



Manchester-Boston Regional Airport  
One Airport Road, Suite-300  
Manchester, New Hampshire 03103

# Addendum No. Four

**Date: January 26, 2022**

**RFP No: FY22-805-25 Parking and Ground Transportation Management Services**

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This Addendum # 4 to the Request for Proposals for Parking and Ground Transportation Management Services contains the following clarifications and changes to the RFP Document:

**Appendix A – Professional Services Agreement – Please note this is the final agreement, to be executed “AS IS” by and between CITY and CONTRACTOR.**

## **CHANGE TO RFP DOCUMENT**

### **Section 3.2 – Selection Schedule**

Final Date for RFI's	February 3, 2022
Addendum Acknowledgement Form	February 8, 2022
RFP Submission Deadline	February 21, 2022
RFP Review and Scoring Completed by Committee	March 4, 2022
Evaluation Committee Meeting	March 8, 2022
Notification of Short List	March 9, 2022
Interviews	March 17, 2022
Notification of Intent to Award	March 18, 2022

**ALL OTHER DATES IN RFP SELECTION STEPS WILL REMAIN UNCHANGED AND IN FULL EFFECT**

## ARTICLE I – PARTIES

### 1.01 Address

**THIS PROFESSIONAL SERVICES AGREEMENT** is made and entered into as of this [ ] day of [ ], 20[ ], ("EFFECTIVE DATE") by and between the **CITY OF MANCHESTER, NEW HAMPSHIRE, acting by and through its Department of Aviation** ("CITY"), being a duly and lawfully constituted municipal corporation, and **[ENTER NAME OF CONTRACTOR]** ("CONTRACTOR"), a [state of registration] [type of company] authorized to do business in New Hampshire. CITY owns, controls, operates, and manages certain real property commonly known and described as the Manchester-Boston Regional Airport (the "AIRPORT"), located in the City of Manchester, New Hampshire and the Town of Londonderry, New Hampshire

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

**City**  
Mr. Theodore Kitchens, A.A.E.  
Director of Aviation  
Manchester-Boston Regional Airport  
1 Airport Road, Suite 300  
Manchester, New Hampshire 03101

**Contractor**  
[ENTER CONTACT INFORMATION]

CITY and CONTRACTOR hereby agree as follows:

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**EXHIBITS**

- A. AIRPORT RULES AND REGULATIONS**
- B. PERFORMANCE BOND**
- C. SERVICE LEVEL DAMAGES**
- D. CHANGE ORDER**

**1.03 Parts Incorporated**

All of the above-described Articles, Sections, and Exhibits are incorporated into the AGREEMENT.

**1.04 Controlling Parts**

In the event of a conflict among the Articles of this Professional Services Agreement and the Exhibits attached hereto, the Articles shall control over the Exhibits.

**1.05 Signatures**

This Professional Services Agreement may be executed in multiple copies, each of which is an original. Each person signing this Professional Services Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Professional Services Agreement. Each party represents and warrants to the other that the execution and delivery of this Professional Services Agreement and the performance of such party's obligations hereunder have been duly authorized and that this Professional Services Agreement is a valid and legal agreement binding on CITY and CONTRACTOR and is enforceable in accordance with terms herein.

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## ARTICLE II – DEFINITIONS

As used in this Professional Services Agreement, capitalized terms shall have the definitions set out in this Article II and the RFP, except as otherwise expressly stated or as otherwise clearly required by context. In the event of any conflict between the defined terms in this Professional Services Agreement and the RFP, the defined terms in this Professional Services Agreement shall control. Such definitions shall be equally applicable to the singular and plural forms of such defined terms. The words “herein,” “hereunder,” and other words of similar nature refer to this Professional Services Agreement as a whole. The word “shall” is mandatory and the word “may” is permissive.

- 2.01 **"Acceptable"** means that services, equipment, or performance, meet or exceed the quality, workmanship, and specifications required by the AGREEMENT.
- 2.02 **"Acceptable Equivalent"** means any equipment, part, or product that complies with existing industry standards governing its manufacture or use, and that is a functional equivalent of any equipment, part, product, or specification described herein, or, which functionally satisfies an approved, negotiated, or specified use made a part hereof.
- 2.03 **"Acceptance"** means the DIRECTOR'S determination, in the DIRECTOR'S sole and absolute discretion, that a service provided, or specific equipment obtained, pursuant to the AGREEMENT meets or exceeds the quality, workmanship, and specifications required by the AGREEMENT.
- 2.04 **"Agreement"** means, jointly and severally, this Professional Services Agreement, all Exhibits attached hereto, the RFP, and the PROPOSAL, all as may be amended from time to time upon mutual written agreement by and between CITY and CONTRACTOR. In the event of a conflict between this Professional Services Agreement and any of the other documents referenced herein, the terms of this Professional Services Agreement shall control.
- 2.05 **"Airport"** means that certain airport commonly known and described as the Manchester-Boston Regional Airport located in the City of Manchester, New Hampshire and the Town of Londonderry, New Hampshire.
- 2.06 **"AOA"** means the Airport Operations Area, being any area of the Airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft, including, but not limited to, such paved and unpaved areas that are used or intended to be used for the unobstructed movement of aircrafts, in addition to associated runways, taxiways, or aprons.
- 2.07 **"Bankruptcy Code"** means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.
- 2.08 **"Basic Services"** means those services described in the Scope of Work set forth in Appendix “E” of the RFP.
- 2.09 **"Change Order"** means a document requiring changes to the scope of the Work, to any plan or specification related to the Work, or to CONTRACTOR'S services to be performed pursuant to the terms of the AGREEMENT.
- 2.10 **"Charters and Ordinances"** means, jointly and severally, (i) the City Charter and the Code of Ordinances of the City of Manchester, New Hampshire, as amended; and (ii) the Town Charter and the Code of Ordinances of the Town of Londonderry, New Hampshire, as amended.

- 2.11 **"City"** means the City of Manchester, New Hampshire, acting by and through its Department of Aviation.
- 2.12 **"City Solicitor"** means the Office of the City of Solicitor of the City of Manchester New Hampshire.
- 2.13 **"Contractor"** means [name of contractor], a [state of registration] [type of company].
- 2.14 **"Default"** means any event or condition described in Section 5.05 herein.
- 2.15 **"Director"** means the Director of the Manchester-Boston Regional Airport or their designee, as appointed in writing.
- 2.16 **"Effective Date"** means the date referenced in Section 1.01 of this Professional Services Agreement.
- 2.17 **"Emergency Service Request"** means a request for Work submitted to CONTRACTOR for immediate action.
- 2.18 **"Environmental Laws"** means any and all statutes, laws, regulations, codes, ordinances, rules, orders, decrees, judgments, injunctions, notices, or binding agreements issued, promulgated, or entered into by any governmental authority relating in any way to pollution, the protection of the environment, preservation or reclamation of natural resources, or the management, release, or threatened release of any Hazardous Material, including, but not limited to, those listed in Section 3.22 herein.
- 2.19 **"Equipment"** means all machinery, together with the necessary supplies for upkeep and maintenance, and all tools and apparatus necessary for the proper and Acceptable completion of the specified Work, including, but not limited to, all those items listed in Appendix "J" of the RFP.
- 2.20 **"FAA"** means the United States Federal Aviation Administration and any agency or instrumentality of the United States government succeeding to its functions.
- 2.21 **"Force Majeure"** has the meaning set forth in Section 7.02 herein.
- 2.22 **"Ground Transportation Curbs"** means the Inner Terminal Curb, Middle Terminal Curb, and Outer Terminal Curb, as such terms are defined in the RFP.
- 2.23 **"Hazardous Materials"** has the meaning set forth in Section 3.22(c) herein.
- 2.24 **"Indemnified Losses"** means any and all liability and damages, costs, and expenses, including reasonable attorneys' fees, and any and all allegations, suits, causes of action, claims, or demands of any kind or nature whatsoever, arising out of or in any manner connected with the activities contemplated by the AGREEMENT.
- 2.25 **"Information"** means all information, data, and documents provided by or on behalf of CITY and received by, prepared by, or accessible to CONTRACTOR, CONTRACTOR'S agents and employees, and Subcontractors.



- 2.26 **"Initial Term"** means the period of time commencing upon the Effective Date and terminating upon the tenth (10th) anniversary of the Effective Date, unless terminated earlier in accordance with the terms of the AGREEMENT.
- 2.27 **"Maintenance Services"** means Preventive Maintenance, Predictive Maintenance, Reliability Centered Maintenance, and Remedial Maintenance.
- 2.28 **"Management Fee"** means the fee described in Section 1.9 of the RFP, and as further identified in the PROPOSAL.
- 2.29 **"Notice to Proceed"** means a written communication from the DIRECTOR to CONTRACTOR instructing CONTRACTOR to begin performance.
- 2.30 **"NPDES"** means the National Pollutant Discharge Elimination System under which the United States Environmental Protection Agency delegates permitting authority in accordance with Section 402(b) of the Federal Water Pollution Control Act.
- 2.31 **"Other Work/Services"** means any Work, other than the Basic Services and the Maintenance Services required by the AGREEMENT, provided by CONTRACTOR only upon the DIRECTOR'S written request.
- 2.32 **"PCI-DSS"** means the technical and business standards that affect the way in which credit card business is conducted, commonly known as "Payment Card Industry Data Security Standards."
- 2.33 **"Performance Bond"** has the meaning set forth in Section 3.21 herein.
- 2.34 **"Predictive Maintenance"** means a carefully planned system of machinery analysis and diagnostics that includes measurements that detect the onset of system or component degradation, thereby allowing casual stressors to be eliminated or controlled prior to any significant deterioration in the system's or component's physical state with the express goal of achieving optimum productivity, extended useful life, and reduced repair costs.
- 2.35 **"Preventive Maintenance"** means any action performed on a regular schedule, including, but not limited to, proper inspections, proper lubrication, filter changes, and proper fastening procedures, which is designed to detect, preclude, or mitigate degradation of a component or system with the aim of sustaining or extending such components or system's useful life. Preventive Maintenance includes but is not limited to, proper inspections, proper lubrication, belts, filter changes, proper fastening procedures, determined by regularly scheduled work. Preventive Maintenance activities should be at least ninety five percent of all planned and scheduled Predictive Maintenance and shall be completed within the timeframe prescribed by the manufacturer of such component or system.
- 2.36 **"Proposal"** means CONTRACTOR'S response to the RFP, including all exhibits, schedules, addenda, appendices, and attachments thereto, and any material representations made by CONTRACTOR, and excluding any portions of said response, documents, and representations as may have been rejected in writing by CITY.
- 2.37 **"Qualified"** means having the ability to perform as required under the AGREEMENT and to the DIRECTOR'S satisfaction, in the DIRECTOR'S sole discretion.

- 2.38 **"Reliability Centered Maintenance"** means the application of Predictive Maintenance and Preventive Maintenance data to the preventive maintenance tasks by using statistical methods to optimize Preventive Maintenance and Predictive Maintenance programs and using this data for future maintenance and/or recommended design changes to increase the probability that the Equipment will function in the required manner throughout such equipment's useful life.
- 2.39 **"Remedial Maintenance"** means repair of equipment and systems with parts, materials, and labor to restore performance to the designed function in the event of any breakdown or stoppage of equipment or system including, but not limited to, repairs and replacements of related components, parts, and appurtenances that have failed, no longer perform reliably, or have worn beyond safe tolerances, and excluding any such breakdowns or stoppage caused by a third-party.
- 2.40 **"Renewal Term"** means an extension of the Initial Term for an additional period of time, as further described in Section 5.02 herein.
- 2.41 **"Response Time"** means the maximum elapsed time in which CONTRACTOR must respond to an Emergency Service Request. The maximum elapsed time is measured from CONTRACTOR'S receipt of an Emergency Service Request to CONTRACTOR'S arrival at the Work Site specified in the Emergency Service Request.
- 2.42 **"RFP"** means CITY'S Request for Proposals for Parking and Ground Transportation Management Services dated December 21, 2021, Solicitation Number FY22-805-25, and all appendices, attachments, and addenda thereto.
- 2.43 **"Rules and Regulations"** means the rules and regulations promulgated by CITY governing conduct on and operations at the AIRPORT, as may be amended from time to time. The Rules and Regulations in effect as of the Effective Date are attached hereto as Exhibit A and incorporated herein by reference
- 2.44 **"Site Manager"** means that certain employee of CONTRACTOR, as approved by the DIRECTOR, stationed at the AIRPORT full-time to oversee the parking operations at the AIRPORT.
- 2.45 **"Subcontractor"** means any individual, materialman, supplier, distributor, vendor, or firm at any level below CONTRACTOR who performs any part of the Work or other requirement of CONTRACTOR under the AGREEMENT.
- 2.46 **"Term"** means, jointly and severally, the Initial Term and any Renewal Terms exercised pursuant to Article V herein.
- 2.47 **"Termination Notice"** means a written notice from the DIRECTOR to CONTRACTOR terminating the AGREEMENT for convenience or for cause, on the date specified therein.
- 2.48 **"Work"** means all services, including, but not limited to, Basic Services and Maintenance Services, to be provided by CONTRACTOR under the AGREEMENT, whether or not such services are provided by CONTRACTOR or a Subcontractor.
- 2.49 **"Work Sites"** means, jointly and severally, the Parking Garage, Lot A, Lot C, and the Ground Transportation Curbs, as such terms are defined, and all other sites at the Airport that may be affected by the AGREEMENT, or as the RFP.

## ARTICLE III – DUTIES OF CONTRACTOR

### 3.01 Scope of Services

a) Services. In consideration of the payment specified in the AGREEMENT, CONTRACTOR shall provide all labor, supervision, parts, equipment, materials, tools, instruments, expendable items, supplies, reports, transportation, insurance, subcontracts, bonds, and incidentals necessary to perform the Work.

b) Equipment. CONTRACTOR shall operate and maintain all of the Equipment and all related components, appurtenances, and replacements, in good operating condition and repair and within generally accepted tolerances for safe and reliable operation, reasonable wear and tear excepted.

### 3.02 Coordinate Performance

CONTRACTOR shall coordinate performance of the Work and daily activities required by the AGREEMENT with the DIRECTOR or other persons as the DIRECTOR may designate. CONTRACTOR shall promptly inform the DIRECTOR of all significant events and material relating to the performance of the AGREEMENT.

### 3.03 Reports

CONTRACTOR shall submit all reports and progress updates required by the DIRECTOR, as outlined in the RFP.

### 3.04 Duty to Inspect

CONTRACTOR represents that CONTRACTOR, or CONTRACTOR'S designees or agents, have inspected all Work Sites. On the basis of such inspections, CONTRACTOR agrees that CONTRACTOR is not entitled to additional compensation for CONTRACTOR'S failure to conduct all such inspections or to accurately account for the full scope of the Work in the PROPOSAL.

### 3.05 Invoicing

CONTRACTOR shall submit all invoices on forms previously approved in writing by the DIRECTOR. Each invoice must be accompanied by all support documents as may be requested by the DIRECTOR. Each invoice CONTRACTOR submits must be in duplicate and each copy shall include all support documents. Each invoice must be identified as being related to the AGREEMENT by including the name of this Professional Services Agreement and the contract number of **[INSERT CONTRACT NUMBER]**. All invoices are to be delivered or mailed to the following location:

Manchester-Boston Regional Airport  
Accounts Payable Section  
1 Airport Road, Suite 300  
Manchester, New Hampshire 03101

### 3.06 Prompt Payment of Subcontractors

In accordance with the AGREEMENT, CONTRACTOR shall make timely payments to all persons and entities supplying labor, materials, services, or equipment for the performance of the AGREEMENT. CONTRACTOR SHALL DEFEND AND INDEMNIFY CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE TIMELY PAYMENTS TO ALL SUBCONTRACTORS. CONTRACTOR shall submit disputes relating to payment of DBE Subcontractors to arbitration in the same manner as any other disputes under a DBE Subcontract.

### 3.07 Personnel of Contractor

- a) Qualified and Sufficient Personnel. CONTRACTOR shall provide Qualified personnel as specified in the AGREEMENT. Personnel shall be of sufficient number to meet the requirements set forth in the RFP. In the event that the number of personnel offered by CONTRACTOR in the PROPOSAL is insufficient to meet the intent of the AGREEMENT, then CONTRACTOR shall increase the number of personnel to a sufficient amount at no cost to CITY.
- b) Site Manager. CONTRACTOR shall designate an on-site Site Manager to act on behalf of CONTRACTOR. CONTRACTOR shall authorize the Site Manager to make all decisions regarding the Work hereunder. The Site Manager, and any replacement thereof, shall meet all the necessary requirements as described in the RFP. The DIRECTOR may rely on any decisions made by the Site Manager as being decisions of CONTRACTOR. Such Site Manager shall not be replaced by CONTRACTOR during the Term of the AGREEMENT without the prior written permission of the DIRECTOR (subject to all employment laws) and the mutual agreement between the DIRECTOR and CONTRACTOR of a replacement Site Manager who is satisfactory to the DIRECTOR. CONTRACTOR shall replace any personnel or Subcontractors, including the Site Manager or a subsequent replacement, whose work product is deemed unsatisfactory by the DIRECTOR.

### 3.08 Release

EXCEPT FOR CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, CONTRACTOR AGREES TO AND SHALL RELEASE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

### 3.09 Indemnification

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD CITY, CITY'S AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- a) CONTRACTOR'S AND/OR ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, OR SUBCONTRACTORS ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS.
- b) CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.
- c) CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD CITY HARMLESS DURING THE TERM OF THE AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY CITY FOR CITY'S SOLE NEGLIGENCE.

d) CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS AND THIRD-TIER SUBCONTRACTORS TO RELEASE AND INDEMNIFY CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO CITY.

### 3.10 Indemnification Procedures

If CITY or CONTRACTOR receives notice of any claim or circumstances which could give rise to an Indemnified Loss, the receiving party shall give written notice to the other party within ten (10) days of receiving such notice, pursuant to the requirements of Section 7.06 herein. The notice must include the following:

1. A description of the indemnification event in reasonable detail;
2. The basis on which indemnification may be due; and,
3. The anticipated amount of the Indemnified Loss.

This notice does not stop or prevent CITY from later asserting a different basis for indemnification or a different amount of Indemnified Loss than that indicated in the initial notice. If CITY does not provide this notice within the ten (10) day period, CITY does not waive any right to indemnification except to the extent that CONTRACTOR is prejudiced, suffers loss, or incurs expense because of the delay.

### 3.11 Defense of Claims

a) Counsel's Defense. CONTRACTOR may assume the defense of any claim at CONTRACTOR'S own expense with counsel chosen by CONTRACTOR that is reasonably satisfactory to CITY. CONTRACTOR shall then control the defense and any negotiations to settle the claim. Within ten (10) days after receiving written notice of CITY'S request for indemnification, CONTRACTOR must advise CITY as to whether CONTRACTOR will defend the claim. If CONTRACTOR does not assume said defense, then CITY shall assume and control the defense, and all defense expenses shall constitute an Indemnified Loss.

b) Counsel & Settlement. If CONTRACTOR elects to defend the claim, then CITY may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. CONTRACTOR may settle the claim without the consent or agreement of CITY, unless such settlement:

- i. would result in injunctive relief or other equitable remedies or otherwise require CITY to comply with restrictions or limitations that adversely affect CITY;
- ii. would require CITY to pay amounts that CONTRACTOR does not fund in full; or,
- iii. would not result in CITY'S full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by said settlement.

### 3.12 Patent, Copyright, Trademark, and Trade Secret Infringement

CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THE AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

a) CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT CITY'S PRIOR WRITTEN CONSENT, WHICH CONSENT MAY BE WITHHELD AT CITY'S SOLE AND ABSOLUTE DISCRETION.

b) WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

**3.13 Insurance**

a) Coverage Amounts. Contractor shall maintain in effect certain insurance coverage, which is described as follows:

COVERAGE	MINIMUM AMOUNTS OF COVERAGE
Workers' Compensation	Amounts in accordance with New Hampshire statutory limits
Employer's Liability	<ul style="list-style-type: none"> <li>• Bodily Injury by Accident \$500,000 (each accident)</li> <li>• Bodily Injury by Disease \$500,000 (policy limit)</li> <li>• Bodily Injury by Disease \$500,000 (each employee)</li> </ul>
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 per occurrence, and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 aggregate on all vehicles owned or hired by CONTRACTOR, or accessing AIRPORT property on behalf of CONTRACTOR in case of death of or injury to persons or loss, destruction, or damage to property
Professional Liability Coverage	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000.00 per occurrence
Property and Auto Insurance covering Valet Parking (if applicable)	TBD
Cyber Security Insurance	\$5,000,000 per claim; \$5,000,000 aggregate
<b>Aggregate Limits are per 12-month policy period unless otherwise indicated.</b>	

At all times during the Term, CONTRACTOR shall provide and maintain insurance coverage that meets the requirements of the AGREEMENT. Prior to beginning performance under the AGREEMENT or any extensions thereof, or at any time upon the DIRECTOR'S request, or each time coverage is renewed or updated, CONTRACTOR shall furnish to the DIRECTOR current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as requested by the DIRECTOR. CONTRACTOR shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. CONTRACTOR waives any claim CONTRACTOR may have for premiums or deductibles against CITY or CITY'S officers, agents, or employees. CONTRACTOR shall also require all Subcontractors or consultants whose subcontracts exceed One Hundred Thousand Dollars (\$100,000) to provide proof of insurance coverage meeting all requirements stated above. The amount of any such Subcontractors' insurance coverage must be commensurate with the amount of the applicable subcontract, but in no event shall any Subcontractor's insurance coverage be less than Five Hundred Thousand Dollars (\$500,000) per claim.

- b) Form of Insurance. The form of the insurance shall be approved by the DIRECTOR; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section 3.13, or (b) waive or estop CITY from asserting CITY'S rights to terminate the AGREEMENT. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in the State of New Hampshire, or (2) be an eligible non-admitted insurer in the State of New Hampshire and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.
- c) Required Coverage. The AIRPORT shall be an additional insured under the AGREEMENT, and all policies, except professional liability and worker's compensation, shall explicitly name the AIRPORT as an additional insured. The AIRPORT shall enjoy the same coverage as the named insured without regard to other contract provisions. CONTRACTOR waives any claim or right of subrogation to recover against CITY or CITY'S officers, agents, or employees. Each of CONTRACTOR'S insurance policies, except professional liability, must contain coverage waiving such claim. Each policy, except workers' compensation and professional liability, must also contain an endorsement that the policy is primary to any other insurance available to the additional insured with respect to claims arising under the AGREEMENT. If Professional Liability coverage is written on a "claims made" basis, CONTRACTOR shall also provide proof of renewal each year for two (2) years after the Term.
- d) Notice. CONTRACTOR SHALL GIVE THIRTY (30) DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF CONTRACTOR'S INSURANCE POLICIES ARE CANCELED OR NON-RENEWABLE. Within the said thirty (30)-day period, CONTRACTOR shall obtain other suitable policies in order to maintain the required coverage. If CONTRACTOR does not comply with this requirement, the DIRECTOR may, in the DIRECTOR'S sole and absolute discretion, immediately suspend CONTRACTOR from any further performance under the AGREEMENT and begin procedures to terminate the AGREEMENT for Default, pursuant to Article V herein.

### **3.14 Warranties**

a) Workmanlike Manner. CONTRACTOR warrants that CONTRACTOR shall perform all of the Work in a good and workmanlike manner meeting the standards of quality prevailing in Hillsborough County, New Hampshire, for work of the kind contemplated in the AGREEMENT. Further, CONTRACTOR shall perform all of the Work using trained and skilled persons having substantial experience performing the Work required under the AGREEMENT.

b) Manufacturer Warranty. CONTRACTOR shall manage and enforce on the AIRPORT'S behalf all of the Equipment and all manufacturer warranties on the Equipment issued before the Effective Date of the AGREEMENT and during the Term of the AGREEMENT. CONTRACTOR shall not be entitled to any additional compensation for the management and enforcement of these manufacturer warranties. If CONTRACTOR does not exhaust all remedies, including litigation, against a manufacturer who fails to honor all or a part of a warranty, CONTRACTOR shall not receive additional compensation from CITY for the labor and material costs CONTRACTOR incurs to repair or replace the item that otherwise would have been under warranty.

c) Warranty of Operation. CONTRACTOR further warrants that the Equipment, the Work, any Other Work/Services, and any other operations and services to be performed by CONTRACTOR or any Subcontractors pursuant to the terms of the AGREEMENT shall be provided in an Acceptable manner. If CONTRACTOR fails to provide Acceptable Equipment, Work, Other Work/Services, or any other operations and services to be performed by CONTRACTOR as set forth in the AGREEMENT, then the DIRECTOR may, in the DIRECTOR'S sole and absolute discretion, adjust downward any payment or payments due by CITY to CONTRACTOR under the AGREEMENT by the percentage equal to the percentage of the Equipment, the Work, or any Other Work/Services and any other operations and services that are not Acceptable or are otherwise not meeting the requirements of the AGREEMENT.

d) Contractor Expertise. CONTRACTOR acknowledges and agrees that CITY is entering into the AGREEMENT in reliance on CONTRACTOR'S expertise with respect to the Work. CONTRACTOR affirms that the goods and services procured as part of the AGREEMENT serve an essential service and are critical to the AIRPORT'S ability to operate as a public facility and provide exceptional guest services.

e) Contractor Warranties. With respect to any parts, instruments, equipment, and goods CONTRACTOR furnishes, CONTRACTOR warrants:

- i. That all items are free of defects in title, design, material, and workmanship; and,
- ii. That each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed; and,
- iii. That each replacement item is new, in accordance with manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces when such item being replaced was new; and,
- iv. That no items or their use infringe any patent, copyright, or other proprietary rights. In the event CONTRACTOR becomes aware of such an infringement, CONTRACTOR will replace the items that are the subject of the infringement with non-infringing items in a timely manner and at no cost to CITY; and,
- v. During any and all time periods during which any of the Equipment is under warranty, CONTRACTOR shall provide all parts, instruments, equipment, and goods required to complete all Maintenance Services required under the AGREEMENT at no cost to CITY. This warranty is in addition to CONTRACTOR'S obligation to provide Basic Services, and if requested, Other Work/Services under the AGREEMENT. When the manufacturer's warranty period for any parts, instruments, equipment, and goods is greater than one (1) year, the longer period prevails.



- f) Reliance on Proposal. With respect to the PROPOSAL, CONTRACTOR warrants that:
- i. CONTRACTOR is duly organized, validly existing, and in good standing, and no action relating to the Bankruptcy Code or suspension of payments by CONTRACTOR or any of CONTRACTOR'S agents has, to the best of CONTRACTOR'S knowledge after due inquiry, been taken or are threatened; and,
  - ii. CONTRACTOR has the authority to do business in the State of New Hampshire and in any state in which CONTRACTOR conducts business, with the full legal right, power, and authority to enter into and perform CONTRACTOR'S obligations under the PROPOSAL; and,
  - iii. The PROPOSAL was duly authorized, executed, and delivered by all necessary corporate action of CONTRACTOR and constitutes a legal, valid, and binding obligation of CONTRACTOR, enforceable against CONTRACTOR in accordance with the terms of the PROPOSAL, except to the extent that such enforceability may be limited by the Bankruptcy Code or by equitable principles of general application; and,
  - iv. To the best of CONTRACTOR'S knowledge after due inquiry, neither the execution nor delivery by CONTRACTOR of the PROPOSAL nor the performance by CONTRACTOR of CONTRACTOR'S obligations in connection with the transactions contemplated hereby nor the fulfillment by CONTRACTOR of the terms or conditions herein:
    1. Conflicts with, violates, or results in a breach of any constitution, law, governmental regulation, by-laws, or certificates of incorporation applicable to CONTRACTOR; or,
    2. Conflicts with, violates, or results in a breach of any order, judgment, or decree, or any other proposal, agreement, or instrument to which CONTRACTOR is a party or by which CONTRACTOR or any of CONTRACTOR'S properties or assets, including the Equipment, are bound, or constitutes a default under any of the foregoing; and,
  - v. No approval, authorization, order, or consent of, nor any declaration, registration, or filing with, any governmental authority is required for the valid execution under the AGREEMENT by CONTRACTOR except as such have been duly obtained or made; and,
  - vi. Except as disclosed in writing to CITY, there is no legal proceeding, at law or in equity, before or by any court, arbitral tribunal, or other Governmental Authority pending or, to the best of CONTRACTOR'S knowledge after due inquiry, overtly threatened or publicly announced against CONTRACTOR, in which an unfavorable decision, ruling, or finding could reasonably be expected to:
    1. Have a material and adverse effect on the execution and delivery under the AGREEMENT by CONTRACTOR; or
    2. Have a material and adverse effect on the validity, legality, or enforceability of the AGREEMENT against CONTRACTOR, or any other agreement or instrument entered into by CONTRACTOR in connection with the transactions contemplated hereby; or
    3. Have a material and adverse impact on the ability of CONTRACTOR to perform CONTRACTOR'S obligations hereunder or under any such other agreement or instrument; and,

- vii. Except as disclosed in writing to CITY, there are no material and adverse claims or demands based in environmental or tort law pending or threatened against CONTRACTOR or any of CONTRACTOR'S agents with respect to any equipment designed, constructed, or installed by CONTRACTOR or any of CONTRACTOR'S agents that would have a material and adverse effect upon the ability of CONTRACTOR to perform the Work; and,
- viii. Neither CONTRACTOR nor any of CONTRACTOR'S agents have any knowledge of any material violation of any law, order, rule, or regulation with respect to any equipment designed, constructed, or installed by CONTRACTOR or any of CONTRACTOR'S agents; and,
- ix. The information supplied, and the representations and warranties made, by CONTRACTOR in all submittals made in response to the RFP with respect to CONTRACTOR (and to CONTRACTOR'S knowledge, all information supplied by CONTRACTOR'S agents in such submittals) are true, correct, and complete in all material respects; and,
- x. CONTRACTOR is under no obligation, commitment, or impediment of any kind, whether contractual or otherwise, that will limit or prevent performance of its obligations under the AGREEMENT; and,
- xi. That CONTRACTOR:
  - 1. Has examined, carefully studied, and thoroughly understands the AGREEMENT; and,
  - 2. Has become familiar with and is satisfied as to the conditions that may affect cost, progress, and performance pursuant to the terms of the AGREEMENT; and,
  - 3. Is familiar with and is satisfied as to all applicable laws that may affect cost, progress, and performance of the Equipment and the Work; and,
  - 4. Is prepared to perform in accordance with the terms and conditions of the AGREEMENT.

### **3.15 Information Provided by or on Behalf of City**

CONTRACTOR shall independently assess all risks related to the Work and the Equipment, and independently verify and confirm all the Information supplied to CONTRACTOR by or on behalf of CITY and upon which CONTRACTOR elects to rely in connection herewith. Except as may reasonably be requested by CONTRACTOR, or as is expressly permitted by the AGREEMENT, CONTRACTOR shall have no right to relief hereunder, or to make any claim against CITY, or to seek any adjustment to compensation as the result of any error, omission, or insufficiency relating to any information provided to CONTRACTOR by or on behalf of CITY in connection with the AGREEMENT.

### **3.16 Performance Audit**

a) Third-Party Audits. At any time during the Term, the DIRECTOR, without notice to CONTRACTOR and at CITY'S expense, may conduct a third-party audit. CONTRACTOR shall rectify any deficiencies in performance discovered by such audit and for which CONTRACTOR is responsible under the AGREEMENT to the DIRECTOR'S satisfaction and at no cost to CITY within ten (10) days of CONTRACTOR'S receipt of notice of any deficiency. Further, CONTRACTOR shall provide the DIRECTOR with a written explanation for such deficiency in performance and a plan to prevent future deficiencies within fifteen (15) days of receipt of such notice. Failure of CONTRACTOR to rectify the deficiency or to provide a plan and written explanation to the DIRECTOR within said fifteen (15) day period shall be grounds for termination for cause as provided in Section 5.04 of this Professional Services Agreement.

b) Audits of Contractor. At any time during the Term, the DIRECTOR, without notice to CONTRACTOR, may conduct inspections of CONTRACTOR'S work performance, equipment, inventory, logs, and Work Sites. CONTRACTOR shall rectify any deficiencies discovered by such inspection to the DIRECTOR'S satisfaction within ten (10) days of receipt of a notice of any such deficiency, at no cost to CITY, if caused by CONTRACTOR or any Subcontractors.

### **3.17 Confidentiality**

CONTRACTOR, CONTRACTOR'S agents, employees, contractors, and Subcontractors shall hold all of the Information in strictest confidence. CONTRACTOR, CONTRACTOR'S agents, employees, CONTRACTORS, and Subcontractors shall not disclose, disseminate, or use the Information unless the DIRECTOR authorizes such use in writing. CONTRACTOR shall establish procedures to ensure confidentiality of the Information and to prevent unauthorized use and disclosure of the Information. CONTRACTOR shall obtain written agreements from CONTRACTOR'S agents, employees, and Subcontractors performing work pursuant to the AGREEMENT, binding them to the terms in this Section 3.17.

### **3.18 Use of Work Products and Ownership; Works for Hire**

a) Equipment and Materials. Any interest of CONTRACTOR or Subcontractors in drawings, plans, specifications, studies, reports, memoranda, computations sheets, data, software, or other documents prepared by CONTRACTOR or Subcontractors in connection with the AGREEMENT is or shall become property of and shall be transmitted to CITY. However, CONTRACTOR may retain and use copies for reference and as documentation of CONTRACTOR'S experience and capabilities. CITY shall have the non-exclusive right to use, or to permit the use of, all such data, software, related documentation, and papers and any ideas or methods represented thereby for the operation and maintenance of the Equipment and the Work at any time without additional compensation to CONTRACTOR. All materials obtained or provided by CONTRACTOR or any Subcontractors as part of the Equipment, including but not limited to, spare parts, equipment, expendables, and consumables inventory, shall be and shall become property of CITY upon delivery or upon being specially adapted for use in or as part of the Equipment or the Work, whichever occurs first. CONTRACTOR shall promptly furnish to CITY any such bills of sale and other instruments as may be required by CITY, properly executed, acknowledged, and delivered, assuring to CITY title to such materials, free from encumbrances, and shall mark or otherwise identify all such materials as property of CITY.

b) Works for Hire. Any and all artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes, or any other original works of authorship created by CONTRACTOR or Subcontractors in connection with the Work performed under the AGREEMENT shall be works for hire as defined under Title 17 of the United States Code, as may be amended, and all copyrights, trademarks, and patents in and for such works are the property of CITY. If it is determined that any works created by CONTRACTOR or Subcontractors under the AGREEMENT are not works for hire under U.S. law, CONTRACTOR hereby assigns all copyrights to such works to CITY. With the approval of the DIRECTOR, CONTRACTOR may retain and use copies of such works for reference and as documentation of CONTRACTOR'S experience and capabilities.

### **3.19 Licenses and Permits**

CONTRACTOR shall obtain, maintain, and pay for all licenses, permits, and certificates, including, but not limited to, all professional licenses, required by the AGREEMENT, any statute, ordinance, rule, or regulation at no cost to CITY. This requirement includes, without limitation, certification of the on-site technicians. CONTRACTOR shall immediately notify the DIRECTOR of any suspension, revocation, or other detrimental action against required licenses or certifications and CONTRACTOR shall immediately remove such on-site technician, employee, agent, or Subcontractor from performing any further services under the AGREEMENT until such license is reinstated and in good standing.

### 3.20 Compliance with Laws

CONTRACTOR shall comply with all applicable local, state, and federal laws and regulations, including, but not limited to, the Charters and Ordinances and the Rules and Regulations.

### 3.21 Performance Bond

- a) Bond Provisions. CONTRACTOR shall, within ten (10) days of the date the DIRECTOR issues the Notice to Proceed to begin performance hereunder, furnish and maintain a performance bond in the amount of one hundred percent (100%) of the Minimum Annual Guarantee required by the RFP conditioned on CONTRACTOR'S full and timely performance of the AGREEMENT (and payment of Subcontractors). CONTRACTOR shall maintain the Performance Bond throughout the Term. The Performance Bond must be in substantially the form attached as Exhibit B and issued by a corporate surety authorized and admitted to write surety bonds in the State of New Hampshire. The surety of the Performance Bond must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of One Hundred Thousand Dollars (\$100,000) by a reinsurer listed on the U.S. Treasury list.
- b) No Bond Provided. In addition to the termination rights set forth in Article V of this Professional Services Agreement, should CONTRACTOR fail to provide the Performance Bond within the time set forth above, CITY shall have the right to withhold and retain any payments due CONTRACTOR without interest or penalty of any kind, until such time as an acceptable performance bond is provided to CITY as required by the AGREEMENT. At such time as a performance bond is given to CITY, the withheld and retained payments shall be released by CITY to CONTRACTOR in the next monthly billing cycle, without interest or penalty of any kind imposed upon CITY by CONTRACTOR or any of CONTRACTOR'S designees, agents, or employees.

### 3.22 Environmental Laws

- a) Applicable Laws. CONTRACTOR shall comply with all federal, state, and local statutes, ordinances, regulations, rules, policies, codes, or guidelines now or hereafter in effect, as they may be amended from time to time, that govern Hazardous Materials or relate to the protection of human health, safety, or the environment, including but not be limited to:
- i. The *Federal Insecticide, Fungicide, and Rodenticide Act*, 7 U.S.C. Section 136 et seq.;
  - ii. The *Safe Drinking Water Act*, 44 U.S.C. Section 300(f) et seq.;
  - iii. The *Oil Pollution Control Act of 1990*, 33 U.S.C. Section 270 et seq.;
  - iv. the *Comprehensive Environmental Response, Compensation and Liability Act of 1980*, as amended, 42 U.S.C., Section 9601 et seq., and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613;
  - v. The *Toxic Substances Control Act*, 15 U.S.C., Section 2601 et seq.;
  - vi. The *Clean Air Act* as amended, 42 U.S.C. 7401 et seq.;
  - vii. The *Clean Water Act*, 33 U.S.C., Section 1251, et seq.;
  - viii. The *Hazardous Materials Transportation Act*, 49 U.S.C., Section 1801 et seq.;

- ix. The *Resources Conservation and Recovery Act*, 42 U.S.C., Section 6901 et seq.;
- x. and those substances defined as “hazardous waste” or as “hazardous substances” under the laws of the state of New Hampshire, the United States, and in any regulations promulgated under these laws.

b) Payment of Fines. Within ten (10) days of receipt of an invoice, CONTRACTOR shall reimburse CITY for any fines or penalties that may be levied against CITY by the United States Environmental Protection Agency, the New Hampshire Department of Environmental Services, or any other governmental agency for CONTRACTOR’S or CONTRACTOR’S designees’, agents’, employees’, or Subcontractors’ failure to comply with the Environmental Laws.

c) Hazardous Materials. CONTRACTOR shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the AIRPORT, or any other areas or facilities subject to the AGREEMENT, except in strict compliance with the Environmental Laws. "Hazardous Materials" include:

- i. all substances, materials, wastes, pollutants, oils, or governmentally regulated substances or contaminants defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws;
- ii. asbestos and asbestos-containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, polychlorinated biphenyls (PCBs), or radioactive materials or waste; or
- iii. any other substance that, because of such substance’s quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed of, or released.

### **3.23 NPDES Compliance.**

a) Requirements. The AIRPORT is subject to the NPDES, and the regulations that implement 40 CFR Part 122, relating to storm water discharges, for operations at the AIRPORT. CONTRACTOR hereby acknowledges that CONTRACTOR is familiar with these NPDES storm water regulations and shall conduct operations in accordance with 40 CFR Part 122, as amended from time to time. CONTRACTOR understands that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations. CONTRACTOR shall implement the NPDES requirements at CONTRACTOR’S sole expense, unless otherwise agreed to in writing between CITY and CONTRACTOR. CONTRACTOR shall meet all deadlines that may be imposed or agreed to by CITY and CONTRACTOR. Time is of the essence.

b) Coordination of Activities. CONTRACTOR acknowledges that close cooperation with CITY is necessary to ensure compliance with any NPDES storm water discharge permit terms and conditions, as well as to ensure safety and to minimize costs. CONTRACTOR shall implement Best Management Practices as defined in 40 CFR, Part 122.2, as amended from time to time, if necessary to minimize the exposure of storm water to significant materials generated, stored, handled, or otherwise used by CONTRACTOR as defined in the federal storm water regulations. Upon the written request of one party, the other party shall provide any non-privileged information submitted to a government entity or entities under applicable NPDES storm water regulations. At the request of CITY, CONTRACTOR shall participate in CITY organized task forces or other work groups as may be established to coordinate storm water activities at the AIRPORT.

c) NPDES Permit. The AIRPORT NPDES storm water discharge permit and any subsequent amendments, extensions, or renewals are incorporated into the AGREEMENT by reference. CONTRACTOR shall be bound by all applicable portions of the said permit. CONTRACTOR appoints CITY as CONTRACTOR'S agent to negotiate with the appropriate governmental entity or entities regarding any modifications to the AIRPORT'S permit.

d) Compliance Checks. CITY may enter upon any premises at the AIRPORT being used by CONTRACTOR pursuant to the AGREEMENT, including, but not limited to, the Site Manager's office, at any time for purposes of inspection to ensure that CONTRACTOR is complying with this Section 3.23 and any other provisions in the AGREEMENT, without being deemed to have committed a trespass.

e) CITY Remedies. CITY'S remedies with regard to CONTRACTOR'S compliance with the Environmental Laws, and Sections 3.22 and 3.23 herein, are cumulative and shall survive termination of the AGREEMENT.

WITH NO INTENT TO LIMIT CONTRACTOR'S INDEMNIFICATION TO CITY SET FORTH IN ARTICLE III OF THIS PROFESSIONAL SERVICES AGREEMENT, CONTRACTOR SHALL PROTECT, DEFEND, AND INDEMNIFY CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LOSS, COST, CLAIM, DEMAND, PENALTY, FINE, SETTLEMENT, LIABILITY, OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS, AND LITIGATION EXPENSES) RELATED TO:

- i. ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE, OR RESTORATION WORK PERFORMED BY CITY OR A THIRD-PARTY DUE TO CONTRACTOR'S, ITS EMPLOYEES', OR AGENTS' USE OR PLACEMENT OF HAZARDOUS MATERIALS (OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN) ON THE AIRPORT PREMISES, OR ANY OTHER AREAS IMPACTED BY THE AGREEMENT;
- ii. ANY ACTUAL, THREATENED, OR ALLEGED HAZARDOUS MATERIALS CONTAMINATION OF THE AIRPORT PREMISES BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS;
- iii. THE DISPOSAL, RELEASE, OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS AT THE AIRPORT THAT AFFECTS SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, OR PERSONS;
- iv. ANY PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIALS USE BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS AT THE AIRPORT; OR
- v. ANY VIOLATION BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS OF ANY ENVIRONMENTAL LAWS.

THIS INDEMNITY IS NOT APPLICABLE TO LOSSES, CLAIMS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES, AND EXPENSES THAT RESULT FROM CONDITIONS EXISTING ON THE EFFECTIVE DATE OF THE AGREEMENT.

### **3.24 Airport Security and Badging**

a) Security Compliance. CONTRACTOR shall comply with all CITY, AIRPORT, TSA, FAA, and any other governmental agency security directives, rules, and regulations. The FAA and/or the TSA may assess fines and/or penalties for CONTRACTOR'S or any of CONTRACTOR'S designees', agents', employees, or Subcontractors' non-compliance with the provisions of 49 CFR 1540 and 1542, as amended from time to time, or by other agencies for noncompliance with laws or regulations applicable to CONTRACTOR'S operations. Within ten (10) days of receipt of notification in writing, CONTRACTOR shall reimburse CITY for any fine or penalty assessed against the AIRPORT because of CONTRACTOR'S or any of CONTRACTOR'S designees', agents', employees', or Subcontractors' non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.

b) Badging and Background Checks. All on-site personnel of CONTRACTOR, including Subcontractors, who perform services under the AGREEMENT shall undergo a fingerprint-based criminal history records check, as may be required by the DIRECTOR, at the DIRECTOR'S sole discretion. Fingerprints will be collected at the AIRPORT'S badging office and submitted electronically for investigation. At CONTRACTOR'S expense, CONTRACTOR shall obtain AIRPORT security badges for any personnel performing services for CONTRACTOR on AIRPORT property, including Subcontractors' personnel, as may be required by the DIRECTOR, at the DIRECTOR'S sole discretion. Any personnel on AIRPORT property issued such security badge shall wear their AIRPORT security badge at all times while on AIRPORT property. Costs for the fingerprint-based criminal history records checks are reflected in the cost charged by the AIRPORT for the AIRPORT security badges. CONTRACTOR is solely responsible for the cost of all AIRPORT security badges issued to CONTRACTOR, CONTRACTOR'S designees, agents, or employees, or Subcontractor's personnel, including replacements thereof, at no cost to CITY.

### **3.25 Conflicts of Interest**

If a potential or actual conflict of interest arises between the AIRPORT'S and CITY'S interests and the interests of other clients represented by CONTRACTOR, CONTRACTOR shall immediately notify the DIRECTOR by certified letter and request CITY'S consent to such conflict, which consent may be withheld at CITY'S sole and absolute discretion. CITY shall not be deemed to consent to the conflict unless CONTRACTOR receives a written notice of such consent within three (3) days after CITY receives CONTRACTOR'S notice of such conflict. If CITY does not consent, CONTRACTOR shall immediately take steps to resolve said conflict. Failure of CONTRACTOR to resolve said conflict within thirty (30) days of notifying CITY thereof, CONTRACTOR shall be deemed to be in Default, pursuant to Article V herein.

### **3.26 Right to Stop Work**

If CONTRACTOR fails to perform in accordance with the AGREEMENT, the DIRECTOR may order CONTRACTOR to stop the Work, or any portion thereof. CITY may, after twenty-four (24) hours advance written notice to CONTRACTOR by the DIRECTOR, and without prejudice to any other remedy available to CITY, perform the Work stopped by the DIRECTOR. In such a case, an appropriate deduction shall be made from the payments then or thereafter due to CONTRACTOR for the cost of the performance conducted by CITY, including the cost of additional services made necessary and performed by CITY due to CONTRACTOR'S failure to perform. If the payments then or thereafter due CONTRACTOR are not sufficient to cover such amount, CONTRACTOR shall pay the difference to CITY within ten (10) days of receiving an invoice therefor.

**3.27 Software Security**

CONTRACTOR shall maintain controls and processes designed to ensure that networks, systems, and devices, including, but not limited to, operating systems and applications, under CONTRACTOR'S control are up-to-date, including prompt implementation of all security patches when issued. CONTRACTOR shall notify CITY, as promptly as possible under the circumstances and without unreasonable delay, upon CONTRACTOR having reason to believe a Security Breach has occurred that could affect CITY or any patrons, tenants, or CONTRACTORS of the AIRPORT, or affect CONTRACTOR'S ability to perform under the AGREEMENT. For the purposes of this Section 3.27 "Security Breach" shall mean any event involving a known, actual, or suspected unauthorized access to any networks, systems, and devices under CONTRACTOR'S control or compromise of the security, confidentiality, or integrity of any data or information that is subject to regulation under applicable privacy and data protection legislation, including, but not limited to, Personal Data, Protected Health Information, and Personally Identifiable Information, as such terms are defined in said applicable legislation. CONTRACTOR shall use commercially reasonable efforts to contain such Security Breach and provide CITY with a detailed description of the Security Breach, the type of data that was the subject of the Security Breach, and the identity of each affected business or person, to the extent permitted by Law, promptly after such information can be collected or otherwise becomes available. CONTRACTOR shall take action immediately, at CONTRACTOR'S own expense, to investigate said Security Breach, to take all commercially reasonable actions to identify, prevent, and mitigate the effects of any such Security Breach, and to carry out any recovery or other action necessary to remedy said Security Breach. CONTRACTOR'S failure to comply with this Section 3.27 shall be deemed a Default under this AGREEMENT, and CITY may exercise any rights and remedies available to CITY at law or in equity.

**3.28 PCI-DSS Compliance.**

CONTRACTOR acknowledges and agrees that all processes, procedures, or technologies subject to this AGREEMENT shall follow PCI-DSS requirements. CONTRACTOR shall submit all PCI-DSS reports as required by the RFP.

**3.29 Professional Conduct and Appearance.**

CONTRACTOR, CONTRACTOR'S agents, employees, contractors, and Subcontractors shall conduct themselves in a professional and courteous manner and shall be well-groomed and suitably attired to present a professional appearance to the public, and shall comply with all codes of conduct and requirements of appearance as CITY may issue.

**3.30 Service Level Agreement.**

a) Service Level Breaches. CONTRACTOR hereby acknowledges and agrees that the Work and all services related to the AGREEMENT, including, but not limited to, the service requirements listed in Exhibit C, shall be of the highest caliber, performed in strict compliance with the requirements of the AGREEMENT, and remain consistent with the image that CITY seeks to project to all guests to and users of the AIRPORT. In the event that CONTRACTOR fails to meet the aforesaid standards or fails to duly perform in accordance with the terms and conditions of the AGREEMENT, CONTRACTOR hereby acknowledges and agrees that, in addition to all other rights and remedies available to CITY under the AGREEMENT, CONTRACTOR shall pay the corresponding liquidated damages as specified in Exhibit C. The amounts set forth in Exhibit C have been agreed upon by and between CITY and CONTRACTOR as reasonable estimates of CITY'S damages in such events. CITY'S acceptance of any damages pursuant to this Section 3.30 and Exhibit C will not prevent CITY from exercising any and all other rights or remedies for default available to CITY at law or in equity.



b) Procedure for Declaring Service Level Breaches. The determination as to whether there has been a breach pursuant to this Section 3.30 is at the DIRECTOR'S reasonable and sole discretion. Upon determining that such a breach has occurred, the DIRECTOR shall issue a written notice to CONTRACTOR of said breach and CITY'S claim for liquidated damages. Within ten (10) days after receiving written notice of a claim for liquidated damages pursuant to this Section 3.30, CONTRACTOR shall either, (i) pay to CITY the required amount, in full, or (ii) provide the DIRECTOR with a written statement and all supporting evidence that such breach did not occur. Upon receipt of any such written statement, the DIRECTOR shall review the evidence provided and determine, in the DIRECTOR'S reasonable and sole discretion, whether said breach occurred, which decision shall be final. In the event that the DIRECTOR determines that CONTRACTOR'S statement fails to demonstrate that the breach did not occur, the required liquidated damages shall become immediately due and payable. Any liquidated damages due and owing to CITY pursuant to this Section 3.30 shall be deducted from the payments then or thereafter due to CONTRACTOR by CITY.

c) Waiver of Liquidated Damages. Liquidated damages due and owing to CITY pursuant to this Section 3.30 shall be waived to the extent that such liquidated damages are the result of circumstances outside of CONTRACTOR'S control such that the DIRECTOR, in the DIRECTOR'S sole discretion, determines that the failure was unavoidable. Any determination by the DIRECTOR pursuant to this Section 3.30(c) shall be final and conclusive. If CONTRACTOR believes that the occurrence of a particular event may cause delays, CONTRACTOR shall so notify the DIRECTOR in writing and request a written waiver of this Section 3.30.

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## ARTICLE IV – DUTIES OF CITY

### 4.01 Fee Schedule

Subject to all the terms and conditions of the AGREEMENT, CITY shall pay to CONTRACTOR, and CONTRACTOR shall accept, the Management Fee, to be paid monthly, based upon invoices submitted to the DIRECTOR from CONTRACTOR indicating in detail the work performed by CONTRACTOR and Subcontractors, if applicable, for the invoiced month. If Other Work/Services are required during the AGREEMENT, the hourly rates and fees will be based on the labor rates set forth in [REDACTED].

### 4.02 Payment Terms

All CONTRACTOR invoices are subject to approval by the DIRECTOR. The DIRECTOR shall have the continuing right to request and receive from CONTRACTOR evidence which validates CONTRACTOR'S invoices. All payments must be made by check made payable to CONTRACTOR. CITY will not unreasonably delay or withhold payment or approval of any invoice. Neither payments made, nor approvals of invoices or services by the DIRECTOR shall be construed as final acceptance or approval of that part of CONTRACTOR'S services to which such payment or approval relates. Such payments do not relieve CONTRACTOR of any of CONTRACTOR'S obligations under the AGREEMENT.

### 4.03 Withholding of Payment for Deficient Work

If CITY pays CONTRACTOR for work performed by any Subcontractor or for parts, supplies, equipment, or materials provided by any supplier, and CONTRACTOR withholds or has withheld payment to the Subcontractor or supplier because of a deficiency in the quality or quantity of that Subcontractor's or supplier's work or materials, CITY may withhold a corresponding amount from any pending or future payments to CONTRACTOR until the next regular payment to CONTRACTOR occurring after CITY receives reasonable documentation that the deficiency has been remedied.

### 4.04 Submitted False Claims, Monetary Penalties

CONTRACTOR shall be liable to CITY for all damages and costs, including, but not limited to, attorneys' fees as a result of CONTRACTOR or any Subcontractors: (a) knowingly presenting or causing to be presented to CITY a false claim or request for payment or approval; (b) knowingly making, using, or causing to be made or used a false record or statement to get a false claim or invoice paid or approved; (c) conspiring to defraud CITY by getting a false claim or invoice allowed or paid by CITY; (d) knowingly making, using, or causing to be made or used as a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property of CITY; (e) benefiting from an inadvertent submission of a false claim or invoice to CITY, subsequently discovering the falsity of the claim, and failing to disclose the false claim to CITY within a reasonable time after discovery of the false claim or invoice.

### 4.05 Taxes

The AIRPORT is exempt from payment of Federal Excise and Transportation Tax. CONTRACTOR'S invoices to the AIRPORT shall not contain assessments of any of these taxes. The DIRECTOR will furnish CITY'S exemption certificate and federal tax identification number to CONTRACTOR upon written request.

### 4.06 Method of Payment - Disputed Payments

If CITY disputes any items in an invoice CONTRACTOR submits for any reason, including lack of supporting documentation, the DIRECTOR shall temporarily delete the disputed item and pay the remainder of the invoice. The DIRECTOR shall promptly notify CONTRACTOR of the dispute and request remedial action. After the dispute is settled, CONTRACTOR shall include the agreed upon amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

#### 4.07 Change Orders

- a) Issuance of Change Orders. At any time during the Term, the DIRECTOR may issue a Change Order to increase or decrease the scope of the Work or change plans and specifications, as the DIRECTOR may find necessary to accomplish the general purposes of the AGREEMENT. CONTRACTOR shall furnish the services or deliverables set forth in the applicable Change Order in accordance with the requirements of the AGREEMENT plus any special provisions, specifications, or special instructions issued to execute Other Work/Services. The notice of approved changes to the contract will be issued using the form provided in Exhibit D.
- b) Contractor's Obligations Under a Change Order. Whenever CONTRACTOR receives a Change Order, CONTRACTOR shall furnish all material, equipment, and personnel necessary to perform the Other Work/Services described in the Change Order. CONTRACTOR shall complete the Other Work/Services within the time prescribed. If no time for completion is prescribed, CONTRACTOR shall complete the Other Work/Services within a reasonable time. If the Other Work/Services described in any Change Order causes an unavoidable delay in any other Work or Other Work/Services that CONTRACTOR is required to perform under the AGREEMENT, CONTRACTOR may request a time extension for the completion of the Other Work/Services. The DIRECTOR'S decision regarding a time extension is final.
- c) Airport Acceptance of Product or Service Under a Change Order. A product or service provided under a Change Order is subject to inspection, Acceptance, or rejection in the same manner as the work described in the AGREEMENT, and is subject to the terms and conditions of the AGREEMENT as if it had originally been a part of the AGREEMENT.

#### 4.08 Access to Work Sites

Subject to FAA, TSA, and AIRPORT Rules and Regulations, CONTRACTOR may enter and leave Work Sites at all reasonable times without charge. CONTRACTOR and CONTRACTOR'S designees, agents, employees and Subcontractors may use the common areas and roadways at the AIRPORT that are proximate to the Work Sites. The access permitted under this Section 4.08 does not extend to any restricted area of the AIRPORT, including, but not limited to, the AOA, which may only be accessed by persons with AIRPORT security badges that specifically authorize such access or by persons escorted by authorized CITY personnel. CONTRACTOR shall repair any damage caused by it or its employees, suppliers or Subcontractors as a result of their use of the common areas. CONTRACTOR assumes all liability for any unauthorized entry by CONTRACTOR'S designees, agents, employees or Subcontractors into restricted areas at the AIRPORT, and CONTRACTOR shall hold CITY harmless from any penalties or fines resulting from such unauthorized access.

#### 4.09 Key Control

- a) Keys Provided to Contractor. CONTRACTOR shall keep a record of all keys distributed to CONTRACTOR'S employees and Subcontractors and shall return to the AIRPORT the same keys issued upon termination of the AGREEMENT. In the event that CONTRACTOR does not return the same keys issued hereunder to the AIRPORT, then CONTRACTOR shall be held liable for any costs incurred by CITY for re-coring, or other such actions as may be necessary to ensure the security of the AIRPORT, and of any door, gate, or other security device leading to, from, or within the Work Sites or any other part of AIRPORT property.
- b) Work Site Access. CITY personnel and CITY'S authorized contractors shall, at all times, have access to the Work Sites. CONTRACTOR shall provide whatever is necessary to facilitate such access, including but not limited to, personnel and equipment. Persons authorized by CITY to access the Work Sites shall not interfere with or jeopardize CONTRACTOR'S responsibility for safely performing the Work under the AGREEMENT.

**4.10 Proprietary Data**

CITY does not anticipate the receipt of proprietary data/material related to the AGREEMENT. However, if CONTRACTOR provides same, CITY will handle in strictest confidence all such material received that is clearly marked as “proprietary” as part of CONTRACTOR’S performance under the AGREEMENT. Upon reasonable request of CONTRACTOR, CITY may enter into a confidentiality agreement with CONTRACTOR that will pertain to the content of CONTRACTOR’S proprietary information and that will apply throughout the Term.

**4.11 Exercise of Contract Responsibilities**

CITY, in exercising CITY’S responsibilities and authorities under the AGREEMENT, does not assume any duties or responsibilities to any Subcontractor or supplier, nor does CITY assume any duty of care to CONTRACTOR, CONTRACTOR’S suppliers, designees, agents, employees, or Subcontractors, except as may be expressly set forth herein or as required by law.

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## ARTICLE V – TERM AND TERMINATION

### 5.01 Initial Term

The AGREEMENT is effective on the Effective Date and shall continue until the tenth (10th) anniversary of the Effective Date, unless sooner terminated pursuant to the terms of the AGREEMENT. Performance shall begin on the date specified in the Notice to Proceed issued by the DIRECTOR. CONTRACTOR acknowledges that time is of the essence for the AGREEMENT.

### 5.02 Renewals

Upon expiration of the Initial Term, the AGREEMENT may be renewed at the request of the DIRECTOR for two (2) additional Renewal Terms of five (5) years each. If the DIRECTOR elects to not renew the AGREEMENT for a Renewal Term, the DIRECTOR shall notify CONTRACTOR in writing of non-renewal at least thirty (30) days before the expiration of the then current Term.

### 5.03 Termination for Convenience by City

a) CITY'S Rights to Terminate. The DIRECTOR may terminate the AGREEMENT at any time, for any reason, by giving thirty (30) days written notice to CONTRACTOR. CITY'S right to terminate the AGREEMENT for convenience is cumulative of all rights and remedies which exist now or in the future.

b) Duties of Contractor Upon Notice of Termination for Convenience. On receiving the Termination Notice, CONTRACTOR shall, unless the Termination Notice directs otherwise, immediately discontinue all Work under the AGREEMENT and cancel all existing orders and subcontracts that are chargeable to the AGREEMENT. As soon as practicable after receiving the Termination Notice, CONTRACTOR shall submit an invoice showing in detail the services performed under the AGREEMENT up to the date on which the AGREEMENT terminates, as specified in the Termination Notice. CITY shall pay any outstanding fees due and owing to CONTRACTOR for services actually performed, but not already paid for, in the same manner as prescribed in Sections 4.01 to 4.03 herein.

c) Contractor's Only Remedies. TERMINATION OF THE AGREEMENT AND PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THE AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN CONTRACTOR'S CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION 5.03), CONTRACTOR MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM CITY'S TERMINATION FOR CONVENIENCE.

### 5.04 Termination for Cause by City

a) Causes for Termination. If CONTRACTOR fails to perform under the AGREEMENT, the DIRECTOR may terminate the AGREEMENT with CONTRACTOR, and retain another contractor to assume the duties of the AGREEMENT, and charge CONTRACTOR for any costs incurred by CITY as a result of CONTRACTOR'S failure to perform. CONTRACTOR'S performance measures that would lead to a termination for cause by CITY shall include, but are not limited to:

- i. CONTRACTOR'S failure to address a maintenance issue within thirty (30) days of receiving notice of said issue;
- ii. Twelve (12) or more [insert applicable term for maintenance tickets/CCTRs] within a rolling three (3) month period addressing Remedial Maintenance that result in a degradation in guest experience; or

- iii. Exceeding applicable Response Times for more than twelve (12) Remedial Maintenance within a rolling twelve (12) month period that result in a degradation in customer experience.

b) Written Notice of Termination for Cause and Contractor Cure. If CITY determines that CONTRACTOR has met one of the aforementioned items leading to a determination that CONTRACTOR should be terminated for cause, then the DIRECTOR may, but is not obligated to, deliver a Termination Notice to CONTRACTOR describing the reason for the termination. The DIRECTOR may, but is not obligated to, extend the date indicated in the Termination Notice to a later date. If the DIRECTOR allows CONTRACTOR to cure the Default and CONTRACTOR does so to the DIRECTOR'S satisfaction, in the DIRECTOR'S sole judgment, before the date specified in the Termination Notice, then the Termination Notice shall be deemed null and void. If CONTRACTOR does not cure the Default before the date on which the AGREEMENT is set to terminate pursuant to this Section 5.04, then the DIRECTOR may terminate the AGREEMENT on said date, at no further obligation of CITY. After receiving the Termination Notice, CONTRACTOR shall, unless the Termination Notice directs otherwise, immediately discontinue all services under the AGREEMENT, and promptly cancel all orders or subcontracts chargeable to the AGREEMENT.

c) Overturn of Termination for Cause. If, after a termination of the AGREEMENT pursuant to the terms of Section 5.04(a) herein, it is determined that CONTRACTOR had not so failed, the termination shall be deemed to have been effected for the convenience of CITY. In such event, CONTRACTOR shall be paid in accordance with the provisions of Section 5.03 herein.

#### 5.05 Default

- a) Events of Default. In the event of any of the following ("Default" or "Defaults"), CITY shall have the rights set forth in this Section 5.05:
  - i. CONTRACTOR fails to perform or observe any of CONTRACTOR'S duties, obligations, covenants, or conditions of the AGREEMENT and such failure remains unremedied for ten (10) days after written notice thereof has been given or sent to CONTRACTOR by CITY;
  - ii. Any material warranty or representation made by CONTRACTOR to CITY as an inducement to enter into the AGREEMENT or as made herein proves to be false or misleading;
  - iii. CONTRACTOR fails to make any payments due and owing to CITY hereunder in full within five (5) days after the same is due and payable; or
  - iv. CONTRACTOR files a petition of bankruptcy or insolvency in any federal court, a receiver or trustee is appointed to take possession of CONTRACTOR'S business operations, or CONTRACTOR makes an assignment for the benefit of creditors.
- b) Effects of Default. If CONTRACTOR Defaults under the AGREEMENT, the DIRECTOR may either terminate the AGREEMENT or allow CONTRACTOR to cure the Default as provided in Section 5.04(b) herein. CITY'S right to terminate the AGREEMENT due to CONTRACTOR'S Default is cumulative of all rights and remedies which exist now or in the future.

## ARTICLE VI – FEDERAL CONTRACT PROVISIONS

### 6.01 General Civil Rights Provision

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 ARTICLE VI binds CONTRACTOR and CONTRACTOR'S agents, employees, and Subcontractors from the date on which the RFP is advertised through the Term. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

### 6.02 Compliance with Nondiscrimination Requirements

During the performance of the AGREEMENT, CONTRACTOR agrees as follows:

a) Compliance with Regulations. CONTRACTOR and CONTRACTOR'S agents, employees, Subcontractors, and consultants shall 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 the AGREEMENT.

b) Nondiscrimination. CONTRACTOR, with regard to the Work, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of employees or Subcontractors, 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 contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

c) Solicitations for Subcontracts, 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 subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by CONTRACTOR of CONTRACTOR'S obligations under the AGREEMENT and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

d) Information and Reports. CONTRACTOR shall provide all information and reports required by all applicable laws and regulations described in this Article VI and directives issued pursuant thereto and will permit CITY and the FAA access to CONTRACTOR'S books, records, accounts, other sources of information, and to CONTRACTOR'S facilities, as CITY or the FAA may deem necessary to ascertain compliance therewith. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish the information, then CONTRACTOR shall so certify to CITY or to the FAA, as appropriate, and will set forth what efforts CONTRACTOR has made to obtain said information.

e) Sanctions for Noncompliance. In the event of CONTRACTOR'S noncompliance with the non-discrimination provisions of the AGREEMENT, CITY and the FAA may impose such sanctions as CITY or the FAA may determine to be appropriate, including, but not limited to:

- i. Withholding payments due to CONTRACTOR under the AGREEMENT until CONTRACTOR complies; and/or
- ii. Cancelling, terminating, or suspending the AGREEMENT, in whole or in part.

f) Incorporation of Provisions. CONTRACTOR shall include the provisions of this Section 6.02 in every subcontract that CONTRACTOR enters into pertaining to the Work or to CONTRACTOR'S performance under the AGREEMENT, including procurements of materials and leases of equipment, unless there exists an applicable exemption under the laws, regulations, and directives described in this Article VI. CONTRACTOR shall take action with respect to any subcontract or procurement as CITY or the FAA may direct as a means of enforcing such provisions, including, but not limited to, sanctions for noncompliance. Provided that, if CONTRACTOR becomes involved in, or is threatened with, litigation by a Subcontractor, employee, or supplier because of such direction, CONTRACTOR may request that CITY enter into said litigation to protect the interests of CITY. In addition, CONTRACTOR may request the United States to enter into the litigation to protect the interests of the United States.

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

During the performance of the AGREEMENT, CONTRACTOR, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including, but not limited to:

- i. 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);
- ii. 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);
- iii. 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);
- iv. 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;
- v. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- vi. 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);
- vii. 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);
- viii. 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;



- ix. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- x. 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;
- xi. 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);
- xii. 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).

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## ARTICLE VII – MISCELLANEOUS

### 7.01 Independent Contractor

CITY reserves the right to select multiple contractors to perform the Work. CONTRACTOR is an independent contractor and shall perform the services provided for in the AGREEMENT as such. CITY has no control or supervisory powers over the manner or method of CONTRACTORS' performance under the AGREEMENT. All personnel CONTRACTOR uses or provides are CONTRACTOR'S employees or Subcontractors and not CITY'S employees, agents, or subcontractors for any purpose whatsoever. CONTRACTOR is solely responsible for the compensation of CONTRACTOR'S personnel, including, but not limited to, the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

### 7.02 Force Majeure

a) Events of Force Majeure. Timely performance by both parties is essential to the AGREEMENT. However, neither party is liable for reasonable delays in performing its obligations under the AGREEMENT to the extent said delay is caused by Force Majeure that directly impacts CITY, the AIRPORT, or CONTRACTOR. An event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under the AGREEMENT. Force Majeure means fires, drought, interruption of utility services, epidemics, pandemics, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term "Force Majeure" does not include any changes in general economic conditions such as inflation, interest rates, economic downturn, or other factors of general application, nor any event that merely makes performance more difficult, expensive, or impractical. Force Majeure does not entitle CONTRACTOR to extra reimbursable expenses or payment.

b) Mitigation and Notice. Relief of liability due to Force Majeure is not applicable unless the affected party (i) uses due diligence to remove the effects of the Force Majeure as quickly as reasonably possible and to continue performance notwithstanding the Force Majeure; and (ii) provides the other party with prompt written notice of the cause and anticipated effect of such Force Majeure. The DIRECTOR may review claims that a Force Majeure that directly impacts CITY or CONTRACTOR has occurred and render a written decision within fourteen (14) days of receiving such claim in writing. The decision of the DIRECTOR is final. CITY may perform the Work or contract with a third party to perform the Work during periods of Force Majeure. Such performance is not a default or breach of the AGREEMENT by CITY.

c) Termination Due to Force Majeure. In the event that a Force Majeure continues for more than fourteen (14) days from the date performance of a party's obligations under the AGREEMENT is affected, the DIRECTOR may terminate the AGREEMENT by giving seven (7) days' written notice to CONTRACTOR, which termination shall not be a default or breach of the AGREEMENT by CONTRACTOR or CITY. CONTRACTOR WAIVES ANY CLAIM CONTRACTOR MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM A TERMINATION OF THE AGREEMENT DUE TO FORCE MAJEURE EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.

### 7.03 Severability

The determination by a court of competent jurisdiction and venue that any one or more of the terms, clauses, or provisions of the AGREEMENT is unenforceable or invalid shall not affect the enforceability or validity of any other term, clause, or provision of the AGREEMENT.

**7.04 Entire Agreement**

This Professional Services Agreement, all Exhibits attached hereto, the RFP, and the PROPOSAL shall constitute the entire agreement between the parties hereto and no part hereof may be changed, altered, amended, modified, limited, or extended orally or by agreement between the parties unless such agreement is expressed in writing and signed by CITY and CONTRACTOR or their respective assigns.

**7.05 Applicable Laws**

CONTRACTOR shall comply with all applicable municipal, county, state, and federal laws, ordinances, rules, and regulations, including, but not limited to, the laws of the State of New Hampshire, the Charters and Ordinances, and the laws of the federal government of the United States. CONTRACTOR, to the extent that CONTRACTOR may legally do so, hereby consents that venue for any litigation relating to the AGREEMENT is Hillsborough, New Hampshire, and further consents to the jurisdiction of the courts of the State of New Hampshire and the United States District Court of the State of New Hampshire, as well as to the jurisdiction of all courts from which an appeal may be taken from such courts for the purposes of any suit, action, or other proceedings arising out of any of the obligations hereunder or with respect to the transactions contemplated hereby, and expressly waives any and all objections CONTRACTOR may have to venue in any such courts.

**7.06 Notices**

Any written notice, request, or demand required or permitted by the AGREEMENT will, until either party notifies the other in writing of a different address, be properly given if (i) hand delivered; (ii) sent by certified mail, return receipt requested; (iii) sent by registered first class mail, postage prepaid; or (iv) delivered by United States Express Mail, Federal Express, UPS, or any other nationally recognized overnight delivery service and addressed as identified in Section 1.01 of this Professional Services Agreement. Postage or delivery charges must be paid by the party giving the notice. All such notices shall be deemed effective as of the date of delivery if hand-delivered or sent by overnight delivery service, or three (3) days after such notice is deposited in the U.S. mail if sent by certified or registered mail.

**7.07 Interpretation**

The captions contained in this Professional Services Agreement are for reference only, and, therefore, are not a part of the terms or provisions of the AGREEMENT. Whenever required by the context of the AGREEMENT, the singular shall include the plural and the plural shall include the singular. The masculine, feminine, and neuter genders shall each include the other. In any provision relating to the conduct, acts, or omissions of CONTRACTOR, the term "CONTRACTOR" shall include CONTRACTOR'S agents, employees, contractors, Subcontractors, and successors. The AGREEMENT shall not be construed more strictly against one party than against the other merely by virtue of the fact that the AGREEMENT was prepared by one party, it being recognized that CITY and CONTRACTOR have had the opportunity to consult with counsel prior to executing the AGREEMENT.

**7.08 Non-Waiver**

No delay or omission by CITY in exercising any right, power, or remedy hereunder or otherwise afforded by the AGREEMENT or by contract, law, in equity, or by statute, shall constitute an acquiescence therein, impair any other right, power, or remedy hereunder, or otherwise afforded by the AGREEMENT or by contract, law, in equity, or by statute, or operate as a waiver of such right, power, or remedy. No waiver by CITY of any Default by CONTRACTOR hereunder shall operate as a waiver of any other Default or the same Default on a future occasion.

**7.09 Inspections and Audits**

AIRPORT and CITY representatives may perform, or have performed, (1) audits of CONTRACTOR'S books and records, (2) inspections of all places where Work is undertaken in connection with the AGREEMENT, and (3) all costs and underlying expenses relating to CONTRACTOR'S performance, including, but not limited to, all fees paid to CONTRACTOR. CONTRACTOR shall keep CONTRACTOR'S books and records available for this purpose for at least six (6) years after the AGREEMENT terminates. This provision does not affect the applicable statute of limitations.

**7.10 Enforcement**

The City Solicitor may enforce all legal rights and obligations under the AGREEMENT without further authorization. CONTRACTOR shall provide to the City Solicitor all documents and records that the City Solicitor requests to assist in determining CONTRACTOR'S compliance with the AGREEMENT, with the exception of those documents made confidential by federal or state law or regulation.

**7.11 Survival**

CONTRACTOR shall remain obligated to CITY under all clauses of the AGREEMENT that expressly or by their nature extend beyond the expiration or termination of the AGREEMENT, including, but not limited to, the indemnity provisions.

**7.12 Publicity**

CONTRACTOR shall make no announcement or release of information concerning the AGREEMENT unless the release has been submitted to and approved, in writing, by the DIRECTOR.

**7.13 Successors and Assigns**

The AGREEMENT binds and benefits CONTRACTOR and CITY and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in [Section 7.14](#) herein. The AGREEMENT does not create any personal liability on the part of any officer or agent of the AIRPORT or CITY.

**7.14 Business Structure and Assignments**

CONTRACTOR shall not, voluntarily, by operation of law, or otherwise, assign, transfer, mortgage, pledge, or encumber the AGREEMENT or any portion thereof or interest therein, nor shall CONTRACTOR grant, permit, or otherwise authorize the use of, in whole or in part, the rights granted to CONTRACTOR by the AGREEMENT to any party other than CONTRACTOR or CONTRACTOR'S agents, employees, contractors, or Subcontractors dispose of all or substantially all of CONTRACTOR'S assets without the DIRECTOR'S prior written consent, which consent may be withheld at the DIRECTOR'S sole and absolute discretion. Nothing in this Section 7.14, however, prevents the assignment of accounts receivable or the creation of a security interest. In the case of such an assignment, CONTRACTOR shall immediately furnish CITY with proof of the assignment and the name, telephone number, and address of the assignee and a clear identification of the fees to be paid to the assignee.

**7.15 Alternative Dispute Resolution**

a) Decisions by the Director. In the event that CONTRACTOR requires clarification regarding the terms and conditions of the AGREEMENT or in the event of a dispute arising under or pertaining to the AGREEMENT, said clarification or dispute shall be decided by the DIRECTOR, whose decision shall be final and conclusive.

b) Mediation. CONTRACTOR and CITY hereby agree that any and all disputes arising under or pertaining to the AGREEMENT which are not settled pursuant to Section 7.15(a) herein, shall be submitted to mediation before any other legal action is taken. CONTRACTOR and CITY shall mutually agree upon a third-party mediator. If the parties cannot agree upon a mediator within a reasonable period of time, each party shall select one mediator and the two mediators chosen shall select a third mediator who shall serve as the sole mediator. The costs and expenses of such mediation shall be borne equally by the parties, subject to approval by the City Solicitor. The parties shall cooperate with the mediator to schedule the mediation within a reasonable amount of time from the date the mediator is selected. CONTRACTOR and CITY hereby agree to participate in the mediation in good faith effort to resolve the dispute.

c) Continuation of Work. During the course of such negotiations, mediation, or any other Alternate Dispute Resolution process that may be mutually agreed upon, CONTRACTOR and CITY hereby agree that all Work hereunder shall be continued without interruption. Unless otherwise specified elsewhere in the AGREEMENT, the rights and remedies contained in the AGREEMENT are not exclusive but are cumulative of all rights and remedies which exist now or in the future.

**7.16 Contractor Indebtedness to City**

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THE AGREEMENT, INCURS A DEBT OWNED TO CITY OF MANCHESTER OR STATE OF NEW HAMPSHIRE, IT SHALL IMMEDIATELY NOTIFY THE DIRECTOR IN WRITING. IF THE DIRECTOR BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, THE DIRECTOR SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE AIRPORT MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FOR ANY PAYMENTS OWED TO CONTRACTOR UNDER THE AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

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[ENTER CONTRACT NUMBER HERE]  
[ENTER CONTRACT TITLE HERE]



**MANCHESTER-BOSTON  
REGIONAL AIRPORT**

**[ENTER CONTRACTOR NAME]**

\_\_\_\_\_  
Mr. Theodore Kitchens, A.A.E.  
Director of Aviation

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Enter Name]  
[Enter Title]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attest

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attest

\_\_\_\_\_  
Date

SAMPLE

**EXHIBIT A:  
AIRPORT RULES AND REGULATIONS**

SAMPLE

[ENTER CONTRACT NUMBER HERE]  
[ENTER CONTRACT TITLE HERE]

**EXHIBIT B:  
PERFORMANCE BOND**

SAMPLE



**SECTION 00510**

**PERFORMANCE BOND**

**DESCRIPTION**

**FORM OF PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS

That we, \_\_\_\_\_  
an individual\*, a partnership\*, a corporation organized under the laws of the State of \_\_\_\_\_  
\_\_\_\_\_ \* having a usual place of business in the State of \_\_\_\_\_  
\_\_\_\_\_ as Principal, and \_\_\_\_\_

\_\_\_\_\_ a corporation organized under the laws of the State of \_\_\_\_\_  
and having a usual place of business in the State of \_\_\_\_\_  
as Surety, are holden and stand firmly bound and obligated unto the City of Manchester, New Hampshire,  
Department of Aviation (hereinafter the Owner), its successors and assigns, in the sum of \_\_\_\_\_

\_\_\_\_\_ ---- Dollars (\$  
\_\_\_\_\_) .

lawful money of the United States of America, to and for the true payment whereof, we bind ourselves  
and each of us, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly  
by these presents. WHEREAS, the said Principal has by means of a written agreement dated \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_, entered into a Contract with the Owner for: \_\_\_\_\_

(Statement of Work/Project)

a copy of which Contract is attached hereto and by reference made a part hereon.

\*Strike out inapplicable terms.

NOW, THEREFORE, THE CONDITION of this obligation is such that if the said Principal and his/her  
subcontractors shall well and truly keep and perform all the agreements, terms and conditions in said  
Contract set forth and specified to be by said Principal kept and performed, and shall well and truly  
indemnify and save harmless the Owner against all counsel fees paid or incurred by the Owner as a result  
of a breach of any condition of this bond, and against all claims and suits for damage to person or  
property arising from carelessness or want of due care, or any act or omission on the part of said Principal  
during the performance of said Contract, then this obligation shall be void; otherwise, it shall remain in

full force and virtue.

PROVIDED, FURTHER, that said Surety, for value received, hereby stipulates and agrees that no extension of time, or change in, alteration or addition to the terms of the Contract or to the work to be performed there under or the Contract Documents accompanying the same and no failure or refusal of the Owner to withhold any monies from the Principal shall in any way affect its obligations on this bond, and it does hereby waive notice of any such extension of time, change, alterations or addition to the terms of the Contract or the work or to the Contract Documents.

In the event that the Contract is abandoned by the Principal, or is terminated by the Owner under the provisions of said Contract, said Surety hereby further agrees that said Surety shall, if requested in writing by the Owner, take action as is necessary to complete said Contract.

This bond shall become effective at the same time as the Contract annexed hereto for the work hereinbefore mentioned.

IN WITNESS WHEREOF, we have set our hands and seals to this bond, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ In presence of:

\_\_\_\_\_  
*Individual Principal* SEAL

\_\_\_\_\_  
*Business Address*

\_\_\_\_\_  
*Individual Principal* SEAL

\_\_\_\_\_  
*Business Address*

Attest:

\_\_\_\_\_  
*Corporate Principal* SEAL

By:

Attest:

\_\_\_\_\_  
*Corporate Surety* SEAL

\_\_\_\_\_  
*Business Address*

Countersigned:

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

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

**CERTIFICATE AS TO CORPORATE PRINCIPAL**

**PERFORMANCE BOND**

I, \_\_\_\_\_, certify that I am the  
of the Corporation named as Principal in the within bond; that,  
who signed the said bond on behalf of the principal was then \_\_\_\_\_,  
of said Corporation; that I know his/her signature and his/her signature thereto is genuine; and that said  
bond was duly signed, sealed and attested to for and in behalf of said Corporation by authority of its  
governing body and is within the scope of its corporate powers.

\_\_\_\_\_ SEAL

(Power of attorney of person(s) signing Bond for Surety Company must be attached.)

NOTE: Date of Bond must not be prior to date of Contract. If Principal is Partnership, all partners must execute bond.

**EXHIBIT C:**  
**SERVICE LEVEL DAMAGES**

Pursuant to Section 3.30 of the Professional Services Agreement, CONTRACTOR agrees to pay to CITY the amounts specified below as liquidated damages for the applicable breach:

Failure to provide any reports required by the AGREEMENT, including, but not limited to, all reports related to PCI-DSS compliance.	\$50.00 for each day the applicable report is late and \$50.00 for each day CONTRACTOR is not PCI-DSS compliant.
Failure to comply with emergency preparedness procedures of the AIRPORT	\$500.00 per occurrence.
Failure to comply with the Rules and Regulations.	\$500.00 per occurrence.
Failure to comply with any guest experience program as may be promulgated by the AIRPORT.	\$500.00 per occurrence.
Site Manager's failure to comply with his or her duties as required under the AGREEMENT.	\$500.00 per occurrence.
Failure to comply with all codes of conduct and requirements of appearance as described in <u>Section 3.29</u> of the Professional Services Agreement or as CITY may otherwise issue.	\$500.00 per occurrence.
Failure to perform all Maintenance Services as required under the AGREEMENT.	\$500.00 per occurrence.
Failure to inventory or document all vehicles parked within the Work Sites each day.	\$500.00 per occurrence.
Failure to collect, account for, and deposit daily all gross revenues collected during the pervious day for the operation of the Work Sites, including, but not limited to, self-parking, valet parking, and employee parking.	\$250.00 for each late collection, account, or deposit and for each day that such collection, account, or deposit is late.
Failure to staff the Work Sites consistent with the then-current applicable minimum staffing levels approved by the DIRECTOR in writing.	\$500.00 per occurrence.

[ENTER CONTRACT NUMBER HERE]  
[ENTER CONTRACT TITLE HERE]

**EXHIBIT D:  
CHANGE ORDER**

SAMPLE