



REQUEST FOR STATEMENT OF QUALIFICATIONS FOR:

**ON-CALL AIRPORT PLANNING SERVICES**

Solicitation Number FY24-805-04

MANCHESTER-BOSTON REGIONAL AIRPORT  
MANCHESTER, NEW HAMPSHIRE

## **REQUEST FOR STATEMENT OF QUALIFICATIONS FOR**

### **ON-CALL AIRPORT PLANNING SERVICES**

### **MANCHESTER-BOSTON REGIONAL AIRPORT MANCHESTER, NH**

### **Solicitation Number FY24-805-04**

In accordance with FAA Advisory Circular 150/5100-14E, The City of Manchester, New Hampshire acting by and through its Department of Aviation (hereinafter called the “AIRPORT”), being the duly and lawfully constituted municipal corporation owning and operating the Manchester-Boston Regional Airport, located in the City of Manchester and Town of Londonderry, New Hampshire hereby solicits Statements of Qualification (“STATEMENTS”) from Airport Planning Consulting Firms for On-Call Airport Planning Services.

Interested firms are highly encouraged to formulate teams and to submit one STATEMENT that conforms to the requirements of this RFQ. It is the intent of the AIRPORT to select one RESPONDENT for a term of three (3) years fixed with two (2) one (1) year options.

#### **Title VI Solicitation Notice:**

Manchester-Boston Regional Airport, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

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## SECTION I – DESCRIPTION OF WORK

### 1.1 General Description of Responsibilities

The AIRPORT plans to make application to the Federal Aviation Administration (“FAA”) and/or the State of New Hampshire Department of Transportation, Bureau of Aeronautics (“NHDOT”) over the course of the next five years for grants related to airport development. A copy of the Airport Capital Improvement Projects (“ACIP”) is included in **Appendix A**. The ACIP projects, timeframes and estimates are subject to change at any time due to constraints outside of AIRPORT control. The detailed scope of each ACIP project will be determined as each project is approved and funded through the development of a Task Order which will serve as an amendment to the Professional Services Agreement (“AGREEMENT”).

In addition to those projects identified in the ACIP, the CONSULTANT will assist the AIRPORT on non-AIP funded projects. These projects are provided in **Appendix B**. The following sections present some of the responsibilities the AIRPORT will expect the CONSULTANT to perform during the term of the AGREEMENT.

### 1.2 Responsibilities of Consultant – Master Planning Services

This phase involves those activities required to develop an appropriate project definition for a project. Some examples of activities within this phase of a project include, but not limited to the following:

- a) Preparation of forecasts, demand/capacity analysis, airspace analysis, ALP preparation, and other aviation related planning activities;
- b) Developing and/or updating the Airport Layout Plan set;
- c) Developing targeted area plans that may be focused on Airport functional areas, such as cargo, general aviation, parking, maintenance, etc.
- d) Preparing project cost estimation and conducting financial feasibility in concert with the airport rates and charges consultant; and,
- e) Conducting needs assessments, efficiency studies, long-term use analysis, programming and project definition reports.

### 1.3 Responsibilities of Consultant – Airfield Planning Services

This phase includes all activities required to undertake and accomplish a full and complete project design. Examples include, but not limited to the following:

- a) Developing planning studies, creating reports involving airside facilities, airspace and operational issues;
- b) Identifying airfield needs and developing alternative layouts for aircraft parking plans, aircraft deicing, hangars, cargo facilities, and other related components;
- c) Performing airfield and airspace modeling, simulation, and obstruction surveys and assessments.

### 1.4 Responsibilities of Consultant – Terminal Planning Services

These activities involve assisting the AIRPORT in advertising, securing and recording bids, negotiating for services, analyzing bid results and furnishing recommendations on the award of contracts. Examples include, but not limited to the following:

- a) Identifying and analyzing terminal facility requirements and modifications to such terminal;
- b) Performing passenger processing and flow studies;
- c) Assisting in terminal space planning;
- d) Reviewing airline and other tenant plans for terminal modifications;
- e) Collecting data concerning terminal operations ranging from curbside utilization, circulation along terminal roadways, security checkpoint processing, and baggage handling systems;
- f) Performing simulations and activity forecasts for terminal facilities.

#### **1.5 Responsibilities of Consultant – Landside Planning Services**

This phase includes all basic services rendered after award of a construction contract including, but not limited to, the following activities:

- a) Providing non-terminal landside planning that may include roadways, parking, rental car facilities, and ground transportation facilities;
- b) Analyzing and evaluating transportation corridors and site-specific vehicular traffic situations;
- c) Forecasting near and long-term traffic, parking and curbside peak demand periods;
- d) Planning short-term and long-term public parking, employee parking, curb front access and allocation;
- e) Planning and cost estimating for surface transportation, thoroughfare and ground access improvements;
- f) Planning airport integration to regional transportation planning efforts including regional rail and transit services.

#### **1.6 Responsibilities of Consultant – Environmental Planning Services**

This phase includes all basic services rendered after completion of a construction contract including, but not limited to, the following activities:

- a) Preparing environmental studies and reports concerning airport development and operational issues;
- b) Assisting in preparing NEPA documentation including categorical exclusions and environmental assessments for both airport development and operations;
- c) Providing environmental training for airport staff;
- d) Assisting in preparing environmental permit applications required for both Airport development and operations;
- e) Reviewing existing airport environmental sustainability efforts and identifying areas for additional sustainability efforts;
- f) Initiating surveys and assisting in developing policies to allow the airport to operating in an environmentally efficient and sustainable manner.

#### **1.7 Special Services**

In addition to the responsibilities listed above, the AIRPORT may seek assistance from the CONSULTANT for the following services:

- a) Analyzing air traffic procedures and conducting any specific reports/studies associated with noise issues;
- b) Developing and/or assessing land-use plans that may include on- and off-airport property;
- c) Site assessments;
- d) Utility/infrastructure assessment and planning;

- e) Preparing development criteria and design standards for tenant improvements;
- f) Reviewing individual zoning and development plans for compliance with approved Airport Master Plan and development criteria;
- g) Coordinating with parties responsible for property acquisition, land valuation, market studies, lease negotiations, and utility/infrastructure assessment and planning;
- h) Preparing, publishing, and maintaining data dashboards on airport KPIs and operational metrics.

### **1.8 Knowledge, Skills and Abilities of the Consultant**

As part of their STATEMENT, the RESPONDENT shall exhibit the following knowledge, skills, and abilities:

- a) Comprehensive knowledge of airport planning principles, practices, and techniques;
- b) Knowledge of the FAA Airport Improvement Program (AIP);
- c) Knowledge of Capital Improvement Planning;
- d) Knowledge of 14 CFR Part 139, Certification of Airports;
- e) Knowledge of 14 CFR Part 77, Objects Affecting Navigable Airspace;
- f) Knowledge of Advisory Circulars for Airfield Design; Airfield Lighting Systems; Safety and Security During Construction; Pavement Condition Index;
- g) Knowledge of FAA Order 8260.3D Terminal Instrument Approach Procedures (“TERPs”)
- h) Knowledge of security requirements under Subchapter C to Chapter XII of Title 49 to the United States Code of Federal Regulations;
- i) Knowledge of ICAO Annexes;
- j) Ability to maintain and update Airport Layout Plan and other FAA required documents;
- k) Ability to communicate effectively with others, both orally and in writing, using both technical and non-technical language;
- l) Ability to understand and follow oral and/or written policies, procedures and instructions;
- m) Ability to use logical and creative thought processes to develop solutions according to written specifications and/or oral instructions;
- n) Ability to identify and perform a wide variety of duties and responsibilities with accuracy and speed under the pressure of time-sensitive deadlines; and,
- o) Integrity, ingenuity and inventiveness in the performance of assigned tasks.

## SECTION II – INSTRUCTIONS FOR PREPARATION OF STATEMENT

### 2.1 Statement Content and Organization

RESPONDENTS interested in providing the services as described in this RFQ must include in their STATEMENTS the following information:

#### 2.1.1 Section 1: General Corporate Overview and Capabilities

The STATEMENT shall include a letter of interest that introduces the Prime Consultant and any Sub-Consultants proposed to conduct the work contemplated in this procurement action. The Letter shall be signed by a person that is authorized to bind the RESPONDENT to the STATEMENT. This letter shall provide a description of the team organization (including subconsultants or team members) and the general workload *for each firm* included in the STATEMENT.

In this section, the RESPONDENTS shall describe those capabilities for each firm included in the STATEMENT that will facilitate accomplishment of the types of work contemplated under this procurement action. The RESPONDENT shall identify items of originality or specific capability that would promote the orderly progression and successful completion of the projects contemplated.

A current audited financial statement for the Prime Consultant only shall be included in this section.

**FAILURE TO PROVIDE A SIGNED LETTER FROM A DULY AUTHORIZED REPRESENTATIVE WILL RESULT IN A NON-RESPONSIVE STATEMENT.**

**FAILURE TO PROVIDE AN AUDITED FINANCIAL STATEMENT FOR THE PRIME CONSULTANT WILL RESULT IN A NON-RESPONSIVE STATEMENT.**

#### 2.1.2 Section 2: Project Organization and Staffing

This section should describe the RESPONDENTS organizational plan, including responsibility for major planning disciplines, e.g., master planning, airfield planning, terminal planning, etc. The relationship between individuals and/or subconsultants should be clearly indicated.

The role and scope of both managerial and technical functions, by name of the individual performing the function, must be clearly identified. This should be done whether or not the individual is a staff member of the Prime Consultant or a sub-consultant. The purpose of this requirement is to clearly identify the technical capability that exists within the Prime Consultant's regular staff and the extent to which the Prime Consultant will rely on the services of outside technical assistance.

In addition, this section should contain a resume of the professional qualifications of key individuals of the proposed Prime Consultant and/or subconsultants whose contribution is considered by the Prime Consultant as essential to the successful completion of the assignment.

RESPONDENTS are cautioned to include only those individuals that would make a significant contribution to the project if the RESPONDENT is selected.

RESPONDENTS are further cautioned that the AIRPORT expects that the individuals included in the STATEMENT will be those individuals assigned to Task Orders generated during the term of the AGREEMENT. Failure of the CONSULTANT to provide the proposed individuals will be considered default under the AGREEMENT unless the failure to provide the proposed individuals is due to circumstances outside the control of the RESPONDENT.

**2.1.3 Section 3: Progress, Quality Assurance, and Cost Control**

This section shall detail in a clear and concise manner the administrative procedures RESPONDENTS will use to ensure the accuracy, timeliness and cost effectiveness of all work produced by the RESPONDENT. This section shall include specific examples of procedures and/or methods that have been used in the past and would be applicable to the work contemplated under this procurement action. This section shall also address, but not be limited to, each of the following concerns:

- a) Methods utilized to determine the required scope of services to complete the assignment and minimize the probability of scope creep and/or additional task orders to complete the work;
- b) Methods used to coordinate the work effort of the various disciplines and/or sub-consultants required to complete the assignments;
- c) Methods utilized to ensure the accuracy and completeness of planning studies and reports;
- d) Methods used to control the quality of all deliverables;
- e) Methods used to respond in a timely and accurate manner to the inquiries of the Owner, regulatory agencies and/or others with a legitimate interest in the project; and,
- f) Methods to ensure appropriate staffing levels over the anticipated life of the assignment.

If the STATEMENT is a team, joint venture, or any other Prime/Sub-Consultant relationship, this section should present a discussion of how the *team* will address items contained in Section 2.1.3 (a) through (f) above and not just how the Prime will address these items.

**2.1.4 Section 4: Disadvantaged and Local Small Business Opportunity Goals**

This section is intended to allow the RESPONDENT an opportunity to discuss any past or present demonstrated commitment to small and minority businesses and contributions. The RESPONDENT is asked to state its:

- a) past efforts to mentor, train and otherwise demonstrate their corporate commitment to the growth and development of the small and minority business community; and,
- b) present intentions to mentor, train, and include Disadvantaged Business Enterprises (“DBE”) in any scope of work contemplated under this procurement action.

A Disadvantaged Business Enterprise shall be defined as a business firm satisfying the requirements of 49 CFR Part 26, as amended. It is the official policy of the AIRPORT to recognize the authority and applicability of the United States Department of Transportation's Rules and Regulations governing Disadvantaged Business Enterprise participation. The AIRPORT is also fully committed to the implementation of these rules and regulations through its approved DBE program. The *minimum* DBE participation goal established for this contract is **5.6%** however, RESPONDENTS are encouraged to exceed this goal. While this RFQ does not consider price as an evaluation factor, and recognizing that the total value of potential task orders issued as part of the AGREEMENT is not known at the time of STATEMENT submission; RESPONDENTS are encouraged to estimate the portion of work that each DBE will be assigned and to estimate the total value of DBE participation in their STATEMENT. The method used by the RESPONDENT to determine this value shall be explained in this section of the STATEMENT.

Firms desiring to participate as a Disadvantaged Business Enterprise (DBE) on AIRPORT projects or contracts must be duly certified as a DBE by the New Hampshire Department of Transportation Office of Federal Compliance (“NHDOT-OFC”) at:

<https://www.nh.gov/dot/org/administration/ofc/dbe.htm>

As part of their STATEMENT, RESPONDENTS shall include documentary evidence that proposed DBE firms contained in the STATEMENT are duly certified by the NHDOT-OFC. Any proposed firm that has not received such certification from NHDOT-OFC at time of STATEMENT submission must receive certification prior to the execution of the AGREEMENT by the RESPONDENT. Should a firm not receive their certification prior to execution of the AGREEMENT by the RESPONDENT shall be replaced by the RESPONDENT with a certified DBE subject to the approval by the AIRPORT.

**RESPONDENTS ARE HEREBY NOTIFIED THAT A FAILURE TO MEET THE AIRPORT’S ESTABLISHED DBE PARTICIPATION RATE FOR FEDERALLY FUNDED PROJECTS, OR FAIL TO PROVIDE SUFFICIENT DOCUMENTARY EVIDENCE OF GOOD FAITH EFFORTS TO MEET THE DBE GOAL, WILL CONSTITUTE A DEFAULT OF THE AGREEMENT AND MAY RESULT IN THE TERMINATION OF THE AGREEMENT OR OTHER SUCH REMEDY AS DEEMED APPROPRIATE BY THE AIRPORT.**

2.1.5 Section 5: Location

This section requires the RESPONDENT to list the office location proposed by the Prime Consultant all Sub-Consultants that will be used to manage the work contemplated under this procurement action, the number of employees at each office location, the years in business at these locations, and the anticipated percentage of work to be assigned to each location.

2.1.6 Section 6: Experience with Similar Projects

The RESPONDENT should include a detailed discussion on projects similar in scope to those identified in **Appendix A** and **Appendix B** in enough detail to present the unique qualifications of the RESPONDENT. The STATEMENT should include two (2) projects for each of the major planning services identified in Section 1.2 through 1.6 of this RFQ that have been completed in the previous five (5) federal fiscal years. Each project discussion should include, at a minimum, the following information:

- a) Project location;
- b) Project fee: The project fee should include the original project budget and final project cost;
- c) Project schedule: the project schedule should include both the baseline schedule estimated date of completion *and* the actual date of completion;
- d) Owner/Sponsor Reference: Include correct contact information for the Owner's Project Manager;
- e) Project Scope: A brief description of project scope in enough detail to allow the reader to grasp how the project relates to the work contemplated under this procurement action; and,
- f) Project Discussion: A candid discussion about the RESPONDENTS approach to project management including any issues faced during the project and how the RESPONDENT successfully resolved these issues. This is an opportunity for the RESPONDENT to demonstrate their capabilities in addressing issues faced during a project, how they creatively addressed these issues, and what issues the AIRPORT should anticipate in projects that are similar in scope.

Each project discussion should present the information organized in a manner consistent with Sections 2.1.6 (a) through (f).

**2.1.7 Section 7: Previous Airport Contract Awards**

This section requires the RESPONDENT to list all contracts over the last five (5) years awarded to the RESPONDENT by the AIRPORT, including project name, award date, completion date and final professional services contract value. Individual assignments awarded as part of on-call contracts should be listed separately.

**2.1.8 Section 8: Certifications**

This section requires the RESPONDENT to incorporate signed and duly notarized copies of the federal certifications found in **Appendix F**.

**STATEMENTS THAT DO NOT CONTAIN SIGNED AND NOTARIZED CERTIFICATIONS WILL BE CONSIDERED NON-RESPONSIVE BY THE AIRPORT AND NO FURTHER CONSIDERATION WILL BE GIVEN.**

**2.2 Statement Organization**

The STATEMENT shall be organized in sections consistent with Section 2.1.1 through 2.1.8 above. STATEMENTS are limited to **50-single sided** pages (NOTE: letter of interest, required DBE forms, audited financial statements, certifications, etc. will not be counted toward the 50-page limit). The RESPONDENT is free to use either 8.5"x11" or 11"x17" paper for their submission understanding that the entire proposal shall use the same size paper (e.g. no z-folds or mixing of page sizes). Under no circumstances shall the paper size exceed 11"x17".

*Any pages beyond the 50-page limit or any information submitted on paper size in excess of 11"x17" will not be considered by the AIRPORT.*

**2.3 Submission Date and Procedures**

Each RESPONDENT must submit **five (5)** hard copies of their STATEMENT. The envelope/package containing the STATEMENTS shall be marked:

**“ON-CALL AIRPORT PLANNING SERVICES  
RFQ FY24-805-04”**

with the RESPONDENT’S name clearly stated at the bottom left of the envelope/package in which the Statement is contained.

STATEMENTS shall be delivered by **2:00 pm on August 25, 2023** to the offices of the Manchester-Boston Regional Airport and addressed to:

Manchester-Boston Regional Airport  
Attn: Procurement  
1 Airport Road Suite 300  
Manchester, NH 03103  
Email: [procurement@flymanchester.com](mailto:procurement@flymanchester.com)

**STATEMENTS RECEIVED AFTER 2:00 P.M. ON THE SUBMISSION DATE LISTED ABOVE WILL BE CONSIDERED NON-RESPONSIVE BY THE AIRPORT AND NO FURTHER CONSIDERATION WILL BE GIVEN.**



## SECTION III – SELECTION PROCESS

### 3.1 Selection Process

The AIRPORT intends to use a two-phase selection process. The first phase is the written STATEMENT and the second phase will be oral interviews (“INTERVIEWS”) of short-listed RESPONDENTS. Should an insufficient number of STATEMENTS be received by the AIRPORT to develop an competitive shortlist of RESPONDENTS, then the AIRPORT reserves the right to reject all STATEMENTS received and reissue the RFQ or select directly from the responses received.

### 3.2 Selection Schedule

The AIRPORT intends to adhere to the following schedule:

<b>Solicitation Step</b>	<b>Date</b>
Advertise RFQ	July 19, 2023
<b>Mandatory Pre-Proposal Meeting</b>	<b>August 9, 2023 @ 2:00pm</b>
Final Date for RFIs	August 16, 2023
Addendum Acknowledgment Form	August 21, 2023
<b>RFQ Submission Deadline</b>	<b>August 25, 2023 @ 2:00pm</b>
RFQ Review and Scoring by Committee	September 1, 2023
Evaluation Committee Meeting	September 6, 2023
<b>Notification of Short List</b>	<b>September 8, 2023</b>
<b>Interviews</b>	<b>September 21, 2023</b>
Notification of Intent to Award	September 25, 2023
Professional Services Agreement Executed	September 27, 2023
<b>Notice to Proceed</b>	<b>October 2, 2023</b>

### 3.3 Preliminary Review

Upon receipt of submittals, the AIRPORT will conduct a preliminary review to assure that each submittal is generally responsive to the published criteria. STATEMENTS deemed non-responsive will be returned to the RESPONDENT with a brief explanation of the reason for the rejection.

### 3.4 Formal Evaluation and Scoring

Following preliminary review, an Evaluation Committee will convene to independently review and score each STATEMENT based on the information requested in Sections 2.1.1 through 2.1.7. A detailed and objective evaluation will be conducted, the sole intent of which will be to identify

the most responsive and responsible RESPONDENT to perform the work contemplated under this procurement action.

The following criteria, scoring, and review process will be employed by the AIRPORT:

<b>Criteria</b>	<b>Max Score</b>
General Corporate Overview	10 points
Project Organization and Staffing	35 points
Progress, Quality Assurance, and Cost Control	25 points
Disadvantaged Business Enterprise Participation	25 points
Location	15 points
Experience with Similar Projects	35 points
Previous Airport Contract Awards	5 points
<b>TOTAL MAXIMUM SCORE</b>	<b>150 points</b>

The maximum score per evaluator is **150 points**. RESPONDENTS should note that 80% of points are available from four criteria: Project Organization and Staffing; Experience with Similar Projects; Progress, Quality Assurance, and Cost Control; and Disadvantaged Business Enterprise Participation.

### **3.5 Phase I Tiebreaker**

In the event of a tie between two or more RESPONDENTS, the RESPONDENT with the greater percentage of DBE participation presented in Section 2 of their STATEMENT will be awarded the tie-breaker.

### **3.6 Phase I: Shortlist Development**

Notwithstanding the provisions of Section 3.1 above, the AIRPORT may shortlist up to five (5) STATEMENTS for Phase II of the selection process. Short-listed RESPONDENTS will be provided a minimum of two-weeks to prepare.

### **3.7 Phase II: Interviews**

Shortlisted RESPONDENTS shall have the opportunity to present their qualifications to the Evaluation Committee. This is an opportunity for shortlisted RESPONDENTS to clarify their STATEMENTS and present any additional information that the shortlisted RESPONDENTS wish the Evaluation Committee to consider. No more than five (5) personnel from each shortlisted RESPONDENT shall be at the interview but two (2) members shall be the Principal-in-charge and the proposed Project Manager for the Prime Consultant.

### **3.8 Final Selection**

Upon completion of the Phase II Interviews, the Evaluation Committee shall independently score each shortlisted RESPONDENT. The criteria used to score the presentations shall be included in notification of shortlist issued to shortlisted RESPONDENTS.

After each committee member independently scores each shortlisted RESPONDENT, the Evaluation Committee shall convene and select the two (2) highest scored RESPONDENTS by summing their respective Phase I and Phase II scores.

## SECTION IV – GENERAL CONDITIONS

### 4.1 Airport Right to Reject and Waive Minor Irregularities

The AIRPORT reserves the right to reject any and all STATEMENTS or to re-advertise for additional STATEMENTS. The AIRPORT reserves the right to waive minor irregularities.

The selection shall be at the sole discretion of the AIRPORT. No RESPONDENT shall have any cause of action against the AIRPORT arising out of a failure by the AIRPORT to consider the qualifications of the RESPONDENT, or the methods by which the AIRPORT evaluated the STATEMENTS received.

### 4.2 Inquiries

Inquiries on all matters pertaining to this RFQ or the process the AIRPORT is following should be directed to:

Manchester-Boston Regional Airport  
1 Airport Road Suite 300  
Manchester, NH 03103  
Email: [procurement@flymanchester.com](mailto:procurement@flymanchester.com)

### 4.3 Contact With Airport Staff

From the time of receipt or publication of the RFQ, all parties who intend to directly or indirectly submit a response to the solicitation shall direct all contact with the AIRPORT to the point of contact listed in Section 4.2. If the question or comment deals with a subject matter that is outside of the knowledge or responsibility of this person, the AIRPORT point of contact will direct the question or comment to the appropriate person or authority.

Other than as permitted herein, respondents to this solicitation may not contact AIRPORT executives beyond the person identified in Section 4.2, any members of the evaluation committee, or those representing any AIRPORT interests in this solicitation for the purpose of discussing the same.

**VIOLATION OF THIS PROVISION MAY RESULT IN REJECTION OF THE STATEMENT AND/OR RESPONDENT DEBARMENT FROM FUTURE SOLICITATIONS.**

### 4.4 Addendums and Clarifications

No interpretation of the meaning of any part of the RFQ, or corrections of any apparent ambiguity, inconsistency or error therein, will be made to any RESPONDENT orally. All requests for written interpretations or corrections shall be submitted in writing and addressed to the AIRPORT using the contact information in Section 4.2 by the date listed in Section 3.2.

All such interpretations and supplemental instructions will be in the form of a written ADDENDUM to the RFQ documents, which, if issued, will be posted on the AIRPORT website, [www.flymanchester.com](http://www.flymanchester.com).

Only the interpretations or corrections so given by the AIRPORT in writing will be binding, and prospective RESPONDENTS are advised that no other source is authorized to give information concerning, or to explain or interpret the RFQ.

It is the responsibility of the RESPONDENT to incorporate any ADDENDUM into their STATEMENT and to acknowledge receipt of any ADDENDUMS by signing the *Addendum Acknowledgement Form* and including the same in their STATEMENT. If a RESPONDENT fails to acknowledge receipt of any such ADDENDUM through signing the *Addendum Acknowledgement Form*, their STATEMENT will be construed as though the ADDENDUM has been received and acknowledged.

#### **4.5 Additional Provisions**

The AIRPORT reserves the right to add, delete, or revise any section of this RFQ. The AIRPORT reserves the right 1) to accept the RESPONDENT(S) it deems most suitable and beneficial and 2) to reject any or all STATEMENTS received as part of this RFQ. The AIRPORT also reserves the right to retain all copies of STATEMENTS submitted by RESPONDENTS.

#### **4.6 Rejection of Irregular Statements**

The AIRPORT reserves the right to reject STATEMENTS that are considered irregular in the sole discretion of the AIRPORT. STATEMENTS will be considered irregular if they show omissions, alterations of form, additions not called for, conditions, limitations, or other irregularities of any kind. The AIRPORT reserves the right to waive minor irregularities that will not result in an unfair economic or competitive advantage or disadvantage to any RESPONDENT.

#### **4.7 Reserved.**

#### **4.8 Cost**

RESPONDENTS are responsible for any and all costs associated with their STATEMENT including, but not limited to, the creation of the STATEMENT and any interviews (if applicable). The AIRPORT will not accept any promotional items as part of the proposal process and any such items included will either be discarded or, if so requested, returned to the RESPONDENT at no cost to the AIRPORT.

#### **4.9 Contract Agreement**

The AIRPORT intends to enter into a Professional Services Agreement with one CONSULTANT for a three (3) year fixed term with two (2) one-year options. A sample contract is provided in **Appendix C** to this RFQ.

#### **4.10 Project Manager**

The selected firms shall commit to maintaining the proposed and accepted project manager for the duration of the contract. The project manager shall only be changed with the approval of the DIRECTOR or if the project manager is no longer available due to circumstances beyond the control of the CONSULTANT. Should the project manager become unavailable during the course of this agreement, the AIRPORT reserves the right to either accept the proposed substitute or to terminate the contract for convenience and issue a new RFQ.

At all times, the AIRPORT shall maintain the option of requesting an alternative project manager.

#### **4.11 Non-Discrimination Provisions**

The RESPONDENT agrees to comply with all applicable federal, state and local laws, including the Civil Rights Act of 1964 as amended. The Equal Employment Opportunity Clause in Section 202, paragraph 1 through 7 of Executive Order 11246, as amended, relative to Equal Employment and the implementing Rules and Regulations of the Office of Federal Contract Compliance Programs are incorporated herein by specific reference. The Affirmative Action Clause in Section 503 of the Rehabilitation Act of 1973, as amended, relative to Equal Opportunity for the disabled is incorporated herein by specific reference. The Affirmative Action Clause in 38 USC Section 2-12 of the Vietnam Veterans' Readjustment Assistance Act of 1974, relative to Equal Employment Opportunity for the special disabled Veteran and Veterans of the Vietnam Era, is incorporated herein by a specific reference. The RESPONDENT specifically agrees to comply with: (i) Title VI of the Civil Rights Act of 1964, which prohibits discriminations on the grounds of race, color or national origin; and (ii) Title 49 of the U.S. Code Section 47123, which further prohibits discrimination on the grounds of sex, based on gender, and creed, based on religion.

#### **4.12 Sub-Consultants**

If any sub-consultant(s) are to be used by the Prime Consultant in the discharge of its duties in performance of the work contemplated in this procurement action, then the Prime Consultant is as fully responsible to the AIRPORT for the acts and omissions of any sub-consultant and of persons either directly or indirectly employed by any sub-consultant, as they are for the acts and omissions of persons directly employed by the Prime Consultant. It is the responsibility of the Prime Consultant to ensure that any and all subconsultants comply with all terms and conditions of the AGREEMENT. Nothing contained in the AGREEMENT or any STATEMENT creates any contractual relationship between the subconsultants and the AIRPORT. The AIRPORT requires that all subconsultants enter into a formal agreement with the Prime Consultant that clearly lists all of the agreed upon conditions, including all required Federal Contract Provisions contained in *Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects* published by the FAA on June 19, 2018. After each subconsultant agreement is executed, the Prime Consultant is required to issue a letter to the Airport Director that certifies the sub-consultant agreement contains required federal contract provisions.

## APPENDIX A: ANTICIPATED FEDERALLY-FUNDED CIP PROJECTS

Federal Fiscal Year	Project	Estimated Cost*
2024	Taxiway A Retaining Wall Rehabilitation (Construction Phase)	\$2,226,067
	Airfield Electrical Vault Replacement (Design Phase )	\$400,000
	ARFF Vehicle Replacement	\$1,000,000
	Taxiway Hotel (Design Phase)	\$500,000
	Airport Master Plan Update	\$1,200,000
	Main Escalator to Pedestrian Bridge Replacements (Design Phase)	\$321,750
2025	Airfield Electrical Vault Replacement (Construction Phase)	\$5,200,00
	Runway 17-35 Perimeter Road (Construction Phase)	\$1,500,000
	Main Escalator to Pedestrian Bridge Replacements (Construction Phase)	\$2,692,244
	Taxiway Hotel (Construction Phase)	\$5,000,000
	Terminal Loop Road Rehabilitation and Landside Signage Upgrade (Planning)	\$200,000
2026	Glycol Recovery System (Phase I Reimbursement)	\$5,000,000
	Terminal Loop Road Rehabilitation and Landside Signage Upgrade (Construction)	\$5,000,000
	Taxiway Echo and November Rehabilitation (Design)	\$5,000,000
2027	Taxiway Echo and November Rehabilitation (Construction)	\$6,000,000
	Taxiway Juliet Rehabilitation (Design)	\$500,000

	Taxiway Mike Rehabilitation (Design)	\$500,000
	Glycol Recovery System (Phase II Reimbursement)	\$5,000,000
	Engineered Materials Arresting System (EMAS)	\$7,000,000
2028	Taxiway Juliet (Construction)	\$5,000,000
	Taxiway Mike Rehabilitation (Construction)	\$5,000,000
	Taxiway Golf and Delta Rehabilitation (Design)	\$5,000,000
	SRE Equipment Replacement	\$800,000

\*Project cost reflects total estimated cost (federal grants, state grants, and local share)

\*\*Airport Master Plan Update will be procured via separate RFQ



## APPENDIX B: ANTICIPATED NON-FEDERALLY FUNDED CIP PROJECTS

City Fiscal Year	Project
2024	Parking Garage Maintenance/Upgrades
	Rolling Stock Replacement
	Airport Operations Center – Construction
	Terminal Roof Repair - Annual Maintenance
	Landside Signage Modifications - Project Definition
	Rental Car QTA – Design
	Jet Bridge Rehabilitation - Gate 11
2025	Parking Garage Maintenance/Upgrades
	Jet Bridge Replacement – Gates 10, 11 and 14
	Terminal Roof Repair - Annual Maintenance
	Terminal Restroom Modernization - Phase I Design
	Jet Bridge 10 Upgrade
	Rental Car QTA - Construction Phase
	Rolling Stock Replacement
2026	Jet Bridge Replacement – Gates 1 and 4
	Rolling Stock Replacement
	Terminal Restroom Modernization - Phase I Construction
	Terminal Restroom Modernization - Phase II Design
	Document Management System
2027	Terminal Roadway and Curbside Sign Upgrade - Design
	Lot C Phase I Rehabilitation - Exit Canopy
	Terminal Restroom Modernization - Phase II Construction

	Employee Screening Area Refurbishment - Design and Construction
	Rolling Stock Replacement
	Jet Bridge Rehabilitation - Gate 5
2028	Terminal Roadway and Curbside Sign Upgrade - Phase I Construction
	Terminal Loop Road Rehabilitation - Design
	Lot B Rehabilitation - Design
	Jet Bridge Rehabilitation - Gates 6, 14 & 15
	Rolling Stock Replacement

## **APPENDIX C: SAMPLE PROFESSIONAL SERVICES AGREEMENT FOR AIP- FUNDED CONSULTING SERVICES**

**[CONTRACT FORM "B" –AIP FUNDED PROFESSIONAL SERVICES AGREEMENT]**

**ARTICLE I – PARTIES**

**1.1 Address**

THIS AGREEMENT by and between the City of Manchester, acting by and through its Department of Aviation at the Manchester-Boston Regional Airport (hereinafter "AIRPORT"), a municipal corporation of the State of New Hampshire (hereinafter "CITY") and **[ENTER NAME OF CONSULTANT]**, a corporation [limited liability company, as applicable] organized under the laws of the state of **[ENTER STATE OF INCORPORATION]**, and authorized to do business in the state of New Hampshire (hereinafter "CONSULTANT") is effective as of the date of countersignature by the Director of the AIRPORT (hereinafter "AGREEMENT").

The addresses of the parties, unless and until changed by 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

**Consultant**

**[ENTER CONTACT  
INFORMATION]**

The Parties agree as follows:

**1.2 Table of Contents**

The AGREEMENT includes the following parts:

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- K. TRAINING REQUIREMENTS

DRAFT



**1.3 Parts Incorporated**

All the above-described sections and **Exhibits** are incorporated into this AGREEMENT.

**1.4 Controlling Parts**

If a conflict among the **Articles** and **Exhibits** occurs, the articles control over the exhibits.

**1.5 Legal Authority**

The PARTIES have executed this AGREEMENT in multiple copies, each of which is an original. Each person signing this AGREEMENT represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this AGREEMENT. Each PARTY represents and warrants to the other that the execution and delivery of this AGREEMENT and the performance of such PARTY'S obligations hereunder have been duly authorized and that the AGREEMENT is a valid and legal agreement binding on such PARTY and enforceable in accordance with its terms.

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## ARTICLE II – DEFINITIONS

As used in this AGREEMENT, the following terms have the meanings set out below:

- 2.1 **"ACIP"** means the Airport Capital Improvement Program that is on file with the New England Region of the Federal Aviation Administration.
- 2.2 **"Acceptable"** means that performance meets or exceeds the requirements of this AGREEMENT.
- 2.3 **"Acceptance"** shall be determined by the DIRECTOR and occurs when the DIRECTOR determines that the unit of work specified under the AGREEMENT is completed consistent with industry accepted quality and completeness.
- 2.4 **"Agreement"** means the AGREEMENT, inclusive of any written amendments authorized by the DIRECTOR or designee, between the AIRPORT and CONSULTANT whereby CONSULTANT shall provide all specified work in connection with the AGREEMENT, in the manner provided by the AGREEMENT. The AGREEMENT shall include all plans, specifications, addenda, RFP/RFQ issued in conjunction with the procured goods or services.
- 2.5 **"Agreement Year"** means the current year of the agreement term as outlined in [insert Section Number]
- 2.6 **"Air Operations Area (AOA)"** means any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operations area shall include such paved and unpaved areas that are used or intended to be used for unobstructed movement of aircraft in addition to its associated runway, taxiway or apron.
- 2.7 **"Airport"** means the Manchester-Boston Regional Airport.
- 2.8 **"Basic Services"** means those services described in the Performance/Work Statement set forth in Exhibit "A."
- 2.9 **"Business Days"** means all days of a calendar year.
- 2.10 **"CIP"** means the Capital Improvement Program that is on file with the City of Manchester that serves as a statement of forecasted capitalized expenditures regardless of funding source (e.g. AIP, PFC, or Airport Cash).
- 2.11 **"Consultant"** is defined in the preamble.
- 2.12 **"Core Competency"** is defined as providing knowledge, ability, or expertise in Architectural and Engineering practices.
- 2.13 **"Director"** means the Director of the Manchester-Boston Regional Airport or their designee in writing. The AGREEMENT designates certain functions to be performed by the DIRECTOR.
- 2.14 **"FAA"** means the Federal Aviation Administration.
- 2.15 **"Furnish"** means to supply and deliver to the appropriate airport site, ready for unloading, unpacking, assembly, installation, use, documentation of OEM maintenance protocols, etc., as applicable in each instance, except as otherwise defined in greater detail.

- 2.16 **"Notice to proceed"** means a written communication from the DIRECTOR to CONSULTANT instructing CONSULTANT to begin performance.
- 2.17 **"Provide"** means furnish and install, complete, and ready for intended use, as applicable in each instance, except as otherwise defined in greater action.
- 2.18 **"Routine"** means those services that do not require emergency condition.
- 2.19 **"Statement of Work"** (SOW) is defined as the performance/work statement described in Exhibit "A."
- 2.20 **"Work"** means all services to be provided by the CONSULTANT under this AGREEMENT, specifically, without limitation, Exhibit "A".

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### ARTICLE III – DUTIES OF CONSULTANT

#### 3.1 Scope of Services

In consideration of the payment specified in this AGREEMENT, CONSULTANT shall provide all labor and materials necessary to fulfill the Scope of Work contained in Exhibit A.

#### 3.2 Coordinate Performance

CONSULTANT shall coordinate its performance with the DIRECTOR or other persons that the DIRECTOR designates. CONSULTANT shall promptly inform the DIRECTOR and other person(s) of all significant events relating to the performance of this AGREEMENT.

#### 3.3 Standard of Care

CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the SERVICES as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. CONSULTANT warrants that:

- a) it has the authority and right to enter into this AGREEMENT and any Task Order, to perform services and provide materials, information and deliverables hereunder, and that its obligations hereunder are not in conflict with any other CONSULTANT obligation;
- b) each of its employees has the proper skill, training and background necessary to accomplish their assigned tasks; and,
- c) all services will be performed in a competent and professional manner, by qualified personnel authorized, as necessary under applicable State and Federal laws to perform the work necessary to complete the SERVICES.

#### 3.4 Sensitive Security Information

CONSULTANT shall maintain in confidence, and shall cause its employees that meet 49 CFR 1520.11(a) to maintain in confidence all records, documents, and information provided to CONSULTANT by the AIRPORT for CONSULTANT's preparation of said contract documents and information, that contain and/or constitute Sensitive Security Information ("SSI") as defined by 49 C.F.R. 1520.5, including without limitation all data, plans, specifications, sketches, drawings, other renderings, individual personnel records, and all other records, documents and information that contain and/or constitute SSI. CONSULTANT shall restrict access to all such records, documents and information that contain and/or constitute SSI only to those employees of CONSULTANT who meet the requirements of 49 CFR 1520.11(a).

The unauthorized release of SSI is prohibited. All records, documents and information defined by 49 C.F.R. 1520 as SSI, or designated by the AIRPORT as SSI, shall be marked, stored, distributed and destroyed in accordance with 49 CFR 1520. SSI records, documents and information received during the term of this AGREEMENT are the property of the AIRPORT. No part of any such records or documents, or any of the information contained therein, may be photocopied or reproduced in any way except as specifically required or permitted by the terms of this AGREEMENT, or released to any person without the prior written permission of the AIRPORT subject to the requirements of 49 CFR 1520. Unauthorized possession, photocopying, reproduction, or release of such records and documents, or any portion of their contents, or failure to return the original and any copies made to the AIRPORT immediately upon request, shall constitute a material breach of this AGREEMENT, and may result in immediate termination of this AGREEMENT and/or such other action as deemed appropriate by the AIRPORT, including but not limited to referral to federal authorities.

### **3.5 Subconsultants**

Without limiting the ability of CONSULTANT to hire SUBCONSULTANTS in accordance with this AGREEMENT, the AIRPORT shall have the right to require CONSULTANT to engage SUBCONSULTANTS reasonably acceptable to CONSULTANT to perform any of the work required for the successful completion of the SERVICES or any Task Order under this AGREEMENT.

Notwithstanding the above, none of the services to be provided by CONSULTANT pursuant to this AGREEMENT shall be subcontracted or delegated, in whole or in part, to any other organization, association, individual, corporation, partnership or other such entity without the prior written approval of the AIRPORT. Upon approval by the AIRPORT for the CONSULTANT to engage a SUBCONSULTANT(s) for work contained in this AGREEMENT, the CONSULTANT shall include the name of each SUBCONSULTANT performing the task and a detailed description of the work to be performed by each SUBCONSULTANT in the Task Order. Reference to any SUBCONSULTANT in an approved Task Order executed in accordance with this AGREEMENT shall be deemed written approval by the AIRPORT of the SUBCONSULTANT, but only to the extent described in such Task Order.

CONSULTANT shall enter into a written agreement with each such SUBCONSULTANT pursuant to which each such SUBCONSULTANT agrees to be bound by the terms and conditions of this AGREEMENT. Any subcontract entered into by the CONSULTANT shall comply with applicable federal grant assurances contained in this AGREEMENT.

### **3.6 Reports**

CONSULTANT shall submit all reports and progress updates required by the DIRECTOR.

### **3.7 Invoicing**

CONSULTANT shall submit its invoices on forms approved in advance by the DIRECTOR. Each invoice must be accompanied by copies of certified time sheets and any other support documents as may be requested by the DIRECTOR. Each invoice CONSULTANT submits must be in duplicate and each copy must include required support documents. Each invoice must be identified by the Contract name and 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

### **3.8 Prompt Payment of Subconsultants**

CONSULTANT shall make timely payments to all persons and entities supplying labor, materials, services, or equipment for the performance of this AGREEMENT. CONSULTANT SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONSULTANT'S FAILURE TO MAKE THESE PAYMENTS.

CONSULTANT shall submit disputes relating to payment of MWBE sub-CONSULTANTS to arbitration in the same manner as any other disputes under the MWBE subcontract.

### **3.9 Personnel of Consultant**

CONSULTANT shall provide fully qualified personnel as specified in the CONSULTANT'S response to the RFQ. Personnel shall be of sufficient number to meet the performance

requirements set forth in Exhibit "A". Should the number of personnel offered by the CONSULTANT in their SUBMITTAL not be sufficient to meet the intent of this contract, then the CONSULTANT shall increase the number of personnel to a sufficient amount at no cost to the CITY or AIRPORT.

The CONSULTANT shall designate an on-site Project Manager to act on behalf of CONSULTANT who is authorized to make all decisions regarding the Work hereunder. Such Project Manager and any replacement Project Manager shall have a minimum of five year's project experience on similar projects procured through this contract.

The DIRECTOR may rely on any decisions made by the Project Manager as being decisions of the CONSULTANT. Such Project Manager shall not be replaced by CONSULTANT during the Term of this AGREEMENT without the prior written permission of DIRECTOR (subject to all employment laws) and the mutual agreement by the DIRECTOR and CONSULTANT of a replacement Project Manager who is satisfactory to the DIRECTOR. CONSULTANT shall replace any of its personnel or SUBCONSULTANTS, including the Project Manager or a subsequent replacement, whose work product is deemed unsatisfactory by the DIRECTOR.

### **3.10 Release**

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

### **3.11 Waiver of Damages**

Notwithstanding any other provision of this AGREEMENT, to the fullest extent permitted by law, the CITY and the AIRPORT, and collectively theirs respective agents, affiliates, directors, officers, employees, representatives, attorneys or agents shall not be liable, whether in contract, tort, negligence, strict liability or otherwise, for any lost or prospective profits or any other special, punitive, exemplary, indirect, incidental or consequential losses or damages arising out of or in connection with this AGREEMENT.

### **3.12 Indemnification**

CONSULTANT AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY AND THE AIRPORT 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 THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- a) CONSULTANT'S AND/OR ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, OR SUB CONSULTANT'S ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- b) THE CITY'S AND CONSULTANT'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONSULTANT IS IMMUNE FROM LIABILITY OR NOT; AND THE CITY'S AND CONSULTANT'S ACTUAL OR ALLEGED STRICT PRODUCTS

LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONSULTANT IS IMMUNE FROM LIABILITY OR NOT.

- c) CONSULTANT SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONSULTANT'S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. CONSULTANT SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.
- d) CONSULTANT SHALL REQUIRE ALL OF ITS SUB CONSULTANTS AND THIRD-TIER SUB CONSULTANTS TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.
- e) CONSULTANT (AND ALL OF ITS SUBCONSULTANTS AND THIRD-TIER SUBCONSULTANTS) TO CARRY INSURANCE WHICH EXPRESSLY COVERS THEIR INDEMNIFICATION OBLIGATIONS UNDER THE AGREEMENT, AND TO PROVIDE THE AIRPORT WITH PROOF OF THE SAME.

### **3.13 Indemnification Procedures**

If the CITY or CONSULTANT 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. The notice must include the following:

- a) A description of the indemnification event in reasonable detail;
- b) The basis on which indemnification may be due; and,
- c) The anticipated amount of the indemnified loss.

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

### **3.14 Defense of Claims**

CONSULTANT may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the CITY. CONSULTANT shall then control the defense and any negotiations to settle the claim. Within ten (10) days after receiving written notice of the indemnification request, CONSULTANT must advise the CITY as to whether it will defend the claim. If CONSULTANT does not assume the defense, then the CITY shall assume and control the defense, and all defense expenses constitute an indemnified loss.

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

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

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

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

- a) CONSULTANT SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE WORK PRODUCT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.
- b) WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, THE CONSULTANT SHALL, AT ITS OWN EXPENSE, OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE WORK PRODUCT, SOFTWARE, PROCESS, AND DOCUMENTS.

### 3.16 Insurance

CONSULTANT shall maintain in effect certain insurance coverage, which is described as follows:

COVERAGE	LIMIT OF LIABILITY
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by Accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$2,000,000 each Occurrence, and \$5,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability Coverage	\$1,000,000 per occurrence; \$2,000,000 aggregate
Cyber Security	\$5,000,000 per occurrence; \$10,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$5,000,000.00
<b>Aggregate Limits are per 12-month policy period unless otherwise indicated.</b>	



At all times during the term of this AGREEMENT and any extensions or renewals, CONSULTANT shall provide and maintain insurance coverage that meets the AGREEMENT requirements. Prior to beginning performance under this AGREEMENT or any extensions thereof, or at any time upon the DIRECTOR'S request, or each time coverage is renewed or updated, the CONSULTANT shall furnish to the DIRECTOR current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. CONSULTANT shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. CONSULTANT waives any claim it may have for premiums or deductibles against the CITY, its officers, agents, or employees. CONSULTANT shall also require all SUBCONSULTANTS whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

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, or (b) waive or estop the CITY from asserting its rights to terminate this 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.

Required Coverage. The AIRPORT shall be an Additional Insured under this 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. CONSULTANT waives any claim or right of subrogation to recover against the CITY, its officers, agents, or employees. Each of CONSULTANT'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 this AGREEMENT. If professional liability coverage is written on a "claims made" basis, CONSULTANT shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this AGREEMENT with a duration of two years after substantial completion.

Notice. CONSULTANT SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, CONSULTANT shall provide other suitable policies in order to maintain the required coverage. If CONSULTANT does not comply with this requirement, the DIRECTOR, at his or her sole discretion, may immediately suspend CONSULTANT from any further performance under this AGREEMENT and begin procedures to terminate this AGREEMENT for default.

### **3.17 Confidentiality**

CONSULTANT, its agents, employees, CONSULTANTS, and SUBCONSULTANTS shall hold all AIRPORT information, data, and documents (collectively, "the Information") that they receive, prepare, or to which they have access, in strictest confidence. CONSULTANT, its agents, employees, CONSULTANTS, and SUBCONSULTANTS shall not disclose, disseminate, or use the information unless the DIRECTOR authorizes it in writing. CONSULTANT shall establish procedures to ensure confidentiality of the Information and to prevent its unauthorized use and disclosure. CONSULTANT shall obtain written agreements from its agents, employees, and

SUBCONSULTANTS who perform work under this AGREEMENT, which bind them to the terms in this paragraph.

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

Any interest of CONSULTANT or its SUBCONSULTANTS in drawings, plans, specifications, studies, reports, memoranda, computations sheets, data, software, or other documents prepared by CONSULTANT or its SUBCONSULTANTS in connection with this AGREEMENT is or shall become property of and shall be transmitted to the AIRPORT. However, CONSULTANT may retain and use copies for reference and as documentation of its experience and capabilities. The AIRPORT shall have the non-exclusive right to use or permit the use of all such data, software, related documentation, and papers and any ideas or methods represented thereby at any time without additional compensation to the CONSULTANT.

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 CONSULTANT or its subconsultants in connection with the Works performed under this AGREEMENT shall be works for hire as defined under Title 17 of the United States Code, as may be amended, and all copyrights in such works are the property of the AIRPORT. If it is determined that any works created by CONSULTANT or its SUBCONSULTANTS under this AGREEMENT are not works for hire under U.S. law, CONSULTANT hereby assigns all copyrights to such works to the AIRPORT. With the approval of the DIRECTOR, the CONSULTANT may retain and use copies of such works for reference and as documentation of its experience and capabilities.

**3.19 Licenses and Permits**

CONSULTANT shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by this AGREEMENT, any statute, ordinance, rule, or regulation, whether state, federal, or local at no cost to the AIRPORT. CONSULTANT shall immediately notify the DIRECTOR of any suspension, revocation, or other detrimental action against the holder of any such required licenses or certifications and the CONSULTANT shall immediately remove such on-site employee(s), agent(s) or SUBCONSULTANT(s) from performing any further services under the AGREEMENT until such license is reinstated and in good standing.

**3.20 Compliance with Laws**

CONSULTANT shall comply with all applicable local, state and federal laws and regulations; the Manchester City Charter and Code of Ordinances; and Airport Rules and Regulations.

**3.21 Airport Security and Badging**

CONSULTANT shall comply with all 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 CONSULTANT'S or any of its agents 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 CONSULTANT'S operations. Within 10-days of notification in writing, CONSULTANT shall reimburse the AIRPORT for any fine or penalty assessed against the AIRPORT because of CONSULTANT'S or any of its agents non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.

All on-site personnel of CONSULTANT, including SUBCONSULTANTS, who perform services under this AGREEMENT are required to undergo a fingerprint-based criminal history records check. Fingerprints will be collected at the Airport Badging Office and submitted electronically for investigation. At CONSULTANT'S expense, CONSULTANT shall obtain airport security

badges for its personnel performing services on-site, including its SUBCONSULTANTS' personnel. On-site personnel shall wear identification badges at all times while on AIRPORT property. Costs for the fingerprint-based criminal history records checks are reflected in the cost of the badges. CONSULTANT is responsible for the cost of badges, including replacements thereof at no cost to the AIRPORT. CONSULTANT personnel and its SUBCONSULTANTS losing badges will be charged for replacement badges at the then current rate at no cost to the AIRPORT.

### **3.22 Conflicts of Interest**

If a potential or actual conflict of interests arises between the AIRPORT'S interests and the interests of other clients CONSULTANT represents, the CONSULTANT shall immediately notify the DIRECTOR by certified letter and request consent. The AIRPORT shall be deemed to consent to the conflict unless the AIRPORT sends a written notice that the AIRPORT declines to consent within 3 business days after the AIRPORT receives the notice. If the AIRPORT does not consent, the CONSULTANT shall immediately take steps to resolve the conflict.

### **3.23 Training Requirements**

CONSULTANT and SUBCONSULTANTS personnel shall abide by the City of Manchester Drug and Alcohol Policy, Sexual Harassment Policy, and Workplace Violence Policy. If CONSULTANT has similar policies within their organization, CONSULTANT shall submit proof of training to the DIRECTOR by complete EXHIBIT K and submit to the DIRECTOR within 60 days of Contract execution. CONSULTANT shall annually further provide documentary evidence to the DIRECTOR that any legally mandated recurrent training is provided to staff assigned to work at the AIRPORT. Furthermore, CONSULTANT shall provide documentary evidence to the DIRECTOR that any new employee of CONSULTANT that is assigned to work at the AIRPORT has received required training within 60 days of the employee being assigned to work at the AIRPORT.

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## ARTICLE IV – DUTIES OF AIRPORT

### 4.1 Fee Schedule

Subject to all the terms and conditions of this AGREEMENT, the AIRPORT shall pay to CONSULTANT, and CONSULTANT accepts the fees specified in Exhibit "B," Fee Schedule, paid monthly, based upon invoices submitted to the DIRECTOR from the CONSULTANT indicating in detail the Work performed by CONSULTANT (and its SUBCONSULTANTS) for the invoiced month.

### 4.2 Payment Terms

All CONSULTANT invoices are subject to approval by the DIRECTOR or designee and are due and payable within thirty (30) days after receipt and approval by the DIRECTOR or designee. The DIRECTOR or designee shall have the continuing right to request and receive from CONSULTANT evidence which validates CONSULTANT'S invoices. All payments must be made by check made payable to CONSULTANT. The AIRPORT will not unreasonably delay or withhold payment or approval of any invoice. Neither payments made nor approval of invoices or services by the DIRECTOR or designee shall be construed as final acceptance or approval of that part of CONSULTANT'S services to which such payment or approval relates. Such payments do not relieve CONSULTANT of any of its obligations under this AGREEMENT.

### 4.3 Withholding of Payment for Deficient Work

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

### 4.4 Taxes

The AIRPORT is exempt from payment of Federal Excise and Transportation Tax. CONSULTANT'S invoices to the AIRPORT shall not include assessments of any of these taxes. The DIRECTOR will furnish the CITY'S exemption certificate and federal tax identification number to CONSULTANT if requested.

### 4.5 Method of Payment - Disputed Payments

If the AIRPORT disputes any items in an invoice CONSULTANT 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 CONSULTANT of the dispute and request remedial action. After the dispute is settled, CONSULTANT shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

### 4.6 Access to Site

Subject to FAA, TSA and AIRPORT rules and regulations, the CONSULTANT may enter and leave Work sites at all reasonable times without charge. CONSULTANT and its employees and SUBCONSULTANTS may use the common areas and roadways at the AIRPORT that are proximate to the Work Site. This excludes parking for CONSULTANT'S personnel and SUBCONSULTANTS and does not extend to any restricted area of the AIRPORT, including without limitation, the AOA, unless the person is properly badged or under AIRPORT escort.

CONSULTANT shall repair any damage caused by it or its employees, suppliers or SUBCONSULTANTS as a result of their use of the common areas. The CONSULTANT assumes all liability for any unauthorized incursions into restricted areas at the AIRPORT and will hold the AIRPORT harmless from any penalties or fines either the AIRPORT or the CONSULTANT receives for such incursions.

**4.7 Key Control**

CONSULTANT shall keep a record of all keys distributed to its employees and SUBCONSULTANTS and shall return the same keys issued at conclusion of the AGREEMENT. Should CONSULTANT not return the same keys issues, then the CONSULTANT shall be held liable for any costs incurred by the AIRPORT for re-coring, or other such actions as may be necessary to ensure the security of the airport, of any door, gate, or other security device leading to, from, or within the work site.

AIRPORT personnel and CONSULTANT its agents and SUBCONSULTANTS shall, at all times, have access, to AIRPORT personnel, to the Work Site. The CONSULTANT shall provide whatever is necessary to facilitate such access, including but not limited to, personnel and equipment. Persons authorized by the AIRPORT to access the Work Site shall not interfere with or jeopardize the CONSULTANT'S responsibility for safely performing Work under this AGREEMENT.

**4.8 Proprietary Data**

The AIRPORT does not anticipate the receipt of proprietary data/material related to this proposal. However, if the CONSULTANT provides same, the AIRPORT will handle in strictest confidence all material received as part of CONSULTANT'S performance under this AGREEMENT that is clearly marked as "proprietary." The AIRPORT will, upon request of the CONSULTANT, enter a confidentiality agreement with CONSULTANT that will pertain to the content of the CONSULTANT'S proprietary information and will apply throughout the period during which this AGREEMENT is in effect.

**4.9 Exercise of Contract Responsibilities**

The AIRPORT, in exercising its responsibilities and authorities under the AGREEMENT, does not assume any duties or responsibilities to any SUBCONSULTANT or supplier, nor does AIRPORT assume any duty of care to CONSULTANT, its SUBCONSULTANTS or suppliers, except as may be expressly set forth herein or by law. However, AIRPORT shall be entitled to performance and enforcement of CONSULTANT'S obligations under this AGREEMENT intended to facilitate performance of the AIRPORT'S duties.

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## ARTICLE V – TERM AND TERMINATION

### 5.1 Contract Term

This AGREEMENT is effective on the Effective Date and continues for [insert term in writing followed by number of years in parenthesis] consecutive years from the date set forth in the Notice to Proceed, unless sooner terminated under this AGREEMENT. Performance begins on the date specified in the Notice to Proceed issued by the DIRECTOR. The CONSULTANT acknowledges that time is of the essence if this AGREEMENT.

### 5.2 Renewals

Upon expiration of the initial Term, this AGREEMENT may be renewed at the request of the DIRECTOR for [enter in number of option years in writing followed by number of years in parenthesis]. If the DIRECTOR elects to not renew this AGREEMENT, the DIRECTOR shall notify CONSULTANT in writing of non-renewal at least thirty (30) days before the expiration of the then current term.

### 5.3 Termination for Convenience by City

The DIRECTOR may terminate this AGREEMENT at any time without cause by giving thirty (30) days written notice to CONSULTANT. The AIRPORT'S right to terminate this AGREEMENT hereunder is in addition to any and all other rights and remedies hereunder.

Duties of CONSULTANT Upon Notice of Termination for Convenience. On receiving the notice, CONSULTANT shall, unless the notice directs otherwise, immediately discontinue all Work under this AGREEMENT and cancel all existing orders and subcontracts that are chargeable to this AGREEMENT. As soon as practicable after receiving the termination notice, the CONSULTANT shall submit an invoice showing in detail the services performed under this AGREEMENT up to the termination date. The AIRPORT shall then pay the fees to CONSULTANT for services actually performed, but not already paid for, in the same manner as prescribed in Article IV, Section 1.02 unless the fees exceed the allocated funds remaining under this AGREEMENT.

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

### 5.4 Termination for Cause by City

If CONSULTANT fails to perform under this AGREEMENT, the DIRECTOR may terminate this AGREEMENT with said CONSULTANT.

Written Notice of Termination for Cause and CONSULTANT Cure. If the AIRPORT determines that the performance of the CONSULTANT is not meeting expectations, and provided the AIRPORT has given time for the CONSULTANT to cure performance-related issues; then the DIRECTOR may, but is not obligated to, deliver a written notice to CONSULTANT describing the default and the termination date. The DIRECTOR may, but is not obligated to, extend the termination date to a later date. If the DIRECTOR allows CONSULTANT to cure the default and CONSULTANT does so to the DIRECTOR'S satisfaction before the termination date, then the termination is ineffective. If CONSULTANT does not cure

the default before the termination date, then the DIRECTOR may terminate this AGREEMENT on the termination date, with no further action required by the AIRPORT, except as provided in Section 5.03 of this Article.

To effect final termination, the DIRECTOR must notify CONSULTANT in writing. After receiving the notice, CONSULTANT shall, unless the notice directs otherwise, immediately discontinue all services under this AGREEMENT, and promptly cancel all orders or subcontracts chargeable to this AGREEMENT, as provided in Section 5.03 of this Article.

## **5.5 Default**

Default by CONSULTANT occurs if:

- a) CONSULTANT fails to perform any of its duties under this AGREEMENT; and/or,
- b) CONSULTANT becomes insolvent; and/or,
- c) All or a substantial part of CONSULTANT'S assets are assigned for the benefit of its creditors; and/or,
- d) A receiver or trustee is appointed for the CONSULTANT.

If CONSULTANT defaults under this AGREEMENT, the DIRECTOR may either terminate this AGREEMENT or allow CONSULTANT to cure the default as provided in Article VI. The AIRPORT' right to terminate this AGREEMENT for CONSULTANT'S default is cumulative of all other rights and remedies which exist hereunder.

## ARTICLE VI – FEDERAL CONTRACT PROVISIONS

### 6.1 Maintenance of and Access to Records and Reports

The CONSULTANT must maintain an acceptable cost accounting system. The CONSULTANT agrees to provide the AIRPORT, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the CONSULTANT which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The CONSULTANT agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed. In light of the federal funds involved in the AIRPORT'S performance of the AGREEMENT, the following federal laws, assurances, certifications, and disclosures are incorporated into and made a part of the AGREEMENT, and by the execution of the AGREEMENT, the CONSULTANT agrees to comply with same, and for breach of any of which the CONSULTANT shall be in default of the AGREEMENT.

### 6.2 Breach of Contract Terms

Any violation or breach of terms of this contract on the part of the Consultant or its SUBCONSULTANTS may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

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

The duties and obligations imposed by the AGREEMENT and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

### 6.3 Civil Rights – Title VI Assurances

Title VI of the Civil Rights Act of 1964, as amended, (Title VI) prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance.

#### **Compliance with Nondiscrimination Requirements**

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

1. **Compliance with Regulations:** The CONSULTANT (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of SUBCONSULTANTS, including procurements of materials and leases of equipment. The CONSULTANT will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including



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

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

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

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

1. 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);
2. 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);
3. 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);
4. 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;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);

6. 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);
7. 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 CONSULTANTS, whether such programs or activities are Federally funded or not);
8. 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;
9. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. 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;
11. 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);
12. 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).

#### **6.4 Clean Air and Water Pollution Control**

CONSULTANT agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The CONSULTANT agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. CONSULTANT must include this requirement in all subcontracts that exceeds \$150,000.

#### **6.5 Certification of Consultant Regarding Debarment**

By submitting a bid/proposal under this solicitation, the consultant certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

##### **CERTIFICATION OF LOWER TIER CONSULTANTS REGARDING DEBARMENT**

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offerer /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

#### **6.6 Disadvantaged Business Enterprise**

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

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

**Prompt Payment (§26.29)** – The CONSULTANT agrees to pay each SUBCONSULTANT under this AGREEMENT for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment. The CONSULTANT agrees further to return retainage payments to each SUBCONSULTANT within thirty (30) days after the SUBCONSULTANT's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the SUBCONSULTANT. This clause applies to both DBE and non-DBE SUBCONSULTANTS.

#### **6.7 Texting When Driving**

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

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

#### **6.8 Certification Regarding Lobbying**

The CONSULTANT certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal,

amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

#### **6.9 Occupational Safety and Health Act of 1970**

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

#### **6.10 Termination for Convenience**

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

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

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

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

#### **6.11 Equal Opportunity Clause**

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

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

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

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

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

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

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

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

#### **6.12 Certification of Consultant Regarding Tax Delinquency and Felony Convictions**

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if

awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

### **CERTIFICATIONS**

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

### **Term Definitions**

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

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

### **Note:**

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

### **6.13 Trade Restriction Certification**

By submission of award, the CONSULTANT certifies that with respect to this solicitation and any resultant AGREEMENT, the CONSULTANT –

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

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

The CONSULTANT must provide immediate written notice to the AIRPORT if the CONSULTANT learns that its certification or that of a SUBCONSULTANT was erroneous when

submitted or has become erroneous by reason of changed circumstances. The CONSULTANT must require SUBCONSULTANTS provide immediate written notice to the CONSULTANT if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no AGREEMENT shall be awarded to a CONSULTANT or SUBCONSULTANT:

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

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

The CONSULTANT agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The CONSULTANT may rely on the certification of a prospective SUBCONSULTANT that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the CONSULTANT has knowledge that the certification is erroneous.

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

#### **6.14 Right to Inventions**

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the AIRPORT in any resulting invention as established by 37 CFR 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This AGREEMENT incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. CONSULTANT must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

#### **6.15 Veteran's Preference**

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



## ARTICLE VII – MISCELLANEOUS

### 7.1 Independent Consultant

CONSULTANT is an independent CONSULTANT and shall perform the services provided for in this AGREEMENT in that capacity. The AIRPORT has no control or supervisory powers over the manner or method of CONSULTANT'S performance under this AGREEMENT. All personnel CONSULTANT uses or provides are its employees or SUBCONSULTANTS and not the AIRPORT'S employees, agents, or SUBCONSULTANTS for any purpose whatsoever. CONSULTANT is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

### 7.2 No Joint Venture

Nothing herein shall be construed to imply a joint venture or principal and agent relationship between the AIRPORT and CONSULTANT, and neither party shall have any right, power, or authority to create any obligation, express or implied, on behalf of the other.

### 7.3 Force Majeure

Timely performance by both parties is essential to this AGREEMENT. However, neither party is liable for reasonable delays in performing its obligations under this AGREEMENT to the extent the delay is caused by Force Majeure that directly impacts the AIRPORT or CONSULTANT. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this AGREEMENT. Force Majeure means: fires, drought, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or CONSULTANT, 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 does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle CONSULTANT to extra Reimbursable Expenses or payment.

This relief is not applicable unless the affected party does the following:

- a) Uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- b) Provides the other party with prompt written notice of the cause and its anticipated effect.

The DIRECTOR will review claims that a Force Majeure that directly impacts the CITY or CONSULTANT has occurred and render a written decision within 14 days. The decision of the DIRECTOR is final. The CITY may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this AGREEMENT by the CITY or AIRPORT.

If the Force Majeure continues for more than 14 days from the date performance is affected, the DIRECTOR may terminate this AGREEMENT by giving 7 days' written notice to CONSULTANT. This termination is not a default or breach of this AGREEMENT by the CONSULTANT.



CONSULTANT WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.

**7.4 Severability**

If any part of this AGREEMENT is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

**7.5 Entire Agreement**

This AGREEMENT merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this AGREEMENT.

**7.6 Written Amendment**

Unless otherwise specified elsewhere in this AGREEMENT, this AGREEMENT may be amended only by written instrument executed on behalf of the AIRPORT and CONSULTANT. The DIRECTOR is only authorized to perform the functions specifically delegated to him or her in this AGREEMENT.

**7.7 Applicable Laws**

This AGREEMENT is subject to the laws of the State of New Hampshire, the City of Manchester Charter and Charter Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this AGREEMENT is Hillsborough County, New Hampshire.

**7.8 Notices**

All notices to either party to the AGREEMENT must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party identified in Article I of this AGREEMENT or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the PARTY giving the notice.

**7.9 Captions**

Captions contained in this AGREEMENT are for reference only, and, therefore, have no effect in construing this AGREEMENT. The captions are not restrictive of the subject matter of any section in this AGREEMENT.

**7.10 Non-Waiver**

If either party fails to require the other to perform a term of this AGREEMENT, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this AGREEMENT.

An approval by the DIRECTOR, or by any other employee or agent of the CITY, of any part of CONSULTANT'S performance does not waive compliance with this AGREEMENT or establish

a standard of performance other than that required by this AGREEMENT and by law. The DIRECTOR is not authorized to vary the terms of this AGREEMENT.

**7.11 Inspections and Audits**

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

**7.12 Enforcement**

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

**7.13 Ambiguities**

If any term of this AGREEMENT is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

**7.14 Survival**

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

**7.15 Publicity**

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

**7.16 Parties in Interest**

This AGREEMENT does not bestow any rights upon any third party but binds and benefits the AIRPORT and CONSULTANT only.

**7.17 Successors and Assigns**

This AGREEMENT binds and benefits the PARTIES 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 7.18 below. This AGREEMENT does not create any personal liability on the part of any officer or agent of the AIRPORT or CITY.

**7.18 Business Structure and Assignments**

CONSULTANT shall not assign this AGREEMENT at law or otherwise or dispose of all or substantially all of its assets without the DIRECTOR'S prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest. In the case of such an assignment, CONSULTANT shall immediately furnish the AIRPORT 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.

CONSULTANT shall not delegate any portion of its performance under this AGREEMENT without the DIRECTOR'S written consent.

**7.19 Dispute Resolution**

Should any dispute arise under this AGREEMENT respecting the true value of any Work performed, of any Work omitted, of any extra Work which the CONSULTANT may be required to perform, time extensions, respecting the size of any payment to the CONSULTANT during the performance of the AGREEMENT, or of compliance with AGREEMENT provisions, said dispute shall be decided by the DIRECTOR whose decision shall be final and conclusive. If the CONSULTANT should disagree with the DIRECTOR'S decision, the CONSULTANT'S sole and exclusive remedy is to file a claim in accordance with this Section. The CONSULTANT shall diligently prosecute the disputed Work to final completion. The provisions of this paragraph survive termination or completion of this AGREEMENT. CONSULTANT shall bear all costs incurred in the preparation and submission of any disputes.

**7.20 Alternative Dispute Resolution**

In the event mediation is not successful, the PARTIES may, prior to any legal action, agree upon another method of Alternate Dispute Resolution.

During the course of such negotiations, mediation, or any other Alternate Dispute Resolution process that may be mutually agreed upon, the PARTIES agree that all Work hereunder shall be continued without interruption.

Unless otherwise specified elsewhere in this AGREEMENT, the rights and remedies contained in this AGREEMENT are not exclusive but are cumulative of all rights and remedies which exist now or in the future. Neither PARTY may terminate its duties under this AGREEMENT except in accordance with its provisions.

**7.21 Consultant Indebtedness to City**

IF CONSULTANT, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT OWNED TO THE CITY OF MANCHESTER OR STATE OF NEW HAMPSHIRE, IT SHALL IMMEDIATELY NOTIFY THE DIRECTOR IN WRITING. IF THE DIRECTOR BECOMES AWARE THAT CONSULTANT HAS INCURRED A DEBT, THE DIRECTOR SHALL IMMEDIATELY NOTIFY CONSULTANT IN WRITING. IF CONSULTANT 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 CONSULTANT UNDER THIS AGREEMENT, AND CONSULTANT WAIVES ANY RECOURSE THEREFOR.

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



MANCHESTER-BOSTON  
REGIONAL AIRPORT

[ENTER CONSULTANT NAME]

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attest

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attest

\_\_\_\_\_  
Date

DRAFT

## **APPENDIX D: RESERVED**

## **APPENDIX E: NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

### **Timetables**

Goals for minority participation for each trade: **3.7%**

Goals for female participation in each trade: **3.7%**

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

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60. Compliance with the goals will be measured against the total work hours performed. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

As used in this notice and in the contract resulting from this solicitation, the "covered area" is City of Manchester, Hillsborough County New Hampshire.

## **APPENDIX F: CERTIFICATIONS**

**PLEASE COMPLETE, SIGN, NOTARIZE AND INSERT THE FOLLOWING CERTIFICATIONS INTO YOUR SUBMITTAL. THE AIRPORT WILL CONSIDER STATEMENTS THAT FAIL TO INCLUDE COMPLETED CERTIFICATIONS AS NON-RESPONSIVE AND SUCH SUBMITTALS WILL NOT BE CONSIDERED.**

### **CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT**

By submitting a proposal under this solicitation, the offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction. Further, the offeror certifies that any lower tier participant contained in this SOLICITATION is not presently debarred or otherwise disqualified from participation in federally assisted projects resulting from this procurement action.

**CERTIFICATION:**

**NOTARY/ATTESTATION:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title



## CERTIFICATION REGARDING LOBBYING

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

CERTIFICATION:

NOTARY/ATTESTATION:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

## CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

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

### Certifications

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

### Note

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

### Term Definitions

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

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

CERTIFICATION:

NOTARY/ATTESTATION:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

## TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

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

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

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

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

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

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

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous

certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

CERTIFICATION:

NOTARY/ATTESTATION:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title