiscrimination Requirements

- 1.) Compliance with Regulations: 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 Agreement.
- 2.) Nondiscrimination: Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3.) Solicitations for Sub-contracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Contractor for work to be performed under a sub-contract, including procurements of materials, or leases of equipment, each potential sub-contractor supplier will be notified by Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 4.) Information and Reports: 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, Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5.) Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this Agreement, the sponsor will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a.) Withholding payments to Contractor under the Agreement until Contractor complies; and/or
 - b.) Cancelling, terminating, or suspending an Agreement, in whole or in part.
- 6.) Incorporation of Provisions: Contractor will include the provisions of paragraphs one through six in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any sub-contract 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 Contractor becomes involved in, or is threatened with litigation by a sub-contractor, or supplier because of such direction, Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities

Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as "Contractor")

agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

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

C. Additional Terms

If the Agreement is for a license, lease, permit, or similar instruments conveying any interest in real property or space at the Airport, then the following terms are in addition to the terms set forth above in this Section:

- 1.). Contractor for himself/herself/, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

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

3.) In the event of breach of any of the above Nondiscrimination covenants, Owner will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

D. NYS PROVISIONS

If the Agreement is NOT for: (1.) any AIP funded work subject to Title VI regulations; or (2.) any negotiated agreements regardless of funding source then during the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees that during the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, Contractor will not discriminate against any employee or Respondent for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, military status or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its sub-contractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its sub-contractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

Section 7. CLEAN AIR AND WATER POLLUTION CONTROL

If the Agreement exceeds \$150,000 then 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). Contractor agrees to report any violation to Owner immediately upon discovery. Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. Contractor must include this requirement in any sub-contract that exceeds \$150,000.

Section 8. AGREEMENT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

If the Agreement exceeds \$100,000 and is for: (1.) construction which exceeds \$100,000, and employ laborers, mechanics, watchmen, and guards; (2.) an equipment project exceeding \$100,000 that involves installation of equipment onsite but not for equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant; or (3.) professional services that exceed \$100,000 and employs laborers, mechanics, watchmen, guards and/or members of survey crews and exploratory drilling operations then the following terms apply:

1.) Overtime Requirements.

No Contractor or sub-contractor 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.

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, Contractor and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and sub-contractor shall be liable to the United States (in the case of work done under Agreement 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.

3.) Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or Owner 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 Contractor or sub-contractor under any such Agreement or any other Federal Agreement with the same prime Contractor, or any other federally assisted Agreement subject to the Agreement 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 sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

4.) Sub-contractors.

Contractor or sub-contractor shall insert in any sub-contracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the sub-contractor to include these clauses in any lower tier sub-contracts. The prime Contractor shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (1) through (4) of this clause.

Contractor must insert this clause in all sub Agreements for construction exceeding \$100,000, and which employs laborers, mechanics, watchmen, and guards.

Section 9. COPELAND “ANTI-KICKBACK” ACT

If the Agreement is AIP funded and for: (1.) construction Agreements that exceed \$2,000; (2.) an equipment installation projects that exceed \$2,000 but not when the project is an equipment acquisitions where the equipment is manufactured at the vendor’s plant ; or (3.) professional service which tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5, and when construction, alteration, or repair work exceeds \$2,000 then 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 sub-contractors 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. Contractor and each Sub-contractor must submit to Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

Section 10. DAVIS BACON REQUIREMENTS

If the Agreement is AIP funded, exceeds \$2,000 and is for: (1.) construction; (2.) equipment installation projects but not for equipment acquisitions where the equipment is manufactured at the vendor’s plant; or (3.) professional services which include tasks that meet the definition of construction, alteration, or repair, then the following terms apply:

1.) Minimum Wages.

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

(ii)

(A) The Contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the 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:

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

(B) If 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.

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

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

(iii) 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, Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If Contractor does not make payments to a trustee or other third person, 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 Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2.) Withholding.

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from Contractor under this Agreement or any other Federal Agreement with the same prime Contractor, or any other federally-assisted Agreement 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 Contractor or any sub-contractor the full amount of wages required by the Agreement. 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 Agreement, the Federal Aviation Administration may, after written notice to Contractor, Sponsor, Respondent, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3.) Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by 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, 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.

(ii)

(A) Contractor shall submit weekly for each week in which any Agreement work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the Agreement, but if the agency is not such a party, Contractor will submit the payrolls to the Respondent, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at 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 sub-contractors. Contractors and sub-contractors 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 Agreement, but if the agency is not such a party, Contractor will submit them to the Respondent, sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, 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 sub-contractor 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 Respondent, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by Contractor or sub-contractor or his or her agent who pays or supervises the payment of the persons

employed under the Agreement and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) 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;

(3) 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 Agreement.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject Contractor or sub-contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) Contractor or sub-contractor 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 Contractor or sub-contractor fails to submit the required records or to make them available, the Federal agency may, after written notice to Contractor, Sponsor, Respondent, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4.) Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to 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 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 Contractor's or sub-contractor'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, Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

5.) Compliance with Copeland Act Requirements.

Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.

6.) Sub-contracts.

Contractor or sub-contractor shall insert in any sub-contracts 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 sub-contractors to include these clauses in any lower tier sub-contracts. The prime Contractor shall be responsible for the compliance by any sub-contractor or lower tier sub-contractor with all the Agreement clauses in 29 CFR Part 5.5.

7.) Agreement Termination: Debarment.

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

8.) Compliance with Davis-Bacon and Related Act Requirements.

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

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 Agreement. 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 Contractor(or any of its sub-contractors) and the Contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10.) Certification of Eligibility.

(i) By entering into this Agreement, Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in Contractor's firm is a person or firm ineligible to be awarded Government Agreements 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 sub-contracted to any person or firm ineligible for award of a Government Agreement 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.

If the Agreement is not AIP funded, does not exceeds \$2,000 and is not for: (1.) construction; (2.) equipment installation projects but not for equipment acquisitions where the equipment is manufactured at the vendor's plant; or (3.) professional services which include tasks that meet the definition of construction, alteration, or repair, and it is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its sub-contractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its sub-contractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work Agreement covered by Article 8 of the Labor Law, Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County approved sums due and owing for work done upon the project.

Section 11. DEBARMENT AND SUSPENSION

Certification Regarding Debarment attached as _____ must be executed by Contractor and all sub-contractors.

Section 12. DISADVANTAGED BUSINESS ENTERPRISE

When Owner has a DBE program on file with the FAA, Contractor must affirm the following:

Agreement Assurance: Contractor or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted Agreements. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Owner deems appropriate, which may include, but is not limited to:

- 1.) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying Contractor from future bidding as non-responsible.

Prompt Payment: The prime Contractor agrees to pay each sub-contractor under this prime Agreement for satisfactory performance of its Agreement no later than fifteen (15) days from the receipt of each payment the prime Contractor receives from Owner. The prime Contractor agrees further to return retainage payments to each sub-contractor within fifteen (15) days after the sub-contractor'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 Owner. This clause applies to both DBE and non-DBE sub-contractors.

Section 13. DISTRACTED DRIVING

If the Agreement exceeds the micro-purchase threshold of \$3,500, as stated in 2 CFR Part 200.67, then 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 Federal Aviation Administration 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 subgrant.

In support of this initiative, Owner encourages 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. Contractor must include the substance of this clause in all sub-tier Agreements exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

Section 14. ENERGY CONSERVATION REQUIREMENTS

If the Agreement is AIP funded, Contractor agrees and shall cause all Sub-contractors to agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201et seq).

Section 15. DRUG FREE WORKPLACE REQUIREMENTS- Intentionally Blank

Section 16. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

If the Agreement is for: (1.) construction; (2.) equipment installation projects but not for equipment acquisitions where the equipment is manufactured at the vendor's plant; or (3.) professional services then during the performance of this Agreement, Contractor agrees as follows:

A. Equal Opportunity Clause.

1.) Contractor will not discriminate against any employee or Respondent for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that Respondents 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. Contractor agrees to post in conspicuous places, available to employees and Respondents for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

3.) Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and Respondents for employment.

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

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

6.) In the event of 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 Contractor may be declared ineligible for further Government Agreements or federally assisted construction Agreements in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7.) Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every sub-contract 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 sub-contractor or vendor. Contractor will take such action with respect to any sub-contract 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 Contractor becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction by the administering agency Contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. Standard Federal Equal Employment Opportunity Construction Agreements.

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 Agreement Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c.) "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d.) "Minority" includes:

- (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
- (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

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

3.) If 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 sub-contractor 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 sub-contractors toward a goal in an approved Plan does not excuse any covered Contractor's or sub-contractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4.) Contractor shall implement the specific affirmative action standards provided in sub-section 7 below, 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 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 Agreement 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 Agreement Compliance Programs office or from Federal procurement Contracting officers. Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

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

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

7.) Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. 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 Contractor's employees are assigned to work. Contractor, where possible, will assign two or more women to each construction project. Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out 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 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 Respondent 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 Contractor by the union or, if referred, not employed by Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions Contractor may have taken.

d.) Provide immediate written notification to the Director when the union or unions with which Contractor has a collective bargaining agreement has not referred to Contractor a minority person or female sent by Contractor, or when Contractor has other information that the union referral process has impeded 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 Contractor's employment needs, especially those programs funded or approved by the Department of Labor. Contractor shall provide notice of these programs to the sources compiled under 7b above.

f.) Disseminate Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting 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 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 Contractor's EEO policy with other Contractors and sub-contractors with whom 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 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, 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 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 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 sub-contracts 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 Contractor's EEO policies and affirmative action obligations.

8.) Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a Contractor association, joint Contractor union, Contractor community, or other similar groups of which 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 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 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 Contractor. The obligation to comply, however, is Contractor's and failure of such a group to fulfill an obligation shall not be a defense for Contractor's noncompliance.

9.) A single goal for minorities and a separate single goal for women have been established. 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 Contractor has achieved its goals for women generally), Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

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

11.) Contractor shall not enter into any sub-contract with any person or firm debarred from Government Agreements pursuant to Executive Order 11246.

12.) 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 sub-contracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Agreement Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13.) 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 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.

14.) Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15.) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Chapter 17. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

If Contractor has workers engaged in interstate commerce; producing goods for interstate commerce; or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), this Agreement shall incorporate by reference the provisions of FLSA, with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

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

Chapter 18. LOBBYING AND INFLUENCE FEDERAL EMPLOYEES

If the Agreement exceeds \$100,000 then Contractor must recertify, its bid or proposal, to the best of his or her knowledge and belief, that:

1.) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Agreement, 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 Agreement, grant, loan, or cooperative agreement.

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

instructions.

3.) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and Agreements under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

Section 19. PROHIBITION OF SEGREGATED FACILITIES

If the Agreement is for: (1.) construction work, including construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility service, as well as the supervision, inspection and other onsite functions incidental to the actual construction; (2.) any equipment project exceeding \$10,000 that involves installation of equipment onsite (e.g. electrical vault equipment) but is not an equipment acquisition projects where the manufacture of the equipment takes place offsite at a manufacturer's plant; or (3.) professional services which include tasks that meet the definition of construction work [as defined by the U.S. Department of Labor (DOL)] then:

1.) 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. Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this Agreement.

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.

3.) Contractor shall include this clause in every sub-contract and purchase order that is subject to the Equal Employment Opportunity clause of this Agreement.

Section 20. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All Contractors and sub-contractors that must comply with the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Contractor retains full responsibility to monitor its compliance and their sub-contractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part

1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

Section 21. PROCUREMENT OF RECOVERED MATERIALS

If the Agreement is for procurement of products designated in subpart B of 40 CFR part 247 where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000 and is for: (1.) AIP funded construction work, including construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility service, as well as the supervision, inspection and other onsite functions incidental to the actual construction; (2.) any equipment project that involves installation of equipment onsite (e.g. electrical vault equipment) but is not an equipment acquisition projects where the manufacture of the equipment takes place offsite at a manufacturer's plant; or (3.) professional services which include tasks that meet the definition of construction work [as defined by the U.S. Department of Labor (DOL)] then Contractor and sub-contractor 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, Contractor and sub-contractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The Agreement requires procurement of \$10,000 or more of a designated item during the fiscal year; or
- 2) Contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

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

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

Section 22. RIGHT TO INVENTIONS

If the Agreement for construction, equipment or professional services is with small business firms or nonprofit organizations that include performance of experimental, developmental, or research work, then the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Agreements, and Cooperative Agreements. This Agreement incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Contractor must include this

requirement in all sub-tier Agreements involving experimental, developmental, or research work.

Section 23. SEISMIC SAFETY

If the Agreement is for the construction of new buildings or structural addition to existing buildings and is AIP funded for: (1.) construction of new buildings and additions to existing buildings financed in whole or in part through the Airport Improvement Program; (2.) any equipment project that involves installation of equipment onsite (e.g. electrical vault equipment); or (3.) professional services involved in the construction of new buildings or structural addition to existing buildings then in the performance of design services, Contractor agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, Contractor agrees to furnish Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

Contractor agrees to ensure that all work performed under this Agreement, including work performed by sub-contractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

Section 24. TAX DELINQUENCY AND FELONY CONVICTIONS

If the Agreement is in whole or in part AIP funded, Contractor certifies that the Certification Statements submitted to Owner during the procurement process were true and accurate when delivered to Owner and are still true and accurate at the time of execution of this Agreement. In addition, Contractor must incorporate the following in all sub-Agreements:

- 1.) The sub-Contractor has no 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; and
- 2.) The sub-Contractor has not been convicted of a criminal violation under any Federal law within the preceding 24 months.

If potential sub-Contractor cannot make either of the above representations, the sub-contractor shall be deemed ineligible to receive an award unless Contractor 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 potential sub-Contractor must provide information to Contractor about its tax liability or conviction to Contractor, 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.

For purposes of this Section, the following definitions shall apply:

- **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.

Section 25. TERMINATION OF AGREEMENT

A. Termination for Convenience

The following applies to all Construction and Equipment Agreements in excess of \$10,000:

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

- 1.) Contractor must immediately discontinue work as specified in the written notice.
- 2.) Terminate all sub-contracts to the extent they relate to the work terminated under the notice.
- 3.) Discontinue orders for materials and services except as directed by the written notice.
- 4.) Deliver to Owner 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.
- 5.) Complete performance of the work not terminated by the notice.
- 6.) Take action as directed by Owner to protect and preserve property and work related to this Agreement that Owner will take possession.

Owner agrees to pay Contractor for:

- 1.) Completed and acceptable work executed in accordance with the Agreement documents prior to the effective date of termination;
- 2.) 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;

3) Reasonable and substantiated claims, costs, and damages incurred in settlement of terminated Agreements with Sub-contractors and Suppliers; and

4) Reasonable and substantiated expenses to Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from Owner'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 Agreement.

The following applies to all Professional Services Agreements in excess of \$10,000:

Owner may, by written notice to Contractor, terminate this Agreement for its convenience and without cause or default on the part of Contractor. Upon receipt of the notice of termination, except as explicitly directed by Owner, Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, Contractor must deliver to Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by Contractor under this Agreement, whether complete or partially complete.

Owner agrees to make just and equitable compensation to Contractor for satisfactory work completed up through the date Contractor receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Contractor harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

B. Termination for Default

The following applies to all Construction Agreements in excess of \$10,000:

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

The following applies to all Equipment Agreements in excess of \$10,000:

Owner may, by written notice of default to Contractor, terminate all or part of this Agreement if Contractor:

- 1.) Fails to commence the work under the Agreement within the time specified in the Notice-to-Proceed;
- 2.) Fails to make adequate progress as to endanger performance of this Agreement in accordance

with its terms;

- 3.) Fails to make delivery of the equipment within the time specified in the Agreement, including any Owner approved extensions;
- 4.) Fails to comply with material provisions of the Agreement;
- 5.) Submits certifications made under the Agreement and as part of their proposal that include false or fraudulent statements; or
- 6.) Becomes insolvent or declares bankruptcy.

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

If within [10] days of the receipt of notice, Contractor or Surety fails to remedy the breach or default to the satisfaction of Owner, Owner has authority to acquire equipment by other procurement action. Contractor will be liable to Owner for any excess costs Owner incurs for acquiring such similar equipment.

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

Owner will not terminate 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 Contractor. Examples of such acceptable causes include: acts of God, acts of Owner, acts of another Contractor in the performance of Agreement with Owner, and severe weather events that substantially exceed normal conditions for the location.

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

The rights and remedies of Owner in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

The following applies to all Professional Services Agreements in excess of \$10,000:

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

1.) Termination by Owner: Owner may terminate this Agreement in whole or in part, for the failure of Contractor to:

- a.) Perform the services within the time specified in this Agreement or by Owner approved extension;
- b.) Make adequate progress so as to endanger satisfactory performance of the project; or
- c.) Fulfill the obligations of the Agreement that are essential to the completion of the project.

Upon receipt of the notice of termination, Contractor must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, Contractor must deliver to Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by Contractor under this Agreement, whether complete or partially complete.

Owner agrees to make just and equitable compensation to Contractor for satisfactory work completed up through the date Contractor receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Contractor harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, Owner determines Contractor was not in default of the Agreement, the rights and obligations of the parties shall be the same as if Owner issued the termination for the convenience of Owner.

2.) Termination by Contractor: Contractor may terminate this Agreement in whole or in part, if Owner:

- a.) Defaults on its obligations under this Agreement;
- b.) Fails to make payment to Contractor in accordance with the terms of this Agreement;
- c.) Suspends the project for more than [180] days due to reasons beyond the control of Contractor.

Upon receipt of a notice of termination from Contractor, Owner agrees to cooperate with Contractor for the purpose of terminating this Agreement or portion thereof, by mutual consent. If Owner and Contractor cannot reach mutual agreement on the termination settlement, Contractor may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon Owner's breach of the Agreement.

In the event of termination due to Owner breach, Contractor is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by Contractor through the effective date of termination action. Owner agrees to hold Contractor harmless for errors or omissions in documents that are incomplete as

a result of the termination action under this clause.

Section 26. TRADE RESTRICTION CERTIFICATION

If the Agreement is AIP funded then Contractor recertifies the following certification which was made at time of the submission of its offer:

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any Agreement or sub-contract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any sub-contract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

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

Contractor must provide immediate written notice to Owner if Contractor learns that its certification or that of a sub-contractor was erroneous when submitted or has become erroneous by reason of changed circumstances.

Contractor must require sub-contractors provide immediate written notice to Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no Agreement shall be awarded to an Offeror or sub-contractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- 2) whose sub-contractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

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

Contractor agrees that, it will incorporate this provision for certification without modification in all lower tier sub-contracts. Contractor may rely on the certification of a prospective sub-contractor that it

is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that Contractor or sub-contractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through Owner cancellation of the Agreement or sub-contract for default at no cost to Owner or the FAA.

Section 27. VETERAN'S PREFERENCE

If the Agreement is for AIP funded projects that involve labor to carry out a project then in the employment of labor (excluding executive, administrative, and supervisory positions), 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.

Section 28. AMENDMENTS

This Agreement may be modified or amended only in writing duly executed by both parties. Any modification or amendment shall be attached to and become part of this Agreement. All notices concerning this Agreement shall be delivered in writing to the parties at the principal addresses as set forth above unless either party notifies the other of a change in address.

Section 29. INSURANCE AND FAMILY LEAVE BENEFITS

Intentionally left blank.

Section 30. INDEMNIFICATION

Contractor shall defend, indemnify and save harmless the County, its officers, agents, and employees from and against all liability, damages, costs or expenses, causes of actions, suits, judgments, losses, and claims of every name not described, including attorneys' fees and disbursements, brought against the County which may arise, be sustained, or occasioned directly or indirectly by any person, firm or corporation arising out of or resulting from the performance of the services by Contractor, its agents or employees, the provision of any products by Contractor, its agents or employees, arising from any act, omission or negligence of Contractor, its agents or employees, or arising from any breach or default by Contractor, its agents or employees under the Agreement. Nothing herein is intended to relieve the County from its own negligence or misfeasance or to assume any such liability for the County by Contractor.

Section 31. INDEPENDENT CONTRACTOR

For the purpose of this Agreement, Contractor is and shall in all respects be considered an independent Contractor. Contractor, its individual members, directors, officers, employees and agents are not and shall not hold themselves out as, nor claim to be, an officer or employee of Monroe County nor make claim to any rights accruing thereto, including, but not limited to, Worker's Compensation, unemployment benefits, Social Security or retirement plan membership or credit.

Contractor shall have the direct and sole responsibility for the following: payment of wages and other compensation; reimbursement of Contractor's employees' expenses; compliance with Federal, state

and local tax withholding requirements pertaining to income taxes, Worker's Compensation, Social Security, unemployment and other insurance or other statutory withholding requirements; and all obligations imposed on the employer of personnel. The County shall have no responsibility for any of the incidences of employment.

Section 32. EXECUTORY NATURE OF AGREEMENT

This Agreement shall be deemed executory only to the extent of the funding available and the County shall not incur any liability beyond the funds annually budgeted therefore. The County may make reductions in this Agreement for the loss/reduction in State Aid or other sources of revenues. If this occurs, Contractor's obligations regarding the services provided under this Agreement may be reduced correspondingly.

Section 33. NO ASSIGNMENT WITHOUT CONSENT

Contractor shall not, in whole or in part, assign, transfer, convey, sublet, mortgage, pledge, hypothecate, grant any security interest in, or otherwise dispose of this Agreement or any of its right, title or interest herein or its power to execute the Agreement, or any part thereof to any person or entity without the prior written consent of the County.

Section 34. FEDERAL SINGLE AUDIT ACT

In the event Contractor is a recipient through this Agreement, directly or indirectly, of any funds of or from the United States Government, Contractor agrees to comply fully with the terms and requirements of Federal Single Audit Act [Title 31 United States Code, Chapter 75], as amended from time to time. Contractor shall comply with all requirements stated in "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Grant Guidance) Subpart F and such other circulars, interpretations, opinions, rules or regulations that may be issued in connection with the Federal Single Audit Act.

If on a cumulative basis Contractor expends Seven Hundred and Fifty Thousand and no/100 Dollars (\$750,000.00) or more in federal funds in any fiscal year, it shall cause to have a single audit conducted, the Data Collection Form (defined in Federal Office of Management and Budget Uniform Grant Guidance) shall be submitted to the County; however, if there are findings or questioned costs related to the program that is federally funded by the County, Contractor shall submit the complete reporting package (defined in Federal Office of Management and Budget Uniform Grant Guidance) to the County.

If on a cumulative basis Contractor expends less than Seven Hundred and Fifty Thousand and no/100 Dollars (\$750,000.00) in federal funds in any fiscal year, it shall retain all documents relating to the federal programs for three (3) years after the close of Contractor's fiscal year in which any payment was received from such federal programs.

All required documents must be submitted within nine (9) months of the close of Contractor's fiscal year end to:

Monroe County Internal Audit Unit
303 County Office Building
39 West Main Street
Rochester, New York
14614

Contractor shall, upon request of the County, provide the County such documentation, records, information and data and response to such inquiries as the County may deem necessary or appropriate and shall fully cooperate with internal and/or independent auditors designated by the County and permit such auditors to have access to, examine and copy all records, documents, reports and financial statements as the County deems necessary to assure or monitor payments to Contractor under this

Agreement.

The County's right of inspection and audit pursuant to this Agreement shall survive the payment of monies due to Contractor and shall remain in full force and effect for a period of three (3) years after the close of Contractor's fiscal year in which any funds or payment was received from the County under this Agreement.

Section 35. RIGHT TO INSPECT

Designated representatives of the County shall have the right to monitor the provision of services under this Agreement which includes having access at reasonable times and places to Contractor's employees, reports, books, records, audits and any other material relating to the delivery of such services. Contractor agrees to maintain and retain all pertinent records related to this Agreement for a period of ten (10) years after final payment. Contractor may retain all pertinent records in electronic format provided written notice is provided to the County that such method will be used. Retention of electronic records shall be for a period of ten (10) years after final payment.

Section 36. CONTRACTOR QUALIFIED, LICENSED, ETC.

Contractor represents and warrants to the County that it and its employees is duly and fully qualified under the laws of the state of its incorporation and of the State of New York, to undertake the activities and obligations set forth in this Agreement, that it possesses as of the date of its execution of this Agreement, and it will maintain throughout the term hereof, all necessary approvals, consents and licenses from all applicable government agencies and authority and that it has taken and secured all necessary board of directors and shareholders action and approval.

Section 37. CONFIDENTIAL INFORMATION

a. For the purpose of this Agreement, "Confidential Information" shall mean information or material proprietary to the County or designated as "Confidential Information" by the County, and not generally known by non-County personnel, which Contractor may obtain knowledge of or access to as a result of an Agreement for services with the County. The Confidential Information includes, without limitation, the following types of information or other information of a similar nature (whether or not reduced to writing): methods of doing business, computer programs, computer network operations and security, finances and other confidential and proprietary information belonging to the County. Confidential Information also includes any information described above which the County obtained from another party which the County treats as proprietary or designates as Confidential Information, whether or not owned or developed by the County. Information publicly known and that is generally employed by the trade at the time that Contractor learns of such information or knowledge shall not be deemed part of the Confidential Information.

1. Scope of Use

- a. Contractor shall not, without prior authorization from the County acquire, use or copy, in whole or in part, any Confidential Information.
- b. Contractor shall not disclose, provide or otherwise make available, in whole or in part, the Confidential Information other than to those employees of Contractor who have executed a confidentiality agreement with the County, have a need to know such Confidential Information, and who have been authorized to receive such Confidential Information.
- c. Contractor shall not remove or cause to be removed, in whole or in part, from County facilities, any Confidential Information, without the prior written permission of the County.

- d. Contractor shall take all appropriate action, whether by instruction, agreement or otherwise, to insure the protection, confidentiality and security of the Confidential Information and to satisfy its obligations under this Confidentiality Agreement.

2. Nature of Obligation

Contractor acknowledges that the County, because of the unique nature of the Confidential Information, would suffer irreparable harm in the event that Contractor breaches its obligation under this Agreement in those monetary damages would be inadequate to compensate the County for such a breach. The parties agree that in such circumstances, the County shall be entitled, in addition to monetary relief, to injunctive relief as may be necessary to restrain any continuing or further breach by Contractor, without showing or proving any actual damages sustained by the County.

3. Freedom of Information Law

This paragraph shall apply after written notice by Contractor that certain information provided to the County is Contractor Confidential Information. In the event that the County or any of the County's members, officers, agents or representatives are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any Confidential Information relative to Contractor, the County shall provide Contractor with prompt written notice of any such request or requirement so that Contractor may seek a protective order or other appropriate remedy and/or waive compliance with this provision of this Agreement. Furthermore, in recognition of the fact that the County is subject to laws requiring disclosure of public documents, including the Freedom of Information Law ("FOIL"), the parties agree that in the event that the County receives a request or order for the release of Contractor's Confidential Information, the County shall provide Contractor with prompt notice thereof so that Contractor may seek a protective order or other appropriate remedy prior to such disclosure, if Contractor chooses to do so. If, in the absence of a protective order or waiver from Contractor, the County is nonetheless, in the opinion of the County Attorney and after consultation with Contractor, compelled to disclose some portion of Contractor's confidential information, the County may disclose such information to such person without penalty under the terms of this Agreement and shall immediately advise Contractor of such disclosure.

Section 38. FEDERAL, STATE AND LOCAL LAW AND REGULATORY COMPLIANCE

- a. Notwithstanding any other provision in this Agreement, Contractor remains responsible for ensuring that any service(s) provided pursuant to this Agreement complies with all pertinent provisions, including but not limited to any and all reporting requirements, of Federal, State and local statutes, rules and regulations, including without limitation, Title VI of the Civil Rights Act of 1964 (CRA Title VI), Federal Executive Order 13166, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA).

- b. The Contractor is responsible for ensuring with New York State Labor Law Section 201-g and Executive Law Section 296-d. Upon request by the County, the Contractor shall provide evidence of compliance with sexual harassment training requirement under Labor Law Section 201-g for all its employees performing work under this Agreement.

- c. To the extent that State-funds/State-authorized payments (SF/SAP) received are used to pay for program services by covered providers, any sub-contractors or sub-awardees shall be made aware of the provisions of the regulations of 9 NYCRR Part 6157 - "Limits on Administrative Expenses and Executive Compensation". Additionally, Contractor and any sub-contractors shall review as appropriate Executive Order No. 38, which can be located at <http://executiveorder38.ny.gov>.

Section 39. LAW

This Agreement shall be governed by and under the laws of the State of New York without regard or reference to its conflict of law principles. In the event that a dispute arises between the parties, venue for the resolution of such dispute shall be the County of Monroe, New York.

Section 40. NO-WAIVER

In the event that the terms and conditions of this Agreement are not strictly enforced by the County, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the County from enforcing each and every term of this Agreement thereafter.

Section 41. SEVERABILITY

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of New York.

Section 42. TITLE TO WORK

a. The title to all work performed by Contractor and any unused materials or machinery purchased by Contractor with funds provided by the County in order to accomplish the work hereunder shall become legally vested to the County upon the completion of the work required under this Agreement. Contractor shall obtain from any sub-contractors and shall transfer, assign, and/or convey to Monroe County all exclusive, irrevocable, or other rights to all work performed under this Agreement, including, but not limited to trademark and/or service mark rights, copyrights, publication rights, distribution rights, rights of reproduction, and royalties.

b. No information relative to this Agreement shall be released by Contractor or its employees for publication, advertising or for any other purpose without the prior written approval of the County. Contractor hereby acknowledges that programs described herein are supported by this Agreement by the County and Contractor agrees to state this fact in any and all publicity, publications and/or public information releases.

Section 43. STATE FINANCE LAW PROVISIONS

a. In accordance with Section 139-d of the State Finance Law, if this Agreement was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on Contractor's behalf.

b. To the extent this agreement is a "procurement Agreement" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the County may terminate this Agreement by providing written notification to Contractor in accordance with the terms of the Agreement.

Section 44. MISCELLANEOUS

a. Contractor agrees to comply with all confidentiality and access to information requirements in Federal, State and Local laws and regulations.

b. This Agreement constitutes the entire Agreement between the County and

Contractor and supersedes any and all prior Agreements between the parties hereto for the services herein to be provided.

c. As set forth above, attached to this Agreement and incorporated herein is the Certification Regarding Debarment, Suspension and Responsibility/Certification Regarding Monroe County Procurement Policy and Consequences for Violation.

d. Contractor agrees that this Agreement may be made available to the public and searchable online in a digital format.

-----END OF PAGE-----

APPENDIX B

MONROE COUNTY AIRPORT AUTHORITY PROCUREMENT DISCLOSURE POLICY

(Adopted August 16, 2006)

Purpose

This Procurement Disclosure Policy is adopted to bring the Monroe County Airport Authority (Authority) into compliance with State Finance Law Sections 139-j and 139-k (the “Statutes”) and to provide for the implementation of such Statutes by the Authority.

Article 1

Definitions

As used herein, the following terms shall have the meanings set forth below:

Article of Procurement

A commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property, that is the subject of a Governmental Procurement.

Contacts

Any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the Governmental Procurement.

Governmental Entity

(a) Any department, board, bureau, commission, division, office, council, committee or officer of the state, whether permanent or temporary; (b) each house of the state legislature; (c) the unified court system; (d) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (e) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (f) a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the legislative law; or (g) a subsidiary or affiliate of such a public authority.

Governmental Procurement

(a) The preparation or terms of the specifications, bid documents, request for proposals, or evaluation criteria for a Procurement Contract, (b) solicitation for a Procurement Contract, (c) evaluation of a Procurement Contract, (d) award, approval, denial or disapproval of a Procurement Contract, or (e) approval or denial of an assignment, amendment (other than amendments that are authorized and payable

under the terms of the Procurement Contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a Procurement Contract, or any other material change in the Procurement Contract resulting in a financial benefit to the Offerer.

Impermissible Contacts

Contacts made by an Offerer shall be considered impermissible if the Offerer fails to satisfy the requirements of Article 4 and Article 5 hereof.

Offerer

The individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts a Governmental Entity about a Governmental Procurement during the Restricted Period of such Governmental Procurement.

Permissible Contacts

Contacts made by an Offerer shall be considered permissible if the Offerer satisfies the requirements of Article 4 and Article 5 hereof.

Procurement Contract

Any contract or other agreement for an Article of Procurement involving an estimated annualized expenditure in excess of Fifteen Thousand Dollars (\$15,000). Grants, article eleven-B state finance law contracts (i.e., any contract providing for a payment under a program appropriation to a not-for-profit corporation), intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions shall not be deemed Procurement Contracts.

Procurement Officer

This term shall have the meaning set forth in Article 3 hereof.

Procurement Record

This term shall have the meaning set forth in Article 6 hereof.

Proposal

Any bid, quotation, offer or response to a Governmental Entity's solicitation of submissions relating to a procurement.

Restricted Period

The period of time commencing with the earliest written notice, advertisement or solicitation of a proposal or bid, or any other method for soliciting a response from offerers intending to result in a procurement contract and ending with the final contract award and approval by the appropriate entity.

Solicitation Materials

This term shall have the meaning set forth in paragraph (a) of Article 4 hereof.

Article 2 Investigating Officer

The Monroe County Attorney, Legal Advisor to the Authority, is hereby appointed as the Officer responsible for reviewing and investigating any allegations of violation of this policy or of the Statutes.

Article 3 Procurement Officers

(Authorized Authority Contact Persons)

The Members of the Authority hereby delegate to the Administrative Director the power to select a "Procurement Officer" for each and every Governmental Procurement (collectively, the "Procurement Officers"). The Administrative Director may either select the Procurement Officer at the time the Governmental Procurement commences or select a Procurement Officer in advance for each type or category of Governmental Procurement. Such Procurement Officer(s) shall be the designated "contact" person for Offerers during the Restricted Period surrounding each Governmental Procurement.

Article 4 Contacts by Offerers

All Contacts between an Offerer and the Authority during the Restricted Period for each Governmental Procurement shall be made through the applicable Procurement Officer, unless one of the following exceptions applies:

(a) The submission of written proposals in response to a request for proposals, invitation for bids or any other method of soliciting a response from Offerers intending to result in a Procurement Contract (collectively, "Solicitation Materials");

(b) The submission of written questions to a designated contact set forth in any Solicitation Materials, when all written questions and responses are to be disseminated to all Offerers who have expressed interest in the Solicitation Materials;

(c) Participation in a conference provided for in any Solicitation Materials;

(d) Complaints made in writing to the Administrative Director by an Offerer regarding the failure of the applicable Procurement Officer to respond in a timely manner to authorized Offerer Contacts, provided that such written complaints become part of the Procurement Record;

(e) Offerers who have been tentatively awarded a contract and are communicating with the Authority for the sole purpose of negotiating the contract, so long as the Contact occurs after the Offerer has received notice of the tentative award;

(f) Contact between designated Authority staff and an Offerer in which the Offerer requests the review of a procurement award;

(g) Contacts by Offerers in protests, appeals or other review proceedings before the Authority seeking a final administrative determination, or in a subsequent judicial proceeding;

(h) Complaints of alleged improper conduct in a Governmental Procurement to the Attorney General, Inspector General, District Attorney, or court of competent jurisdiction; or

(i) Written complaints to the State Comptroller's Office during the process of contract approval, when the State Comptroller's approval is required by law, provided that such written complaints become part of the Procurement Record; and

(j) Complaints of improper conduct in a Governmental Procurement conducted by a municipal agency or local legislative body to the State Comptroller's Office.

The Statutes and this Policy permit communications between Offerers and the Authority prior to the Restricted Period in the form of a request for information ("RFI") by the Authority and the response thereto by the Offerer. The RFI must be used as a means to collect information upon which to base a decision by the Authority to proceed with a Governmental Procurement and not as a tool employed to award a Procurement Contract.

Article 5

Other Prohibited Offerer Activities

In addition to utilizing the designated Procurement Officer for all Contacts with the Authority, the following additional rules shall apply to all Offerers:

(a) Offerers shall not attempt to influence the Authority's Governmental Procurement in a manner that would result in a violation of any State ethics/conflict of interest statute or the Authority's Code of Ethics or Conflict of Interest Policies; and

(b) Offerers are prohibited from contacting any member, officer or employee of a governmental entity other than the Authority¹, during the Restricted Period of a Governmental Procurement, regarding the Authority's pending procurement.

¹ This prohibition is not applicable to Contacts between an Offerer and a member of the state legislature or legislative staff about a governmental entity other than the State Legislature, or a member of the state legislature or legislative staff contacting a governmental entity about a Governmental Procurement being conducted by a governmental entity other than the state legislature, provided that the member of the state legislature or legislative staff is acting in their official capacity.

Article 6

Procurement Record

For each Governmental Procurement of the Authority, the applicable Procurement Officer shall maintain a procurement record (the "Procurement Record"), including all written materials pertaining to the specific Governmental Procurement. Upon any Contact in the Restricted Period, the Procurement Officer shall obtain the name, address, telephone number, place of principal employment and occupation of the person or organization making the Contact and inquire and record whether the person or organization making such contact was the Offerer or was retained, employed or designated by or on behalf of the Offerer to appear before or contact the Authority about the Governmental Procurement. The Procurement Record shall include all recorded Contacts described in the prior sentence, whether such Contacts are Permissible Contacts or Impermissible Contacts. The Procurement Record shall not include Contacts with certain public officials as described in the footnote to item (b) of Article 5 hereof. In addition, the Procurement Record shall not include communications that a reasonable person would infer are not intended to influence a Governmental Procurement. The Authority shall keep a written or electronic copy of the Procurement Record for a period of six years from the end of the Restricted Period for each Governmental Procurement.

Article 7

Required Disclosure

In general, all Solicitation Materials shall incorporate a summary of the policy and prohibitions of the Statutes as well as include copies of rules, regulations and the Authority's guidelines and procedures regarding Permissible Contacts during a Governmental Procurement. The following provisions offer specific methods for satisfying such requirements.

1. In all Authority Solicitation Materials, the following statement shall appear:

Pursuant to State Finance Law §§ 139-j and 139-k, this solicitation [or other applicable identifier, i.e. "Invitation for Bid" or "Request for Proposal," etc.] includes and imposes certain restrictions on communications between a Governmental Entity (including the Authority) and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Authority and, if applicable, the Office of the State Comptroller [the Authority may delete the reference to Comptroller approval when not applicable] ("restricted period"), to other than the Authority's Procurement Officer unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). The Authority's Procurement Officer(s) for this Governmental Procurement, as of the date hereof, is identified on the first page of this solicitation [or wherever in the bid documents it is identified]. Authority employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four (4) year period, the

Offerer/bidder is debarred from obtaining government Procurement Contracts. Further information about these requirements may be obtained from the Procurement Officer.

2. In all Authority Procurement Contracts, the following provision shall appear:

The Authority reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with State Finance Law §139-k (5) was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Offerer in accordance with the written notice terms of this contract.”

3. In each response to any Solicitation Materials, the Offerer shall complete the following in a timely and accurate fashion:

(a) “Offerer Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j(3) and 139-j (6)(b)” in the manner discussed in Appendix “A” hereto;

(b) “ Offerer Certification of Compliance with State Finance Law § 139-k (5)” in the manner discussed in Appendix “B” hereto; and

(c) “Offerer Disclosure of Prior Non-Responsibility Determinations” in the form provided as Appendix “C” hereto.

The failure of an Offerer to comply with such disclosure requirements will subject the Offerer to the sanctions described in Article 10 hereof, as well as any other penalties permitted by law.

Article 8

Requirements of the authority prior to Awarding Procurement Contracts

Prior to conducting an award of a Procurement Contract, the Members of the Authority shall:

1. Make a final determination of responsibility of the proposed awardee in accordance with the Authority’s existing procedures;

2. Make a final determination of responsibility of the proposed awardee that measures compliance with the State Finance law provisions regarding (i) Permissible Contacts and (ii) disclosure of all information required in any Solicitation Materials (including, but not limited to, prior findings of non-responsibility by a Governmental Entity); and

3. Make a final determination that the procurement process for such proposed award was free from any conduct prohibited under the Public Officers Law as well as the applicable provisions of the Authority’s Code of Ethics and/or Conflict of Interest Policies.

Article 9

Alleged Violation; Procedure

1. Any Member, officer or employee of the Authority who becomes aware that an Offerer has violated this Policy or the Statutes shall:

(a) Immediately notify the County Attorney, who shall immediately investigate the alleged violation(s).

(b) If, after commencing the investigation, the County Attorney finds that there is sufficient cause to believe the alleged violation has occurred, s/he shall give the alleged violating Offerer reasonable notice (in the form of a certified letter, return receipt requested) informing him/her of the allegations and providing him/her with an opportunity to be heard regarding the allegations.

(c) If, following the opportunity to be heard, the County Attorney determines that the Offerer has knowingly and willfully violated this Policy, the Statutes or any other applicable procurement disclosure standards affecting Members, Officers or employees of the Authority, the Offerer shall be subject to sanctions described in Article 10 hereof.

2. The County Attorney shall report to the Investigating Officer of another Governmental Entity any violation of the statutes by an Offerer or by such other Governmental Entity's employees. The County Attorney shall be the person designated to receive similar communications coming from another Governmental Entity.

Article 10 Sanctions

1. Upon a finding by the County Attorney that an Offerer has knowingly and willfully violated this Policy, the Statutes or any other applicable procurement disclosure standards affecting Members, officers or employees of the Authority, the Offerer shall be subject to the following sanctions, as well as any other penalty permitted by law:

(a) The Offerer shall be deemed "non-responsible" and such Offerer (along with its subsidiaries and any other related or successor entity) shall not be awarded the Procurement Contract, unless the Authority finds that the following special circumstances exist:

- (i) The award to the offending Offerer is necessary to protect public property or public health or safety; and
- (ii) The offending Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

(b) In addition, the County Attorney shall notify the State Office of General Services of the finding of non-responsibility².

2. Upon a finding that a Member, officer or employee of the Authority has knowingly and willfully violated this Policy, the Statutes or any other applicable procurement disclosure standards affecting Members, officers or employees of the Authority, the

² A second finding of non-responsibility under the Statutes within four (4) years will render the Offerer (along with its subsidiaries and any other related or successor entities) ineligible to submit a proposal on or be awarded any Procurement Contract for four (4) years from the date of the second final determination of non-responsibility, unless the special circumstances outlined in Section (a) of this Article 10 exist.

County Attorney shall immediately notify the Administrative Director of the Authority or the Chair of the Board of the Authority.

Distribution of This Policy

This Policy shall be distributed annually to the Authority's Members and officers. It shall also be distributed annually to those employees that have the ability to affect any Procurement. It shall also be distributed to each new Member, officer and applicable employee as soon as practicable following commencement of such position.

APPENDIX C
MONROE COUNTY AIRPORT AUTHORITY
REQUIRED FORMS

THE FOLLOWING FORMS ARE REQUIRED SUBMISSION DOCUMENTS. FAILURE TO COMPLETE ANY OF THESE FORMS AND SUBMIT THEM WITH YOUR PROPOSALS MAY RENDER THE RESPONDENT NON-RESPONSIVE AND INELIGIBLE FOR SELECTION.

MONROE COUNTY AIRPORT AUTHORITY

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OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS, page 1 of 2

NAME OF INDIVIDUAL OR ENTITY SEEKING TO ENTER INTO THE PROCUREMENT CONTRACT:

ADDRESS:

STREET:

CITY:

STATE:

ZIP:

NAME OF PERSON SUBMITTING THIS
FORM:

TITLE OF PERSON SUBMITTING THIS
FORM:

CONTRACT PROCUREMENT
NUMBER:

DATE:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four (4) years? (Please "X" or circle)

☐ NO

☐ YES

If Yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j? (Please "X" or circle)

☐ NO

☐ YES

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please "X" or circle)

☐ NO

☐ YES

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below:

Governmental Entity:

Date of Finding of Non-
Responsibility:

Basis of Finding of Non-
Responsibility:

**(Add additional pages as
necessary)**

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please "X" or circle)

NO

YES

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OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS, page 2 of 2

6. If yes in 5. above, please provide details below.

Governmental Entity: _____

Date of Termination or _____

Withholding of Contract: _____

Basis of Termination or _____

Withholding: _____

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____
(Signature)

Date: _____

Print Name: _____

Title: _____

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AFFIRMATION OF UNDERSTANDING AND AGREEMENT OF PERMISSIBLE CONTACTS

(Pursuant to State Finance Law §139-j (3) and §139-j (6) (b))

The undersigned affirms that (s)he understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

Date: _____ [Print Contractor Name]

[Signature of Authorized Individual] [Print Name of Signer]

[Print Title/Office of Signer]

[Print Contractor Street Address] [Print Contractor City, State, Zip]

THE AUTHORITY'S RIGHT TO TERMINATE

The Monroe County Airport Authority reserves the right to terminate a Contract in the event it is found that the certification filed by the Contractor/Consultant, as Respondent/Offeror, in accordance with New York State Finance Law §139-k, was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Contractor/Consultant in accordance with the written notification terms of the Contract/Agreement resulting from this Request for Proposals.

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Certification Regarding Debarment, Suspension and Responsibility

The undersigned certifies, to the best of his/her knowledge and belief, that the Contractor and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;
2. Have not within a three (3) year period preceding this transaction/application/proposal/contract/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have not within a three (3) year period preceding this transaction/application/proposal/contract/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

CERTIFICATION REGARDING MONROE COUNTY PROCUREMENT POLICY AND CONSEQUENCES FOR VIOLATION

The undersigned certifies, to the best of his/her knowledge and belief, that the Contractor and its principals:

5. Have read and understand the Monroe County Procurement Policy and agree to abide by its terms (<http://www2.monroecounty.gov/purch-overview.php>);
6. Understand that any violation of the Monroe County Procurement Policy may result in the exclusion of any response to a public bid, Request for Proposals (RFP) or Request for Qualifications (RFP) submitted on our behalf; and
7. Understand that any contract or agreement entered into subsequent to a violation of this policy during the procurement process is null and void.

Date: _____

[Print Name of Contractor]

By: _____

[Signature]

[Print Name]