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## AIRPORT CONSULTING SERVICES MASTER CONTRACT

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This Agreement, effective as of this **9th** day of **April 2024**, is by and between:

CITY OF HAWTHORNE, HAWTHORNE MUNICIPAL AIRPORT hereinafter referred to as the **SPONSOR** AND **COFFMAN ASSOCIATES, INC.** hereinafter referred to as the **CONSULTANT FOR THE PURPOSE** of providing airport consulting services for a full range of aviation development needs for the HAWTHORNE MUNICIPAL AIRPORT , including, but not necessarily limited to, airport master planning services including airport layout plans, NEPA and CEQA environmental documentation and assessments, categorical exclusion related to Federal Projects, airport noise studies and land use compatibility planning, financial evaluations, benefit/cost analysis, grant administration services for FAA and Caltrans funded projects (including grant applications and grant reimbursement requests), coordination with sponsor and FAA on grant projects, assistance with land acquisition programs and special services as defined in Federal Aviation Administration (FAA) Advisory Circular 150/5100-14E (Change 1), Section 1.5.

The Sponsor and Consultant do hereby mutually agree to the following:

### ARTICLE ONE - SERVICES AND RESPONSIBILITIES

**1.1 Employment of the Consultant.** In consideration of the mutual promises contained in this Agreement, the Sponsor engages the Consultant to render airport consulting services in furtherance of the Sponsor's development, operation, and management of airports under the control of the Sponsor in accordance with all the terms and conditions contained in this Agreement, and pursuant to Authorization(s) of Services issued pursuant to this Agreement for specific projects, which Authorization(s) shall be attached to and by this reference made a part of this Agreement.

**1.2 Scope of Services.** The Consultant shall do, perform, and carry out, or cause to be done, performed, and carried out, the services generally outlined below and specifically indicated in future task orders to be incorporated by reference hereto. In providing services under this Agreement, the Consultant will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. To assist it in doing, performing, and carrying out the services, the Consultant is authorized to utilize the services of independent contractors, consultants, and subconsultants, when such services are warranted and agreed upon by the Sponsor.

- (a) **General Services.** The Consultant shall render services as the Sponsor's airport consultant, giving consultation and advice as needed. The Consultant shall provide general project administration, financial, and management services, including, but not necessarily limited to, consultation regarding priority

determination, funding sources, and scheduling of work for the design and construction of airport maintenance and development projects.

- (b) For all services not covered under the above general services, separate Authorization of Services will be prepared as required. Each Authorization of Services for engineering and/or related studies shall set forth the specific services to be performed; the time limits, if any, within which such services are to be performed; the compensation to be paid the Consultant for its services; and other special conditions or provisions which apply to the particular study and are not addressed elsewhere in this Agreement. The Consultant may elect not to perform any services before execution of such an Authorization of Services.
- (c) **Airport Engineering and Construction Observation Services.** The Consultant shall assist the Sponsor in determining the extent of engineering projects and shall perform the phases of preliminary design, final design, bidding, and construction administration/observation. Specific engineering services will be included under a Scope of Services in an attached Authorization of Services. One or more separate Work Orders will be prepared for each project and when signed by the parties, becomes a part of this Agreement. Each Work Order shall set forth, in addition to the specific services to be performed in connection with the project described therein, the time limits, if any, within which such services are to be performed; subconsultants to be utilized; the compensation to be paid the Consultant for its services; and any other special conditions or provisions which apply to the subject project and are not addressed elsewhere in this Agreement. The Consultant may elect not to perform any services before execution of an Authorization of Services.

**1.3 Responsibility of the Consultant.** The Consultant shall be responsible for the quality, technical accuracy, and the coordination of all services provided by the Consultant under this Agreement.

**1.4 Responsibility of the Sponsor.** The Sponsor shall cooperate with the Consultant by making a diligent effort to provide everything reasonably necessary for the Consultant to be able to provide its services, including all previous plans, drawings, specifications and design and construction standards (on the accuracy of which the Consultant may rely in performing its services); assistance in obtaining necessary access to public and private lands; legal, accounting, and insurance information required for various projects; and necessary permits and approval of governmental authorities or other individuals.

**1.5 Subcontracts.** At the time subcontracted services are anticipated, the Consultant shall notify the Sponsor of the nature of and need for such services and identify the proposed subcontracting firm. The Consultant must receive approval in writing from the Sponsor prior to utilization of a sub consultant. The Sponsor's approval will not be withheld unreasonably.

**1.6 Time of Performance.** The general services of the Consultant shall be available on a continuous basis for a period of five (5) years with a maximum not exceed three (3) Million over the period of this agreement commencing as of the effective date of this Agreement set forth above. Specific services described in all attached Authorization of Services shall be undertaken and completed in the sequence and timeframe agreed upon and specified in each Authorization of Services. It is understood that specific services begun during the Time of Performance as outlined above may require the services of the Consultant beyond the termination date of this Agreement, in which case the provisions of this Agreement will remain in effect until the specific services are complete.

## **ARTICLE TWO - COMPENSATION AND METHOD OF PAYMENT**

**2.1 Compensation.** All compensation for services rendered by the Consultant shall be based upon criteria established below which relate to the type of services provided and must be billed through the Consultant.

- (a) **General Services.** Compensation for general services authorized by the Sponsor shall be based upon agreement between the Sponsor and the Consultant. General services may be included in the Consultant's scope of services. The Consultant and any of its subconsultants must provide hourly rate schedules which will be approved by and placed on file with the Sponsor. Such hourly rate schedules will establish a billing note for each employee category which includes direct salary, overhead, and profit and shall constitute the full and complete compensation per hour of services performed by the Consultant. Eligible expenses shall be reimbursed by the Sponsor based upon submittal of expense reports and/or receipts if requested. All eligible expenses will be outlined and generally approved by the Sponsor beforehand and will include only non-overhead items directly related to the services performed, such as, but not limited to, transportation, subsistence, reproduction of documents, computer costs, but not purchases of same and all purchases which become the property of the Sponsor. The Consultant may submit revised hourly rate schedules when changes occur and adjustments are necessary, provided that such changes are approved by the Sponsor and no other adjustments have been approved during a period of no less than six (6) months prior to the requested adjustment. The Consultant's 2013 rate schedule is attached hereto as Exhibit "A".
- (b) **Project Services.** Compensation for services rendered by the Consultant shall be negotiated with the Sponsor and formally agreed to in a Work Order that will become an amendment to this Agreement.

A Work Order shall include labor projections by task and will result in a lump sum fee for the service, unless otherwise specified. This fee will constitute full and complete compensation for services performed by the Consultant and/or its subconsultants.

**2.2 Method of Payment.** The Sponsor shall pay the Consultant pursuant to the agreed-upon rate schedule the appropriate rate or fixed price amount for services rendered as described in Paragraph 2.1 of this Agreement only after the Consultant has specified that it has performed the services and is entitled to the amount requisitioned under the terms of this Agreement.

- (a) General Services. For general services rendered through authorization from the Sponsor, the Consultant shall submit a requisition for payment outlining actual hours and expenses incurred once the services are performed or at monthly intervals. Payments shall be subject to receipt of requisitions for payment from the Consultant specifying that it has performed the services and is entitled to the full amount requisitioned under the terms of this Agreement.
- (b) Major Project Services. For services rendered under an Authorization of Services, the Sponsor shall pay to the Consultant not more than the fixed-fee amount set out in the particular Authorization of Services. Payment shall be at monthly intervals subject to receipt of requisitions for payment from the Consultant specifying that it has performed the services and is entitled to the full amount requisitioned under the terms of the Authorization of Services and this Agreement. Requisitions for payment will be based upon the percentage of the Consultant's services actually completed during the monthly billing period in relation to all services to be performed under that particular Authorization of Services.

**2.3 Consultant Responsibilities for Compensation.** The Consultant shall prepare monthly invoices and progress reports which clearly indicate the progress to date and the amount of compensation due by virtue of that progress. All requisitions for payment shall be for services completed unless otherwise agreed to by the Sponsor. The Consultant shall also prepare the necessary forms and Requisitions for Payment under the State of California and/or Federal project grant application requirements.

**2.4 Billing Address.** All billing will be to the \_\_\_\_\_ at location or electronically \_\_\_\_\_/\_\_\_\_\_

**2.5 Sponsor Responsibilities for Compensation.** The Sponsor agrees to pay the Consultant's invoices net upon receipt. At no time will payment of requisitions exceed thirty (30) days from the date of the invoice without notification to the Consultant. It is expressly understood that the Sponsor has the right to withhold payment on an invoice if it believes that the Consultant has not performed the requisitioned services in a satisfactory manner. If the Sponsor decides to withhold payments to the Consultant for any reason, it must provide written notification and an explanation to the Consultant within ten (10) days of the date of the invoice. If any payments are not made when due,

then the Consultant may suspend services under this Agreement until payment has been made in full or other satisfactory arrangements have been made.

**2.6 Notice.** All notices or demands are deemed to have been given or made when delivered in person or mailed by certified, registered, or express mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective parties as follows:

Sponsor:

**Akbar Farokhi  
Attn: Director of Public Works  
City of Hawthorne**

Consultant:

**Kory Lewis  
Coffman Associates, Inc.  
12920 Metcalf Ave., Suite 200  
Overland Park, KS 66213**

The address to which any notice or demand may be given to either party may be changed by written notice.

### **ARTICLE THREE - CHANGES TO THE SCOPE OF SERVICES**

The Sponsor may, at any time and by written order, make changes in the services to be performed under this Agreement and such changes must be agreed to in writing by both parties. If such changes cause an increase or decrease in the Consultant's cost or time required for performance of any services under this Agreement, then an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly. Any claim of the Consultant for adjustment under this Article Three must be submitted in writing within thirty (30) days from the date of receipt by the Consultant of the notification of change.

### **ARTICLE FOUR - TERMINATION OF THE AGREEMENT**

The Sponsor may, by written notice to the Consultant given at least thirty (30) days in advance, terminate this Agreement in whole or in part at any time, either for the Sponsor's convenience or because of the failure of the Consultant to fulfill its obligations. Upon receipt of such notice, the Consultant shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Sponsor all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing under this Agreement, whether completed or in process.

If the termination is due to the failure of the Consultant to fulfill its obligations, then the Sponsor may take over the services and prosecute the same to completion, by contract or otherwise.

If the termination is for the convenience of the Sponsor, then the Sponsor shall pay the Consultant for the services rendered up to the date of termination in accordance with percent completion at the time of termination minus previous payments.

This Agreement may be terminated in whole or in part by the Consultant in the event of substantial failure by the Sponsor to fulfill its obligations.

## **ARTICLE FIVE - ASSURANCES**

**5.1 Access to Records and Reports.** The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor 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.

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

This provision binds the contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

### **5.3 Civil Rights – Title VI Assurance.**

**(a) Title VI Solicitation Notice:**

The **City of Hawthorne, Hawthorne Municipal Airport**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders 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.

**(b) Compliance with Nondiscrimination Requirements.** During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or

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

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights



Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

#### **5.4. Disadvantaged Business Enterprises.**

**Contract Assurance (§ 26.13)** - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (§26.29)** - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than {specify number} days from the receipt of each payment

the prime contractor receives from {Name of recipient}. The prime contractor agrees further to return retainage payments to each subcontractor within {specify the same number as above} days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the {Name of Recipient}. This clause applies to both DBE and non-DBE subcontractors.

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the City of Hawthorne, Hawthorne Municipal Airport to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

**5.5 Energy Conservation Requirements.** Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq*).

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

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

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

**5.8 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 Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within in

the 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

**5.9 Trade Restriction Certification.** By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror -

- a. 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 (U.S.T.R.);
- b. 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 U.S.T.R.; and
- c. has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

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, United States Code, 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 U.S.T.R. or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- (3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. 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 U.S.T.R., 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 may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

**5.10 Veteran's Preference.** In the employment of labor (excluding executive, administrative, and supervisory positions), the contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 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.

**5.11 Seismic Safety.** In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

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

## 5.13 Davis-Bacon Requirements.

### 1. Minimum Wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the

Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding.

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be

necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### 3. Payrolls and basic records.

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime

contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

(2) That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the sponsor, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the



job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training

program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

#### 5. Compliance with Copeland Act Requirements.

The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### 6. Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

#### 7. Contract Termination: Debarment.

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

#### 8. Compliance With Davis-Bacon and Related Act Requirements.

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

#### 9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### 10. Certification of Eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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

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

**5.15 Equal Employment Opportunity.** During the performance of this contract, the contractor agrees as follows:

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

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

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

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

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

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

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

#### 5.16 Debarment and Suspension.

(a) **Certification of Offerer Regarding Debarment.** By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

(b) **Certification of Lower Tier Contractors 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 Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.

3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the FAA 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.

**5.17 Lobbying and Influencing Federal Employees.** 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, sub-grants, 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.

**5.18 Breach of Contract Terms.** Any violation or breach of terms of this contract on the part of the contractor or its subcontractors 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.

Owner 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 contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Consultant must correct the breach. Owner may proceed with termination of the contract if the Consultant fails to correct the breach by deadline indicated in the Owner's notice.

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

**5.19 Clean Air and Water Pollution Control.** Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor 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.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

**5.20 CALTRANS Review and Approval.** On projects involving State Airport Development Agreements, CALTRANS shall approve all plans and specifications prior to bid advertisement. In addition, all change orders shall also be approved by CALTRANS.

#### **5.21 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 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.

## 5.22 TERMINATION OF CONTRACT

**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 Contractor 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.

**Termination for Default:**

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

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

a) **Termination by Owner:** The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:

1. Perform the services within the time specified in this contract or by Owner approved extension;
2. Make adequate progress so as to endanger satisfactory performance of the Project;
3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. 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.

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

b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Owner:



1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

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

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

## **ARTICLE SIX - SUSPENSION OF SERVICES**

The Sponsor may order the Consultant, in writing, to suspend all or any part of the services for such period of time as it may determine to be appropriate for the convenience of the Sponsor. If the performance of all or any part of the services is, for any unreasonable period of time, suspended or delayed by an act of the Sponsor in the administration of this Agreement, or by its failure to act within the time specified in this Agreement (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Agreement necessarily caused by such unreasonable suspension or delay, and the Agreement and Authorization of Services, if applicable, shall be modified in writing accordingly. However, no adjustment shall be made under this Article Six for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Consultant, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Agreement.

## **ARTICLE SEVEN - LIABILITY**

**7.1 Indemnification.** To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the Sponsor and its representatives, officers, directors, officials, and employees from and against any claims, direct damages, losses, and expenses (including, but not limited, to reasonable attorneys' fees, court costs, and the costs of appellate proceedings) resulting from or caused by the Consultant's negligent acts, errors, mistakes or omissions in the performance of services under this Agreement.

The Consultant’s duty to hold harmless and indemnify the Sponsor shall arise in connection with any claim, direct damage, loss, or expense that is attributable to bodily injury, sickness, disease, death or injury to any person, or impairment or destruction of property, including loss of use resulting therefrom, caused by any negligent act, error, mistake, or omission in the performance of the Consultant’s services under this Agreement, including those by any person for whose negligent acts, errors, mistakes, or omissions Consultant may legally be liable. The amount and type of insurance coverage requirements set forth in this Agreement shall not limit the scope of the indemnity in this Paragraph 7.1.

**7.2 Liability of Subconsultants.** It shall be the responsibility of the Consultant, to assure through contractual agreement that any independent contractor, subcontractor, or subconsultant utilized by the Consultant under subparagraph (c) of Paragraph 1.2 ,Scope of Services, shall save and hold harmless the Consultant, the Sponsor, and any of their respective representatives, officers, directors, officials, and employees who may be obligated to pay by reason of any liability imposed upon any of the above for damages arising out of, resulting from, or caused by, any negligent error, omission, or act of the independent contractor, subcontractor, or subconsultant.

**ARTICLE EIGHT - INSURANCE**

The Consultant and any subcontractor shall obtain and maintain, during the life of this Agreement, the following minimum public liability and property damage insurance, which shall protect the Consultant from claims for injuries, including accidental death, as well as from claims for property damages which may arise from the performance of services under this Agreement and the limits of liability for such insurances shall be as follows:

The following types and amounts of insurance are required as minimums:

<b>General Liability</b>			
Comprehensive Premises-Operation	Form	Bodily Injury and Property Damage	\$1,000,000 each occurrence
Explosion and Collapse Hazard Underground Hazard Products/Completed Operations Hazard		Combined	
<b>Contractual Insurance</b>			
Broad Form Property Damage Independent Contractors			
Personal Injury		Personal Injury	\$2,000,000 Aggregate

**Automobile Liability**

Comprehensive Form Owner Hired Non-Owned	Bodily Injury and Property Damage Combined	\$1,000,000
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**Excess Liability**

Umbrella Form	Bodily Injury and Property Damage Combined	\$1,000,000 each occurrence
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**Worker's Compensation**

Statutory

**Employer's Liability**\$1,000,000 each  
accident**Professional Liability/Errors  
& Omissions**\$1,000,000 each  
claim/annual  
aggregate

Standard minimum deductibles are allowed. Any deductibles are the responsibility of the Consultant. The Consultant shall promptly inform the Sponsor of any cancellation of insurance or any decrease in the amount of coverage at least thirty (30) days before such action takes place. A violation of this provision may be treated as a material breach of this Agreement by the Sponsor. The Consultant shall notify the Sponsor upon termination of its regular professional liability coverage and shall obtain tail coverage for a minimum of five (5) years from the termination date, so long as such coverage is then available at commercially reasonable rates.

The Consultant acknowledges that the amounts of insurance coverage stated above shall not limit its liability under this Agreement.

**ARTICLE NINE - INTERESTS AND BENEFITS**

**8.1 Interest of Sponsor Members and Others.** No officer, member, or employee of the Sponsor and no member of its governing body who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of the services to be performed under this Agreement shall participate in any decision relating to this Agreement which affects his personal interest or have any personal or pecuniary interests, direct or indirect, in this Agreement or the proceeds thereof.

## **ARTICLE TEN - ASSIGNMENT**

The Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same, without the prior written consent of the Sponsor; provided, however, that claims for money due or to become due to the Consultant from the Sponsor under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Sponsor.

## **ARTICLE ELEVEN- CLAIMS AND DISPUTES**

All claims, disputes, and matters in question between the Sponsor and the Consultant arising out of this Agreement which are not resolved to the satisfaction of either parties after being submitted to the City Manager, will be submitted to non-binding mediation prior to any lawsuits being filed. The parties agree to share the costs of mediation equally. In any mediation or law suit, the prevailing party shall be entitled to an award of its attorney's fees and costs.

## **ARTICLE TWELVE- GOVERNING LAW**

This Agreement shall be governed by the laws of the State of California. Any suit arising out of this Agreement shall be brought in the state courts of California, but only after the review procedure specified in Article 11.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement as of the date first written above.

### **City of Hawthorne, California**

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

Name: **Vontray Norris**

Title: **City Manager**

### **Coffman Associates, Inc.**

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

Name: **Kory Lewis**

Title: **Principal**