

**CITY OF NEWPORT  
CITY ENGINEERING SERVICES CONTRACT  
April 2013**

This Contract is by and between City of Newport ("City") and WHPacific, Inc. ("Engineer") for the performance of engineering services for the Newport Municipal Airport ARFF Truck Procurement Project as detailed in the Request for Proposals for these services.

**A. RECITALS**

City has conducted an informal solicitation for proposals from engineering firms pursuant to City Public Contracting Rule 137-048-0210. Engineer was chosen as the most highly qualified engineering firm, best suited to meet the City's needs, pursuant to the selection criteria and approved by FAA.

City has awarded the contract to Engineer.

**B. CONTRACT EXHIBITS**

The following exhibits are hereby incorporated by reference into this Contract:

- Exhibit A – City's Scope of Work and FAA Approval Letter
- Exhibit B – Schedule of Charges
- Exhibit C – Oregon Personal Services Public Contracting Code Requirements
- Exhibit D – FAA Clauses for Airport Improvement Projects

**C. AGREEMENT**

**1. Term**

The term of this Contract shall be from its execution to project completion on or before July 31, 2014, and may be extended for additional periods of time upon mutual agreement of both parties. Such extension(s) will consider Engineer's schedule of charges attached as Exhibit B to this Agreement.

**2. Scope of Work**

Engineer shall provide all services and deliver all materials as specified in the attached Exhibit A. All services and materials shall be provided by Engineer in accordance with the Exhibit in a competent and professional manner.

During Construction/Installation, Engineer shall be available to receive Engineer and City questions. Responses to Engineer and City questions and issues shall be received by City within 24 hours.

Upon City's request and without additional compensation, Engineer shall make such revisions to completed Contract Documents as are necessary to correct errors or omissions appearing therein, which deviated from the standard of care described in Section 20.

If all purchase bids come in over the City's budgeted amount for the construction/installation project by greater than fifteen (15) percent, or otherwise must all be rejected, Engineer shall either redraft project specifications to bring the project within budget or rebid the project, at the

City's discretion. Beyond any needed initial redraft or rebid performed without additional compensation further redraft or rebids will be performed by Engineer on a time and materials basis. City may choose to negotiate compensation for Engineer's costs associated with redrafting project specifications, upon receipt of Engineer's written request to this effect, in City's sole discretion. City shall cooperate with Engineer in reducing Project scope or quality, and/or redesign or other services as necessary to reduce the Project cost. Engineer shall be responsible for the costs of all licenses and permits necessary to perform the services under this Contract, and to arrange for and obtain all such licenses and permits from the appropriate office or agency.

### **3. Compensation**

3.1 Payment. Engineer shall complete its scope of work as defined above and in the attached exhibits above on the Newport Municipal Airport ARFF Truck Procurement Project based upon Exhibit B rates, for up to a maximum not to exceed the total fee of \$19,812.00.

3.2 Invoices. Payments shall be based upon monthly invoices which Engineer shall submit to the City, detailing the previous months' fees, costs and percentage of the project completed at that time. Reimbursable expenses shall be itemized and backup invoices provided if required by City. Upon request, Engineer will provide the City with documents, records, and draft plans evidencing the progress made on the project to date. Engineer shall send invoices to City's representative at City's address set forth in Section 5. No payment shall be due for work undertaken, but not invoiced monthly during the course of the project.

#### **3.3 Payments.**

- a. City will review Engineer's invoice and within ten (10) days of receipt notify Engineer in writing if there is a disagreement or dispute with the invoice. If there are no such disputes with the invoice, City shall pay the invoice amount in full within thirty (30) days of invoice date.
- b. If City fails to make any payment due Engineer for services and expenses within thirty (30) days of the date on Engineer's invoice therefore, late fees will be added to amounts due Engineer at the rate of 1.0 percent (1%) per month from original invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute. In addition, Engineer may, after giving seven (7) days written notice to City, suspend services under this Contract until Engineer has been paid in full all amounts due for services, expenses, and charges, except any invoices in dispute.

### **4. Contractor Is an Independent Contractor**

Engineer shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under this Contract. While City reserves the right to set the schedule and evaluate the quality of Engineer's completed work, City cannot and will not control the means and manner of Engineer's performance. Engineer is responsible for determining the appropriate means and manner of performing work. Engineer is responsible for all federal and state taxes applicable to compensation and payment paid to Engineer under the Contract and will not have any amounts withheld by City to cover Engineer's tax obligations. Engineer is not eligible for any City fringe benefit plans.

### **5. Notices**

All notices provided for hereunder shall be in writing and shall be deemed to be duly served on the date of delivery if delivered in person, when receipt of transmission is generated by the transmitting facsimile machine if delivered by facsimile transmission, on the day after deposit if delivered by overnight courier, or three days after deposit if delivered by placing in the U.S. mail,

first-class, postage prepaid. Any notice delivered by facsimile transmission shall be followed by a hard copy. All notices shall be addressed as follows:

City: Melissa Román  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365  
Phone: (541) 574-3377  
Fax: (541) 265-3301

Engineer: Rainse E Anderson P.E.  
WHPacific, Inc  
9755 SW Barnes Rd. Suite 300  
Portland, OR 97225  
Phone: (503) 372-3521  
Fax: (503) 526-0775

## 6. Indemnification

To the fullest extent permitted by law, Engineer shall indemnify and, hold harmless, and defend City and its representatives, officers, directors, and employees from any loss or claim made by third parties, including reasonable legal fees and costs of defending actions or suits to the extent arising from Engineer's negligent acts, errors, omissions, or deliberately wrongful misconduct. Such claims include, but are not limited to, claims for bodily injury, illness or death, or property damage to the extent cause by Consultant's negligent acts, errors, or omissions as adjudicated by a court of competent jurisdiction on a comparative fault basis with City. If the loss or claim is caused by the joint concurrent negligence or other fault of City and Engineer, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each. Engineer is not obligate to indemnify City for City's own negligence or intentionally wrongful misconduct.

Engineer shall defend City from claims covered under this section at Engineer's sole cost and expense until such time (1) as an arbitration panel or a court of competent jurisdiction determines that City is liable in whole or in part for the loss or claim caused by City's negligence or (2) until City and Engineer mutually agree to allocate the liability.

## 7. Insurance Requirements

7.1 During the term of this Contract, Engineer shall maintain, at its own expense, the following types of insurance in the following amounts:

- a. Comprehensive general liability insurance, including coverage for premises operations, independent contractors, protected products, completed operations, contractual liability, personal injury, and broad form for property damage (including coverage for explosion, collapse, and underground hazards):

\$2,000,000 – each occurrence (bodily injury)  
\$2,000,000 – general aggregate  
\$1,000,000 – property damage, contractual, etc.  
\$1,000,000 – umbrella liability coverage

Coverage shall also include contractual liability coverage for the indemnity provided under this contract.

- b. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence.

- c. Errors and Omissions insurance covering Engineer's liability arising out of negligent acts, errors or omissions in its performance of work or services under this Contract. Such policy will have a combined single limit of not less than \$1,500,000 per each claim, incident or occurrence for the term of the Project. Such policy will be on a claims made basis. Engineer agrees to maintain similar and comparable coverage for a period of six years after substantial completion of Engineer's professional service under this Agreement.
  - d. The limits required in this Section 7.1 may be met with a combination of underlying and umbrella coverage.
  - e. Automobile liability insurance coverage (owned, not owned, and hired) for bodily injury and property damages: \$1,000,000 each accident.
- 7.2 Except as required in 7.1(d) above, if any of the above required insurance is arranged on a "claims made" basis, "tail" coverage will be required at final completion or termination of this Contract for a duration of two (2) years.
- 7.3 Policies shall provide that City, its directors, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 8.1(a) and a waiver of subrogation against them shall be obtained for all coverages.
- 7.4 All coverages under Section 7.1 shall be primary over any insurance City may carry on its own.
- 7.5 Engineer shall be solely responsible for any loss, damage or destruction to its own property, equipment, and materials used in conjunction with the work or services under this Contract.
- 7.6 All policies of insurance shall be issued by good, responsible companies, with a rating reasonably acceptable to City and that are qualified to do business in the state of Oregon.
- 7.7 Engineer shall furnish City with certificates of insurance evidencing all required coverages prior to commencing any work or services under this Contract. If requested by City, Engineer shall furnish City with executed copies of such policies of insurance. Engineer shall furnish City with at least 30-days' written notice of cancellation of, or any modification to, the required insurance coverages. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract.

## **8. Workers' Compensation**

- 8.1 Engineer, its subcontractors, if any, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all subject workers.
- 8.2 Engineer warrants that all persons engaged in Contract work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Engineer shall indemnify City for any liability incurred by City as a result of Engineer's breach of the warranty under this paragraph.

## **9. Hours of Employment**

Engineer shall comply with all applicable state and federal laws regarding employment.

**10. Assignment**

Engineer may not assign any of its responsibilities under this Contract without City's prior written consent, which consent may be withheld in City's sole discretion. Engineer may not subcontract for performance of any of its responsibilities under this Contract without City's prior written consent, which consent shall not be unreasonably withheld. Engineer's assigning or subcontracting of any of its responsibilities under the Contract without City's consent shall constitute a material breach of this Contract. Regardless of any assignment or subcontract, Engineer shall remain liable for all of its obligations under this Contract.

**11. Labor and Material**

Engineer shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of all Contract work, all at no cost to City other than the compensation provided in this Contract.

**12. Ownership of Work and Documents**

All work performed by Engineer and compensated by City pursuant to this Contract shall be the property of City upon full compensation for that work performed or document produced to Engineer, and it is agreed by the parties that such documents are works made for hire. Engineer hereby conveys, transfers and grants to City all rights of reproduction and the copyright to all such documents. However, in the event City reuses or modifies any materials furnished to City by Engineer, without Engineer's involvement or consent, then Engineer shall not be responsible for the materials.

**13. Termination for Convenience**

This Contract may be terminated by mutual consent of the parties upon written notice. In addition, City may terminate all or part of this Contract upon determining that termination is in the best interest of City by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Engineer. Upon termination under this paragraph, Engineer shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) City has against Engineer. Pursuant to this paragraph, Engineer shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Engineer. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless Engineer can show good cause beyond its control for the delay.

**14. Termination for Cause**

City may terminate this Contract effective upon delivery of written notice to Engineer, or at such later date as may be established by City, under any of the following conditions:

- 14.1 If City funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.
- 14.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 14.3 If any license or certificate required by law or regulation to be held by Engineer to provide

the services required by this Contract is for any reason denied, revoked, or not renewed.

**15. Termination for Default**

Either City or Engineer may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

If Engineer fails to perform in the manner called for in this Contract or if Engineer fails to comply with any other provisions of the Contract, City may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Engineer setting forth the manner in which Engineer is in default. Engineer shall be paid the Contract price only for services performed in accordance with the manner of performance as set forth in this Contract.

**16. Remedies**

In the event of breach of this Contract the parties shall have the following remedies:

- 16.1 If terminated under paragraph 15 by City due to a breach by Engineer, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Engineer shall pay to City the amount of the reasonable excess.
- 16.2 In addition to the above remedies for a breach by Engineer, City also shall be entitled to any other equitable and legal remedies that are available.
- 16.3 If City breaches this Contract, Engineer's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Engineer is entitled.
- 16.4 City shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.
- 16.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Engineer shall immediately cease all activities related to the services and work under this Contract. As directed by City, Engineer shall, upon termination, deliver to City all then existing work product that, if the Contract had been completed, would be required to be delivered to City.

**17. Nondiscrimination**

During the term of this Contract, Engineer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

**18. Governing Law; Jurisdiction; Venue**

This Contract shall be governed by and construed in accordance with the laws of the state of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between City and Engineer that arises from or relates to this Contract which results in litigation shall be brought and conducted solely and exclusively within the Circuit Court of Lane County for the state of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. ENGINEER BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID

## COURTS.

### 19. Compliance with Laws and Regulations

Engineer shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services under this Contract. Without limiting the generality of the foregoing, Engineer expressly agrees to comply with: (i) ORS 659.425; (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) City's performance under this Contract is conditioned upon Engineer's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit D and incorporated herein by this reference. Engineer, its subconsultants and all employers providing work, labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Engineer shall adhere to all safety standards and regulations established by City for work performed on its premises or under its auspices.

### 20. Experience, Capabilities and Resources

By execution of this Contract, the Engineer agrees that:

Engineer is an experienced Engineering firm having the skill, legal capacity, and professional ability necessary to perform all the services required under this Contract to design or administer the work of the scope and complexity of this project.

Engineer has the capabilities and resources necessary to perform the obligations of this Contract.

Engineer is familiar with all current laws, rules, and regulations which are applicable to the design and construction of the project, and that all drawings, specifications, and other documents prepared by Engineer shall be prepared in accordance with the standard of care of other professionals performing similar services under similar conditions and in an effort to accurately reflect and incorporate all such laws, rules, and regulations.

### 21. Drawings, Specifications and Other Documents

Engineer hereby agrees that it will, in a manner consistent with its standard of care defined in above in Section 20, prepare all drawings, specifications, and other documents pursuant to this Contract so that they are complete.

### 22. Errors and Omissions

Upon receipt of written notice to Engineer by the City of a suspected error, omissions, or other defect in the Engineer's work under this Agreement and upon mutual agreement of the parties, Engineer shall correct such services which deviate from the standard of care set forth in Section 20 at no additional cost to the City. Upon notification by the City of problems or alleged problems with the Engineer's design, the Engineer agrees to put forth reasonable professional effort to assist City in resolving such problems to the extent arising from the Engineer's professional services under this Agreement.

### 23. Contract Performance

Engineer shall at all times carry on the services diligently, without delay and punctually fulfill all requirements herein. All construction documents shall be completed sufficient for turn in for review no later than April 30, 2013 (hereinafter the "Critical Dates").

Engineer shall not be liable for delays that are beyond Engineer's control. Contract expiration shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to

any breach of Engineer's warranties or a default or defect in performance by Engineer that has not been cured. Engineer agrees that time is of the essence under this Contract.

**24. Access to Records**

For not less than three (3) years after the Contract expiration and for the purpose of making audit, examination, excerpts, and transcripts, City, and its duly authorized representatives shall have access to Engineer's books, documents, papers, and records that are pertinent to this Contract. If, for any reason, any part of this Contract, or any resulting construction contract(s) is involved in litigation, Engineer shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Engineer shall provide full access to these records to City, and its duly authorized representatives in preparation for and during litigation.

**25. Representations and Warranties**

Engineer represents and warrants to City that (1) Engineer has the power and authority to enter into and perform this Contract, (2) when executed and delivered, this Contract shall be a valid and binding obligation of Engineer enforceable in accordance with its terms, (3) Engineer shall, at all times during the term of this Contract, be duly licensed to perform the services, and if there is no licensing requirement for the profession or services, be duly qualified and competent, (4) the services under this Contract shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**26. City Obligations**

26.1 City shall provide full information in a timely manner regarding requirements for and limitations on the project. With regard to subcontractor liens, City shall furnish to Engineer, within fifteen (15) days after receipt of a written request, information necessary and relevant for Engineer to evaluate, give notice of, or enforce lien.

26.2 City shall establish and update, if necessary, overall project budgets, including Engineering and construction costs.

26.3 City shall furnish the services of consultants, including geotechnical engineers, when such services are requested by Engineer, reasonably required by the scope of a project, and agreed to by City.

26.4 City shall furnish all testing as required by law or the contract documents.

26.5 City shall furnish all legal accounting, auditing and insurance services as necessary for projects to meet the City's needs and interests, after Engineer has performed requisite project management and oversight duties.

26.6 City shall provide prompt written notice to Engineer if City becomes aware of any problem, fault, defect, or suspected problem, fault or defect, in a project, including any suspected errors, omissions or inconsistencies in Engineer's design or performance under the contract so that Engineer may take reasonable measures to mitigate the consequences of such.

26.7 City shall pay Engineer in accordance with paragraph 3 and Exhibit C of this Contract, upon receipt of Engineer's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect work completed and progress made upon the project to date, on a pro rata basis.

26.8 City shall report the total amount of all payments to Engineer, including any expenses, in

accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.

- 26.9 City shall guarantee access to, and make all provisions for Engineer to enter upon public and private property necessary for performance of the Scope of Work over which City exercises control.

**27. Arbitration**

All claims, disputes, and other matters in question between the City and Engineer arising out of, or relating to this Contract, including rescission, reformation, enforcement, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in City's sole discretion, in accordance with the Oregon Uniform Arbitration Act, ORS 36.600, et seq. and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after the notice of demand, the presiding judge of the Lane County Circuit Court will establish rules to govern the arbitration.

A claim by Engineer arising out of, or relating to this Contract must be made in writing and delivered to the City Administrator not less than 30 days after the date of the occurrence giving rise to the claim. Failure to file a claim with the City Administrator within 30 days of the date of the occurrence that gave rise to the claim shall constitute a waiver of the claim. A claim filed with the City Administrator will be considered by the City Board at the Board's next regularly scheduled meeting. At that meeting the Board will render a written decision approving or denying the claim. If the claim is denied by the Board, the Engineer may file a written request for arbitration with the City Administrator. No demand for arbitration shall be effective until the City Board has rendered a written decision denying the underlying claim. No demand for arbitration shall be made later than thirty (30) days after the date on which the City has rendered a written decision on the underlying claim. The failure to demand arbitration within said 30 days shall result in the City Board's decision being binding upon the City and Engineer.

Notice of demand for arbitration shall be filed in writing with the other party to the agreement, subject to applicable statutes of limitation, except as set forth above. The City, if not the party demanding arbitration, has the option of allowing the matter to proceed with binding arbitration or by written notice within five (5) days after receipt of a demand for arbitration, to reject arbitration and require the Engineer to proceed through the courts for relief. If arbitration is followed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Oregon law.

**28. Attorney Fees**

If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for City to incur the services of an attorney to enforce any provision of this contract without initiating litigation, Engineer agrees to pay City's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.

**29. Successors and Assigns; Subcontractors and Assignments**

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

**30. Limitation of Liabilities**

City shall not be liable for (i) any indirect, incidental, consequential, or special damages under the

Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

**31. Foreign Contractor**

If Engineer is not domiciled in or registered to do business in the state of Oregon, Engineer shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Engineer shall demonstrate its legal capacity to perform the work under this Contract in the state of Oregon prior to entering into this Contract.

**32. Confidentiality**

Each party shall maintain the confidentiality of any information that has been so marked as confidential, unless withholding such information would violate the law or create the risk of significant harm to the public. Engineer shall require similar agreements from City's and/or Engineer's subconsultants to maintain the confidentiality of information of City.

Engineer will have no obligation or restriction with respect to any confidential information if the same is:

- a) In the public domain at the time of disclosure, or is subsequently made available to the general public without restriction by the Disclosing Party;
- b) Known to the Receiving Party at the time of disclosure without restrictions on its use or independently developed by the Receiving Party, and there is adequate documentation to demonstrate either condition;
- c) Used or disclosed with the prior written approval of the Disclosing Party;
- d) Furnished by the Disclosing Party to the U.S. Government with "unlimited rights" or pursuant to a lawful subpoena; or
- e) Disclosed without restriction to the Receiving Party from a source other than the Disclosing Party.

**33. Force Majeure**

Engineer shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war.

**34. Waivers**

No waiver by City of any provision of this Contract shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Engineer of the same or any other provision. City's consent to or approval of any act by Engineer requiring City's consent or approval shall not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by Engineer, whether or not similar to the act so consented to or approved.

**35. Severability**

Any provisions of this Contract which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

**36. Headings**

The captions contained in this Contract are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

**37. Integration**

This Contract, including the attached exhibits referenced in Section B, contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters addressed by this Contract.

**38. Amendments**

Changes to the Contract shall be made only by written Amendment. No change in the work or any extra work shall be performed prior to execution of an Amendment by City, signed by the Engineer and City authorizing a change in the work and/or an adjustment in the price, deliverable due dates, substantial completion date, or final completion date. The price included on any Amendment shall be inclusive of all estimated costs, both direct and indirect, relating to the change in work. Further, the Amendment shall provide a detailed basis for substantiating any monetary and/or work changes. If monetary changes are made, the Amendment shall contain a maximum not to exceed amount.

**39. Authority**

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to make this Contract.

**40. Certificate of Compliance with Oregon Tax Laws**

By executing this Contract, Engineer certifies under penalty of perjury that Engineer is, to the best of Engineer's knowledge, not in violation of any Oregon tax laws described in ORS 305.385(6) and (7).

CITY:

CITY OF NEWPORT

By: Jim Verthuy

Title: City Manager

Date: 4/18/13

ENGINEER:

WH Pacific, Inc

By: Robert E. [Signature] W.B.

Title: Director of Aviation

Date: 4/17/13

## Exhibit A

### SCOPE OF WORK

PROCUREMENT OF NEW  
AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) TRUCK

CITY OF NEWPORT MUNICIPAL AIRPORT

PROPOSED SCOPE OF WORK

April 3, 2013

#### DEFINITIONS

- a. Engineer – WHPacific Inc.
- b. Owner – City of Newport

#### ARTICLE A - DATA COLLECTION AND PROJECT DEVELOPMENT

- a. Pre-design Conference - A representative of the engineer will attend a pre-design meeting at the offices of the City to provide representatives of the owner, the opportunity to review and discuss the nature and extent of the project and to establish the project criteria, budget, and schedule. The engineer will coordinate the date and time of the pre-design conference via teleconferences, letters, faxes and emails to the representatives of the owner and the FAA. The engineer will prepare an agenda of the project components for discussion at the pre-design conference. The engineer will use the Airports Division Pre-design Conference per FAA Engineering Guidance 2013-04 to determine the parameters that will be used for this project.
- b. Review and Evaluate Existing Data - The engineer will compile existing data and preliminary specifications that were prepared by the City for the purchase of the new ARFF truck. The existing data includes appropriate ARFF trucks for an Index A airport and required additional equipment to be purchased with truck. The engineer will utilize the pertinent data and information as appropriate to prepare worksheets to facilitate the development of the project. The engineer will review the existing data for accuracy and completeness and to determine the feasibility of utilizing the data to prepare specifications for procurement of ARFF truck.

Expenses - The engineer will incur certain miscellaneous project related expenses during this phase of the work which may include but will not be limited to: mileage cost at \$0.555 per mile, tolls, overnight shipping, plans, photocopies, photographic materials, equipment rental, survey materials, long distance telephone calls from the field, newspaper advertisements, and miscellaneous vendor invoices. These expenses will be included in the engineer's contract with the owner.

Outside Services - The engineer will incur certain project related costs during the data collection and project development phase of the work. These costs will be included in the engineer's contract with the owner.

## ARTICLE B - DESIGNS, PLANS AND SPECIFICATIONS

- a. Project Specifications and Contract Documents - The engineer will prepare preliminary and final specifications and procurement documents based on the preliminary and final plans. The specifications will establish the Requirements for the project in accordance with the current version of and changes to FAA AC 150/5220-10, current edition, "Guide Specification for Aircraft Rescue and Firefighting (ARFF) Vehicles" including general provisions, FAA required language for equipment purchases, and technical specifications.

The procurement documents will include: Invitation to Bid, Information for Bidders, Bid Proposal, Schedule of Items, manufacturer's Qualifications and Certifications, Buy American Requirements, Contract Agreement, Notice to Bidders (Bonding), Bid Bond, Payment Bond, Performance Bond, Maintenance Bond, and Insurance Requirements. The contract documents will include Federal special provisions including: Federal Requirements for Equipment Contracts \$100,000 and Over, Instructions to Bidders, Certification for Nonsegregated Facilities, Required Assurances and Federal wage rate requirements for Newport, Oregon, USA.

The engineer will distribute the preliminary specifications and contract documents to the owner and the FAA for review and approval. The engineer will provide the owner with one (1) set of preliminary specifications and procurement documents for review and comment. The engineer will provide the FAA with one (1) set of preliminary specifications and procurement documents for review and comment. The engineer will further develop the preliminary specifications and contract documents into final specifications and contract documents subsequent to the review and comment period. The engineer will distribute the final specifications and procurement documents to the owner and the FAA. The engineer will provide the owner with one (1) set of final specifications and contract documents. The engineer will provide the FAA with one (1) set of final specifications and procurement documents.

- b. Estimates - The engineer will prepare estimates of material quantities and purchasing costs based on the plans and specifications. The estimates will be distributed to the owner and the FAA for review and modification. The owner and the FAA each will be provided with one (1) copy of the estimates.

*NOTE: Procurement cost estimates will reflect the engineer's opinion of probable purchasing costs and will be based on the engineer's experience with similar recent purchases. The engineer has no control over the actual cost of materials or over the competitive bidding and procurement market conditions. The engineer cannot guarantee the accuracy of the purchasing cost estimates when compared to the consultants' purchasing bids or to the final project procurement cost.*

- c. Quality Control and Design Review - The engineer will conduct in-house quality control

and design review meeting with experienced representatives of the engineer. The engineer will provide staff members with the opportunity to perform independent analyses of the final specifications to ensure clarity, accuracy, and completeness. Subsequent to the independent reviews, a special in-house project review meeting will be conducted to discuss and consolidate the findings of the reviewers. The recommendations of the design review team will be incorporated into the final specifications.

Expenses - The engineer will incur certain miscellaneous project related expenses during this phase of the work which may include but will not be limited to: mileage cost at \$0.555 per mile, tolls, overnight shipping, plans, photocopies, photographic materials, equipment rental, survey materials, long distance telephone calls from the field, and miscellaneous vendor invoices. These expenses will be included in the engineer's contract with the owner.

#### ARTICLE D - PROJECT ADMINISTRATION

- a. Scope of Services and Contract - The engineer will communicate and coordinate with the owner via telephone, letters, fax, and email requesting the authority to proceed with the preliminary phases of the proposed project pending the execution of the engineering services agreement. The engineer will review an engineering services agreement including a detailed work scope narrative and prepare itemized fee schedules for submission to the owner and the FAA for review and approval. The engineer will coordinate the preparation of the contract with the staff of their planning, CADD, and airport departments.

The engineer will make changes to the work scope narrative and the fee schedules of the selected proposal. The engineer will make changes to the contract document standard provisions at the request of the owner's legal counsel and with the approval of the engineer's executive management. The engineer will prepare letters of transmittal and will distribute three (3) copies the final contract to the owner and the engineer's executive management for original authorized signature s. The engineer will prepare letters of transmittal and will distribute one (1) signed original copy of the fully executed contract to the owner, one (1) signed original copy to the engineer's executive management, and one (1) signed photocopy to the FAA.

- b. FAA Grant Application - The engineer will prepare seven (7) copies of the formal FAA grant application including letters of transmittal, Standard Form 424, Standard Form 5100-100, project narrative, cost estimate, project schedule, statement of airport user coordination, statement of intergovernmental coordination, sponsor certifications, and grant assurances. The engineer will submit the grant application to the owner with transmittal letters for the owner's signatures and forwarding to the FAA. The engineer will review the Federal grant offer and assist the owner in complying with the terms and conditions of the grant offer.
- c. In-House Administration - The engineer will provide general project administration and coordination including in-house staff review of the project's progress, in-house staff communication, and dissemination of project data and information to in-house staff in the form of internal memos, discussions, meetings, and updates to apprise the project team of

new developments throughout the design phases of the project. The engineer will prepare an in-house project work plan for distribution to the engineer's design team members to inform them of the project goals and objectives including scope of work, team assignments and responsibilities, project budget, project schedule, project contacts, and contract requirements, obligations, and limitations.

- d. Outside Administration - The engineer will provide general project administration and coordination including disseminating interim project data and information to the owner, the FAA, and the engineer's subconsultants in the form of telephone conversations, letters, faxes, email, copies, etc. to apprise the owner and the FAA of new developments throughout the project.
- e. Accounting Administration - The engineer will provide general project administration and coordination with the staff of their accounting department. The engineer will prepare the engineer's internal close out forms. The engineer will verify and reconcile the monthly accounting statements and will prepare memos for adjustments and corrections when necessary. The engineer will approve and process invoices received from subconsultants and vendors providing services to the engineer throughout the design phases of the project. The engineer will prepare and submit monthly invoices to the owner for services provided to the owner and for costs incurred by the engineer and their subconsultants. It is anticipated that a total of five (5) invoices will be prepared and submitted during the course of the project.
- f. Miscellaneous Administration - The engineer will provide miscellaneous project administration and coordination duties which are not specifically addressed or anticipated in other project related tasks including telephone conversations with the owner, the FAA, and other interested parties; disseminating interim project information to the owner, the FAA, and other interested parties; and organizing, maintaining, and archiving the project records for six (6) years.

Expenses - The engineer will incur certain miscellaneous project related expenses during this phase of the work which may include but will not be limited to: meals, lodging, mileage cost at \$0.555 per mile, tolls, overnight shipping, plans, photocopies, photographic materials, equipment rental, survey materials, long distance telephone calls from the field, and miscellaneous vendor invoices. These expenses will be included in the engineer's contract with the owner.

#### ARTICLE E - BIDDING SERVICES AND PROCUREMENT ARRANGEMENTS

- a. Bid Documents - The engineer will prepare 10 sets of bid documents comprising the equipment specifications, and contract in accordance with the requirements of the owner and the FAA.
- b. Bid Advertisement - The engineer will prepare a legal advertisement and deliver it to three (3) newspapers to publish as a solicitation for bids in accordance with the owner's bidding procedures. The engineer will deliver the bid advertisement to five (5) plan viewing rooms for publication in order to maximize the project exposure and generate widespread consultant interest in the project. The engineer will communicate with the

plan viewing rooms and similar industry entities to provide technical information for their publications. The engineer will notify the state and the FAA of the project's advertisement. The City will be responsible for paying the advertisement costs.

- c. **Distribute Bid Documents** - The engineer will contact manufactures who are potential bidders in order to maximize participation in the project. The engineer will issue the bid documents to the interested bidders and to five (5) plan centers. The engineer will maintain a list of the bid document recipients including the recipient's name, overnight mailing address, telephone number, and fax number for use in issuing addenda. The engineer will distribute the bid document recipient list to interested parties if requested by potential bidders.
- d. **Bid Questions and Addenda** - The engineer will answer questions and provide technical advice to the potential bidders concerning the bid documents. The engineer will answer questions and provide technical advice to the owner concerning the bid documents. The engineer will prepare and issue one (1) addenda to the bid document recipients to clarify, modify, or correct the bid documents. Consultant will attend the bid-opening and prepare a bid tabulation.
- e. **Bid Analyses, Recommendation and Award** - The engineer will conduct a detailed analysis of the bids for completeness and accuracy and will note omissions and discrepancies. The engineer will compile a bid summary comprising the results of the bids for distribution to the bid document recipients. The engineer will write a letter to the owner recommending the award of the contract to the apparent low bidder based on the bid analyses. With the concurrence of the owner and the FAA, the engineer will issue a written notification to the successful bidder informing the bidder of the bid results. The engineer will disseminate the bid results to the plan viewing rooms.
- f. **Bid Sureties** - The engineer will issue letters to the unsuccessful bidders returning the bid sureties, distributing the bid summary, and describing the bid results. The engineer will return the bid surety to the successful bidder after the bidder has executed the construction contract. The engineer will return the bid surety to the second low bidder after the successful bidder has executed the construction contract.
- g. **Contractor Coordination** - The engineer will prepare six (6) copies of the contractor's bid proposal package for use as the equipment purchase contract document. The engineer will coordinate with and provide information to the contractor to facilitate the preparation and execution of the contract document. The engineer will review the contractor's contract for accuracy and completeness before submitting the document to the owner for final signatures. The engineer will prepare a checklist of tasks to be performed by the owner to fully execute the contract. **Expenses** - The engineer will incur certain project related expenses during this phase of the work which may include but will not be limited to: meals, lodging, mileage cost at \$0.555 per mile, tolls, overnight shipping, plans, photocopies, photographic materials, equipment rental, survey materials, long distance telephone calls from the field, and miscellaneous vendor invoices. These expenses will be included in the engineer's contract with the owner.
- h. **Shop Drawing Review** - The engineer will review the shop drawings and materials submittals that are

furnished by the contractor as required by the equipment contract documents. The engineer will fully approve, conditionally approve, or reject the shop drawings and materials. The engineer will return conditionally approved and rejected shop drawings and materials submittals to the contractor for changes or revisions prior to the use of the materials on the project. The engineer will review only one resubmission of a conditionally approved or rejected shop drawing or submittal. The engineer will prepare and maintain a submittal register identifying the submittal number, description, specification section, specification paragraph, received date, action date, and action taken. The engineer will distribute copies of the submittals and the updated submittal register to the owner.

- i. Final Inspection - The engineer will conduct a site walk and final inspection with the owner of the delivered ARFF truck and equipment to confirm the completeness and quality of the deliverables. The engineer will coordinate the date and time of the final inspection via teleconferences, letters, faxes and email to the owner, the FAA and the contractor. The engineer along with the Owners' representative will prepare a summary report of the final inspection, including a punch list of work items that the contractor must accomplish to complete the work. The engineer will distribute the summary report to the owner, the FAA and the contractor.
- j. Project Close Out Report - The engineer will prepare the final project documentation per requirements of FAA Engineering Guidance 2010-06 in the form of a project close out report that consolidates the project related information that will be required by the FAA to formally close out the project. The engineer will include in the close out report all general, fiscal, miscellaneous, engineering and construction information, and submissions/certifications listed on the FAA project closure summary checklist. The engineer will distribute one (1) copy of the project close out report each to the owner and the FAA.

### End of Scope of Work



U.S. Department  
of Transportation  
Federal Aviation  
Administration

Northwest Mountain Region  
Seattle Airports District Office  
1601 Lind Avenue S.W., Suite 250  
Renton, Washington 98055-4056

April 10, 2013

Ms. Melissa Roman  
Dept. of Public Works  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365

Newport Municipal Airport, Newport, Oregon  
Airport Improvement Program (AIP) Project No. 3-41-0040-021  
ARFF Vehicle Procurement

Dear Ms. Roman:

I have reviewed the scope of work, and fee proposal for the 2013 Procurement of Aircraft Rescue and Fire Fighting (ARFF) Truck.

The fee of \$19,812.60 for the above services by WHPacific, Inc. is approved. Any changes to the approved documents and engineering contract fee will require Federal Aviation Administration (FAA) approval prior to performing the work. Please send our office a copy of the executed task order. Ninety percent of the above costs will be eligible for AIP funding on a reimbursement basis.

Federal participation is contingent upon design conforming to FAA standards and specifications, and equipment acquisition conforming to the approved contract documents. In accordance with the grant assurance titled "Policies, Standards, and Specifications," the Sponsor is obligated to carry out these projects in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to the Advisory Circulars listed in the current FAA Advisory Circulars for AIP projects.

We encourage the sponsor to review its engineering services and construction agreements in detail. Under the AIP, the sponsor is the responsible authority regarding the settlement, and satisfaction of all contractual and administrative issues arising from the procurement entered into, and in support of an airport aid grant. If there are any questions regarding this subject, please call me at (425) 227-2654.

Sincerely,

Kevin Latschaw, P.E.  
Seattle Airports District Office

Cc: Rainse Anderson, P.E., WHPacific, Inc.

## Exhibit B

### WHPACIFIC STANDARD FEE SCHEDULE April 2013

#### I. STANDARD FEE SCHEDULE

The compensation of WHPacific for work done on the basis of salary cost times a factor, plus incurred expenses (which may be referred to as "time and materials" or "standard billing") will be the sum of all of the items set forth below:

##### A. PERSONNEL SERVICES

1. 2.2 times salary cost. Salary cost is defined as total hours worked times the employee's straight-time rate of pay on an hourly basis plus 37% allowance for payroll taxes and other employee benefits. All time spent in connection with the order by executive, professional, subprofessional, technical, and clerical employees will be included.
2. Overtime premium (overtime hours worked times the difference between overtime and straight-time rates) if the client's requirements make overtime work necessary.

##### B. TRAVEL AND TRANSPORTATION EXPENSES

1. Reimbursement for actual travel and subsistence expenses paid to or on behalf of employees on business connected with the project, plus a service charge of 10%.
2. Fifty-six and half cents (\$.565) per mile for use of vehicles.

##### C. OUTSIDE SERVICES

1. Invoice cost of services and expenses charged to WHPacific by outside consultants, professional or technical firms engaged in connection with the order, plus 10% overhead costs.

##### D. MISCELLANEOUS EXPENSES

1. Outside Sources: The invoice cost of materials, supplies, reproduction work, and incurred expenses, procured by WHPacific from outside sources. Expenses associated with computers, electronic distance measuring device, telephone, cell phones, photocopies, standard survey supplies and standard postage will be invoiced as a Technology Charge at \$5.00 per billable labor hour.
2. WHPacific Reimbursables:
  - a. Large format photocopying \$3.00 each
  - b. Blueline prints \$3.00 each
  - c. GPS receiver (per receiver) \$250.00 per day



## Exhibit C

### Oregon Public Contracting Requirements

#### ORS CHAPTER 279B PUBLIC CONTRACTING REQUIREMENTS FOR THE PURCHASE OF GOODS AND SERVICES

- (1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor. ORS 279B.220(1).
- (2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. ORS 279B.220(2).
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against the Contracting Agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3).
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617. ORS 279B.220(4).
- (5) Contractor agrees that if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
- (6) Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1).
- (7) All subject employers working under the contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2).
- (8) Contractor shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq). ORS 279B.235(3).
- (9) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work. ORS 279B.235(2).
- (10) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430.
- (11) The contract may be canceled at the election of City for any willful failure on the part of Contractor

to faithfully perform the contract according to its terms.

- (12) Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.
- (13) Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors. ORS 279A.110.
- (14) As used in this section, "nonresident contractor" means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a "resident bidder" under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120.

## Exhibit D

# FAA Clauses for Airport Improvement Projects

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### 1. FAA Required Clauses:

#### **A. Compliance with Laws and Regulations**

CONSULTANT agrees to comply with local and State laws and Federal Executive Order No. 11246, entitled "Equal Employment Opportunity", as supplemented in Department of Labor regulations (41 CFR, Part 60) of this Agreement.

#### **B. FAA Not a Party**

It is understood by OWNER and CONSULTANT that the FAA is not a party to this Agreement and will not be responsible for engineering costs except as should be agreed upon by OWNER and the FAA under a grant Agreement for the Project.

#### **C. Right to Inventions:**

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the sponsor of the Federal Grant under which this contract is executed. Information regarding these rights is available from the FAA and the OWNER.

#### **D. Title VI Assurances:**

During performance of this contract, CONSULTANT, for itself, its assignees and successors in interest, agree as follows:

##### **1. COMPLIANCE WITH REGULATIONS**

CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT"). Table 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

##### **2. NON-DISCRIMINATION**

CONSULTANT, with regard to the work performed by it during this Contract, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. CONSULTANT shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations.

3. SOLICITATIONS FOR SUBCONTRACTORS, INCLUDING PROCUREMENT OF MATERIALS AND EQUIPMENT

In all solicitations, either by competitive bidding or negotiation, made by CONSULTANT for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or suppliers shall be notified by CONSULTANT of the Regulations relative to non-discrimination on the grounds of sex, race, color, or national origin.

4. INFORMATION AND REPORTS

CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, and other sources of information and its facilities as may be determined by the OWNER or the Federal Aviation Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the OWNER or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain this information.

5. SANCTIONS FOR NON-COMPLIANCE

In the event of CONSULTANT's non-compliance with the non-discrimination provisions of this Contract, the OWNER shall impose such Contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including but not limited to:

- (a) withholding of payment to CONSULTANT under this Contract until it complies; or
- (b) cancellation, termination, or suspension of this Contract, in whole or in part.

6. INCORPORATION OF PROVISIONS

CONSULTANT shall include the provisions of paragraphs A through E in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations or directives issued pursuant thereto. CONSULTANT shall take such action with respect to any subcontract or procurement as the OWNER or the Federal Aviation Administration may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such

direction, CONSULTANT may request the OWNER to enter into such litigation to protect the interests of the OWNER, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

**E. Disadvantaged Business Enterprise (DBE) Assurances:**

1. POLICY

It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 applies to this Agreement.

2. DBE OBLIGATION

CONSULTANT agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, CONSULTANT shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to complete for an perform contracts. CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

**F. Trade Restriction Clauses:**

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

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 (USTR);
2. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said lists, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

3. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign county on said list for use on the project, the Federal Aviation Administration may direct through the OWNER cancellation of the contract at no cost to the Government.

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

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

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

This certification concerns a matter within the jurisdiction of an agency of the United Sates of American 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.