

FORM APPROVED COUNTY COUNSEL
BY: GREGORY P. PRIAMOS DATE 8/21/14

Departmental Concurrence

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

378



FROM: Economic Development Agency

SUBMITTAL DATE:

August 27, 2014

SUBJECT: Master Consulting Service Agreement for Blythe Airport, Chiriaco Summit Airport, French Valley Airport, Hemet-Ryan Airport, and Jacqueline Cochran Regional Airport, District 3/3 and District 4/4, [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and authorize the Chairman of the Board of Supervisors to execute the attached five year Master Service agreement between the County of Riverside and Mead & Hunt, Inc.

BACKGROUND:

Summary

(Commences on Page 2)

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent ☐ Policy ☒
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS:

Budget Adjustment: No

For Fiscal Year: 2014/15

C.E.O. RECOMMENDATION:

APPROVE

BY:

Rohini Dasika

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- ☐ A-30 ☐ Positions Added ☐ Change Order
- ☐ 4/5 Vote

Prev. Agn. Ref.:

District: 3/3, 4/4

Agenda Number:

3-24

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Economic Development Agency

FORM 11: Master Consulting Service Agreement for Blythe Airport, Chiriaco Summit Airport, French Valley Airport, Hemet-Ryan Airport, and Jacqueline Regional Airport, District 3/3 and District 4/4, [\$0]

DATE: August 27, 2014

PAGE: 2 of 2

BACKGROUND:

Summary

On April 16, 2013 Mead & Hunt were selected by a Request for Qualification (RFQ) as the County's Airport Project Consultant, per the Federal Aviation Administration's (FAA) five-year consultant selection criteria.

Staff proposes to have Mead & Hunt provide Architectural Engineering A/E services that will include design and construction administration, construction inspection of projects, planning, and environmental services for the County's five airports. The County owns and operates the Hemet-Ryan Airport, French Valley Airport, Blythe Airport, Chiriaco Summit Airport, and Jacqueline Cochran Regional Airport. Riverside County Airports has several projects slated for the next five years. The Airport Capital Improvement Program (ACIP) projects list is anticipated to be funded by the Federal Aviation Administration (FAA).

The Master Consulting Service Agreement has been reviewed and approved by the Federal Aviation Administration (FAA) and is consistent with current guidelines for general Aviation facilities. There will be no cost at this time to the Master Consulting Service agreement. Cost will be incurred through individual work orders and, Form 11's will be submitted to the Board for future projects, including any cost.

Impact on Citizens and Businesses

The Riverside County EDA Aviation future projects will improve the airport operations, and enhance capacity and safety.

SUPPLEMENTAL:

Additional Fiscal Information

There will be no impact on the County's general fund.

ATTACHMENTS:

Master Service Agreement

**MASTER SERVICE AGREEMENT
BETWEEN
MEAD & HUNT, INC.
AND
RIVERSIDE COUNTY ECONOMIC DEVELOPMENT AGENCY**

This Master Service Agreement (this “**Agreement**”) is made this ___ day of _____, 20__ by and between **MEAD & HUNT, INC.** a Wisconsin business corporation (the “**Consultant**”) and **RIVERSIDE COUNTY ECONOMIC DEVELOPMENT AGENCY** (the “**Owner**”).

NOW, THEREFORE, the parties hereto, in consideration of the mutual undertakings and agreements contained herein, the receipt and sufficiency of which the parties hereto hereby acknowledge, agree as follows:

- 1. Services.** Subject to the terms and conditions contained in this Agreement the Consultant shall perform the services described in each fully executed work order. The Consultant shall not be obligated to perform any services until it is in receipt of a work order executed by both the parties hereto which described the services to be performed and the rates and fees to be paid in connection with the services. Work orders may be executed in counterparts and copies of signatures transmitted by facsimile, email, or other electronic means shall be deemed originals. Possession by the Consultant of a fully executed work order shall for all purposes be considered authorization for the Consultant to commence performance of the services.
- 2. This Agreement Controls.** If the terms or conditions of this Agreement conflict with those contained in any fully executed work order made in connection with this Agreement this Agreement shall govern. Each fully executed work order shall be deemed a part of this Agreement for the purposes of Section 24 of this Agreement. This Agreement shall apply to all fully executed work orders which reference this Agreement.
- 3. Payment and Billing.** Consultant, will bill the Owner monthly, according to the fee or payment method set forth in the applicable work order, with net payment due thirty (30) days from the date an invoice is transmitted or placed in the mail to be sent to the Owner. The fees and rates described in the applicable work order shall govern the fees for such work order until it is amended. Past due balances shall be subject to an interest charge at a rate of 1.5% per month. Partial payments shall be applied first to accrued interest and second to the unpaid amounts for services rendered once accrued interest charges have been exhausted. In addition, Consultant, may, after giving seven (7) days' written notice, suspend service under any and all work orders until the Owner has paid in full all amounts due it for services rendered and expenses incurred, including the interest charge on past due invoices. The fees or rates described in a work order do not include any applicable state and local sales or use taxes, gross receipts taxes, or value-added taxes. Payment of any such taxes shall be the sole responsibility of the Owner. Consultant shall be entitled to payment of its court costs and actual attorney fees for any suit brought to collect any amounts due Consultant by Owner related to this Agreement.
- 4. Term.** This Agreement shall be in effect from July 11, 2014 to July 11, 2019. In the event the services described in a fully executed work order will not be completed during the term of this

Agreement, though the work order was executed by the parties while the Agreement was in effect, Consultant shall continue to be obligated to perform the services and Owner shall be obligated to pay for such services as provided in the applicable work order.

5. **Adequacy of Scope of Services.** The stated fees and scope of services contained in any work order constitute the best estimate of the fees and tasks required to perform the services as defined. This Agreement, upon execution by both parties hereto, may be amended only by written instrument signed by both parties. A fully executed work order may only be amended by a written amendment signed by both parties to this Agreement. For those work orders whose described work involves conceptual or process development service, activities often cannot be fully defined during initial planning. As the work progresses, facts uncovered may reveal a change in direction which may alter the scope. Consultant will inform the Owner in writing of such situations so that changes to the applicable work order may be made as required. If the Owner requests significant modifications or changes in the scope of the project, the time of performance of Consultant's services, the description of the services, and the applicable fees must be adjusted by amendment to the applicable work order before Consultant undertakes the additional work.
6. **Delay Caused by Owner.** The Owner shall be liable for and shall indemnify and hold Consultant harmless for all costs and damages incurred by Consultant for delays caused in whole or in part by the Owner's interference with Consultant's ability to provide services, including, but not limited to: (i) Owner's failure to provide specified facilities, information, or access; or (ii) situations where Consultant's services are extended by Owner's actions or inactions. If delays are caused by unpredictable occurrences outside Owner's control, including, without limitation, terrorism, fires, floods, riots, strikes, unavailability of labor or materials (due to terrorism, fires, floods, riots, or strikes), delays or defaults by suppliers of materials or services, process shutdowns, acts of God or the public enemy, or acts or regulations of any governmental agency, then the costs for services and schedule commitments shall be equitably adjusted before Consultant resumes its services.
7. **Insurance.** Consultant will maintain insurance coverage for: worker's compensation, general liability, automobile liability, aviation liability, and professional liability. Consultant will provide information as to specific limits upon written request. If the Owner requires coverages or limits in addition to those in effect as of the date of the Agreement, premiums for additional insurance shall be paid by the Owner.
8. **Limitation of Liability.** The liability of Consultant, to the owner for any indemnity commitments or for any damages arising in any way out of performance of services under a work order is limited to the amount of the fees paid by the Owner to Consultant under such work order as of the time the claim is made. No claim for any indemnity commitment or any damages arising out of the performance of services under any work order may be made more than three hundred sixty (360) days from the date of the last invoice which was transmitted or placed in the mail to be sent to Owner in the ordinary course under such work order (whether or not such invoice is paid). The three hundred sixty day period shall not be extended by re-invoicing or repeatedly invoicing Owner if an invoice is unpaid. In no case shall Consultant be liable for any loss due to terrorism or acts of war.
9. **Mold Damage.** Consultant and the Owner agree that the ultimate liability for mold or mildew regardless of its source, and for the actual, alleged, or threatened discharge, dispersal, release, or

escape of pollutants, mycotoxins, spores, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, buildings, the atmosphere, or body of water shall remain with Owner; and the responsibility and/or liability for any of the foregoing and for the ownership and maintenance of any toxic, hazardous, or asbestos materials relating to the project shall remain with the Owner. Consultant, and the Owner acknowledge that Consultant's professional liability and general liability policies do not apply to claims arising out of the foregoing. Therefore, the Owner agrees not to bring any claim against Consultant, relating to the uninsured liabilities referenced above.

10. **Confidential Information.** The term "Confidential Information" includes, but is not limited to, ideas, specifications, techniques, models, data, programs, documentation, processes, know-how, financial and technical information, and information marked or designated as such by Consultant or Owner. Owner and Consultant, shall not, during the term of this agreement or after the termination of this agreement for a period of two (2) years disclose any Confidential Information to any person or entity or use any Confidential Information for the benefit of Owner or Consultant, as the case may be, or any other person or entity, except with the prior written consent of Consultant, or Owner, as the case may be, or as required by law.
11. **Additional Guidance.** The Owner agrees to clarify and define project requirements and to provide or cause to be provided such other services including without limitation legal, accounting, and insurance counseling services as may be required for the services described in the work order as determined in the reasonably exercised discretion of Consultant.
12. **Termination.** Termination of this Agreement by the Owner or Consultant, shall be effective upon thirty (30) days' written notice to the other party. The written notice shall include the reasons and details for termination. Consultant, will prepare a final invoice showing all charges incurred which are unpaid through the date of termination for all work orders; payment is due as stated in Section 2 of this Agreement. All work by Consultant pursuant to any work order under this Agreement shall cease as of the termination date in the event this Agreement is terminated pursuant to this Section 12. If the Owner breaches this Agreement Consultant, may, upon (20) days' written notice, suspend services without further obligation or liability to the Owner unless, within such twenty (20) day period, the Owner remedies such breach to the reasonable satisfaction of Consultant which suspension of services shall not be deemed a breach of this Agreement.
13. **Limitation on Use of Data and Image Files.** Upon Owner's approval or if necessary for the project, Mead & Hunt, Inc. may release data, models, plans, CAD files, and/or drawings electronically to any other party involved in the project; and if such release is not provided for in the Scope of Services, fees may be adjusted before the documents are prepared for electronic submittal. Data and image files, both electronic and hard copy (hereinafter "Data Files") are part of Consultant's instruments of service and shall not be used for any purpose other than for the project associated with the particular work order for which the relevant Data Files were produced. Any reuse of Data Files or services shall be at Owner's sole risk and without liability or legal exposure to Consultant. Consultant makes no representation as to compatibility of electronic Data Files with Owner's hardware or software. Differences may exist between these electronic Data Files and corresponding hard-copy documents. Consultant makes no representation regarding the accuracy or completeness of the electronic Data Files provided. In the event that a conflict arises

between the signed or sealed hard-copy documents prepared by Consultant, and any electronic Data Files, the signed or sealed hard-copy documents shall govern. Because information presented on the electronic Data Files can be modified, unintentionally or otherwise, Consultant reserves the right to remove all indicia of ownership and/or involvement from each electronic display. Under no circumstances shall delivery of the electronic Data Files for reuse be deemed a sale by Consultant, and Consultant makes no warranties, either express or implied, of merchantability or fitness for any particular purpose. In no event shall Consultant be liable for any loss of profit, delayed damages, or any consequential damages as a result of reuse or changes to Data Files or any data therein. To the fullest extent permitted by law, Owner shall indemnify and hold Consultant, its employees, and agents harmless against all damages, liability, or costs, including reasonable attorneys' fees, arising out of or resulting from Owner's reuse of any Data Files.

14. **Standard for Services.** Consultant will provide services in accordance with best professional practices. The parties agree that this is a contract for professional services and is not subject to the Uniform Commercial Code as adopted in any state.
15. **Content of Work Order.** The only provisions of a fully executed work order which shall have any effect shall be those provisions which describe rates, fees, delivery schedules, and the type and scope of services or work to be provided. No attempt to modify the terms of this Agreement through a work order shall be effective (for example by attaching terms and conditions to a work order). Written acknowledgment of the receipt of a work order or the actual performance of services in connection with a proposed work order shall not be deemed an acceptance by Consultant of the provisions of such proposed work order.
16. **Role of Consultant.** Consultant, intends to serve as the Owner's professional representative for those services as defined in this Agreement and to provide advice and consultation to the Owner as a professional. Any opinions of probable project costs, reviews and observations, and other decisions made by Consultant, for the Owner are rendered on the basis of experience and qualifications and represent the professional judgment of Consultant. However, Consultant, cannot and does not guarantee that proposals, bids or actual project or construction costs will not vary from the opinion of probable cost prepared by it. Owner agrees to indemnify and to hold Consultant, harmless for any claim arising out of or related in any way to project or construction costs even if such claim arises out of and/or has been caused in whole or in part by negligence on the part of Consultant (to the extent permitted by applicable law).
17. **Government Owners.** *Deleted.*
18. **Independent Consultant.** For all purposes including corporate, partnership, and agency law as well as the laws of local, state, and federal taxation this Agreement shall not be construed to create any relationship other than an independent Consultant relationship between the parties hereto and under no circumstances shall Consultant and Owner be deemed joint ventures or partners in a partnership due to this Agreement.
19. **Assignment and Subcontractors.** This Agreement may not be assigned by Owner without mutual written consent of Owner and Consultant. Except as otherwise herein provided, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective

heirs, executors, administrators, successors, and (permitted) assigns. Consultant may engage subcontractors to perform any work or services called for by a fully executed work order under this Agreement provided Consultant obtains the consent of Owner which shall not be unreasonably withheld and shall be provided in writing.

20. **Limitation of Scope of Services.** Except as stated for a specific project, this agreement shall not be construed as imposing upon or providing to Consultant, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work of the contractors or subcontractors.
21. **Limitation on Liability.** Consultant is not liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages caused or incurred in connection with services provided under this Agreement.
22. **Force Majeure.** The Consultant shall not be responsible for any delays in the performance of services by it or its subcontractors due to the occurrence of a force majeure event which includes without limitation delays caused by terrorism, fires, floods, wars, embargos, riots, strikes, unavailability of labor or materials (for reasons including, without limitation, terrorism, fires, floods, riots, wars, embargos, or strikes), delays or defaults by suppliers of materials or services, process shutdowns, acts of God or the public enemy, or acts or regulations of any governmental agency. In the event a force majeure event occurs any delivery deadline or other deadline contained in an effected work order shall be reasonably extended.
23. **Amendment.** This Agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof shall be effective unless agreed in writing duly executed by the waiving party.
24. **Entire Agreement.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations, inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this Agreement supersedes any other prior understanding entered into between the parties on the subject matter hereof. This Agreement does not create any benefits for any third party.
25. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the state of California. Any action brought in connection with this Agreement shall be filed in either the Superior Court for the State of California or in the -U.S. District Court located in Riverside, California. Judgments may be enforced and/or domesticated in other venues and jurisdictions as applicable.
26. **Counterparts.** *Deleted.*
27. **Disputes.** In an effort to resolve any significant dispute that arises during services provided under this Agreement, Owner and Consultant agree that such disputes shall be submitted to mediation unless the parties mutually agree otherwise.

28. **Saving Clause.** If any provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force.
29. **Federal Aviation Administration Contract Provisions.** The Federal Aviation Administration (FAA) requires that federal contract provisions, as applicable, be included in and made part of this Agreement between the Riverside County Economic Development Agency and the Consultant. This requirement is established within the County's grant assurances. The Required Federal Provisions are included as Attachment 1 to this Agreement, and incorporated as if fully set out herein.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first written above.

CONSULTANT: MEAD & HUNT, INC.

By: 
Name: Jon J. Faucher
Title: Vice President

OWNER: RIVERSIDE COUNTY ECONOMIC DEVELOPMENT AGENCY

By: _____
Name: Jeff Stone
Chairman, Board of Supervisors
Title: _____

FORM APPROVED COUNTY COUNSEL
BY: 
NEAL R. KIPNIS DATE

**REQUIRED CONTRACT PROVISIONS FOR FEDERAL AVIATION ADMINISTRATION
AIRPORT IMPROVEMENT PROGRAM (A/E CONTRACTS)**

(Last Modified by FAA May 2014)

The following provisions, if applicable, are hereby included in and made part of the attached Contract between the Riverside County Economic Development Agency (County) and Mead & Hunt, Inc. (Consultant).

1. FAA NOT A PARTY

It is understood by the County and the Consultant that the FAA is not a part of this Agreement and will not be responsible for Project costs except as should be agreed upon by County and the FAA under a Grant Agreement for the Project.

2. COMPLIANCE WITH LAWS AND REGULATIONS

The Consultant agrees to comply with Federal Executive Order No. 11246, entitled "Equal Employment Opportunity", as supplemented in Department of Labor regulations (41 CFR, Part 60); Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-300) as supplemented by Department of Labor Regulations (29 CFR, Part 5); and all applicable standards, orders and regulations issued pursuant to the Clean Air Act of 1970 if this Agreement exceeds \$100,000.

3. ACCESS TO RECORDS AND REPORTS. (Reference: 2 CFR § 200.326, 2 CFR § 200.333))

The Consultant must maintain an acceptable cost accounting system. The Consultant agrees to provide the County, 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.

4. BREACH OF CONTRACT TERMS. (Reference 49 CFR part 18.36(i)(1))

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. 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. BUY AMERICAN PREFERENCE. (Reference: 49 USC § 50101)

The Consultant agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

6. CIVIL RIGHTS PROVISIONS— GENERAL. (Reference: 49 USC § 47123)

The Consultant agrees that it will 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 handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the 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.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

7. CIVIL RIGHTS – TITLE VI ASSURANCES

Title VI Clauses for Compliance with Nondiscrimination Requirements

(Source: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

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 Consultants will comply with the **Title VI List of Pertinent Nondiscrimination Statutes 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 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 subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, 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 subcontractor or supplier will be notified by the Consultant of the Consultant's obligations under this contract and the Acts and the Regulations relative to Non-discrimination 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 County or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, 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 County 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 7.1 through 7.6 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 County 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 subcontractor, or supplier because of such direction, the Consultant may request the County to enter into any litigation to protect the interests of the County. 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 Authorities

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

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 U.S.C. § 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 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);

- 4). 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;
- 5). The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 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 contractors, 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 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- 9). 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);
- 10). Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures 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;
- 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 U.S.C. 1681 et seq.).

8. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The Consultant, 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 Consultant 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 tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

9. CLEAN AIR AND WATER POLLUTION CONTROL.

(Reference: 49 CFR § 18.36(i) (12)) Note, when the DOT adopts 2 CFR 200, this reference will change to 2 CFR § 200 Appendix II (G))

Consultant and subcontractors agree:

- 4). That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- 5). To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- 6). That, as a condition for the award of this contract, the Consultant or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- 7). To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

10. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT REQUIREMENTS.

(Reference: 2 CFR § 200 Appendix II (E))

- 1). Overtime Requirements.

The Consultant or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- 2). Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3). **Withholding for Unpaid Wages and Liquidated Damages.**

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 any monies payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same Consultant, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4). **Subcontractors.**

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

11. DISADVANTAGED BUSINESS ENTERPRISES

- 1). **Contract Assurance** (§26.13) - The Consultant and their subcontractors 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 DOT 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 recipient deems appropriate.
- 2). **Prompt Payment** (§26.29) - The Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty days from the receipt of each payment the Consultant receives from County. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontractors.

12. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE) (Reference: 29 USC § 201, et seq.)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Consultant must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

13. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES.

(Reference: 49 CFR part 20, Appendix A)

- 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.

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.

14. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (Reference 20 CFR part 1910)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Consultant must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

15. RIGHT TO INVENTIONS (Reference 49 CFR part 18.36(i) (8))

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the County of the Federal grant under which this contract is executed.

16. TERMINATION OF CONTRACT (Reference: 49 CFR § 18.36(i) (2))

- a. The County may, by written notice, terminate this contract in whole or in part at any time, either for the County's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the County.
- b. If the termination is for the convenience of the County, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.

- c. If the termination is due to failure to fulfill the Consultant's obligations, the County may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant is be liable to the County for any additional cost occasioned to the County thereby.
- d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination will be deemed to have been effected for the convenience of the County. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.
- e. The rights and remedies of the County provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

17. TRADE RESTRICTION (Reference: 49 CFR part 30)

The Consultant or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- 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 published by the Office of the United States Trade Representative (USTR);
- 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 on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

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 a Consultant or subcontractor who is unable to certify to the above. If the Consultant knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the County cancellation of the contract at no cost to the Government.

Further, the Consultant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Consultant may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The Consultant shall provide immediate written notice to the County if the Consultant learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the Consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Consultant or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the County cancellation of the contract or subcontract for default at no cost to the Government.

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.

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.

18. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The Consultant certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by acceptance of this contract that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Consultant or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this agreement.

19. TEXTING WHEN DRIVING (References: Executive Order 13513, and DOT Order 3902.10)

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), 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.

The Consultant must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Consultant must include these policies in each third party subcontract involved on this project.

20. VETERAN'S PREFERENCE (Reference: 49 USC § 47112(c))

In the employment of labor (except in executive, administrative, and supervisory positions), preference must be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Title 49 United States Code, Section 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.
