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STANDARD FORM OF AGREEMENT BETWEEN  
JACKSON MUNICIPAL AIRPORT AUTHORITY AND  
CONTRACTOR

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Project: H a w k i n s F i e l d A i r c r a f t H a n g a r

JMAA Project Number: 005-22

Airport Designation: H K S

Payment Form:

This STANDARD FORM OF AGREEMENT ("Agreement") is made by and between

The Owner: Jackson Municipal Airport Authority ("JMAA"), a municipal airport authority organized and existing under the laws of the State of Mississippi.

And \_\_\_\_\_ ("Contractor") a \_\_\_\_\_ corporation

**RECITALS:**

- A. JMAA desires to construct the improvements described in the Contract Documents (as hereafter defined).
- B. Contractor desires to construct the improvements described in the Contract Documents and to otherwise perform the Work (as hereafter defined) on the terms and conditions set forth in this Agreement and the other Contract Documents.

**AGREEMENT:**

In recognition of and reliance on the foregoing recitals, and in consideration of the mutual promises and covenants set forth in this Agreement and the other Contract Documents, and in exchange for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, JMAA and Contractor agree as follows.

**1. DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following meanings:

- 1.1. Agreement means this Standard Form of Agreement between JMAA and Contractor.
- 1.2. Airport means Hawkins Field Airport in Jackson, MS.
- 1.3. Application Deadline means the deadline for Contractor's submission of applications for payment, as provided in Section 8.2 of the Agreement.
- 1.4. Change Order means a written directive from JMAA that orders an increase or decrease in the Work.
- 1.5. Completion means completion, as determined by Engineer, of all portions of the Work in accordance with the Contract Documents including, without limitation, completion or correction of any punch list items or non-conforming Work.
- 1.6. Contract has the meaning designated in Section 1.36 of this Agreement.
- 1.7. Contract Documents means those documents identified in Section 1.36 of this Agreement and includes all Plans, Drawings, Technical Specifications, computations, sketches, data, surveys, models, photographs, renderings and other like materials relating to the Work and/or the Project.
- 1.8. Contract Sum is the total amount, as may be amended by authorized adjustments, set forth in Article 7 of this Agreement payable by JMAA to Contractor for performance of the Work under the Contract Documents.
- 1.9. Contract Time is the period of time, as may be amended by authorized adjustments, allotted in Article 6 of this Agreement for Completion of the Work.
- 1.10. Contractor means \_\_\_\_\_, its successors and permitted assigns.
- 1.11. DBE means Disadvantaged Business Enterprise, for the purpose of this document the firms meeting the following criteria: Disadvantaged Business Enterprises ("DBEs") by the Mississippi Unified Certification Program ("MUCP"), Jackson Municipal Airport Authority, and the Mississippi Department of Transportation ("MDOT").
- 1.12. DOT means the United States Department of Transportation.
- 1.13. Drawings or Plans means the official drawings or exact reproductions which show the location, character, dimensions and details of the Airport and the Work to be done and which are considered a part of the Contract, supplementary to the Specifications.

- 1.14. Engineer means a design professional chosen by JMAA.
- 1.15. FAA means the Federal Aviation Administration, an operating administration of the DOT.
- 1.16. JMAA means the Jackson Municipal Airport Authority, a municipal airport authority organized and existing under the laws of the State of Mississippi.
- 1.17. Modification means a Supplemental Agreement signed by both JMAA and Contractor or a Change Order.
- 1.18. Notice to Proceed means the written notice to Contractor to commence the Work.
- 1.19. Product Data means all illustrations, standard schedules, performance charts, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.
- 1.20. Project means the project of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by JMAA or by separate contractors.
- 1.21. Project Manual means the volume of documents and forms assembled for the Work which may include the bidding requirements, sample forms, conditions of the Contract and Specifications.
- 1.22. Samples are physical examples which illustrate materials, equipment or workmanship.
- 1.23. Security Regulations means the security requirements of 49 CFR Part 1542, and JMAA's security program, as currently in force and as may be hereafter amended.
- 1.24. Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by Contractor to illustrate some portion of the Work.
- 1.25. Specifications means those portions of the Contract Documents consisting of the written directions and requirements for completing the Work, including materials, equipment, construction systems, standards and workmanship and performance of related services. The Specifications include any general, special and supplementary provisions of the Contract.
- 1.26. Subcontractor means a person or entity who has a direct contract or agreement with Contractor to perform a portion of the Work.
- 1.27. Sub-subcontractor means a person or entity who has a direct or indirect contract or agreement with a Subcontractor to perform a portion of the Work.

- 1.28. Substantial Completion means the stage in the progress of the Work when the Work or designated portions thereof are determined by JMAA to be sufficiently complete in accordance with the Contract Documents that the Work or a portion thereof could be used as intended.
- 1.29. TSA means the Transportation Security Administration, an operating administration of the United States Department of Homeland Security.
- 1.30. Work means the construction and related services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, tools, equipment, incidentals and services provided or to be provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a part of the Project.

## **REPRESENTATIONS**

Contractor represents, covenants and warrants to JMAA as follows:

- 1.31. Contractor is a corporation, duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_.
- 1.32. Contractor holds a valid and current certificate of responsibility from the Mississippi Board of Contractors for the Work or is exempt from such requirements.
- 1.33. Contractor is knowledgeable of all federal, state and local laws, codes, rules and regulations applicable to the Project and the Work shall comply with all applicable laws, codes, rules and regulations.
- 1.34. Contractor is experienced and fully qualified to perform the Work set forth or otherwise contemplated by the Contract Documents, and Contractor is properly licensed in accordance with all applicable laws to perform the Work. Contractor has taken all action necessary or appropriate to enter into this Agreement and this Agreement constitutes a valid and binding obligation of Contractor.
- 1.35. Contractor shall timely obtain and pay for all licenses and permits necessary for operations at HKS, including but not limited to a City of Jackson Mississippi Business Privilege License and registration with the Mississippi Secretary of State throughout the term of this Agreement.

## **THE CONTRACT DOCUMENT**

- 1.36. The Contract Documents form the Contract for construction. The Contract Documents consist of the Advertisement for Bids, the Instructions to Bidders, the Bid, this Agreement (and all Exhibits referred to herein or attached hereto), Drawings, Plans, Technical Specifications, General Provisions, Special Provisions, addenda issued prior to execution of this Agreement, other documents listed in this Agreement and

Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents, other than Modifications, appears in Article 26.

- 1.37. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. In the event of a conflict between or among the Contract Documents, all terms of this Agreement shall supersede any terms stated within the Technical Specifications. In addition, Contractor shall perform Work and obligations of the higher quality, larger quantity, greater expense, tighter schedule and more stringent requirements, unless otherwise directed in writing by JMAA.
- 1.38. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral.

## **OWNERSHIP OF DOCUMENTS**

- 1.39. The Contract Documents, including all Plans, Drawings, Specifications, Computations, sketches, data, surveys, models, photographs, renderings and other like materials relating to the Work and/or the Project are the property of JMAA. Contractor may retain one contract record set. All copies of the Contract Documents, except Contractor's record set, shall be returned to JMAA upon completion of the Work.
- 1.40. The Contract Documents are for use solely with the Project. Contractor, Subcontractors, Sub-subcontractors and material and equipment suppliers are granted a limited license to use and reproduce applicable portions of the Contract Documents appropriate to and for use in the execution of their Work under the Contract Documents.
- 1.41. Contractor represents and warrants that neither Contractor, nor any Subcontractor, Sub-subcontractor or supplier shall use any of the Contract Documents in whole or in part on any other project without the specific, prior, written consent of JMAA.

## **2. ADMINISTRATION OF THE CONTRACT**

- 2.1. JMAA will name an Engineer ("Engineer") who will provide administration of the Contract during construction through completion of all portions of the work. This Engineer will have authority to act on behalf of JMAA only to the extent provided in the Contract Documents, unless otherwise directed in writing by JMAA.
- 2.2. Engineer will visit the site at intervals appropriate to the stage of construction to determine the progress and quality of the completed Work and to determine if the Work is being performed in such a manner that the Work, when completed, will be in accordance with the Contract Documents.

- 2.3. Engineer will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, which shall all remain the sole responsibility of Contractor throughout the performance of the Contract.
- 2.4. Engineer will have authority to reject Work which does not conform to the Contract Documents. Whenever JMAA considers it necessary or advisable for implementation of the intent of the Contract Documents or to assess the quality or quantity of Contractor's Work, JMAA will have authority to require additional inspection or testing of the Work, which shall be conducted at Contractor's sole expense.
- 2.5. Notwithstanding Engineer's approval of any Work, Contractor shall remain responsible and liable for any defective, incomplete or nonconforming Work and for full performance in strict compliance with the Contract Documents.

### **3. THE WORK OF THIS CONTRACT**

- 3.1. Contractor shall perform and complete the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. The Work includes all work specifically set forth in the Contract Documents and further includes everything reasonably inferable, necessary or customary for the proper execution, functioning, connection and completion of all work referred to by the Contract Documents. All Work shall be subject to the satisfaction and approval of JMAA.
- 3.2. Contractor shall provide and pay for all labor, materials, tools, equipment, permits, fees, licenses, facilities, supervision, management, financing, services, shop drawings, submittals, testing, inspections, transportation, scaffolding, cleanup, trash removal, scheduling information, documents, quality control, insurance, bonding, taxes and every other thing of whatever nature necessary to fully perform all obligations in a first-class, workmanlike manner and in every respect complete the Work required by the Contract Documents.
- 3.3. Contractor shall perform the Work in strict accordance with the Contract Documents. Contractor shall not deviate from the Plans and Specifications without the written consent of JMAA in the form of a Modification, which consent shall be obtained prior to performing or utilizing such deviations. Any deviations not properly approved and authorized shall be considered defective. Any changes in the Plans or Specifications, or substitution of materials as an "or equal", or any other proposal of Contractor shall be Contractor's full responsibility, despite any approval by JMAA. Contractor shall indemnify, defend, exonerate, and hold harmless JMAA from all damages, losses, costs, delays and liability incurred by JMAA, the Engineer and any third parties as a result of deviations, substitutions, options and alternates selected or performed by Contractor.

- 3.4. Contractor shall prepare and maintain at the Project site a complete and accurate record set of as-built drawings, which shall be updated daily. Contractor shall submit a complete set of as-built drawings to JMAA at the time of Contractor's submission of its Application for Payment. Receipt of the final, complete set of as-built drawings will be a condition precedent to JMAA's release of final payment to Contractor.
- 3.5. Contractor shall furnish for approval all Shop Drawings, Product Data, schedules, reports, diagrams, layouts, cuts, explanations, setting plans, catalog references, Samples, and other data in the number and with the content regarded by JMAA as necessary or desirable. Approval of any Shop Drawings or other submittals furnished by Contractor shall not relieve Contractor from its responsibility of complying strictly with all requirements of the Contract Documents. Contractor shall make any corrections to Shop Drawings or other submittals required by JMAA and file with JMAA corrected copies in the number requested. Contractor shall perform no portion of the Work requiring submittal and review until JMAA has approved the respective submittal.
- 3.6. Contractor shall coordinate its Work hereunder with the work and requirements and with the efforts of all other contractors and professional disciplines performing services or work with respect to this Project and other projects at the project site, irrespective of whether such other contractors or professionals are engaged by JMAA, by Contractor, or by others.
- 3.7. Promptly after execution of this Agreement, Contractor shall prepare and submit for JMAA's information a Contractor's construction schedule for the Work, which shall include a schedule of submittals that allows JMAA reasonable time for review. Contractor's schedule shall not exceed the time limits established by the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, and shall provide for expeditious and practicable execution of the Work.
- 3.8. Promptly after execution of this Agreement, Contractor shall prepare and submit for JMAA's information and approval, a Schedule of Values which allocates the entire Contract Sum among the various portions of the Work. The Schedule of Values shall be prepared in such form and be supported by such data to substantiate its accuracy as JMAA may require. The Schedule of Values, unless objected to by JMAA, shall be used as a basis for reviewing Contractor's Application for Payment.
- 3.9. Contractor shall keep the premises free from rubbish, debris, waste and surplus materials resulting from Contractor's operations and activities. Upon completion of the Work, Contractor shall remove from and about the Project all waste materials, rubbish, Contractor's tools, construction equipment, machinery, vehicles and surplus materials. If Contractor fails to clean up as required, JMAA may do so by contract or otherwise and the cost thereof shall be charged to Contractor.



- 3.10. JMAA reserves the right to increase or decrease the scope of the Work performed by Contractor under the Contract Documents, which changes shall be in the form of a Supplemental Agreement executed by JMAA's Procurement Department and Contractors or a written Change Order executed by JMAA utilizing JMAA's currently approved Change Order Form, which will be provided upon request. An appropriate increase or decrease in the Contract Sum and/or Contract Time shall be made for all such changes in the scope of the Work. Contractor shall be obligated to comply with any Change Order issued in accordance with this provision. Oral changes to this Agreement or pertaining to the Work are not valid and shall not be enforceable. Contractor shall have no claim or entitlement to payment for any additional work performed or for any added compensation unless, prior to performance, Contractor receives a properly executed Change Order.

#### **4. CONTRACTOR'S WARRANTY**

- 4.1. Contractor guarantees and warrants the Work to comply strictly with this Agreement and the Contract Documents. Contractor further warrants and guarantees that the Work and all materials and equipment furnished in connection therewith are new, of good material and workmanship, free from defects, fit, safe, merchantable, and sufficient for the purposes intended. Contractor further guarantees and warrants that Contractor has good title to all such work, material, and equipment. Any Work not conforming to these requirements shall be considered defective. Contractor shall take all steps necessary to transfer or assign the rights and benefits of any manufacturer's warranties to JMAA.
- 4.2. Contractor agrees to promptly perform maintenance, make repairs, replace, correct, or otherwise remedy any Work considered by JMAA to be defective or noncompliant with the Agreement or Contract Document, as directed by JMAA and without cost to JMAA.
- 4.3. Contractor's guarantees and warranties shall extend for not less than one (1) year after Completion, or for such longer period of time as may be specified elsewhere in the Contract Documents. The warranties and guarantees set forth here in the Contract Documents are in addition to any other warranties or guarantees provided by law or by separate agreement.
- 4.4. JMAA may demand, and Contractor shall give, satisfactory assurances, from time-to-time, that Contractor will satisfy all guarantees and warranties.
- 4.5. The lapse of the period for Contractor's guarantees and warranties shall not relieve Contractor from otherwise adhering to all terms and conditions of this Agreement.

#### **5. PERFORMANCE AND PAYMENT BONDS**

- 5.1. At the time of execution of the Agreement, Contractor shall post a Performance Bond in the form specified by JMAA in a penal sum equal to 100% of the Contract Sum for the Work. A surety company licensed in the State of Mississippi and appearing on the

United States Treasury Department's most current list (Circular 570, as amended) must issue the Performance Bond.

- 5.2. At the time of execution of the Agreement, Contractor shall post a Payment Bond in the form specified by JMAA in a penal sum equal to 100% of the Contract Sum for the Work. A surety company licensed in the State of Mississippi and appearing on the United States Treasury Department's most current list (Circular 570, as amended) must issue the Payment Bond.
- 5.3. Contractor's obligations under this Agreement and under the Contract Documents shall be equally the obligation of the surety for Contractor's performance bond as if all terms and conditions of this Agreement were set forth verbatim in the performance bond. The surety's obligations shall not terminate upon substantial or final completion of the Work but shall continue thereafter for so long as Contractor has any obligations of whatever nature under this Contract.

## **6. DATE OF COMMENCEMENT AND COMPLETION**

- 6.1. Contractor shall commence the Work on the date specified in a Notice to Proceed issued by or on behalf of JMAA and shall thereafter diligently pursue the Work until fully completed in accordance with the terms of the Contract Documents or until this Agreement is terminated. Contractor shall achieve Substantial Completion of all the Work not more than twenty-one (21) consecutive calendar days following issuance of the Notice to Proceed, subject to adjustments in the Contract Time as provided in the Contract Documents. In the event Contractor fails to reach Substantial Completion of the above-described items of Work within the Contract Time, or any authorized extension thereof, there shall be deducted from the Contract Sum, as agreed liquidated damages and not as a penalty, the sum of \$ \_\_\_\_\_ per calendar day that the Work remains incomplete. If the amount of such liquidated damages exceeds the amounts retained by JMAA, Contractor shall pay the deficiency to JMAA promptly upon demand.
- 6.2. Contractor shall complete all elements of the Work (including completion or correction of all punch list items) not more than thirty (30) days following the date of Substantial Completion. In the event Contractor fails to achieve completion of all the Work within thirty (30) calendar days following the date of Substantial Completion, there shall be deducted from the amounts due Contractor, as agreed liquidated damages and not as a penalty, the sum of \$ \_\_\_\_\_ per calendar day that the Work remains incomplete beyond the time allowed for Completion. If the amount of such liquidated damages exceeds the amounts retained by JMAA, Contractor shall pay the deficiency to JMAA promptly upon demand.
- 6.3. Time is of the essence with respect to each and every provision of this Agreement, including without limitation, commencement and Completion of the Work. By executing the Agreement, Contractor represents that the Contract Time is a reasonable period for performing the Work. Contractor shall strictly adhere to the Contract Time

and shall immediately inform JMAA in writing of any situation which becomes known to Contractor potentially causing a delay in achieving Completion within the Contract Time. Contractor acknowledges that JMAA may sustain financial loss or other damages for which Contractor may be liable if the Project or any part thereof is delayed because Contractor fails to perform any part of the Work in accordance with this Agreement.

## **7. CONTRACT SUM**

- 7.1. JMAA shall pay Contractor in current funds for Contractor's performance of the Contract the Contract Sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), subject to additions and deductions as provided in the Contract Documents.
- 7.2. [Not used]

## **8. PROGRESS PAYMENTS**

- 8.1. Based upon Applications for Payment and a completed JMAA Contract Reporting Form submitted to JMAA by the Contractor and Certificates for Payment issued by Engineer, JMAA shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 8.2. The period covered by each Application for Payment shall be one calendar month ending on the 20th day of the month. Each Application for Payment shall be submitted to and received by Engineer no later than the 25th day of the month (the "Application Deadline").
- 8.3. Provided an Application for Payment is received by Engineer not later than the Application Deadline, payment shall be due and payable by JMAA to the Contractor not later than forty-five (45) days after the Application Deadline. If Engineer receives an Application for Payment after the Application Deadline, payment shall be due and payable by JMAA within seventy (70) days of Engineer's receipt of the Application for Payment.
- 8.4. Engineer will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to JMAA a Certificate for Payment, with a copy to the Contractor, for such amount as Engineer determines is properly due, or notify the Contractor and JMAA in writing of Engineer's reasons for withholding certification, as set forth herein. The issuance of a Certificate for Payment constitutes a representation by Engineer to JMAA that the Work has progressed to the point indicated, that the Work performed is in accordance with the Contract Documents and that the Contractor is entitled to payment in the amount certified.
- 8.5. Engineer may decide not to certify payment in whole or in part or, because of subsequently discovered evidence or subsequent observations, may nullify in whole or

in part a Certificate for Payment previously issued, to such extent as may be necessary in Engineer's opinion to protect JMAA from loss. Reasons for denial or nullification of a Certificate for Payment shall include, but are not limited to:

- 8.5.1. Defective Work not remedied;
  - 8.5.2. Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
  - 8.5.3. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
  - 8.5.4. Damage to JMAA;
  - 8.5.5. Reasonable evidence that the Work will not be completed with the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
  - 8.5.6. Persistent failure to carry out the Work in accordance with the Contract Documents.
- 8.6. If Engineer is unable to certify payment in the amount of the Application for Payment, Engineer shall notify the Contractor and JMAA. If the Contractor and Engineer cannot agree on a revised amount, Engineer will promptly issue a Certificate for Payment for the amount for which Engineer is able to certify. Despite any dispute related to the certification of any Application for Payment, the Contractor shall continue to diligently perform the Work required by the Contract Documents.
- 8.7. Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as Engineer or JMAA may require. This Schedule, unless objected to by Engineer or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Applications for Payment shall not include requests for payment of amounts the Contractor does not intend to pay to a subcontractor, supplier or other contractees because of a dispute or other reason.
- 8.8. Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.
- 8.9. The Contractor warrants that title to all Work covered by the Application for Payment shall pass to JMAA no later than the time of payment.
- 8.10. Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- 8.10.1. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of five percent 5.0%;
  - 8.10.2. Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by JMAA, suitably stored off the site at a location agreed upon in writing), less retainage of 5.0%;
  - 8.10.3. Subtract the aggregate of previous payments made by JMAA; and
  - 8.10.4. Subcontract amounts, if any, for which Engineer has withheld or nullified a Certificate for Payment.
- 8.11. [Not used]
- 8.12. All Applications for Payment must be accompanied by a Project/Contract Reporting Form which will be provided upon request.

## **9. FINAL PAYMENT**

- 9.1. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by JMAA to the Contractor when (1) the Contract has been fully performed by the Contractor and accepted by JMAA, except for the Contractor's responsibility to correct nonconforming Work and to satisfy other requirements, if any, which necessarily survive final payment; (2) the Contractor delivers the completed as-built drawings, as required hereunder; (3) a final Certificate for Payment has been issued by Engineer; and (4) the consent of the Contractor's surety has been obtained in writing and delivered to JMAA. Such final payment shall be due and payable by JMAA

not more than sixty (60) days after satisfaction of the foregoing requirements.

- 9.2. Acceptance of final payment by the Contractor constitutes a complete and general release of JMAA from all claims and liability of whatever nature, whether then known or unknown, whether then existing or thereafter arising, and whether in contract, tort, or other basis of relief.
- 9.3. No payment, including final payment, nor partial or entire use or occupancy of the Project, shall be construed as acceptance of defective, incomplete or nonconforming Work and the Contractor shall remain responsible and liable for full performance in strict compliance with the Contract Documents.

## 10. SUBCONTRACTORS

- 10.1. Contractor may enter into subcontracts with Subcontractors for portions of the Work to be performed by Contractor pursuant to this Agreement. Any such Subcontractors shall be subject to the prior written approval of JMAA. JMAA shall have the right not to accept any proposed Subcontractor for any reason and Contractor shall have no right to additional compensation or other remedy based on the rejection of any Subcontractor.
- 10.2. Contractor shall verify that all Subcontractors and any other persons performing Work under this Agreement are properly qualified and licensed to provide such Work.
- 10.3. Contractor shall bind each and every Subcontractor to all the terms and conditions of this Agreement and the Contract Documents, including without limitation the requirements of Articles 18 and 19 regarding indemnification and insurance.
- 10.4. Contractor shall be fully responsible to JMAA for every act or omission of any Subcontractors and, notwithstanding and in no way limiting any other provision of this Agreement, shall fully indemnify, defend, protect, exonerate and save JMAA harmless from all liabilities, claims, losses, suits, actions, demands, judgments, and costs, including without limitation attorneys' fees, arising from or in any way related to the Work performed or to be performed by the Subcontractors under or in connection with this Agreement. JMAA hereby approves, and Contractor covenants and agrees to use, the following Subcontractors for the Work specified:

NON-DBE SUBCONTRACTS		
Name and Address	Work Item(s)	Subcontract Amount

Total Dollar Value of Subcontract Work:		\$
Percent of Total Contract Sum:		%

DBE SUBCONTRACTS		
Name and Address	Work Item(s)	Subcontract Amount
Total Dollar Value of Subcontract Work:		\$
Percent of Total Contract Sum:		%

Contractor acknowledges that the participation of the foregoing persons and entities as Subcontractors for the Project, particularly including the DBE participation, was a material factor in JMAA's entering into this Agreement with Contractor. No other persons or entities may be used in substitution of the foregoing identified Subcontractors without the prior, written consent of JMAA. In no event shall Contractor substitute or terminate any DBE Subcontractor without the prior, written consent of JMAA. In the event of termination of any DBE Subcontractor, Contractor shall use good faith efforts (as such term is used in 49 CFR Part 26) to replace such DBE Subcontractor with another DBE Subcontractor.

- 10.5. Notwithstanding any other provision of this Agreement, Contractor shall not assign this Agreement, in whole or in part, to any other person or entity, without the prior written consent of JMAA.
- 10.6. Contractor shall comply with the following with respect to each Subcontractor:
  - 10.6.1. JMAA shall not be obligated to make any payment to Contractor until Contractor provides evidence to JMAA that all Subcontractors have been paid all amounts owing at the time of payment by JMAA.
  - 10.6.2. Contractor shall release any retainage withheld from a Subcontractor within ten (10) days of satisfactory completion of the Subcontractor's Work.
  - 10.6.3. Contractor shall not require greater insurance coverages from any of its Subcontractors or proposed Subcontractors than required of Contractor by JMAA under Article 19 of this Agreement.
- 10.7. Contractor shall incorporate the foregoing Sections 10.6.1 through 10.6.3 in each

subcontract relating to the Work.

## **11. GRATUITIES AND COMPENSATION**

- 11.1. Contractor shall at all times comply with JMAA's Policy on Gifts and Gratuities, as such policy may be amended, modified, or replaced from time to time. A copy will be provided to Contractor upon request. Without limiting the foregoing, Contractor shall not, under any circumstances, offer or agree to offer any gift or gratuity, regardless of its value or form, to any Commissioner, employee, or representative of JMAA. Any evidence of such an offer of a gift or gratuity in violation of JMAA's policy will be cause for immediate termination of this Agreement.
- 11.2. Contractor shall advise all Subcontractors, Sub-subcontractors, suppliers or other contractees of Contractor's obligations under this provision of this Agreement and shall require that all such parties fully comply with this provision at all times.

## **12. ACCOUNTING RECORDS**

- 12.1. Contractor shall maintain books, records, documents and other evidence related to the Work and/or the performance of this Agreement in accordance with generally accepted accounting principles and practices. JMAA, the FAA, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, records, and other evidence for the purpose of examination, audit, excerpts and transcriptions. Contractor shall maintain the records required to be maintained by this provision shall be maintained for a period of not less than three (3) years after JMAA makes final payment of the Contract Sum and all other matters related to this Agreement are closed.

## **13. NON-DISCRIMINATION**

- 13.1. Non-Discrimination. 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.
  - 13.1.1. This provision binds the Contractor and subtier Contractors from solicitation period through the completion of the Agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.
- 13.2. During the performance of the Agreement, the Contractor, for itself, its assignees, and successors in interest agrees as follows:
  - 13.2.1. Compliance with Regulations. The Contractor shall comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.



- 13.2.2. Nondiscrimination. The Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Sub-Contractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 13.2.3. Solicitations for Subcontractors, 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 Sub-Contractor, including procurements of materials, or leases of equipment, each potential subcontractor supplier will be notified by Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 13.2.4. 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 JMAA or the FAA 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 this information, the Contractor shall so certify to JMAA or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 13.2.5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Agreement, JMAA will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
- 13.2.5.1. Withholding payments to the Contractor under the Agreement until Contractor complies, and/or
  - 13.2.5.2. Cancelling, terminating, or suspending this Agreement, in whole or in part.
- 13.2.6. Incorporation of Provisions. The Contractor will include the provisions of subparagraphs 13.2.1 through 13.2.5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as JMAA or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that the Contractor

becomes involved in, or is threatened with, litigation with a Sub-Contractor, or supplier because of such direction, the Contractor may request JMAA to enter into such litigation to protect the interests of JMAA. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

- 13.3. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statues and authorities; including but not limited to:
- 13.3.1. 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);
  - 13.3.2. 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);
  - 13.3.3. 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);
  - 13.3.4. 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;
  - 13.3.5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
  - 13.3.6. 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);
  - 13.3.7. 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);
  - 13.3.8. 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;

- 13.3.9. 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);
  - 13.3.10. 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;
  - 13.3.11. Executive Order 13166, Improving Access to Work 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);
  - 13.3.12. 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.*).
- 13.4. Equal Employment Opportunity. During the performance of this contract, the contractor agrees as follows:
- 13.4.1. 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.
  - 13.4.2. 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.
  - 13.4.3. 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.

- 13.4.4. 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.
- 13.4.5. 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.
- 13.4.6. 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.
- 13.4.7. 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.

### 13.5. Prohibition of Segregated Facilities.

- 13.5.1. The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their Work at any

location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

13.5.2. “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

13.5.3. The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

### 13.6. Disadvantaged Business Enterprises.

13.6.1. Contract Assurance. Contractor and each Sub-Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. **Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the recipient deems appropriate.**

13.6.2. Prompt Payment. Contractor agrees to pay each Sub-Contractor under this Agreement for satisfactory performance of its subcontract no later than five (5) days from the receipt of each payment Contractor receives from JMAA. Contractor agrees further to return retainage payments to each Sub-Contractor, if any, within ten (10) days after the Sub-Contractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of JMAA. This clause applies to both DBE and non-DBE Sub-Contractors. Nothing in this provision shall authorize withholding of retainage from any Sub-Contractor if JMAA does not withhold retainage from Contractor.

## VETERAN'S PREFERENCE

13.7. 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.

#### **BUY AMERICAN PREFERENCE**

- 13.8. The contractor agrees to comply with 49 USC § 50101, which provides that federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the 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.
- 13.9. The contractor was required in the Instructions for Bidders for this Work to submit the Buy America certification with their bid.

#### **FAIR LABOR STANDARDS ACT**

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

#### **14. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

- 14.1. 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 Sub-Contractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

#### **15. FEDERALLY REQUIRED CERTIFICATIONS**

- 15.1. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. Contractor certifies, by acceptance of this Agreement, that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared

ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Contractor further agrees by accepting this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts.

15.2. Trade Restriction Clause.

15.2.1. The Contractor certifies that with respect to this Agreement, the Contractor:

15.2.1.1. Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (“U.S.T.R.”);

15.2.1.2. Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.; and;

15.2.1.3. Has not entered into any subcontract for any product to be used on a federal 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.

15.2.2. 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.

15.2.3. The Contractor must provide immediate written notice to JMAA if the Contractor learns that its certification or that of a Sub-Contractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require Sub-Contractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

15.2.3.1. 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 Contractor or Sub-Contractor:

15.2.3.1.1. 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

15.2.3.1.2. 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

15.2.3.1.3. Who incorporates in the public works project any product of a foreign country on such U.S.T.R. list.

- 15.2.4. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of Contractor or any Sub-Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 15.2.5. The Contractor agrees that it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective Sub-Contractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R., unless the Contractor has knowledge that the certification is erroneous.
- 15.2.6. 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 Sub-Contractor knowingly rendered an erroneous certification, the FAA may direct through JMAA cancellation of the contract or subcontract for default at no cost to JMAA or the FAA.

15.3. Contract Workhours and Safety Standards Act Requirements.

- 15.3.1. Overtime Requirements. No Contractor or Sub-Contractor 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.
- 15.3.2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any Sub-Contractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Sub-Contractor shall be liable to the United States (in the case of work done under 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) of this



clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

- 15.3.3. Withholding for Unpaid Wages and Liquidated Damages. The FAA or JMAA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Sub-Contractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Sub-Contractor for unpaid wages and liquidated damages as provided herein.
- 15.3.4. Subcontractors. The Contractor or Sub-Contractor shall insert in any subcontracts the clauses set forth in Sections 15.3.1 through 15.3.3 and also a clause requiring the Sub-Contractor to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Sub-Contractor or lower tier Sub-Contractor with the clauses set forth herein.
- 15.4. Copeland “Anti-Kickback” Act. The 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 Sub-Contractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Sub-Contractor must submit to JMAA, a weekly statement on the wages paid to each employee performing on covered work during the prior week. JMAA must report any violations of the Act to the FAA.
- 15.5. Davis-Bacon Requirements.
  - 15.5.1. Minimum Wages.
    - 15.5.1.1. 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.

- 15.5.1.2. 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.
  
- 15.5.1.3. 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:
  - 15.5.1.3.1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  
  - 15.5.1.3.2. The classification is utilized in the area by the construction industry; and
  
  - 15.5.1.3.3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

- 15.5.1.4. 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.
- 15.5.1.5. 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.
- 15.5.1.6. The wage rate (including fringe benefits where appropriate) determined pursuant to this Article, 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.
- 15.5.1.7. 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.
- 15.5.1.8. 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 asset for the meeting of obligations under the plan or program.

15.5.2. Withholding. The FAA or JMAA 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 Agreement 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 Sub contractor the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the Agreement, the FAA may, after written notice to the contractor, sponsor, applicant, or JMAA, 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.

15.5.3. Payrolls and basic records.

15.5.3.1. 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.

15.5.3.2. 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 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).

15.5.3.3. 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:

15.5.3.3.1. 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.

15.5.3.3.2. 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;

15.5.3.3.3. 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.

15.5.3.3.4. 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 hereunder.

15.5.3.3.5. 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.

15.5.4. 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.

## 15.6. Apprentices and Trainees.

15.6.1. 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.

15.6.2. 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.

- 15.6.3. 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.
- 15.7. Compliance with Copeland Act Requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.
- 15.8. 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.
- 15.9. Contract Termination. Debarment. A breach of this Article may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- 15.10. 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.



15.11. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general dispute's 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.

15.12. Certification of Eligibility.

15.12.1. 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).

15.12.2. 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).

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

15.13. Drug-Free Workplace Requirement.

15.13.1. In accordance with the Drug-Free Workplace Act of 1988, 41 USC 702-706, the Contractor must provide a drug-free workplace for its employees by:

15.13.1.1. publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

15.13.1.2. establishing a drug-free awareness program to inform employees about:

15.13.1.2.1. the dangers of drug abuse in the workplace;

15.13.1.2.2. the Contractor's policy of maintaining a drug-free workplace;

15.13.1.2.3. any available drug counseling, rehabilitation, and employee assistance programs; and

- 15.13.1.2.4. the penalties that may be imposed upon employees for drug abuse violations.
- 15.13.1.3. making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required hereunder:
- 15.13.1.4. notifying the employee in the statement required hereunder, that as a condition of employment on such contract, the employee will:
  - 15.13.1.4.1. abide by the terms of the statement; and
  - 15.13.1.4.2. notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;
- 15.13.1.5. notifying the contracting agency within 10 days after receiving notice under subparagraph (15.13.1.4.2) from an employee or otherwise receiving actual notice of such conviction;
- 15.13.1.6. imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of this title; and
- 15.13.1.7. making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (15.13.1.1), (15.13.1.2), (15.13.1.3), (15.13.1.4), (15.13.1.5), and (15.13.1.6).

## **16. ENVIRONMENTAL COMPLIANCE**

- 16.1. Clean Air and Water Pollution Control. The 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 JMAA immediately upon discovery. JMAA assumes responsibility for notifying the Environmental Protection Agency (EPA) and the FAA. Contractor must include this requirement in all subcontracts that exceed \$150,000.00.
- 16.2. Procurement of Recovered Materials.
  - 16.2.1. Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and

Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use of products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

16.2.1.1. The contract requires procurement of \$10,000.00 or more of a designated item during the fiscal year; or

16.2.1.2. The contractor has procured \$10,000.00 or more of a designated item using federal funding during the previous fiscal year.

16.2.2. The list of EPA-designated items is available online.

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

16.2.3.1. Not reasonably available within a timeframe providing for compliance with the contract performance schedule;

16.2.3.2. Fails to meet reasonable contract performance requirements; or

16.2.3.3. Is only available at an unreasonable price.

16.3. Energy Conservation. Contractor and Sub-Contractors 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.*).

## **17. TERMINATION OF CONTRACT**

17.1. Termination for Convenience.

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

17.1.1.1. Contractor must immediately discontinue work as specified in the written notice.

17.1.1.2. Terminate all subcontracts to the extent they relate to the work

terminated under the notice.

17.1.1.3. Discontinue orders for materials and services except as directed by the written notice.

17.1.1.4. Deliver to JMAA all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work and as directed in the written notice.

17.1.1.5. Complete performance of the work not terminated by the notice.

17.1.1.6. Take action as directed by JMAA to protect and preserve property and work related to this contract that Owner will take possession.

17.1.2. Owner agrees to pay Contractor for:

17.1.2.1. Completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;

17.1.2.2. Documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;

17.1.2.3. Reasonable and substantiated claims, costs and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and

17.1.2.4. Reasonable and substantiated expenses to the contractor directly attributable to JMAA's termination action.

17.1.3. JMAA will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the JMAA's termination action.

17.1.4. The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

17.2. Termination for Default.

17.2.1. The Contractor shall be considered in default of his/her contract and such default will be considered as cause for the Owner to terminate the contract for any of the following reasons if the Contractor:

17.2.1.1. Fails to begin the work under the contract within the time

specified in the "Notice to Proceed," or

- 17.2.1.2. Fails to perform the work or fails to provide sufficient workers, equipment or materials to assure completion of work in accordance with the terms of the contract, or
  - 17.2.1.3. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
  - 17.2.1.4. Discontinues the prosecution of the work, or
  - 17.2.1.5. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
  - 17.2.1.6. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
  - 17.2.1.7. Allows any final judgment to stand against him unsatisfied for a period of 10 days, or
  - 17.2.1.8. Makes an assignment for the benefit of creditors, or
  - 17.2.1.9. For any other cause whatsoever, fails to carry on the work in an acceptable manner.
- 17.2.2. Should the Engineer consider the Contractor in default of the contract for any reason hereinbefore, he shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and JMAA's intentions to terminate the contract.
- 17.2.3. If the Contractor or surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then JMAA will, upon written notification from the Engineer of the facts of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority without violating the contract, to take the prosecution of the work out of the hands of the Contractor. JMAA may appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer will be required for the completion of said contract in an acceptable manner.
- 17.2.4. All costs and charges incurred by JMAA, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum

which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to JMAA the amount of such excess.

## **18. INDEMNITY**

- 18.1. To the fullest extent allowed by law, Contractor shall defend, indemnify, save harmless, protect, and exonerate JMAA, its board of commissioners (individually and as a group), officers, employees, agents, and representatives from all liabilities, claims, losses, suits, actions, demands, arbitrations, administrative proceedings, awards, judgments, expenses, attorneys' fees, and costs related to or for economic loss or damage, labor disputes, nonperformance of obligations, personal injury, bodily injury, illness, death, or property damages arising from or in connection with the Work undertaken or to be performed by or on behalf of Contractor under this Agreement or arising from or in connection with any act or omission relating to Contractor.

## **19. INSURANCE**

- 19.1. Contractor shall maintain, at its own expense, the following insurance coverages in the amounts specified, insuring Contractor, its employees, agents, designees, subcontractors, and any indemnities as required herein:
- 19.1.1. Commercial general liability insurance of not less than \$1,000,000 each occurrence for bodily injury and property damage and \$2,000,000 aggregate limit for bodily injury and property damage, including coverage for blanket contractual liability, broad form property damage, personal injury and bodily injury (including illness, disease and death), and products/completed operations.
  - 19.1.2. Comprehensive business automobile liability insurance, including hired and non-owned vehicles, with a combined single limit of not less than \$1,000,000, covering bodily injury and property damage.
  - 19.1.3. Statutory worker's compensation coverage with employer liability limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000.00 disease each employee.
  - 19.1.4. Property insurance on all equipment used in connection with the Project in an amount not less than full insurable value.
  - 19.1.5. Umbrella liability insurance with a limit of not less than \$5,000,000 providing additional coverage to the policies required by Sections 19.1.1, 19.1.2 and 19.1.3.
  - 19.1.6. Such other insurance as may reasonably be required by JMAA.
- 19.2. All insurance policies required herein shall be issued by an insurance company or

companies licensed to do business in the State of Mississippi and acceptable to JMAA, shall contain a waiver of subrogation in favor of JMAA, and shall be written on an occurrence basis or Contractor shall provide coverage to JMAA for a period not less than three (3) years after final completion of the Work. Contractor shall name JMAA as an additional insured on all insurance policies and coverages.

- 19.3. All policies required under the Contract Documents shall include the following endorsement and/or rider duly issued by the insurer that effectively amends the terms of the policy and binds the insurer to the following provision:

It is hereby agreed and understood that Jackson Municipal Airport Authority is named as an additional insured, and that the coverage afforded to Jackson Municipal Airport Authority under this policy shall be primary insurance. If Jackson Municipal Airport Authority has other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the Insurer's liability under this policy shall not be reduced by the existence of such other insurance.

- 19.4. No policy of insurance may be canceled, modified or reduced during the course of this Agreement, and Contractor shall obtain an endorsement and/or rider duly issued by the insurer that effectively amends the terms of the policy and binds the insurer to a provision substantially as follows:

Insurer will provide the Jackson Municipal Airport Authority not less than thirty (30) days prior written notice of its intent to cancel, modify, amend or reduce coverage.

- 19.5. Contractor shall be responsible for all deductibles and for any inadequacy or absence of coverage, and Contractor shall have no claim or other recourse against JMAA for any costs or loss attributable to such deductibles or to coverage limitations, exclusions, or unavailability, all of which shall be borne solely by Contractor.
- 19.6. At the time of execution of this Agreement, Contractor shall deliver to JMAA a Certificate or Certificates of Insurance, certifying the types and the amounts of coverage, certifying that the insurance is in force before Contractor starts work, certifying that the insurance applies to the Work and to all activities and liability of Contractor pursuant to this Agreement, and certifying that JMAA is named as an additional insured on Contractor's policies of insurance by duly issued endorsement and/or rider as required herein.
- 19.7. The insurance and indemnity obligations of this Agreement are non-delegable.
- 19.8. Contractor's failure to maintain complete insurance shall be a material breach of this Agreement authorizing JMAA, at JMAA's sole election, either to terminate this Agreement or to provide full insurance coverage at Contractor's sole expense; however, in neither case shall Contractor's liability be lessened.

- 19.9. In the event Contractor fails to obtain and maintain any of the insurance coverages required by this Agreement, JMAA shall be entitled, at its sole discretion and without waiving any rights under the Contract Documents, to purchase the insurance and deduct the premium costs from any amounts owed Contractor. However, JMAA shall have no obligation whatsoever to purchase the insurance and failure to do so shall not constitute a waiver of Contractor's obligations with respect to insurance as set forth in this Agreement.
- 19.10. Contractor shall be responsible for payment of all premiums for insurance required by this Agreement, but Contractor's obligations shall not be limited to the purchase of insurance. Contractor shall indemnify and hold harmless JMAA for all damages for which insurance should have been provided pursuant to this Agreement, irrespective of whether the insurance was actually obtained. Contractor's indemnity obligations under this Agreement shall not be restricted to amounts available under insurance, whether actually obtained or which should have been obtained, but shall extend to the fullest extent allowed by law.

## **20. SAFETY AND SECURITY**

- 20.1. Contractor shall observe all safety requirements of JMAA relating to the Airport in effect from time to time, and shall take such steps and actions as may be necessary or directed by JMAA to ensure that all officers, employees, engineers, contractors, invitees and guests of Contractor observe such requirements.
- 20.2. Contractor shall observe all requirements of any Security Regulations relating to the Airport including, without limitation, JMAA's Security Plan for the Airport, and any regulations of the TSA relating to security at the Airport, and shall take such steps and actions as may be necessary or directed by JMAA to ensure that all officers, employees, engineers, invitees and guests of Contractor observe such requirements.
- 20.3. If JMAA incurs any fines or penalties or any cost or expense under any safety or security program or plan pertaining to JMAA or the Airport as a result of any act or omission of Contractor, Contractor shall pay or reimburse to JMAA, as the case may be, all such fines, penalties, costs, and expenses. Contractor shall further rectify any such safety or security deficiency as may be determined by JMAA. JMAA reserves the right to take whatever action may be necessary to rectify any security deficiency caused by the actions or inactions of Contractor, which Contractor fails to timely remedy. In the event JMAA undertakes any such action, Contractor shall immediately pay and reimburse JMAA all monies expended, and costs incurred by JMAA in connection therewith.
- 20.4. 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.

- 20.4.1. In support of this initiative, JMAA 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 \$3,500.00 and involve driving a motor vehicle in performance of work activities associated with the project.

## **21. CERTIFICATION REGARDING LOBBYING**

- 21.1. The Contractor certifies to the best of his or her knowledge and belief, that:
  - 21.1.1. No federally-appropriated funds have been paid or will be paid, by or on behalf of the Contractor, 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.
  - 21.1.2. 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.
  - 21.1.3. 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.
- 21.2. 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 \$10,000.00 and not more than \$100,000.00 for each such failure.

## **22. BREACH OF CONTRACT TERMS**

- 22.1. 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 Agreement or such other action that may be necessary to enforce the rights of the parties of this agreement.
- 22.2. JMAA will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. JMAA reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or JMAA elects to terminate the contract. JMAA's notice will identify a specific date by which the Contractor must correct the breach. JMAA may proceed with termination of the contract if Contractor fails to correct the breach by deadline indicated in the JMAA's notice.
- 22.3. 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.

## **23. DISPUTE RESOLUTION**

- 23.1. If JMAA and Contractor litigate any claim under this Agreement, the non-prevailing party in such proceedings shall pay the prevailing party's reasonable attorneys' fees and expenses.
- 23.2. No claim, dispute, or other matter in controversy or question shall interfere with the performance of the Work required by this Agreement, and Contractor shall proceed diligently with performance of this Agreement, notwithstanding the existence of any claim, dispute, or other matter in controversy or question.
- 23.3. Should JMAA through litigation or other means seek enforcement of any of the provisions hereof or seek to protect its interests in any matter arising under this Agreement, or seek to collect damages for the breach of this Agreement, or seek to prosecute or defend any suit resulting from this Agreement, Contractor shall pay JMAA all costs, expenses, and attorneys' fees incurred in the investigation, preparation, and trial or hearing of such matters and otherwise reasonably related thereto.
- 23.4. If JMAA and Contractor litigate a claim for additional work or increased compensation, the non-prevailing party in the proceedings shall pay the prevailing party's reasonable attorneys' fees. If less than the full amount of the monetary claim is awarded, the claimant shall recover reasonable attorneys' fees (but no contingent fees) equal to the proportion of the amount awarded to the amount claimed, and the claimant shall pay the other party's reasonable attorneys' fees (but no contingent fees) equal to the proportion of the amount denied to the amount claimed.
- 23.5. No claim, dispute, or other matter in controversy or question shall interfere with the

rendering of the Work required by this Agreement or the progress of construction with respect to the Project, and Contractor shall proceed diligently with performance of this Agreement, notwithstanding the existence of any claim, dispute, or other matter in controversy or question.

- 23.6. Contractor shall include provisions similar to the foregoing Sections 23.1 through 23.5 in each subcontract entered into pursuant to this Agreement.

## **24. NOTICES**

- 24.1. Any notice or other communication herein required or permitted to be given shall be in writing and may be personally served or may be delivered by facsimile, overnight courier or United States mail and shall be deemed to have been given when delivered in person or received by facsimile (as evidenced by the sender's facsimile machine-generated confirmation report) or one (1) business day after delivery to the office of such overnight courier service or three (3) business days after depositing the notice in the United States mail with postage prepaid and properly addressed to the other party at the following respective addresses:

To JMAA: Jackson Municipal Airport Authority  
Suite 300, Main Terminal Building  
Jackson-Medgar Wiley Evers International Airport  
Post Office Box 98109  
Jackson, Mississippi 39298

Telephone No.: (601) 664-3500  
Facsimile No.: (601) 939-3713

Attention: Chief Executive Officer

To Contractor:

or to such other address as the party being given such notice shall from time to time designate to the other by notice given in accordance herewith.

## **25. GENERAL PROVISIONS**

- 25.1. Contractor shall, at all times, be regarded as an independent contractor and shall at no time act as agent for JMAA. Nothing contained in the Contract Documents shall be deemed or construed by JMAA, Contractor, or any third party as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between JMAA and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained in the Contract Documents, nor any acts of JMAA or Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of JMAA and Contractor. Moreover, nothing contained in the Contract Documents shall be deemed or construed to create a contractual relationship of any kind between JMAA and any Subcontractor or Sub-subcontractor or supplier.

- 25.2. Execution of this Agreement by Contractor is a representation that Contractor has visited the site, that general and local conditions are suitable for the Work to be performed and that Contractor accepts all conditions at the Project site. Contractor assumes all risks with respect to the requirements of the Contract Documents, including without limitation the characteristics (natural and manmade) of the site, site accessibility, labor rates and availability, weather conditions, and any other matter that could affect the performance and cost of the Work.
- 25.3. Where reference is made in this Agreement to another Contract Document, the reference refers to that document as amended or supplemented by other provisions of the Contract Documents.
- 25.4. All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement and are incorporated by reference into this Agreement as fully as if repeated herein verbatim.
- 25.5. The recitals at the beginning of this Agreement are intended to be covenants of JMAA and Contractor, are a material part of this Agreement, and shall be binding on JMAA and Contractor.
- 25.6. The headings contained in this Agreement are inserted for convenience of reference only and shall not be construed as defining, limiting, extending, or describing the scope of this Agreement, any article or paragraph hereof, or the intent of any provision hereof.
- 25.7. Unless the context otherwise requires, the words "hereof," "herein," "herewith," "hereunder," and words of similar meaning shall refer to the Contract Documents as a whole and not to any particular provision of the Agreement or any Contract Document. Where the context requires, the use of singular numbers or pronouns shall include the plural and vice versa, and the use of pronouns of any gender shall include any other gender.
- 25.8. Payments due and unpaid under the Contract shall bear interest in accordance with the terms of and at the legal rate specified in Section 31-5-25, Mississippi Code of 1972, as amended, supplemented or replaced from time to time.

- 25.9. This Agreement is subject and subordinate to the provisions of any agreement hereof or hereafter made between JMAA and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required or is required as a condition precedent to the transfer of federal rights or property to JMAA for airport purposes, or the expenditure of federal funds for the improvement or development of the Airport.
- 25.10. In the event the FAA or its successors require modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Contractor shall make such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be required.
- 25.11. JMAA and Contractor incorporate in the Contract Documents by this reference all provisions lawfully required to be contained herein by any governmental body or agency.
- 25.12. Whenever this Agreement calls for the approval or consent of JMAA, approval or consent shall be given in writing by JMAA's Chief Executive Officer and, unless specifically stated to the contrary, approval or consent may be made or given by JMAA in its sole discretion and determination.
- 25.13. No delay or omission by JMAA in exercising any right, power or remedy hereunder or otherwise afforded by contract, at law, in equity, or by statute, shall constitute an acquiescence therein, impair any other right, power, or remedy hereunder, or otherwise afforded by contract, at law, in equity, or by statute, or operate as a waiver of such right, power, or remedy. No waiver by JMAA of any default by Contractor hereunder shall operate as a waiver of any other default or the same default on a future occasion.
- 25.14. Contractor hereby waives any claim against JMAA for loss of anticipated profits caused by or resulting from any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part hereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void, voidable, or delaying the same or any part hereof from being carried out.
- 25.15. All terms, covenants, and conditions of this Agreement shall be binding upon and inure to the respective benefit of JMAA and Contractor, their respective officers, employees, agents, and representatives.
- 25.16. This Agreement contains the entire agreement between JMAA and Contractor relating to the subject matter hereof and supersedes all oral statements and prior writings with respect hereto and may be altered, amended, or modified only by a written document executed by JMAA and Contractor.
- 25.17. Neither JMAA nor Contractor shall be deemed in violation of this Agreement if

prevented from performing any of the obligations hereunder by reason of acts of God, acts of superior governmental authority, or other similar circumstances of force majeure for which JMAA or Contractor are not responsible, and which are not within JMAA's or Contractor's control.

- 25.18. This Agreement and the rights and obligations of JMAA and Contractor hereunder shall be construed in accordance with and governed by the laws of the State of Mississippi, without regard to the principles of conflict of law.
- 25.19. Contractor acknowledges that it has thoroughly read all Contract Documents, including without limitation this Agreement, all exhibits and attachments hereto, and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein.
- 25.20. This Agreement shall not be construed or interpreted in favor of or against JMAA or Contractor on the basis of draftsmanship or preparation hereof.
- 25.21. If any provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect any other provision of this Agreement that can be given effect without the invalid or unenforceable provision, or the application of such provision to other persons or circumstances, and, to this end, the provisions hereof are severable.

**26. ENUMERATION OF CONTRACT DOCUMENTS**

- 26.1. The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:
  - 26.1.1. The Agreement is this executed Standard Form of Agreement Between Jackson Municipal Airport Authority and Contractor.
  - 26.1.2. The Technical Specifications are those contained in the Project Manual
  - 26.1.3. The Drawings are as follows: Refer to Index of Drawings within the Project Manual.
  - 26.1.4. The Addenda, if any, are as follows:

Number	Date	Pages

- 26.2. Other Documents, if any, forming part of the Contract Documents are as follows:
  - 26.2.1. The Scope of Work attached hereto.

IN WITNESS WHEREOF, JMAA and Contractor have executed this Agreement on the dates indicated below.

JACKSON MUNICIPAL AIRPORT AUTHORITY

Date \_\_\_\_\_  
Paul A. Brown  
Chief Executive Officer

Date \_\_\_\_\_