

CONTRACTOR AGREEMENT

The parties to this agreement are the SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, a local governmental entity of regional government ("Airport Authority"), and [INSERT CONTRACTOR NAME], a [INSERT STATE AND TYPE OF ENTITY] ("Contractor").

The Airport Authority desires to enter into an agreement with Contractor for the construction of [REDACTED] at San Diego International Airport ("Project"). This Contract between the Airport Authority and the Contractor ("Contract") is made and entered into this [REDACTED] day of [REDACTED] in the year of 20[REDACTED].

AIRPORT AUTHORITY: San Diego County Regional Airport Authority
2417 McCain Rd
San Diego, CA 92101

CONTRACTOR: [INSERT CONTRACTOR NAME]
[INSERT ADDRESS]
[INSERT ADDRESS]

PROJECT: [INSERT PROJECT NUMBER/NAME]

In consideration of the mutual covenants and obligations contained herein, the Airport Authority and the Contractor agree to the following:

1. SUMMARY SCOPE OF WORK

- 1.1 The Contractor shall furnish to the Airport Authority all labor, materials, tools, equipment, services, and incidental and customary work necessary to satisfy the requirements of the Contract Documents and required for the complete construction of a complete and fully functional Project, as further described herein.
- 1.2 In the event that both parties agree to extend the term of this Contract, add additional scope, or modify any other term or condition of this Contract, the parties shall enter into a written amendment or Change Order to this Contract.

2. TIME

- 2.1 The Contractor shall begin performance of services under this Contract on the date specified in writing by the Airport Authority. The Contractor shall keep the Airport Authority informed of the progress of such services at all times.
- 2.2 The Contractor agrees to complete all Work required to construct the Project, excluding warranty work, on or before the milestones listed in Special Conditions Article 10. The Final Acceptance milestone duration is defined herein as the Contract Time.
- 2.3 Liquidated Damages. Special Conditions Article 10 sets forth the liquidated damages amounts applicable to this Project.

3. COMPENSATION

- 3.1 The Airport Authority shall pay to the Contractor as full compensation for the performance of the Work required by these Contract Documents, subject to any additions or deductions as provided herein, and including all applicable taxes and costs, the sum of [REDACTED] Dollars (\$ [REDACTED]). Payment shall be made as set forth in the General Conditions.

4. EXECUTION OF CONTRACT

The Contractor acknowledges and agrees that it has independently reviewed the Contract Documents provided by the Airport Authority with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the provisions set forth therein. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of such Contract Documents, they shall not be interpreted or construed against the party who prepared them.

This Contract is entered into as of the day and year first written above.

This Contract is executed and entered into in the County of San Diego, State of California, and the obligations under this Contract are incurred and shall be performed and executed in said County.

If the Contract is between the Airport Authority and a corporation, it requires the signature of two corporate officers. One signature shall be that of the chairman of the board, the president, or any vice president and the second signature shall be that of the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer of such corporation.

**SIGNATURE PAGE FOR
CONTRACTOR AGREEMENT BETWEEN
SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY
AND [INSERT CONTRACTOR NAME]**

**SAN DIEGO COUNTY REGIONAL
AIRPORT AUTHORITY**

DATED _____, 20____
:

By:

Atif Saeed
President/CEO

APPROVED AS TO FORM AND
LEGALITY:
Airport Authority Attorney

[INSERT CONTRACTOR NAME]

By: _____

License No.:

By: _____
Signature

Its: _____

(Type or print Signatory's name and title)

By: _____
Signature

Its: _____

(Type or print Signatory's name and title)

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ARTICLE 1. - GENERAL PROVISIONS

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1. GENERAL PROVISIONS

1.1 THE CONTRACT

- 1.1.1 The Contract Documents form the agreement between the Airport Authority and the Contractor. The Contract Documents represent the entire integrated agreement between the parties and supersede all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only as set forth herein. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Airport Authority and any person or entity other than the Contractor.
- 1.1.2 The Contractor's signing of the Contract signifies the Contractor's acceptance of the terms and conditions of the Contract Documents.

1.2 DEFINITIONS

- 1.2.1 Whenever in these Contract Documents the following terms are used, their intent and meaning are as follows:
 - 1.2.1.1 **Act of God:** An earthquake of magnitude 3.5 or higher on the Richter Scale or a tidal wave.
 - 1.2.1.2 **Addendum:** A formal change to the Request for Bids or other bid documents. All changes to the Contract Documents implemented through Addenda become incorporated into the Contract Documents and shall control over any conflicting information contained in the original Request for Bids.
 - 1.2.1.3 **Airport Authority or Authority:** The San Diego County Regional Airport Authority, a local governmental entity of regional government.
 - 1.2.1.4 **Airport Authority's Representatives or Representative:** The individual(s) designated by the Airport Authority, in writing, to oversee the Work and provide direction regarding performance of the Work.
 - 1.2.1.5 **Air Operations Area (AOA):** Any area designated for the landing, take-off, surface movement, parking, loading and unloading of aircraft (in practice, most areas inside the airport perimeter fence).
 - 1.2.1.6 **Amendment:** A formal alteration of the Contract by addition, deletion, or modification of the terms and conditions of the executed Contract.
 - 1.2.1.7 **Authorization to Proceed:** A written authorization from the Airport Authority's Representative to the Contractor

authorizing the Contractor to proceed with a portion of the Work.

- 1.2.1.8 **As-Built Plans:** Final plans reflecting the completed construction Work as actually performed under the Contract.
- 1.2.1.9 **Beneficial Occupancy:** The point at which the Airport Authority, after notice, takes possession of a portion of the Work or the entire Work to place it in service for its intended purpose.
- 1.2.1.10 **Bid:** The documents submitted by the Bidder in response to the Request for Bids.
- 1.2.1.11 **Bidder:** The individual, partnership, firm, corporation, joint venture or other business entity which submits a Bid in response to the Request for Bids.
- 1.2.1.12 **Building Information Modeling (BIM) and Virtual Design and Construction (VD&C):** The multi-dimensional modeling process that allows the parties to depict construction components.
- 1.2.1.13 **Business Day:** Any day in which normal business is conducted. This is generally considered to be Monday through Friday from 8:00 A.M. to 5:00 P.M. Pacific Time, and excludes weekends and holidays recognized by the Airport Authority.
- 1.2.1.14 **Board:** The Board of the San Diego County Regional Airport Authority, as specified in the San Diego County Regional Airport Authority Act (California Public Utilities Code §170000, et al.).
- 1.2.1.15 **Change Order Request (COR):** A written request made by the Contractor for the issuance of a CCO that adjusts either the Contract Price or Contract Time.
- 1.2.1.16 **Changed Condition:** As further defined in Article 9, a change in the Work not identified in the Contract Documents, which could not have been reasonably anticipated by the Contractor and is beyond the control and without the fault of the Contractor.
- 1.2.1.17 **Conflict:** Any material difference, ambiguity, error, omission, conflict, or discrepancy in the Contract Documents.
- 1.2.1.18 **Construction Documents:** All Plans, Specifications, reports, calculations, records, and other referenced documents that define or affect the Work.

- 1.2.1.19 **Contract:** The document that is comprised of the Contractor Agreement, General Conditions, and Special Conditions.
- 1.2.1.20 **Contract Change Order (Change Order or CCO):** A written document signed and issued by the Airport Authority documenting one or more of the following:
- 1.2.1.20.1 The addition, deletion, or revision to the Work.
 - 1.2.1.20.2 An adjustment in the Contract Price, if any.
 - 1.2.1.20.3 An adjustment in the Contract Time, if any.
- 1.2.1.21 **Contract Completion Date:** The date for full and final completion of all Work as defined by the Contract Documents.
- 1.2.1.22 **Contract Documents:** The Contract entered into between the Airport Authority and the Contractor and any and all other documents of every kind and nature which are attached to or made a part hereof by reference or by operation of law, such as, but not limited to: Request for Bids, Bonds, Addenda, the Contract, General Conditions, Special Conditions, Airport Authority approved Change Orders, and Construction Documents.
- 1.2.1.23 **Contract Price:** The total compensation available to the Contractor and payable by the Airport Authority for performance of all Work as specified by the Contract Documents, as may be amended by Contract Change Orders as the Project progresses.
- 1.2.1.24 **Contract Time:** The total Contract duration for the performance of all Work as specified by the Contract Documents, as may be amended as the Project progresses.
- 1.2.1.25 **Contractor:** The individual, partnership, firm, corporation, joint venture, or other business entity with which the Airport Authority has entered into the Contract. Unless the Contract clearly requires otherwise, the term “Contractor” includes all of the Contractor’s authorized representatives. The term “Contractor” does not include any lower tier Subcontractor.
- 1.2.1.26 **Contractor Agreement:** The written Contract Document entered into between the Airport Authority and the Contractor which summarizes the scope of Work, time, and compensation for the Work.
- 1.2.1.27 **Contractor Quality Control Program (CQCP):** Details the methods and procedures that will be taken to assure that all

materials and completed construction required by the Contract conform to Contract Documents and other requirements, whether manufactured by the Contractor, or procured from Subcontractors or vendors. Components may include, but not be limited to, procedures, calibrations and maintenance of equipment, shop drawing review, mock-ups, document control, production process control, and any sampling, testing, certification, and inspection done for these purposes. The CQCP may also include, but not be limited to, management, administration, construction, material testing, maintenance of public and private facilities, site investigations, and environmental monitoring and compliance.

- 1.2.1.28 **Contractor's Negligence:** Any negligent, reckless or intentional act, failure to act, or mistake of any kind by the Contractor or its Subcontractors that falls beneath the requisite standard of care taking into consideration the nature, progression and phase of the Work.
- 1.2.1.29 **Contractor's Representative(s):** The individual(s) designated by the Contractor who is/are in charge of the Project. The designated Contractor's Representative(s) shall have authority to make binding decisions on behalf of the Contractor and must be fully available for the administration of the Project as needed.
- 1.2.1.30 **Day:** A calendar day, unless specifically identified otherwise.
- 1.2.1.31 **Defective Work:** Work that is unsatisfactory, faulty, or deficient, or that does not conform to the Contract Documents, or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
- 1.2.1.32 **Differing Site Conditions:** Concealed conditions of an unusual nature not generally recognized as inherent in the Work, and that differ materially from (1) conditions ordinarily expected to be encountered, or (2) conditions that should have been identified by the Contractor during the site investigations as required by the Contract Documents.
- 1.2.1.33 **Drawings:** Graphic and pictorial documents showing the design, location, and dimensions of the elements of the Project.
- 1.2.1.34 **Errors and Omissions:** Any negligent or intentional act, failure to act, exclusion, conflict, or mistake of any kind by the

Contractor or its Subcontractors that falls beneath the requisite professional services standard of care.

- 1.2.1.35 **Field Activity:** Any Project activity by the Contractor, or any Subcontractor, entity, or individual that involves visiting, working on, or accessing Airport Authority property or any adjacent property.
- 1.2.1.36 **Final Acceptance and Completion:** The formal written acceptance of the Work by the Airport Authority in the form of a Letter of Final Acceptance and Completion. The Airport Authority may record a Notice of Completion with the County Recorder or, in the event formal acceptance does not occur, a Notice of Cessation with the County Recorder.
- 1.2.1.37 **Force Majeure:** An exceptional event or circumstance which is unforeseeable, beyond the control of the parties, and one which could not reasonably be avoided, including an Act of God, an act of the public enemy, acts of the government in its sovereign capacity, fires, floods, pandemics, hurricanes, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.
- 1.2.1.38 **General Conditions:** The document, included as a part of the Contract, along with the Contractor Agreement and Special Conditions, which establishes the general rights and responsibilities of the Contractor and the Airport Authority, subject to the precedence of documents.
- 1.2.1.39 **Governmental Approvals:** Any approval, authorization, certification, consent, exemption, filing, lease, license, permit, registration or ruling, required by or with any federal, state or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity in order to perform the Work, including any modification or supplement to any of the foregoing.
- 1.2.1.40 **Governmental Rules:** Any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by any federal, state or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity, which is applicable to the Work or the Project.

- 1.2.1.41 **Key Personnel:** Individuals, as specified in Special Conditions 3.1, if any, who have the authority to interact with the Airport Authority and its representative(s) and consultant(s) and provide critical technical expertise throughout the duration of the Project.
- 1.2.1.42 **Master Project Schedule:** Developed according to the critical path method (CPM) of scheduling, the Master Project Schedule represents the Contractor's proposed means and methods to meet Project milestones; is reviewed and agreed upon by the Airport Authority; and consists of the current approved baseline CPM schedule and accepted monthly schedule updates.
- 1.2.1.43 **OCIP:** The Owner Controlled Insurance Program (OCIP) procured by the Airport Authority as defined in the OCIP Contractor's Information Manual and Articles 8 and SC8.
- 1.2.1.44 **Open Book:** Every aspect of performing this Project, including but not limited to cost substantiation, subcontract agreements, and bid documents, is subject to disclosure to the Airport Authority at any time throughout the Project to ensure full transparency in the processing of change orders and during the claims process.
- 1.2.1.45 **Owner Allowance (OA):** If applicable and as further defined in the Special Conditions, the amounts set aside and controlled by the Airport Authority for anticipated but unquantified or not fully defined scope within the Work.
- 1.2.1.46 **Payment Bond:** A bond obtained by the Contractor from a properly-licensed corporate surety which secures payment of Contractor's obligations arising under the Contract.
- 1.2.1.47 **Performance Bond:** A bond obtained by the Contractor from a properly-licensed corporate surety which secures the faithful performance and satisfactory completion of all Work under the Contract.
- 1.2.1.48 **Plans:** The Airport Authority issued set of Drawings, Standard Plans, and supplemental drawings or exact reproductions which show the location, character, dimensions and details of the Project Site and the Work to be done and which are to be considered as a part of the Contract Documents, supplementary to the Specifications. In the event that general notes in the Plans conflict with the General Conditions and Special Conditions, the General Conditions and Special Conditions shall control.

- 1.2.1.49 **President/CEO:** The Airport Authority's President and Chief Executive Officer.
- 1.2.1.50 **Project Site:** The lands or areas indicated in the Contract Documents as being furnished by the Airport Authority upon which the Work is to be performed.
- 1.2.1.51 **Punch List:** A list or a series of lists of the Work that remains to be completed after the achievement of Substantial Completion which must be satisfactorily completed in order to attain Final Completion.
- 1.2.1.52 **Quality Assurance (QA):** Airport Authority's responsibility to assure that construction work completed complies with the Contract Document requirements for payment.
- 1.2.1.53 **Quality Control (QC):** Contractor's responsibility to control material(s) and construction processes to complete construction in accordance with the Contract Documents.
- 1.2.1.54 **Reimbursable Costs:** As further defined in Article 11, those costs that are properly and reasonably expended by the Contractor in the performance of the Work that, if substantiated, may be allowed for reimbursement to the Contractor, subject to the limitations and provisions of the Contract Documents.
- 1.2.1.55 **Self-Performed:** All labor, materials, and equipment integral to the completion of the Work performed by the Contractor or a Subcontractor's own employees, rather than by employees of another Contractor, Subcontractor, or any third party, subject to the interpretation and sole discretion of the Airport Authority.
- 1.2.1.56 **Shop Drawings:** Drawings, diagrams, schedules, and other data serving as extensions of the design that are required for manufacture, fabrication, and erection of the components of construction and which are prepared by the Contractor, Subcontractor, or supplier.
- 1.2.1.57 **Special Conditions:** The document, included as part of the Contract, along with the Contractor Agreement and General Conditions, that establishes special supplementary conditions specific to this particular Project.
- 1.2.1.58 **Specifications:** Written documents containing directions and requirements for materials, equipment, construction systems, workmanship, Quality Assurance and Quality Control, and commissioning needed to complete the Work and which are

to be considered as a part of the Contract, supplementary to the Plans.

- 1.2.1.59 **Stakeholder:** Internal and external parties with direct or indirect interest in the Project as identified by the Airport Authority. Stakeholders are not third-party beneficiaries of this Contract.
- 1.2.1.60 **Standard Plans:** Drawings standard to the Airport Authority “Design and Construction Standards” and other referenced outside agency standard plans or drawings.
- 1.2.1.61 **Subcontractor:** An individual or entity, including but not limited to a contractor or consultant of any tier, which is hired by any entity other than the Airport Authority for performance of any portion of the Work at the Project Site. All articles which impose obligations on the Contractor are intended to impose those same obligations on the Contractor’s Subcontractors.
- 1.2.1.62 **Substantially Complete or Substantial Completion:** The stage of completion when the Work is completed to a sufficient degree and quality, and in strict accordance with the Contract, so as to allow the total and complete use of the Work for all intended purposes at all times. If the Airport Authority is not able to use the Work for one or more of its intended purposes, the Work is not Substantially Complete.
- 1.2.1.63 **Warranty Term:** The period during which the Contractor is responsible for correcting any Work determined by the Airport Authority to not meet the standards established by the Contract Documents.
- 1.2.1.64 **Work:** The entire construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating materials and equipment into such construction, as required by the Contract Documents.
- 1.2.1.65 **Written Direction:** A written document from the Airport Authority’s Representative(s) that directs actions to be taken by the Contractor in performing the Work.

1.3 INTERPRETATION OF THE CONTRACT

1.3.1 Intent of the Contract Documents.

- 1.3.1.1 The Contract Documents are complementary and what is required by one will be as binding as if required by all.

- 1.3.1.2 Contractor will undertake and complete the Work in accordance with the Contract Documents, including what is reasonably inferred from the information contained in the Contract Documents, or a review of the Site, including existing utilities. If the documents provided by the Airport Authority omit any work necessary to be performed in order to complete the Project in accordance with the intent of the Contract Documents, the Contractor shall not be excused from performing such work.
- 1.3.1.3 The Contract Documents are as defined herein, except that any document or portion of a document, including but not limited to Drawings, Specifications, reports, and calculations, produced by the Contractor, that is deficient, contains errors or omissions, fails to meet the standard of care established in the General Conditions, or fails to comply with applicable laws, rules, regulations shall not be considered a Contract Document.
- 1.3.1.4 Notwithstanding anything in the Contract Documents to the contrary, no field explanations or interpretations provided by the Airport Authority at any meetings, and no comments by the Airport Authority on Construction Documents, shall be deemed, construed or interpreted to (a) amend, supersede or alter the terms, requirements, limitations or meaning of any Contract Document or (b) release or relieve the Contractor from full responsibility for the Work in accordance with the Contract Documents, unless the Airport Authority issues Written Direction.
- 1.3.2 Modifications. The parties will not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of the Contract Documents will be valid unless issued in writing by the Airport Authority.
- 1.3.3 Meaning of Terms. Words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.3.4 Cross-References. Cross-references may sometimes be provided in the Contract. (Example: "For a related provision, see Article__"). These cross-references are provided for convenience only and are not a comprehensive listing of related Sections or Articles. The lack of a cross-reference or an incorrect reference shall not be interpreted as indicating that there are no related provisions and does not relieve the parties of the obligation to read and perform the Work defined by the Contract as a whole.

- 1.3.5 Headings. All headings, titles, and tables of contents are for convenience only. They do not control interpretation and do not relieve the parties of the obligation to read the Contract as a whole.
- 1.3.6 Lists. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive.
- 1.3.7 References. The Contractor is responsible for obtaining all manuals, specifications, reference guides, or other publications referenced or indicated in the Contract Documents and performing the Work in conformity with the same. Unless a specific date or version is specified, the Contractor shall use the most recent version of such publication in existence at the time the Bids are submitted, except that the Standard Specifications for Public Works Construction (SSPWC) shall be the latest issue adopted by the City of San Diego, complete with the City of San Diego Standard Special Provisions adopted at the same time and the California Standards Building Code (CBC) adopted by the City of San Diego, including CBC revisions adopted therewith. All specified portions of referenced publications shall be a part of this Contract as though quoted in their entirety herein, except for all project administration and legal terms and conditions, which are governed by these Contract Documents. For example, Sections 1-9 of the SSPWC are specifically excluded from this Contract. Other publications shall only apply if specifically referenced.
- 1.3.8 Precedence of Documents to Resolve Conflicting Contract Documents.
- 1.3.8.1 Precedence of Documents. In case of ambiguity, the following components of the Contract Documents shall control in descending order of priority:
- 1.3.8.1.1 Applicable laws, codes, ordinances, regulations, permits or other requirements of governmental authorities with jurisdiction over the Work or any portion thereof, except for project construction administration requirements which are governed by these Contract Documents.
 - 1.3.8.1.2 Fully executed Change Orders, the most recent governing.
 - 1.3.8.1.3 Contractor Agreement
 - 1.3.8.1.4 Special Conditions of the Contract
 - 1.3.8.1.5 General Conditions of the Contract
 - 1.3.8.1.6 Specifications

- 1.3.8.1.7 Plans
 - 1.3.8.1.8 Contract Exhibits
 - 1.3.8.1.9 Attachments to the Contract
 - 1.3.8.1.10 Instructions to Bidders
 - 1.3.8.1.11 Notice Inviting Bids
 - 1.3.8.1.12 Contractor's Bid Forms.
- 1.3.8.2 Contractor is under a duty to investigate and report any material difference, ambiguity, error, omission, conflict, or discrepancy ("a Conflict") that may significantly affect the cost, quality, conformity, timeliness or any other material aspect of the Work. Contractor shall promptly provide written notification to the Airport Authority in accordance with the applicable requirements contained in this Contract.
- 1.3.8.3 In the case of a Conflict between drawings or other submissions from the Contractor and the Contract Documents, the Contract Documents shall govern. To the extent that different provisions or requirements on the same subject matter Conflict, the document having the highest precedence that addresses the matter or subject will control. If provisions within the same level of Contract Documents Conflict, the one that is more specific or allows for a higher standard or quality at the best value will prevail, subject to the discretionary written approval of the Airport Authority.
- 1.3.8.4 In the event of a Conflict between the Contract Documents and applicable laws, codes, ordinances, regulations, permits or other requirements of governmental authorities having jurisdiction over the Work, or any portion thereof, or in the event of any conflict between such applicable laws, codes, ordinances, regulations, or orders, the legal requirements of any of the above shall be met in conjunction with the more stringent requirements, if any, at no increase to the Contract Price, and shall be subject to the discretionary written approval of the Airport Authority.
- 1.3.8.5 With reference to the Drawings, the order of precedence shall be as follows:
- 1.3.8.5.1 Figures govern over scaled dimensions.
 - 1.3.8.5.2 Detail Drawings govern over general Drawings.
 - 1.3.8.5.3 Change Order Drawings govern over Drawings.

1.4 OWNERSHIP AND USE OF DOCUMENTS

- 1.4.1 The Contractor acknowledges and agrees that all records, documents, notes, tracings, drawings, specifications, maps, evaluations, reports, BIM/VD&C data and files, and other technical data and electronic data issued as a deliverable hereunder for the sole and exclusive benefit of the Airport Authority, prepared, developed or furnished by the Contractor or the design professional(s) employed by the Contractor under this Contract will be and remain the property of the Airport Authority; provided, however, Contractor shall have the unrestricted right to their use, during the term of the Contract. Contract Documents will be deemed to be works made for hire, and all right, title and interest in and to the Contract Documents will, upon payment therefor be vested in the Airport Authority at the moment of their creation, and the Contractor shall take all actions necessary to secure for the Airport Authority all such right, title and interest. The Contractor warrants that all materials comprising the Contract Documents are original with the Contractor except to the extent Airport Authority-furnished materials or industry standard details are incorporated therein, and have not been copied or derived from any other material without the express consent or Written Direction of the Airport Authority, proprietor and copyright holder of that other material, and are not subject to any other claim of copyright by any other person or entity.
- 1.4.2 To the extent that any deliverable does not qualify as a “work made for hire,” the Contractor hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Airport Authority, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the deliverables prepared for the Airport Authority under the Contract, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by Governmental Rules. The Contractor shall, and shall cause all of its Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the Airport Authority may reasonably request in order to assist the Airport Authority in perfecting its rights in and to the copyrights relating to the deliverables, at no additional cost to the Airport Authority. The Contractor warrants to the Airport Authority, its successors and assigns that on the date of transfer good and marketable title in and to the copyrights for the deliverables shall be validly transferred to the Airport Authority. The Contractor further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the deliverables other than the agreements with Subcontractors that provide for the assignment of the Construction Documents and are

otherwise consistent with this Article. The Contractor warrants and represents that the deliverables are complete, entire and comprehensive, and that the deliverables will constitute works of original authorship.

- 1.4.3 With regard to the models produced using BIM/VD&C, the Contractor, its Subcontractors, and other persons performing any portions of the Work for the Contractor, shall have a limited, non-exclusive license to reproduce, distribute, or otherwise use the models, including the contributions to such models by the Project participants, for the sole purpose of carrying out their respective duties and obligations relating to this Project only. This limited, non-exclusive license to use the model shall remain in effect only for the duration of the Project and shall expire upon Final Acceptance of the Project. At Final Acceptance of the Project, the Airport Authority will assume exclusive right to use of the models.
- 1.4.4 Contractor understands and agrees that certain information qualifies as "Sensitive Security Information" pursuant to 42 U.S.C. §40119 and 49 CFR Part 1520, and Airport Authority Policies and Codes and that such information shall in no instance be distributed, shared or disseminated without the prior written approval of the Airport Authority and in conformance with the aforementioned statutes, Policies, and Codes.

1.5 ASSIGNMENT OF CONTRACT

- 1.5.1 Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any rights or duties herein without the prior written consent of the Airport Authority and the surety in each instance; provided, however, that the Contractor may, with the written consent of Airport Authority and surety, make an assignment of any sums of money due or to become due under this Contract as collateral for financial purposes in connection with the Contract. Any assignment without the written consent of the Airport Authority shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the California Civil Code, the California Code of Civil Procedure, or the California Government Code.
- 1.5.2 Any such assignment shall contain a clause in the instrument of assignment stating that it is agreed that the funds to be paid the assignee under the assignment are subject to all liens or claims of any kind whatsoever authorized by law, whether prior or subsequent, for services rendered or materials supplied for the performance of the Work called for in the Contract in favor of all persons, firms or corporations rendering such services or supplying such materials.

1.6 SUCCESSORSHIP

- 1.6.1 The Airport Authority and the Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Contract and to partners, successors, assigns of such other party with respect to covenants of this Contract.

1.7 NO WAIVER

- 1.7.1 The Airport Authority's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive its right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future disputes.

1.8 SURVIVAL

- 1.8.1 Contractor's representations and warranties, Performance and Payment Bonds, indemnification, the dispute resolution provisions, and any other provisions of the Contract Documents which impose continuing obligations shall survive termination of the Contract and Final Acceptance.

1.9 SEVERABILITY

- 1.9.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable legal requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

1.10 LIMITATIONS ON THIRD-PARTY BENEFICIARIES

- 1.10.1 It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. The duties, obligations and responsibilities of the parties to the Contract Documents with respect to third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Airport Authority and a Subcontractor or any person other than Contractor.

1.11 GOVERNING LAW AND VENUE

- 1.11.1 The Contract Documents shall be governed by and construed in accordance with the law of the State of California, without regard to conflict of law principles. In the event suit is brought by either party to the Contract, the parties agree that venue shall be exclusively vested in the state courts of the County of San Diego, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Southern District of California, San Diego, California.

ARTICLE 2. - RESPONSIBILITIES OF THE AIRPORT AUTHORITY

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2. RESPONSIBILITIES OF THE AIRPORT AUTHORITY

2.1 AIRPORT AUTHORITY'S REPRESENTATIVE(S)

- 2.1.1 The Airport Authority will designate, in writing, one or more Airport Authority Representative(s) to oversee the Work, who is authorized to act on its behalf with respect to the Project.

2.2 ADMINISTRATION OF THE AGREEMENT

- 2.2.1 The Airport Authority will oversee the Work to determine in general if the Work, when completed, will be in accordance with the Contract Documents. However, the Airport Authority will not make exhaustive or continuous on-site inspections as to the quality or quantity of the Work.
- 2.2.2 Airport Authority staff, consultants and/or other authorized persons will visit the Project Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. These site visits shall not be deemed to have resulted in an exhaustive or continuous on-site inspection of the Project Site to check quality or quantity of Work.
- 2.2.3 Airport Authority staff and consultants will not be responsible for, or have control over, the acts and/or omissions of the Contractor, or its Subcontractors, employees, agents, or other persons performing the Work.
- 2.2.4 The Airport Authority may review the Contractor's submittals, such as Shop Drawings, product data, and samples. The Airport Authority's review or the review of any other party engaged by the Airport Authority does not constitute approval by the Airport Authority.
- 2.2.5 The Airport Authority's Representative(s) will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as deemed necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. The Contractor shall review and be responsible for the compliance with such written clarifications and interpretations of the Contract Documents.
- 2.2.6 The Airport Authority will issue all modifications of any provisions or requirements of the Contract Documents in writing pursuant to a Written Direction. The Contractor shall not act on any verbal communications or directions which modify any provision or requirement of the Contract Documents without Written Direction from the Airport Authority's Representative(s).
- 2.2.7 Subject to those rights specifically reserved in the Contract Documents, the Airport Authority will not supervise, or direct, or have control over, or

be responsible for, the Contractor's means, methods, techniques, sequences or procedures of construction, or for safety precautions and programs in connection with the Work, or the Contractor's failure to comply with laws and regulations applicable to the furnishing or performance of the Work.

- 2.2.8 The Airport Authority will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Airport Authority will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Contractor's licensed design professionals, if any, Subcontractors, or their agents or employees, or of any other persons performing any portions of the Work for the Contractor.
- 2.2.9 The Airport Authority may obtain independent review of the Contract Documents by separate consultants or independent parties, including but not limited to, architects, engineers, contractors, cost estimators, or schedulers directly or indirectly under contract to or employed by the Airport Authority. Such independent review will be undertaken at the Airport Authority's expense unless such reviews are required due to demonstrable deficiencies in the Contractor's contract documents.
- 2.2.10 The Airport Authority will have authority to reject Work that does not conform to the Contract Documents. In the event that the Airport Authority considers it necessary to ensure that the intent of the Contract Documents is being met, the Airport Authority may require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed.
- 2.2.11 The Airport Authority will prepare Change Orders and Written Direction as necessary to provide direction as to the Contractor's performance of the Work in accordance with the Contract Documents and any interpretations of or changes to the Contract Documents.
- 2.2.12 Pre-Construction Conference. The Airport Authority will schedule and administer a pre-construction conference for clarification of the contents and requirements of the Contract Documents. The pre-construction conference is mandatory for all Contractor personnel identified in the Contract and for any Subcontractors as directed by the Airport Authority. The agenda shall include the following topics:
 - 2.2.12.1 Contract Requirements Overview
 - 2.2.12.2 Scope of the Work Overview
 - 2.2.12.3 Contract Relationships, Roles, and Responsibilities
 - 2.2.12.4 Airport Operational Requirements

- 2.2.12.5 Airport Security Requirements
- 2.2.12.6 Construction Health and Safety Requirements
- 2.2.12.7 Owner Controlled Insurance Program (OCIP) Requirements
- 2.2.12.8 Labor Compliance Requirements
- 2.2.12.9 Small Business Reporting Requirements
- 2.2.12.10 Environmental Related Requirements:
 - 2.2.12.10.1 Construction Stormwater Management
 - 2.2.12.10.2 Construction Demolition Waste Management
 - 2.2.12.10.3 Hazardous Materials Management
 - 2.2.12.10.4 Sustainability Certifications Requirements
 - 2.2.12.10.5 Other Project Specific Topics.
- 2.2.12.11 Contractor Quality Control Program (CQCP) Requirements
- 2.2.12.12 Commissioning and Activation Requirements
- 2.2.12.13 Site Utility, Equipment, and System Requirements
- 2.2.12.14 Project Submittal Requirements:
 - 2.2.12.14.1 Submittals required prior to the start of the Work.
 - 2.2.12.14.2 Submittals required during the course of the Work.
- 2.2.12.15 Construction Coordination and Administration Requirements.
- 2.2.13 Construction Progress Meetings. The Airport Authority will schedule and administer the construction progress meetings throughout the duration of the Work. The Airport Authority will be responsible for preparation and distribution of meeting summaries after each meeting. Construction progress meetings will be held weekly. When construction issues warrant more frequent meetings, the Airport Authority may schedule additional meetings. Location of meeting(s) will be determined by Airport Authority. Attendance is mandatory for Contractor Key Personnel, major Subcontractors, and suppliers, as directed by the Airport Authority. The Contractor shall provide status updates and respond to Airport Authority questions related to all agenda topics. The agenda will typically include the following topics:

- 2.2.13.1 Airport Operational Safety
- 2.2.13.2 Airport Security
- 2.2.13.3 Construction Health and Safety
- 2.2.13.4 Environmental Compliance
- 2.2.13.5 Contractor Quality Control
- 2.2.13.6 Commissioning and Activation
- 2.2.13.7 Site Utilities, Equipment, and Systems
- 2.2.13.8 Submittals
- 2.2.13.9 Requests for Information ("RFIs")
- 2.2.13.10 Directives, Change Order Requests, and Change Orders
- 2.2.13.11 Daily Reports
- 2.2.13.12 Schedule Update
- 2.2.13.13 Other topics related to the Work.

2.3 AIRPORT AUTHORITY'S RIGHT TO ACCESS AND AUDIT RECORDS

- 2.3.1 The Airport Authority reserves the right to access the complete set of books and records prepared and used by the Contractor in the Contractor's management, scheduling, and cost accounting associated with the Project. The Airport Authority shall have the right to designate its own employee representative(s) or its contracted representative(s) who shall have the right to inspect, review or audit the Contractor's accounting procedures and internal controls of the Contractor's financial systems and to examine any cost, revenue, payment, claim or other records or supporting documentation resulting from any items set forth in the Contract Documents. Any such inspection(s) or audit(s) shall be undertaken by the Airport Authority or its representative(s) after notice and at reasonable times. Audits shall be undertaken in conformance with generally accepted auditing standards. The Contractor agrees to fully cooperate with any such representative(s) or auditor(s) and shall make office and support facilities available to the Airport Authority's representative(s) as may be reasonably necessary to complete any such audit(s) and inspections.
- 2.3.2 This right to audit shall extend during the length of the Contract and for a period of four (4) years, or longer if required by law or the applicable Project funding requirements, following the date of final payment for the

Work. The Contractor agrees to retain all necessary records and documentation for the entire length of this audit period.

- 2.3.3 The Contractor will be notified in writing of any exception taken as a result of any audit. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within thirty (30) Days from presentation of the Airport Authority's findings to the Contractor. If the Contractor fails to make such payment, the Contractor agrees to pay interest, accruing monthly, at the rate of ten percent (10%) per annum. Interest will be computed from the date of written notification of exception(s) to the date the Contractor reimburses the Airport Authority for any exception(s).
- 2.3.4 If an audit inspection or examination discloses overcharges (of any nature) by the Contractor to the Airport Authority, the Airport Authority may, at its sole discretion, require the Contractor to reimburse the Airport Authority for the actual cost of the audit, in addition to any other remedies allowed by law.
- 2.3.5 The Contractor, who shall in turn include in all sub-tier contracts, shall include a clause in its agreement with Subcontractors reserving the right for audits to be performed by representatives from, or agents of the Airport Authority, who shall have the right to audit the accounting procedures and internal controls of the financial systems and to examine any cost, revenue, payment, claim, other records or supporting documentation resulting from any items set forth in its agreement including insurance documents. This right shall extend during the length of this Contract and for a period of four (4) years or longer if required by law or the applicable funding requirements, following the date of final payment to the Contractor for the Work. The Contractor shall require its Subcontractors to agree in writing to retain all necessary records/documentation for the entire length of this audit period.
- 2.3.6 At a minimum, the Contractor shall make available to the auditors the following:
 - 2.3.6.1 Documents relating to the Contract and/or the Work
 - 2.3.6.2 Daily time sheets and supervisor's daily reports
 - 2.3.6.3 Union agreements
 - 2.3.6.4 Insurance, welfare, and benefits records
 - 2.3.6.5 Payroll registers
 - 2.3.6.6 Earnings record.
 - 2.3.6.7 Payroll tax forms

- 2.3.6.8 Material invoices and requisitions
- 2.3.6.9 Material cost distribution work sheet.
- 2.3.6.10 Equipment records (list of company equipment, rates, etc.).
- 2.3.6.11 Subcontractor solicitations, bid instructions and bid packages
- 2.3.6.12 Subcontractor and supplier bids and proposals.
- 2.3.6.13 Subcontractor (including Suppliers) invoices.
- 2.3.6.14 Subcontractor and agents' payment certificates.
- 2.3.6.15 Canceled checks.
- 2.3.6.16 Job cost report.
- 2.3.6.17 Job payroll ledger.
- 2.3.6.18 General ledger.
- 2.3.6.19 Cash disbursements journal.

2.4 AIRPORT AUTHORITY'S RIGHT TO CARRY OUT WORK

- 2.4.1 During the course of the Project, the Airport Authority may, at its discretion, elect to perform work within or adjacent to the Project. This includes but is not limited to work associated with Airport Authority facilities and systems, and/or work associated with facilities and systems of tenants. The Contractor shall fully cooperate with all parties performing the work and shall coordinate its work so as not to impact the ability of the parties to perform their work.
- 2.4.2 If the Contractor defaults or neglects to carry out Work in accordance with the Contract Documents and fails within ten (10) Days or within the time specified, whichever is less, after receipt of written notice from the Airport Authority to commence and continue correction of such default or neglect with diligence and promptness, the Airport Authority may by any means acceptable to it, without prejudice to other remedies the Airport Authority may have, correct such deficiencies. In such case, a CCO shall be issued deducting from payments then or thereafter due the Contractor for the cost or estimated cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and/or its surety shall pay the difference to the Airport Authority.

2.5 NO WAIVER OF RIGHTS

- 2.5.1 Observation, inspection, or design reviews conducted by the Airport Authority or its authorized representative(s) in accordance with any applicable provisions of this Contract, any order or certificate for payment of money, acceptance of the whole or any part of the Work by the Airport Authority, any extension of time, or any position taken by the Airport Authority or its authorized representative(s) shall not operate as a waiver of any provision of this Contract, or of any power herein reserved by the Airport Authority or any right to damages. No waiver of any breach of Contract shall be held to be a waiver of any other or subsequent breach, and payment shall not be deemed to be the equivalent of acceptance subject to changes executed in accordance with the Contract.
- 2.5.2 All remedies provided in this Contract shall be taken and construed as cumulative; that is, in addition to each and every remedy provided herein, the Airport Authority and the Contractor shall have any and all equitable and legal remedies that they would otherwise have.

ARTICLE 3. - CONTRACTOR’S SERVICES AND RESPONSIBILITIES

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3. CONTRACTOR'S SERVICES AND RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

- 3.1.1 The Contractor shall provide and pay for all items necessary to perform the Work as defined in the Contract Documents as a whole, including but not limited to the following: permitting and support services, Quality Assurance, commissioning, construction, including the provision of all necessary supplies, materials, parts, labor, supervision, coordination, administration, equipment, and tools, temporary light and power, Shop Drawings, investigations and studies, reports, and incidentals required by the Contract Documents and all necessary installation, start-up and testing necessary for the full completion of the Work, whether or not particularly shown, described, or specified in the Construction Documents.
- 3.1.2 The Contractor shall cooperate with the Airport Authority as it performs its responsibilities, obligations, and services throughout the duration of the Project.
- 3.1.3 The Contractor shall conduct the Work in compliance with all laws and regulations of the United States Government, the State of California, the City of San Diego, the Airport Authority, and the appropriate municipal jurisdiction, limiting or controlling the Work in any manner. The Contractor shall comply with all requirements of any applicable environmental permits, including but not limited to those issued pursuant to the California Environmental Quality Act ("CEQA"), the National Environmental Policy Act ("NEPA"), and the California Coastal Commission. Unless otherwise provided by the Contract Documents, the Contractor shall obtain all necessary licenses and permits, including, but not limited to, building permits, and pay all fees and taxes required by law.
- 3.1.4 If the Contractor performs Work contrary to laws, statutes, ordinances, building codes, or rules and regulations, the Contractor shall assume full responsibility for, and make all necessary corrections to such Work at no additional cost to the Airport Authority. The Contractor shall be solely responsible to the Airport Authority for all acts and/or omissions of the Contractor and its employees, Subcontractors and their agents and employees, and other parties, including the design professionals, performing any portion of the Contractor's obligations under the Contract Documents on the Contractor's behalf or at the Contractor's direction, request, or order subject to the indemnity provisions of Article 3.
- 3.1.5 The Contractor shall, upon learning of its own or of any of its Subcontractors filing for bankruptcy protection, immediately notify the Airport Authority and provide the Airport Authority with a copy of the Bankruptcy Case Number and title of the Court in which the petition for bankruptcy was filed.

- 3.1.6 Any electronic deliverable submitted by the Contractor to the Airport Authority shall be in a fully text searchable electronic file format approved by the Airport Authority.
- 3.1.7 Personnel
 - 3.1.7.1 In addition to the Key Personnel, the Contractor shall assign and maintain during the term of the Contract and any extension of it, an adequate staff of competent personnel who are fully equipped, licensed as appropriate, available as needed, and qualified to perform the Work.
 - 3.1.7.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees, agents, assigns, and other persons or entities carrying out this Contract. The Contractor shall only allow employment of persons skilled in tasks assigned to them. The Contractor shall continuously monitor the performance of all personnel performing work on the Project and immediately remove persons from the Project that are identified by the Contractor as not meeting this requirement.
 - 3.1.7.3 The Contractor shall designate its authorized representative(s) in charge of the Project ("Contractor's Representative(s)"). The designated Contractor's Representative(s) shall have authority to make binding decisions on behalf of the Contractor and must be fully available for the administration of the Project as needed.
 - 3.1.7.4 If, in the Airport Authority's opinion, the actions or performance of personnel of the Contractor assigned to this Project is at an unacceptable level, such personnel will cease to be assigned to this Project, and the Contractor shall provide the Airport Authority with the name of a substitute person or persons in accordance with this Article.
- 3.1.8 Maintenance of Project Records
 - 3.1.8.1 The Contractor shall maintain Project Records to include the following types of data generated in the course of performing the Work:
 - 3.1.8.1.1 Contract Documents
 - 3.1.8.1.2 Monthly report of labor by classification of management, supervision, engineering, and other technical personnel used on the job with a level of detail acceptable to the Airport Authority.

- 3.1.8.1.3 Daily Labor and Equipment Reports from the Contractor and each Subcontractor for construction-related activities.
- 3.1.8.1.4 Master Project Schedule and all schedule updates and revisions.
- 3.1.8.1.5 Survey records, engineering computations, working drawings, and assumptions.
- 3.1.8.1.6 All submittals, including Shop Drawings, product data, and samples, bearing the Contractor's licensed design professional's review stamp and all review comments, including those of the Airport Authority.
- 3.1.8.1.7 Meeting minutes, correspondence, memos, transmittals, notes, and other written materials.
- 3.1.8.1.8 Quality Control documentation as required by the approved Contractor Quality Control Program (CQCP).
- 3.1.8.1.9 Compliance records required in accordance with environmental permits.
- 3.1.8.1.10 A Daily Report for construction-related activities that shall be maintained by the Contractor in which shall be recorded daily in a narrative form all significant occurrences on the Project, including permit issues, unusual weather, asserted Acts of God, events and conditions causing or threatening to cause delay or disruption or interference with the progress of any of the Work, known injuries to person or property, a listing of each activity depicted on the Master Project Schedule that is being actively prosecuted, notifications given and received, and significant Project-related meetings. These must be submitted daily.
- 3.1.8.1.11 Subcontractor documentation, including but not limited to the following:
- 3.1.8.1.12 Subcontractor construction and professional services contracts and agreements and associated documents, reports or evaluations.

- 3.1.8.1.12.1 Subcontractor contract instruments, Change Orders, Notice to Proceed, and Notice of Completion.
 - 3.1.8.1.12.2 Subcontractor audit certification of overhead rates for professional consultants.
 - 3.1.8.1.12.3 Subcontractor debarment verification.
 - 3.1.8.1.12.4 Additional information submitted by Subcontractors.
- 3.1.8.2 The Contractor's compiling of Project Records shall be an ongoing obligation, commencing upon execution of the Contract, incorporating documents as they are generated, and continuing through Final Acceptance and Completion of the Project. Project Records shall be available for review by the Airport Authority, at the Project Site, at any time. Project Records shall be submitted to the Airport Authority within thirty (30) Days of request, or thirty (30) Days following Final Acceptance and Completion of the Work by the Airport Authority.
- 3.1.8.3 All records shall be maintained electronically in a format that is legible, accessible, and fully text searchable. Additionally, the Contractor shall generate and maintain at least one hard copy file in good order and regularly updated, if applicable.
- 3.1.8.4 The Contractor shall keep such full and detailed accounts as are necessary for proper financial management and shall provide the Airport Authority's auditors access to these records in accordance with the provisions of Article 2. The Contractor shall maintain all accounting records utilizing generally accepted accounting principles, unless waived in writing by the Airport Authority. The Contractor shall preserve all such records for a period of four (4) years after issuance of the final payment, or longer where required by law or the applicable funding requirements.
- 3.1.9 Contact with Media. Contractor shall refer all media inquiries to the Airport Authority and shall not speak to media personnel about Airport Authority projects without written permission from the Airport Authority. No media personnel shall be allowed on the Project Site without written permission of the Airport Authority.
- 3.1.10 Request for Entitlements. If the Contractor believes and the Airport Authority agrees that any easement, zoning variance, or other legal entitlement regarding site utilization are essential to the performance of

the Work, the Contractor shall submit a written request to the Airport Authority for its assistance in obtaining such entitlements.

3.2 CONTRACTOR SERVICES

3.2.1 General Obligations

- 3.2.1.1 The Contractor shall not begin any actual construction work ("break ground") until all required permits and approvals have been obtained and copies provided to the Airport Authority.
- 3.2.1.2 The Contractor shall not begin actual construction work until all preconstruction reports, plans, schedules, and other documents required by the Contract Documents have been submitted and reviewed and accepted by the Airport Authority. The Contractor is responsible for submitting all documents far enough in advance of the desired start of actual construction work date to allow adequate time for Airport Authority review, comment, and approval. The Contractor is responsible for providing submittal documents that are complete and responsive to the requirements of the Contract Documents. Contractor submittals that are deemed to be incomplete or otherwise non-responsive will be rejected without review. The Contractor's failure to provide complete and responsive documents in a timely manner shall not be accepted as basis for Contract Time or Contract Price extension claims.
- 3.2.1.3 The Contractor shall provide the Airport Authority with a prioritized list of personnel to be contacted during emergency situations that can respond to emergencies and/or have the authority to direct other Project personnel to respond to such emergencies. This list shall contain the names and local telephone numbers of these individuals and shall be submitted on or before commencement of any construction activities. The listed personnel shall be subject to call by the Airport Authority 24 hours a day, seven Days a week during the Contract Time, when, in the opinion of the Airport Authority, the presence of these personnel is required on the Project Site or for any other purpose related to the Work.
- 3.2.1.4 The Contractor shall develop a chart ("Escalation Tree"), which shall establish pre-determined levels of authority for the parties' representatives for use in the resolution of disputes to ensure that decisions are made at the appropriate level. The Escalation Tree shall be provided to the Airport Authority within fourteen (14) Days of Contract award, or prior to the preconstruction meeting, whichever occurs first. If a dispute arises and the parties reach an impasse, the Escalation Tree

must be utilized prior to initiating the formal dispute resolution procedures set forth in Article 14.

3.2.2 Supervision

3.2.2.1 The Contractor shall employ a competent construction management team acceptable to the Airport Authority, consisting of at least one project manager, project superintendents, and other representatives, as necessary, who will be in attendance at the Project Site full time during construction until the date of Substantial Completion of the Work, and for such additional time thereafter as necessary for the expeditious Final Acceptance and Completion of the Work.

3.2.2.2 The Contractor shall monitor the performance of the construction management team and make appropriate adjustments to the individual members of the team and/or the number of team members as necessary to maintain full control of all aspects of the Work.

3.2.3 Field Office, Staging Areas, and Use of Site

3.2.3.1 The Contractor shall provide and maintain fully-functioning field offices, field laboratories and related materials, equipment, and facilities to support the field operations of the Contractor's employees, Subcontractors, third-party inspection firms, and other persons performing any portion of the Contractor's obligations under the Contract.

3.2.3.2 The Contractor shall provide its own security for its equipment staging areas and material stockpile and storage areas. Subject to the approval of the Airport Authority as to the location and type of fencing, the Contractor may erect a fence or fences around the equipment and stockpile areas.

3.2.3.3 The Contractor shall repair and/or restore all surfaces, including pavement and planted areas used as access routes and/or staging, lay down and storage areas, to the same condition as existed before the Contractor entered the area as a condition of Final Acceptance and at no increase to the Contract Price.

3.2.3.4 The Contractor shall confine the Contractor's apparatus, the storage of materials, and the operations of the Contractor and all parties engaged by the Contractor to areas permitted by law, ordinances, Airport Authority policies and codes, the Contract Documents, and permits and/or directions of the

Airport Authority and shall not unreasonably encumber the site with the Contractor's materials.

3.2.3.5 Material shall be arranged and maintained in an orderly manner with use of walks, drives, roads, and entrances unencumbered. The Contractor shall store, place, and handle material and equipment delivered to the Project so as to preclude inclusion of foreign substances or causing of discoloration. The Contractor shall stockpile materials in a compact, orderly manner and barricade the stockpiled materials as appropriate to protect public from injury and shall protect stored materials as required to prevent damage from weather or ground.

3.2.3.6 The Contractor shall not store materials or equipment or utilize the Project Site in any way that has not been approved by the Airport Authority. Should it be necessary to move material or staging or storage areas at any time, the Contractor shall move them as and when required at no additional cost to the Airport Authority.

3.2.3.7 The Airport Authority assumes no responsibility for materials stored on the Project Site. The Contractor shall assume full responsibility for damage due to storing of materials.

3.2.3.8 Contractor shall provide at its own cost all utilities, including water, which are necessary for performance of the Work. Said utilities, including water, shall be from sources approved by the Airport Authority Representative.

3.2.4 Construction Sign

3.2.4.1 At the discretion of the Airport Authority, the Contractor may be permitted to post a single construction sign up to a size to be determined by the Airport Authority, at no additional cost to the Airport Authority. The construction sign shall be of professional quality, shall be maintained throughout the project, and shall be removed by the Contractor at the end of the project.

3.2.5 Construction Administration and Management Responsibilities

3.2.5.1 Correspondence and Documents Delivered to the Authority

3.2.5.1.1 Contractor shall use the Authority's web-based electronic project management system to transmit and receive documents, including but not limited to:

3.2.5.1.1.1 Requests for Information

3.2.5.1.1.2 Submittals and Deliverables

3.2.5.1.1.3 Correspondence

3.2.5.1.2 All documents received by the Airport Authority after 5:00 p.m. will be deemed received the next Business Day. The time period(s) for Airport Authority review and response to the received document(s) shall begin on the next Business Day following the receipt of those documents.

3.2.5.1.3 All documents transmitted to the Airport Authority shall either be in the native file formats used to create the files or shall be provided to the Airport Authority in a non-editable PDF format that is fully text searchable utilizing Optical Character Recognition (OCR) technology, or as directed by the Airport Authority.

3.2.5.2 Material and Equipment Submittals. The Airport Authority will provide a Procurement Log and a Submittal Register. Contractor shall maintain these documents continuously current as to the status of each. Submittals and mockups shall be submitted sequentially in the order in which they will be required, allowing sufficient time for review and approval by the Airport Authority. Unless otherwise agreed by the Airport Authority, Contractor shall allow for the following review time periods: RFIs, seven (7) Days; submittals, 21 Days; substitution requests, 28 Days. Contractor shall submit one (1) copy of each submittal and re-submittal for the Airport Authority's review using the Airport Authority's web-based project management system.

3.2.5.3 Subcontractor RFI Tracking System. The Contractor shall implement and administer an electronic Request for Information (RFI) tracking and response system for RFIs between the Contractor and any Subcontractors throughout the Project.

3.2.5.3.1 The Contractor shall regularly update its RFI system. The Contractor shall submit any RFIs to the Airport Authority upon request, and the Airport Authority shall have unlimited access to the system.

3.2.5.4 RFIs Between the Contractor and Airport Authority: The Contractor shall utilize the Airport Authority's web-based project management system to submit RFIs related to clarifications that the Contractor requests from the Airport

Authority. The Airport Authority's web-based project management system shall only be utilized to track and process RFIs between the Contractor and the Airport Authority

3.2.5.4.1 Regardless of the number of RFIs issued, the Contractor will not be entitled to additional compensation or time unless the cause and impacts of each RFI are identified and attributable to parties other than the Contractor or parties and/or persons performing any portion of the Contractor's obligations under the Contract. The Contractor shall be responsible for the Airport Authority's administrative costs for answering RFIs where the answer could reasonably be found by reviewing the Contract Documents or are solely for the convenience of the Contractor. The Airport Authority may seek reimbursement for such costs and may thereafter deduct the same from the Contract Price.

3.2.5.5 Schedule Updates. The Contractor shall produce, maintain, and update monthly, at a minimum, a critical path schedule as further required herein, which shall consist of but not be limited to a baseline CPM schedule with sufficient detail to demonstrate all planned activities.

3.2.5.6 Daily Construction Reports. The Contractor shall develop and maintain daily construction activity reports.

3.2.5.7 Contractor Quality Control Program. As required by the Special Conditions, the Contractor shall maintain a complete, organized, and fully indexed set of all reports and test results and provide copies of any or all reports and testing of the Work to the Airport Authority upon request. These records shall be maintained at the Project Site if a construction office trailer is being used. The Contractor shall provide the Representative with access to its records at all times throughout performance of the Work and shall maintain the records as required by the Contract.

3.2.6 Construction Meetings

3.2.6.1 Preconstruction Conference. Prior to the start of onsite construction, the Airport Authority will organize and schedule a preconstruction conference to go over the administrative and field requirements of the Contract and to answer Contractor questions on those requirements. Contractor shall

attend the preconstruction conference with key members of its management and construction staff. The Airport Authority will provide an agenda in advance of the meeting. The Airport Authority will also be responsible for taking notes and preparing a meeting summary that will be distributed to all attendees.

3.2.6.2 Progress Meetings. The Airport Authority will organize and schedule weekly construction progress meetings throughout the duration of the Contract. The Airport Authority will provide an agenda in advance of each meeting. The Airport Authority will also be responsible for taking notes and preparing meeting summaries that will be distributed to all attendees. The Contractor shall attend the progress meetings with key members of its management and construction staff. The Contractor must also require any Subcontractors who will be impacted by the topics discussed at a progress meeting to participate. The progress meeting schedule will be published to all parties involved in the Project.

3.2.6.3 Other Meetings. The Airport Authority may organize and schedule additional meetings as needed for the effective management and oversight of the Contract. The Airport Authority will provide an agenda in advance of each meeting. The Airport Authority will also be responsible for taking notes and preparing meeting summaries that will be distributed to all attendees. The Contractor shall attend all other meetings with key members of its management and construction staff and Subcontractors as required.

3.2.7 Submittals

3.2.7.1 The Contractor shall be responsible for the preparation, review, and approval process of all Shop Drawings, Product Data, and Samples, as defined below:

3.2.7.1.1 Shop Drawings are drawings, diagrams, calculations, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

3.2.7.1.2 Product Data are illustrations, standard schedules, descriptions, performance charts, manuals, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

- 3.2.7.1.3 Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
- 3.2.7.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the Contract Documents.
- 3.2.7.3 After the Contractor's and Contractor's Architect and/or Engineer review and approval, stamped copies of all Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents shall be submitted to the Airport Authority for comment. This documentation shall be submitted with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Airport Authority or of other contractors.
- 3.2.7.4 The Contractor's Shop Drawing, Submittal, and Sample (Submittal) review process will include distribution of the materials to the Airport Authority for review. The Airport Authority shall review the Submittals to evaluate general compliance with the Contract Documents and provide any findings to the Contractor. The Airport Authority's procedural review of Submittals is to ensure that the Contractor and the Contractor's Architect and/or Engineer have both accepted and signed the Submittals, the Submittals have been independently reviewed, and are in general conformance with the Contract Documents. The Airport Authority's review is not meant to be a complete and detailed review and will not constitute any approval of the Submittal. The Airport Authority may issue written comments to the Contractor regarding finding on the Submittals. The Contractor shall issue written responses to the comments prior to commencing Work covered by the Submittal.
- 3.2.7.5 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor thereby represents that the Contractor has determined and verified all dimensions, quantities, field dimensions, relations to existing work, coordination with work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data, Samples, or similar submittals and verification of compliance with all the requirements of the Contract Documents. The accuracy and coordination of all such information is the responsibility of the Contractor. In reviewing Shop Drawings, Product Data, Samples, and similar

submittals, the Airport Authority will be entitled to rely upon the Contractor's representation that such information is correct and accurate.

3.2.7.6 The Contractor shall perform all portions of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals only after any Airport Authority comments have been resolved to the satisfaction of the Airport Authority and in accordance with approved Submittals.

3.2.7.7 The Contractor will not be relieved of responsibility for deviations from requirements of the Contract Documents by the approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the Airport Authority in writing outside of the submittal and the Airport Authority have given written approval to the specific deviation. The Contractor will not be relieved of responsibility for Errors or Omissions in Shop Drawings, Product Data, Samples, or similar submittals.

3.2.7.8 The burden of proof shall rest solely with the Contractor that products, materials, Shop Drawings, Samples, and Submittals comply with the Contract Documents in every respect and that any substitutions, variations, deviations, or modifications to exactly what is specified will, in fact, work well in coordination and harmony and will serve the intended purpose.

3.2.8 Substitutions

3.2.8.1 General. In all cases in which a manufacturer's name, trade name or other proprietary designation is used in connection with materials or articles to be furnished under this Contract, whether or not the phrase "or equal" is used after such name, the Contractor shall furnish the product of the named manufacturer(s), unless a written request for the substitution of an equal item, along with supporting documentation has been submitted and accepted by the Airport Authority.

3.2.8.2 Requests for Substitution.

3.2.8.2.1 If Contractor wishes to request a substitution, it shall submit data substantiating a request for substitution within thirty-five (35) Days after execution of the Contract. Only one substitution request will be permitted per item. If the Airport Authority rejects the substitution request, Contractor shall provide the specified material, product, thing, or service without additional cost to the Airport Authority.

- 3.2.8.2.2 If the Airport Authority has elected to sole source a material or equipment pursuant to Public Contract Code §3400, a substitution request for that material or equipment will not be considered.
- 3.2.8.2.3 If the Contractor proposes to use a material that, while suitable for the intended use, deviates in any way from the detailed requirements of the Contract Documents, the Contractor shall inform the Airport Authority in writing of the nature of such deviations sufficiently in advance of when the material needs to be ordered to avoid delay and will request written approval of the deviation from the requirements of the Contract Documents.
- 3.2.8.2.4 In requesting approval of deviations or substitutions, the Contractor shall provide, upon request, evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality or result at least equal in all respects to that otherwise attainable. If in the sole discretion of the Airport Authority, the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty, the Airport Authority may reject such substitution or deviation without further investigation.
- 3.2.8.2.5 Any additional cost, or any loss or damage arising from the substitute of any material or any method for those originally specified shall be borne solely by the Contractor, notwithstanding acceptance of such substitution by the Airport Authority, unless such substitution was made at the Written Direction of the Airport Authority.
- 3.2.8.2.6 Unless otherwise required by the Construction Documents, the Contractor must give the Airport Authority advance written notice in the event that it intends to incorporate any material, product, technology, service, or process into the Project that will restrict the Airport Authority to a single product or technology in its ongoing maintenance and operation of the completed Project. The Airport Authority shall have the right to reject such a proposal, in its sole discretion.

3.2.9 Existing Utilities, Improvements, and Obstructions

- 3.2.9.1 Whenever any pole, structure, culvert, conduit, cable, or other obstruction, either above or below ground surface within the area to be utilized by the Contractor in the performance of the Work is or may be affected by the Contractor's operations, the Contractor shall preserve the same intact, or it shall make such arrangements with the owner of same for its protection, support, alteration, or removal and reinstallation, as may be required by the conditions encountered.
- 3.2.9.2 The Contractor shall notify in advance and cooperate with each owner of poles, structures, pipes, culverts, conduits, cables, or other improvements that may be encountered or affected in any way by the Work under this Contract. It shall be the responsibility of the Contractor to verify the existence and exact location of existing improvements prior to construction.
- 3.2.9.3 Some utility owners may request betterments to their facilities in addition to what is required to facilitate the Work. The Contractor shall give the Airport Authority notice of such a request. The Contractor and the utility owner may work out an agreement to perform these betterments as separate contracts to which the Airport Authority is not a party and has no responsibility, actual or implied, subject to any permits and regulations. The Contractor shall not allow such separate agreements to cause delays or otherwise impact the Work under this Contract.
- 3.2.9.4 Where facilities are altered or removed and reinstalled either to avoid interference with the Work under this Contract or for the convenience of the Contractor, such alteration, removal, and reinstallation shall be performed in accordance with the rules and regulations of the owner, and the cost shall be borne as outlined in the following paragraphs.
- 3.2.9.5 It shall be the Contractor's responsibility within the Contract Price to verify the existence and the exact location of existing underground facilities prior to excavation. The Contractor shall pothole to determine depths and exact location of facilities prior to excavation in the area. The Contractor shall uncover sewer laterals, telephone and electric conduits, water mains and gas mains, or any other utility crossings and other high risk underground facilities a sufficient number of Days in advance of construction operations to permit grade changes, should such changes be required.

- 3.2.9.6 Unless otherwise specifically provided in these Contract Documents, all costs of protecting, potholing, supporting, altering, obliterating, removing, salvaging, reconstructing, and reinstalling pipes, poles, structures, trees, and other facilities or obstructions, shall be within the Contract Price including facilities that are altered or removed and reinstalled for the Contractor's convenience.
- 3.2.9.7 Except as otherwise expressly provided herein, the Contractor shall not be entitled to any additional compensation due to the presence of, or interference, delays, or expense caused by obstructions, or the removal and/or replacement of obstructions where such obstructions could have been reasonably anticipated and such removal and/or replacement is required for proper completion of the Work. The Contractor shall not be assessed liquidated damages for delay in the completion of the Work, when such delay was caused by the failure of the Airport Authority or the owner of the utility facilities as provided by Government Code section 4215. Where the Work requires the removal of or damage to existing pavement, sidewalks, curbs, lawns, shrubbery, trees, hedges, gardens, drives, walls, fences, buildings, or other improvements, the Contractor shall take precautions to limit the removal or damage to the least practicable amount; and it shall restore said improvements to as near their original location and condition as is reasonably possible. The Contractor shall carefully place and compact backfill in areas where improvements are to be placed upon said backfill.
- 3.2.9.8 Trees shall not be removed without the express permission of the Airport Authority or as shown in the Contract Documents. Damage to or excessive trimming of trees in the street or right-of-way shall be avoided, if possible, at a reasonable cost. If directed by the Airport Authority, the Contractor shall replace, at no increase to the Contract Price, with like kind any tree removed and/or overly trimmed in violation of this provision.

3.2.10 Maintenance of Traffic and Accessibility

- 3.2.10.1 The Contractor shall provide maintenance of traffic and accessibility for all airport operational activities as called for in the Contract Documents. The Contractor shall ensure maximum ingress, egress, and movement of aircraft, vehicles, pedestrians, airport tenants, businesses, existing ground transportation services, and the traveling public during construction. Complete closures to areas must be kept to a minimum and when necessary, detours must be provided. Detour plans shall seek to preserve the same lane capacity as the existing roadway system. Partial or permanent closures

to any areas must be shown on the Master Project Schedule, and the Airport Authority must be notified well enough in advance of such closures to review and approve and/or comment on the closures and to allow adequate time to notify tenants, businesses, or the traveling public. The Contractor shall respond to and address all Airport Authority comments and receive final written approval of any closure prior to executing the closure.

3.2.11 Coordination with Other Contractors and Concurrent Construction Projects

3.2.11.1 Other construction may be proceeding concurrently with the Work described under the Contract. The Contractor shall, as part of the Work, coordinate with other contractors engaged by the Airport Authority with the Work to be performed by the Contractor. The Contractor and the Airport Authority will cooperate with each other and other contractors, their subcontractors and any other entity involved in the performance of any separate work. In order to cause the Work, and any separate work to be performed by other contractors, to be completed in an expeditious manner, the Contractor agrees that it will use all reasonable efforts to ensure that other contractors have an opportunity to complete their work as and when required. The Contractor shall afford all other contractors reasonable opportunity for the introduction and storage of their materials and for the execution of their work, and shall properly connect and coordinate its Work with the work of other contractors.

3.2.11.2 The Contractor shall coordinate access for other contractors to temporary power and utilities or tie-ins with existing building systems and utilities.

3.2.11.3 See the Special Conditions for additional requirements regarding coordination with other contractors and concurrent construction projects.

3.2.12 Maintenance and Disposal

3.2.12.1 The Contractor shall keep the Project Site free from accumulation of waste materials or rubbish caused by Contractor's operations on a daily basis. In areas used by the public or exposed to public view, the Contractor shall keep these areas in such a state of cleanliness so as not to reflect unfavorably upon the Airport Authority. In addition to the other requirements set forth herein, in areas near aircraft operations, the Contractor shall keep areas free from materials that could possibly be ingested into aircraft engines

or that could cause damage by being blown by aircraft engine blast effects.

- 3.2.12.2 In the event the Contractor fails to maintain the Project Site as required by this Contract, the Airport Authority will notify the Contractor of such failure. If the Contractor fails to remedy the unsatisfactory maintenance within 24 hours of receipt of the notice, the Airport Authority may remedy the unsatisfactory maintenance and the entire cost of such maintenance will be deducted from the Contract Price.
- 3.2.12.3 The Contractor shall conduct its Work and maintain the Project Site in a manner that minimizes the impact to any operation or work being conducted within or adjacent to the Project. The Contractor shall fully coordinate its Work with the parties performing said operations or work.
- 3.2.12.4 The Contractor shall dispose of all excess materials off-site in a manner consistent with the requirements of the Contract Documents and Government Rules related to the diversion of construction, demolition, and land-clearing debris from disposal in landfills and incinerators. The Contractor shall strive to redirect recyclable recovered resources back to the manufacturing process and reusable materials to appropriate sites.

3.2.13 Payroll Records

- 3.2.13.1 Pursuant to Labor Code §1776, the Contractor and each Subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time, and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.
- 3.2.13.2 In accordance with Labor Code §1771.4, the Contractor and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations (DIR) on a weekly basis and in the format prescribed by the DIR, which may include electronic submission. The Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.

- 3.2.13.3 Furthermore, the Contractor and all of its Subcontractors of any tier shall provide all certified payroll reports (CPRs) weekly through the Airport Authority's electronic submittal process.
- 3.2.13.4 Upon request of the Airport Authority, the payroll records described herein shall be certified and submitted by the Contractor at a time and in a manner designated by the Airport Authority. The Contractor shall also provide the following:
 - 3.2.13.4.1 A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative upon request.
 - 3.2.13.4.2 A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
- 3.2.13.5 Any copy of records made available for inspection and furnished upon request to the public shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor or any Subcontractor shall not be marked or obliterated.
- 3.2.13.6 In the event of noncompliance with the requirements of this section, the Contractor shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this section. Should noncompliance still be evident after such ten (10) Day period, the Contractor shall, as a penalty to the Airport Authority, forfeit one hundred dollars (\$100) for each Day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the DIR, such penalties shall be withheld from Contract payments.
- 3.2.13.7 Any stop orders issued by the DIR against Contractor or any Subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the Airport Authority. Contractor shall defend, indemnify and hold the Airport Authority, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Contractor or any Subcontractor.

3.2.14 Hours of Work

- 3.2.14.1 All Contractor work outside regular hours or on Saturdays, Sundays or holidays (except emergency work) shall be scheduled a minimum of forty-eight (48) hours in advance with the Airport Authority.
- 3.2.14.2 As provided in Article 3 (commencing at §1810), Chapter 1, Part 7, Division 2 of the Labor Code, the Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of the Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1.5) times the basic hourly rate.
- 3.2.14.3 The Contractor and every Subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the Airport Authority and to the Division of Labor Law Enforcement of the DIR of the State of California.
- 3.2.14.4 The Contractor shall pay to the Airport Authority a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at §1810), Chapter 1, Part 7, Division 2 of the Labor Code.

3.2.15 Prevailing Rates of Wages

- 3.2.15.1 The Contractor is aware of the requirements of Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, §16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements of certain

“public works” and “maintenance” projects. Since the Work on this Project involves an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, the Contractor agrees to fully comply with such Prevailing Wage Laws. The Airport Authority has obtained the prevailing wage rates from the Director of the DIR. Copies of the prevailing wage rates are on file at the Airport Authority’s office and shall be made available to any interested party on request. The Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform the Project available to interested parties upon request, and shall post copies at the Contractor’s principal place of business and at the Project Site. The Contractor shall defend, indemnify, and hold the Airport Authority, its elected officials, officers, employees, and agents free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.2.15.2 Pursuant to Labor Code §1775, the Contractor is hereby advised that in the event that the Contractor fails to pay prevailing wages, the Contractor will be held liable for penalties and for shortfalls in wages and such amounts may be withheld from progress payments. The Contractor and each Subcontractor shall forfeit as a penalty to the Airport Authority not more than two hundred dollars (\$200) for each Day, or portion thereof, for any work done by him, or by any Subcontractor under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the stipulated prevailing wage shall be paid to each worker by the Contractor.

3.2.15.3 The Contractor shall post, at appropriate conspicuous points on the Project Site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

3.2.16 Public Works Contractor Registration

3.2.16.1 Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its Subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall

further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project.

3.3 COMMISSIONING

- 3.3.1 If the Contract Documents include a Commissioning Plan, Contractor shall comply with the following commissioning requirements.
- 3.3.2 Commissioning is a quality-focused process for enhancing the delivery of a project. The process focuses on evaluating and documenting that all commissioned systems and assemblies are planned, designed, installed, tested, operated, and maintained to meet the Owner's Project Requirements ("OPR").
- 3.3.3 The Airport Authority has retained a Commissioning Authority ("CxA") to develop and lead the total building commissioning process for this Project in accordance with ASHRAE Guideline 0 and Standard 202-2018 (or current Standard).
- 3.3.4 The OPR has been developed by the CxA in collaboration with the Airport Authority and details the functional requirements of the Project and the expectations of how it will be used and operated. This includes project goals, measurable performance criteria, cost considerations, benchmarks, success criteria, and supporting information. The OPR is a LEED Fundamental Commissioning Prerequisite (EAp1) and Enhanced Commissioning (Cr1) requirement.
- 3.3.5 The Airport Authority and CxA have developed a Commissioning Plan ("Cx Plan") to establish the organization, documentation requirements, and tools that will be used to evaluate and document that the construction and operation of the Project systems and assemblies meet the OPR. The Contractor is responsible for implementing the Cx Plan with oversight from the Airport Authority and CxA. The CxA may update and expand the Cx Plan as the Project is constructed.
- 3.3.6 The Contractor shall assign a Commissioning Coordinator ("CxC") to be responsible for coordinating the total building commissioning process with the Airport Authority and CxA. The primary role of the CxC is to coordinate and manage execution of the Cx Plan and related Specification requirements through the organization and leadership of the Contractor's team. The CxC shall have relatable coordination experience from previous projects with a commissioning component. For this Project, the CxC may also hold a project manager or superintendent position within the Contractor's team.

- 3.3.7 The CxA and CxC shall collaborate to ensure commissioning requirements are fully integrated and executed successfully throughout all phases of construction, testing, training, and warranty period.
- 3.3.8 The Contractor shall review the Cx Plan and coordinate constructability, scheduling, and trade coordination with the CxA for updating the Cx Plan.
- 3.3.9 In collaboration with the Airport Authority and CxA, the Contractor shall develop a Commissioning Implementation Plan that complies with the Cx Plan, identifies appropriate commissioning goals, and describes supporting inspection and testing practices to ensure that Project goals and criteria are met.
- 3.3.10 The Contractor shall consider the commissioning process throughout the Project to ensure that all decisions reflect the goals of the OPR and the Contract Documents, that submissions and constructed features are reviewed and tested for effectiveness, and that proper documentation is made to support the turnover of the constructed Work to the Airport Authority.
- 3.3.11 The Contractor shall coordinate with the CxA to verify all inspections, testing, training, demonstration, and/or certification requirements for designed features, systems, components, equipment, and materials, necessary to ensure that the goals and criteria of the OPR are achieved. The commissioning requirements shall address functional, integration, operational, maintainability, and performance issues, rather than incidental quality control testing and startup activities addressed in the Contractor's Quality Control Plan.
- 3.3.12 The Contractor shall provide all equipment, labor, and material required to participate in the commissioning process, including but not limited to installation verification, start-up, pre-functional checks, functional performance testing, retesting, development of operations and maintenance and systems manuals, and training for equipment installed as part of the Work.
- 3.3.13 The Contractor shall ensure that total building commissioning requirements including compliance with the OPR, the Cx Plan and the Commissioning Implementation Plan are integrated into the Contractor's Work and all Subcontracts and shall coordinate participation of Subcontractors and all Contractor quality control personnel in the commissioning process.
- 3.3.14 Enforceable provisions for meeting commissioning milestones shall be included in all Subcontracts.
- 3.3.15 All commissioning activities shall be tracked in an electronic system identified by the Airport Authority.

- 3.3.16 Deficiencies identified during the commissioning process shall be documented by the CxA and maintained in a corrective action log. Contractor shall identify and communicate acceptable corrective actions to the CxA. Additional retesting activities shall be required to ensure successful issue resolution.
- 3.3.17 The Contractor shall schedule commissioning activities to take place at the optimum time to avoid unnecessary uncovering of Work, retesting due to inadequate preparation and duplication of effort. Commissioning activities shall also be scheduled to minimize disruption to tenants, adjacent facilities, and stakeholders.
- 3.3.18 The Contractor shall provide written notification to the Representative fourteen (14) Days in advance of conducting commissioning activities.
- 3.3.19 The Contractor shall provide qualified personnel to participate in the commissioning tests, including seasonal testing. These individuals must be capable of conducting the tests in a safe manner and with complete knowledge of the hazards involved.
- 3.3.20 The Contractor shall provide adequate time and resources for the functional testing of systems that are to be commissioned.
- 3.3.21 The Contractor shall verify that coordination, installation, Quality Control and final testing have been completed such that installed systems and equipment comply with all Project requirements.
- 3.3.22 All commissioning activities shall be completed including acceptance by the CxA prior to Substantial Completion of the Project or for each Project element, unless otherwise agreed to by the Airport Authority in writing.
- 3.3.23 The Contractor shall develop a commissioning schedule that defines the milestones and conditions that must be achieved before system testing and other commissioning activities can commence. The commissioning schedule shall:
 - 3.3.23.1 Be developed in sequential order, incorporate all systems with commissioning requirements, and include the expected duration of the various tasks so that the commissioning process can be incorporated into the overall construction schedule.
 - 3.3.23.2 Be incorporated into the overall Master Project Schedule, and commissioning tasks shall be reported separately from other progress information.
 - 3.3.23.3 Include, at a minimum, commissioning activities in the following categories:

- 3.3.23.3.1 Factory Acceptance Testing

- 3.3.23.3.2 Equipment Receipt Inspection Checkout
- 3.3.23.3.3 Construction Checkout
- 3.3.23.3.4 Electrical Acceptance Testing
- 3.3.23.3.5 Contractor/Vendor Startup
- 3.3.23.3.6 BAS/SCADA Checkout and Integration
- 3.3.23.3.7 Fire Alarm Pre-Testing if applicable
- 3.3.23.3.8 Testing and Balancing if applicable
- 3.3.23.3.9 Functional Performance Testing
- 3.3.23.3.10 Integrated Systems Testing
- 3.3.23.3.11 Black Start Testing
- 3.3.23.3.12 Building Envelope
- 3.3.23.3.13 Closeout Documentation (O&Ms)
- 3.3.23.3.14 Owner Training
- 3.3.24 The Contractor shall demonstrate compliance with the requirements for each commissioning milestone in sequential order prior to progressing to the next milestone.
- 3.3.25 The Contractor shall schedule commissioning milestone completion meetings with the Airport Authority within fourteen (14) Days of submitting all required commissioning milestone completion documentation.
- 3.3.26 The Airport Authority may observe all commissioning activities and may or may not prepare defect reports; however, such actions shall not relieve the Contractor from its responsibility to prepare detailed commissioning reports.
- 3.3.27 The Contractor shall submit all operations and maintenance manuals for Airport Authority review and acceptance prior to Contractor energizing and operating equipment during construction.
- 3.3.28 The Contractor shall only energize and start equipment during construction under the supervision of the manufacturer.
- 3.3.29 The Contractor shall operate and maintain equipment in accordance with the manufacturer's requirements during construction and shall document and submit maintenance records monthly for equipment operated during construction.

- 3.3.30 All equipment will be started and test run for a sufficient period to demonstrate operation and capacity of equipment in accordance with the Cx Plan. As part of its startup responsibilities, the Contractor shall lubricate all operating equipment in strict accordance with the manufacturer's instructions and shall provide all materials and supplies required for the proper operation of the Work.
- 3.3.31 The Contractor shall submit equipment startup reports for all commissioned equipment/systems.
- 3.3.32 The Contractor shall initiate testing activities at the equipment component level and progress in sequential order to the system level as part of the commissioning process.
- 3.3.33 The Contractor shall train Airport Authority and other personnel on systems being commissioned, in accordance with the Contract Documents. Training plans shall be developed for each system as an essential element to plan, coordinate, schedule and execute demonstration and training requirements.
- 3.3.34 Contractor shall provide resources to support post-occupancy operation commissioning for reasons including delayed and seasonal testing and warranty issue resolution. Services will be coordinated through the Airport Authority and completed prior to warranty expiration.
- 3.3.35 Nothing in this Article waives or modifies any warranty, latent or patent defect obligations or rights.
- 3.3.36 Full compensation for complying with the commissioning requirements set forth in this Article shall be considered as included in the Contract Price paid for the various bid items and no additional compensation will be allowed therefor.

3.4 INDEMNIFICATION

- 3.4.1 To the fullest extent permitted by law (including without limitation Civil Code sections 2782 and 2782.8), Contractor shall defend, indemnify and hold the Airport Authority, its governing Board, officers, directors, agents, employees and volunteers free and harmless from and against any and all claims, demands, actions, losses, liabilities, damages, injuries, fines, penalties and all costs, in law or equity, to the property or persons, including wrongful death, regardless of whether the allegations are false, fraudulent, or groundless, arising out of, pertaining to, or resulting from the negligent act or omissions, recklessness, or willful misconduct of the Contractor, its officers, agents or employees, Subcontractors, or the acts or omissions of anyone else directly or indirectly acting on behalf of the Contractor, or for which the Contractor is legally liable under the law, regardless of whether caused in part by a party indemnified hereunder, including claims made by Subcontractors for nonpayment, and including

without limitation the payment of attorneys' fees and other related costs and expenses.

- 3.4.2 To the fullest extent permitted by law, the Contractor shall defend, at the Contractor's own cost, expense and risk, with counsel of the Airport Authority's choosing, any and all such suits, actions or other legal proceedings of every kind that may be brought or instituted against the Airport Authority, its governing Board, officers, directors, agents, employees, and volunteers. The Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the Airport Authority, its governing Board, officers, directors, agents, employees and volunteers, in any such suit, action or other legal proceeding. The Contractor shall reimburse the Airport Authority, its governing Board, officers, directors, agents, employees and volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The Contractor agrees to pay, or reimburse the Airport Authority and its Representative(s), for regulatory agency or court imposed fees, fines, or penalties imposed on the Airport Authority and its Representative(s) arising from the Contractor's failure to complete the Project in a timely manner and/or in accordance with the Contract Documents and any applicable permits or applicable laws. The Contractor's responsibility and obligation to pay, or reimburse the Airport Authority and its Representative(s), for these fees, fines, or penalties shall be in addition to the assessment of liquidated damages for late completion of the Project.
- 3.4.3 To the extent required by Civil Code §2782.8, which is fully incorporated herein, Contractor's obligations under the above indemnity shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, but shall not otherwise be reduced. If Contractor's obligations to defend, indemnify, and/or hold harmless arise out of Contractor's performance of services as a "design professional" (as that term is defined under Civil Code §2782.8), then upon Contractor obtaining a final adjudication that liability under a claim is caused by the comparative active negligence or willful misconduct of the Airport Authority, Contractor's obligations shall be reduced in proportion to the established comparative liability of the Airport Authority and shall not exceed the Contractor's proportionate percentage of fault.
- 3.4.4 In claims against any person or entity indemnified under this Article 3 that are made by an employee of the Contractor or any Subcontractor, a person indirectly employed by the Contractor or any Subcontractor, or anyone for whose acts the Contractor or any Subcontractor may be liable, the indemnification obligation under this Article 3 shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts or any other insurance limitations.

- 3.4.5 The indemnification obligations under this Article 3 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- 3.4.6 Contractor's indemnification obligation under Article 3 shall not be limited by a limitation in the amount of type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefits acts or other employee benefits acts.
- 3.4.7 The provisions of this Article shall survive expiration or termination of this Contract.

3.5 ROYALTIES AND PATENTS

The Contractor shall hold and save the Airport Authority, its officers, agents, servants and employees harmless from liability of any nature or kind, or any damages, claims for damages, costs, or expenses in law or equity, including attorneys' fees therefor, for or on account of any infringement of the patent rights, copyright, or trademark of any person of any patented invention, article, or appliance included in the material or supplies furnished under this Contract to the extent such infringement claims are not solely due to Airport Authority-furnished documents or materials. Should the Contractor, its agents, servants, employees, or any of them, be enjoined from furnishing or using any invention, article, material, or appliance supplied or required to be supplied or used under this Contract, the Contractor shall promptly, within seven (7) Days, substitute other articles, materials, or appliances in lieu thereof, of equal efficiency, quality, finish, suitability, and market value and satisfactory in all respects to the Airport Authority. In the event that the Airport Authority elects, in lieu of such substitutions, to have supplied and to retain and use any such invention, article, material, or appliance as may by this Contract be required to be supplied, then the Contractor shall pay such royalties and secure such valid licenses as may be requisite and necessary to enable the Airport Authority, its officers, agents, servants, and employees, or any of them, to use such invention, article, material, or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse to promptly, within seven (7) Days, make the substitution hereinbefore required, or to pay such royalties and secure such licenses as may be necessary and requisite for the purpose aforesaid, then in that event, the Airport Authority shall have the right to make such substitution, or the Airport Authority, its agents, officers, servants, and employees may pay such royalties and secure such licenses and charge the cost thereof against any money due the Contractor from the Airport Authority or recover the amount thereof from its sureties, notwithstanding final payment under this Contract may have been made. The provisions of this paragraph do not apply to articles which the Contractor is required to manufacture or furnish in accordance with detail drawings furnished by the Airport Authority, its officers, agents, servants, employees, or any of them included in this Contract. The provisions of this paragraph shall apply, however, where such Drawings and the Specifications cover only the type of device without restrictions to details.

3.6 CHANGED SITE CONDITIONS

3.6.1 Differing Site Conditions

3.6.1.1 The Contractor shall promptly give written notice to the Airport Authority of Differing Site Conditions prior to the disturbance of said Differing Site Conditions. The Airport Authority shall investigate the site conditions promptly after receiving the written notice. If the conditions do materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made pursuant to Article 9 and the Contract modified in writing accordingly. No request by the Contractor for an equitable adjustment to the Contract under Article 9 shall be allowed, unless the Contractor has given the required written notice. No request by the Contractor for an equitable adjustment to the Contract for Differing Site Conditions shall be allowed if made after Substantial Completion under the Contract.

3.6.1.2 The Contractor shall bear the burden of proving that a Differing Site Condition exists and that it could not have avoided any impact to the Project resulting from such Differing Site Condition. Any COR related to a Differing Site Condition shall be accompanied by a statement setting forth all relevant assumptions and justifications explaining, in detail, how the condition satisfies the requirements of a Differing Site Condition and how the Contractor attempted to mitigate any resulting impact to the Project.

3.6.2 Discovery of Certain Site Conditions

3.6.2.1 In performing the Work, the Contractor shall promptly upon discovery, and before conditions are further disturbed, notify the Airport Authority in writing of any of the following conditions:

3.6.2.1.1 Material that the Contractor believes may be Hazardous Waste, as defined in §25117 of the California Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

3.6.2.1.2 Subsurface or latent physical conditions at the Project Site differing from those indicated in the Contract Documents (as such conditions may be

further described in the information provided by the Airport Authority).

- 3.6.2.1.3 Unknown physical conditions at the Project Site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
- 3.6.2.2 The Airport Authority shall promptly investigate the conditions, and if it finds that the conditions materially differ, or involve Hazardous Waste and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, may issue a CCO in accordance with Article 9.
- 3.6.2.3 In the event that a dispute arises between the Airport Authority and the Contractor as to whether a Differing Site Condition exists, involves Hazardous Waste, or causes a decrease or increase in the Contractor's cost of or time required for performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract but shall proceed with all Work allowed by law to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests.
- 3.6.2.4 In the event conditions involve Hazardous Waste or other materials that may require remediation or special handling, the Contractor shall proceed in accordance with the provisions for handling hazardous materials included in this Article.
- 3.6.2.5 If, during performance of the Work, the Contractor encounters materials, waste, contaminated groundwater or substances that the Contractor reasonably suspects are Hazardous Waste, the Contractor shall stop the affected portion of the Work, secure the area, promptly notify the Airport Authority, and take reasonable measures to mitigate the impact of such Work stoppage. The Airport Authority may retain the services of an environmental consultant to perform investigation, inspection, testing, assessment, sampling, and analysis of the suspect materials, waste, groundwater, or substances. Based upon information available to the Airport Authority, including, the conclusion of the environmental consultant's analysis, if any, the Airport Authority shall direct the Contractor to proceed as follows:

- 3.6.2.5.1 Found Not to be Hazardous Waste. If the materials, waste, contaminated groundwater, or substances do not constitute Hazardous Waste, the Contractor shall recommence the suspended Work.
 - 3.6.2.5.2 Found to be Hazardous Waste. If the materials, waste, contaminated groundwater, or substances constitute Hazardous Waste that require remediation and disposal, then the Airport Authority will arrange for another contractor to remediate and dispose, as necessary, the Hazardous Waste.
- 3.6.3 Environmental Conditions and Regulated Materials and Pollutants Encountered During Construction.
 - 3.6.3.1 Certain Environmental Conditions (a) may exist at, under, on, around or near (i) the Project Site and (ii) property which is contiguous, upgradient or otherwise in the vicinity of the Project Site ("the Surrounding Property") and (b) may be encountered during activity undertaken pursuant to Work, as defined in the Contract Documents. The San Diego International Airport is generally considered an area of commercial/industrial land use. No other warranty, express or implied, is made as to the information available or referenced in the Contract Documents. The information available to the Airport Authority has been used in planning purposes for the subject site. The information available may not be sufficient for other uses or for purposes of other parties.
 - 3.6.3.2 For purposes of this Article, the term "Environmental Conditions" means (a) any environmental conditions, circumstances, or other matters of fact, pertaining to, relating to, or otherwise affecting the environment, including without limitation any natural resources (including, without limitation, flora and fauna), soil, surface water, groundwater, any present or potential drinking water supply, subsurface strata or the ambient air, and relating to or arising out of the presence, use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, emitting, leaching, disposal (including, without limitation, the abandonment or discarding of barrels, containers and other closed receptacles and fill materials containing any Regulated Materials and Pollutants), dumping or threatened release of Regulated Materials and Pollutants and (b) the exposure of any persons (including, without limitation, owners, lessees, licensees,

permittees, invitees or other occupants or users of the Project Site and/or the Surrounding Property) to Regulated Materials and Pollutants, or the exposure of other natural persons within or outside the boundaries of the Project Site and/or the Surrounding Property to Regulated Materials and Pollutants related to or otherwise arising from operations, acts, omissions or other conduct at the Project Site and/or the Surrounding Property (as the case may be) (the "Environmental Conditions").

- 3.6.3.3 "Regulated Materials and Pollutants," means (a) any material that, because of its quantity, concentration or physical or chemical characteristics, has been determined by any applicable federal, state or local governmental authority to pose a hazard to human health or safety or to the air, water, soil or environment; (b) any materials, substances, products, by products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by products, or waste may give rise to liability under any law. Such material includes, without limitation, any material or substance identified, listed, or defined as a "hazardous waste," "hazardous substance," "pollutant," "contaminant", "universal waste", or term of similar import, or which is otherwise regulated pursuant to law; any asbestos and asbestos-containing materials; petroleum, including crude oil or any fraction thereof; natural gas or natural gas liquids; polychlorinated biphenyls or lead-based paint.
- 3.6.3.4 The Contractor shall seek competitive bids from contractors to perform any remediation work in accordance with the approved remediation plan. All costs associated with remediating the pre-existing Regulated Materials and Pollutants shall be kept segregated from other costs of the Work.
- 3.6.3.5 The Airport Authority will retain title to all pre-existing on-site Regulated Materials and Pollutants encountered during the Work. Contractor shall have no responsibility for remediation of pre-existing on-site Regulated Materials and Pollutants, as defined in this Article, not identified in the Contract Documents, unless otherwise agreed to by the Contractor and the Airport Authority. The Airport Authority will be shown as the waste generator and will sign all waste shipment manifests for non-Contractor generated waste of Regulated Materials and Pollutants. Nothing contained within these Contract Documents shall be construed or interpreted as requiring the Contractor to assume the status of Owner or generator of waste substances for non-Contractor generated wastes.

However, this section does not include hazardous material brought, stored, or managed onsite and this does not include hazardous waste generated by the Contractor, including, but not limited to, used motor oils, lubricants, cleaners, etc. Contractor shall manage and dispose of such hazardous materials and hazardous waste in accordance with the provisions of the Contract, following local, state, and federal regulations. It is the responsibility of Contractor to obtain all permits and approvals required by federal, state, or local statute or regulation related to management of Contractor-owned and/or generated hazardous materials and/or hazardous waste.

3.6.3.6 Except as otherwise provided by the Contract Documents, it is the responsibility of Contractor to obtain all permits and approvals required by federal, state, or local statute or regulation related to management of Regulated Materials and Pollutants, including federal, state, and local surface water and groundwater discharge permits and permits and approvals for recycling and reuse and disposal of Regulated Materials and Pollutants. The Contractor shall be responsible for compliance with applicable permits and approvals, including those governing the preparation of waste profiles, waste manifests, and bills of lading.

3.6.3.7 If, during construction, the Contractor encounters materials, conditions, waste, contaminated groundwater or substances, not identified during the Contractor's original environmental assessment, that the Contractor reasonably suspects are Regulated Materials and Pollutants, the Contractor shall stop the affected portion of the Work, secure the area, promptly notify the Airport Authority, and take reasonable measures to mitigate the impact of such Work stoppage. At the Written Direction of the Airport Authority, the Contractor shall retain the services of an environmental consultant to perform investigation, inspection, testing, assessment, sampling, and analysis of the suspect materials, conditions, waste, groundwater, or substances. Upon the conclusion of the environmental consultant's analysis, the Contractor shall proceed as follows:

3.6.3.7.1 Found Not to be Regulated Materials and Pollutants. If the environmental consultant determines that the materials, conditions, waste, contaminated groundwater, or substances do not constitute Regulated Materials and Pollutants, the Contractor shall recommence the suspended Work.

3.6.3.7.2 Found to be Regulated Materials and Pollutants. If the environmental consultant determines that the materials, conditions, waste, contaminated groundwater, or substances constitute Regulated Materials and Pollutants that require remediation and disposal, then the Airport Authority may do any of the following:

3.6.3.7.2.1 Direct or cause the Contractor to direct the same or another qualified environmental consultant to prepare a remediation plan for the Airport Authority's approval.

3.6.3.7.2.2 Direct the Contractor to remediate the Regulated Materials and Pollutants pursuant to the remediation plan.

3.6.3.7.2.3 Arrange for another contractor to remediate the Regulated Materials and Pollutants.

3.6.4 Exacerbation of Pre-Existing Site Conditions that are Contaminated by Regulated Materials and Pollutants. If, during performance of the Work, the Contractor encounters pre-existing environmental conditions that it knew or should have known involve Regulated Materials and Pollutants (which encounters may include an unavoidable release or releases of Regulated Materials and Pollutants) then the Contractor must immediately stop the affected portion of the Work. If the Contractor fails to immediately stop the affected portion of the Work after the "Point of Discovery," then the Contractor is solely responsible for any resultant Exacerbation Cost, which shall be considered a non-reimbursable cost as defined by the Contract. "Exacerbate," in all its forms, means the worsening effects of the Contractor's failure to stop the affected portion of Work after the Point of Discovery. "Exacerbation Cost" means the differential between (i) the actual increase in the cost of remediation and delays to the Project attributable to pre-existing environmental conditions involving Regulated Materials and Pollutants, and (ii) the cost thereof or delays thereto had the Contractor immediately stopped the affected portion of the Work after the Point of Discovery. The standard of "should have known" applies to the Contractor's supervisory personnel, whether or not on the site. The Contractor's supervisory personnel shall have the training to recognize Regulated Materials and Pollutants required by applicable OSHA and CalOSHA rules or regulations, and required by the Contract.

3.7 CHANGES IN THE LAW

- 3.7.1 The Airport Authority may issue a Written Direction to increase or decrease the Contract Price or Contract Time due to a change in law to the extent that the change in law:
 - 3.7.1.1 Causes a material modification in the Project that increases the Contract Price and/or Contract Time, or allows a material substitution in the Project resulting in a net cost savings,
 - 3.7.1.2 Causes an increase or reduction in the Project environmental mitigation requirements,
 - 3.7.1.3 Somehow impacts the Project scope of Work, and
 - 3.7.1.4 Could not have been anticipated by the Contractor as part of its design obligations, if any.

3.8 WARRANTY

- 3.8.1 General. In addition to the provisions of California Code of Civil Procedure sections 337.1 and 337.15, the Contractor warrants that:
 - 3.8.1.1 All Work performed, including Change Order Work, if any, shall be free of defects, including Errors and Omissions.
 - 3.8.1.2 All physical components of constructed Work completed, including Change Order Work, if any, shall be fit for use for the intended function/use.
 - 3.8.1.3 Materials and equipment furnished under the Contract Documents shall be new, unless otherwise specified in writing, and of the quality required by the Contract Documents.
 - 3.8.1.4 The Work shall meet all of the requirements of the Contract Documents and industry standards for performance, service life, deterioration, and wear.
- 3.8.2 Warranty Term. The Warranty Term for all work other than information technology and special systems shall commence upon Substantial Completion of each Element (if Elements are defined in the Special Conditions), unless completion of the Work results in a jointly agreed modification of this provision as documented in writing by the Airport Authority and the Contractor.
 - 3.8.2.1 The Warranty Term for all information technology and special systems shall commence upon the date that the Airport Authority accepts that all Punch List, commissioning, and incomplete items have been resolved.

- 3.8.2.2 Except as may be extended below, the Warranties shall remain in effect for one (1) year commencing on the date identified above for all Work covered by this Contract.
 - 3.8.2.3 If the Airport Authority determines that any of the Work has not met the standards set forth in this Article at any time within the Warranty Term, then the Contractor shall correct such Work at the Contractor's sole cost as specified below, and repair any damage to the Project or other property of the Airport Authority to the extent such damage is caused by the failure of the Work to meet the standards set forth here even if the performance of such corrective work extends beyond the stated Warranty Term.
 - 3.8.2.4 The Airport Authority and Contractor shall conduct a walk-through of the Project Site three (3) months prior to expiration of the Warranty Term and shall produce a list of those items requiring warranty work.
 - 3.8.2.5 The Warranty Term shall be unaffected by any contractual arrangement entered into by the Contractor to execute the Work hereunder.
 - 3.8.2.6 Where defective Work (or damage to other Work resulting therefrom) has been corrected or removed and replaced, the Warranty Term hereunder with respect to such Work shall be extended for an additional period of one (1) year, commencing with the date of acceptance of such corrected Work. The Contractor shall perform such tests as the Airport Authority may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract.
 - 3.8.2.7 The Airport Authority shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. Within ten (10) Days after being notified, the Contractor shall commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect or damage, the Airport Authority shall have the right to replace, repair, or otherwise remedy the defect or damage at the Contractor's expense.
 - 3.8.2.8 Nothing herein shall limit the Airport Authority's rights or limit the Contractor or its surety's obligations under the Contract, law or equity, including but not limited to California Code of Civil Procedure sections 337.1 and 337.15.
- 3.8.3 Start of Warranty Term. The Warranty Term shall commence as identified above. In the instances where the Work is completed and accepted by

the Airport Authority, the Contractor's or Subcontractor's Warranty Term for that work and any manufacturer's warranties for material or equipment installed will not commence until the commencement of the Warranty Term as described above. When a portion of the work is completed prior to the start of the Warranty Term, the Contractor will be responsible for protecting and maintaining the work such that any Subcontractor's warranty and any manufacturers' warranty for such work shall commence upon the start of the Warranty Term for the Project as identified above.

- 3.8.4 Remedy. Within five (5) Days of receipt by the Contractor of notice from the Airport Authority specifying a failure of any of the Work to satisfy the Contractor's warranties, or of any Subcontractor representation, warranty, guarantee or obligation that the Contractor is responsible to enforce, the Contractor shall implement appropriate action to remedy such violation and shall notify the Airport Authority in writing of the action; provided, however, that in case of an emergency requiring immediate curative action, the Contractor shall immediately implement such action. If the Contractor does not use its best efforts to proceed with such remedy within the agreed time, or should the Contractor and Airport Authority fail to reach such an agreement within such five-day period (or immediately, should the Airport Authority disapprove of the actions being taken, in the case of emergency conditions), the Airport Authority, after notice to the Contractor, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by the Contractor. Notwithstanding the foregoing, in the event of the existence of a condition on or affecting the Project which, in the Airport Authority's sole discretion, poses an immediate and imminent danger to public health or safety, the Airport Authority may, without notice, rectify the dangerous condition at the Contractor's cost, if the need for such action is ultimately determined to be due to a failure of the Work to satisfy the Contractor's warranties or any Subcontractor representation, warranty, guarantee, or obligation which the Contractor is responsible to enforce. All claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including, but not limited to, all costs of repair or replacement work of others) will be paid by Contractor.
- 3.8.5 Permits and Costs. The Contractor shall be responsible for obtaining any required access permits from the Airport Authority and any required consents from any other persons in connection with warranty work. All Contractor and Subcontractor costs for warranty work, including all labor costs associated with warranty management, additional testing, and inspections are non-reimbursable under the Contract.
- 3.8.6 Subcontractor Warranties

- 3.8.6.1 Warranty Requirements. Without in any way derogating the warranties and the Contractor's own representations and warranties and other obligations with respect to all of the Work, the Contractor shall obtain from all Subcontractors and cause to be extended to the Airport Authority appropriate representations, warranties, guarantees, and obligations with respect to materials, workmanship, equipment, tools, and supplies furnished by such Subcontractors. All representations, warranties, guarantees, and obligations of Subcontractors shall be written so as to survive all Airport Authority inspections, tests, and approvals and shall run directly to and be enforceable by the Contractor and the Airport Authority and their respective successors and assigns. The Contractor hereby assigns to the Airport Authority all Contractor's rights and interest in all extended warranties for periods exceeding the applicable Warranty Term which are received by Contractor from any of its Subcontractors.
- 3.8.6.2 Enforcement. During the Warranty Term, upon receipt from the Airport Authority of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee, or obligation, the Contractor shall enforce or perform any such representation, warranty, guaranty, or obligation, in addition to Contractor's other obligations hereunder. Airport Authority's warranty rights under this Article 3 shall commence at the time such representation, warranty, guaranty or obligation is furnished and shall continue until the expiration of the Contractor's relevant warranty. Until such expiration, the cost of any equipment, material, labor (including re- engineering), or shipping shall be for the account of the Contractor if such cost is covered by such a warranty, and the Contractor shall be required to replace or repair defective equipment, material, or workmanship furnished by the Subcontractors in accordance with the procedures set forth herein.
- 3.8.7 No Limitation of Liability. The foregoing warranties and Subcontractor warranties are in addition to all rights and remedies available under the Contract Documents or applicable Governmental Rules and shall not limit Contractor's liability or responsibility imposed by the Contract Documents or applicable Governmental Rules with respect to the Work, including liability for latent construction defects, strict liability, negligence, or fraud.
- 3.8.8 Damages for Breach of Warranty. In addition to the Airport Authority's other rights and remedies hereunder, at law or in equity, the Contractor shall be liable for damages resulting from any breach of an express or implied warranty or any defect in the Work.

- 3.8.9 Warranty Disputes. Any disagreement between the Airport Authority and the Contractor relating to this Article shall be subject to dispute resolution in accordance with the applicable provisions of this Contract.

3.9 CONFIDENTIAL INFORMATION

- 3.9.1 Confidential Information. The Airport Authority may provide certain Confidential Information (as defined in this paragraph 1) to Contractor in order for Contractor to perform services for the Airport Authority as specified under this Contract. The Airport Authority and the Contractor intend that the furnishing of Confidential Information to Contractor will not render such information subject to public disclosure or disclosure to any third party. "Confidential Information" means any and all nonpublic information, written, electronic, or oral, relating to Airport Authority technology, computer, or data systems, processes, or procedures, including but not limited to Sensitive Security Information as defined under 49 CFR Part 1520 (SSI), and Critical Infrastructure Information or Protected Critical Infrastructure Information as defined under the Homeland Security Act of 2002 and 6 CFR §29.2, which information or access to such information is supplied by the Airport Authority or on behalf of the Airport Authority to the Contractor or otherwise acquired by the Contractor during the course of dealings with the Airport Authority and regardless of whether such information is in its original form, a copy, or a derivative product. "Derivative" means written or electronic material created from or with, or based on Confidential Information (i.e., a report analyzing Confidential Information shall also be considered Confidential Information). Confidential Information shall also mean proprietary, trade secret or other protected information, identified as Confidential Information by the Airport Authority. This provision shall govern all Confidential Information provided to Contractor during the term of the Contract that Airport Authority has provided either directly, indirectly, or through access to Airport Authority systems or data.
- 3.9.2 Use of Confidential Information. Contractor agrees to accept the Airport Authority's Confidential Information solely for use in connection with Contractor's duties in performing services for the Airport Authority. Contractor shall not disclose, publish, or disseminate Confidential Information to anyone other than certain individuals on a need-to-know basis, as reviewed by the Airport Authority. Contractor shall inform individuals having access to the Airport Authority's Confidential Information of the confidential nature of this information and the restrictions on its use, dissemination, duplication and disclosure, and shall assume the responsibility that such employees, agents and contractors will preserve the confidentiality of such information as to third parties. The use of SSI, as a subset of Confidential Information, must conform to the parameters of 49 CFR Part 1520. Each employee, agent, and contractor of Contractor identified as having a "need-to-know" in connection with the receipt, review or evaluation of the Confidential Information shall be required to execute a Non-Disclosure Agreement

under the same terms as stated in this provision. Contractor shall provide Airport Authority with a copy of the executed Non-Disclosure Agreements and a master list of the employees, agents, and contractors and their respective duties in connection with the services involving Confidential Information.

- 3.9.3 Protection of Confidential Information. Contractor shall handle and safeguard Confidential Information in a manner that affords sufficient protection to prevent the unauthorized disclosure of or inadvertent access to such information. Contractor shall protect SSI, as a subset of Confidential Information, as required under 49 CFR Part 1520. The Airport Authority has placed special confidence and trust in Contractor and Contractor is obligated to protect Confidential Information from unauthorized disclosure, in accordance with the terms of this provision and the laws, regulations, and directives applicable to the specific categories of information to which Contractor is granted access. Contractor understands that the Airport Authority or other governmental entities may conduct inspections, at any time or place, for the purpose of ensuring compliance with the condition for access, dissemination, handling and safeguarding information under this provision. Contractor shall promptly report to the Airport Authority any loss, theft, misuse, misplacement, unauthorized disclosure, or other security violation Contractor has knowledge of, whether or not Contractor has direct involvement in such circumstances. Contractor's anonymity will be kept to the extent possible when reporting security violations.
- 3.9.4 Return of Confidential Information. Contractor shall return or, with the express permission of the Airport Authority, destroy all tangible information obtained during the term of this Contract upon the earlier of (a) request of the Airport Authority; (b) the completion of services to the Airport Authority; or (c) two years from the date of the completion of the Contract. Notwithstanding the return or destruction of the Confidential Information, Contractor will continue to be bound by its obligations of confidentiality and other obligations under this provision.
- 3.9.5 Ownership of Confidential Information. The Airport Authority owns all Confidential Information under the Contract. Contractor shall have no right, title, or interest in any Confidential Information. Nothing contained in this provision shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. This provision shall be binding upon the Contractor and Contractor's officers, directors, governing board, parent corporations, subsidiaries, affiliates, successors and assigns. In addition, all Confidential Information shall remain the exclusive property of the Airport Authority, and Contractor shall have no rights, by license or otherwise, to have access to or use the Confidential Information except as expressly provided under this provision. No patent, copyright, trademark, trade secret, service mark or other legally protected proprietary right is licensed, granted or otherwise conveyed by this provision with respect to the Confidential Information.

- 3.9.6 Compliance with Court Order or Public Disclosure Laws. In the event that disclosure of Confidential Information is mandated by a court order or express governmental directive, Contractor shall immediately notify Airport Authority and shall take all reasonable steps to enable Airport Authority to seek a protective order or take other appropriate action. Contractor will also, at no cost or expense to the Airport Authority, cooperate in the Airport Authority's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded the Confidential Information. If, in the absence of a protective order, Contractor is required as a matter of law to disclose the Confidential Information, it may disclose to the party compelling the disclosure only the part of the Confidential Information required by law to be disclosed (in which case, where possible prior to such disclosure, Contractor will advise and consult with Airport Authority and its counsel as to such disclosure). Nothing in this provision shall require Contractor to take any action, or to refuse to release information where to do so would violate applicable law.
- 3.9.7 Remedies. Contractor acknowledges and agrees that violation of this provision shall constitute a material breach of the Contract and may be grounds for termination of this and any underlying or related contract for services involving the use of Confidential Information. Violation of this provision may be grounds for denying further access to any Airport Authority Confidential Information. Violation of this provision may also result in administrative debarment and/or civil or criminal action. Contractor acknowledges that in the event of any breach of this provision, Airport Authority could be irreparably damaged and could not be made whole by monetary damages. Accordingly, Airport Authority shall be entitled to specific performance and injunctive and other equitable relief, in addition to any other remedies or money damages available at law or in equity.
- 3.9.8 Independent Knowledge. This provision imposes no obligation upon Contractor with respect to information which: (a) was in Contractor's possession before receipt from the Airport Authority; or (b) is or becomes a matter of public knowledge through no fault of Contractor; or (c) is received by Contractor from a third party without a duty of confidentiality; or (d) is disclosed by Contractor with Airport Authority's prior written approval; or (e) is developed by Contractor without reference to Confidential Information.

3.10 SECTION 179D TAX DEDUCTION

- 3.10.1 As a result of the implementation of the Project Work, certain tax deductions under Section 179D of the Internal Revenue Code of 1986, as amended ("Code"), or such similar tax deduction, may be available because of the energy efficient improvements to the Airport Authority buildings ("Rebate").

- 3.10.2 To the extent allowed by law, the Airport Authority agrees to allocate 100% of the potential tax deduction to Contractor. At the time of Final Acceptance and Completion of the Contract, and prior to final payment under the Contract, Contractor shall re-allocate to the Airport Authority a payment equal to 50% of the total net tax benefit to the Contractor expected as of the date of Final Acceptance and Completion of the Contract.
- 3.10.3 The Contractor shall retain a third-party consultant (the "Consultant") to manage and administer the process of obtaining and monetizing the Rebate derived from the Project(s). If the Consultant's analysis indicates that there is no tax benefit to the Contractor, then no funds pursuant to this clause are owed to the Airport Authority. Any costs associated with the work of the Consultant shall be considered non-reimbursable costs under the Contract.
- 3.10.4 The Airport Authority may be compensated by the Contractor either in the form of a cash payment, or by deductive change order to the Contract Price, at the Contractor's discretion. Compensation shall occur as part of the Contractor's final application for payment, unless the parties agree otherwise.
- 3.10.5 The Airport Authority agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such Rebates derived from the Project.

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4. CONTROL OF WORK

4.1 CONTROL AND COORDINATION

- 4.1.1 All Work performed and materials used on the Project covered by this Contract shall be in accordance with the Contract Documents.
- 4.1.2 The Contractor shall be solely responsible for, and have control over, the construction means, methods, techniques, sequences, procedures, and worksite safety, and shall be solely responsible for coordinating all portions of the Work under the Contract Documents, subject to the requirements contained in the Contract Documents.
- 4.1.3 The Contractor shall coordinate the Work with other Airport Authority contractors, utilities, tenants, and the Authority's Airport Operations Department.
- 4.1.4 All material and equipment shall be stored in areas authorized by the Airport Authority. Delivery and installation of materials and equipment shall be scheduled in such manner so as to minimize interference with the normal conduct of business in or around the occupied portions of the buildings, facilities and operational areas.
- 4.1.5 The Contractor shall make all arrangements with utilities companies/agencies for connections, metering and new services required for the Project. The Contractor shall arrange for all required inspections to accomplish the utility connections and, if required by the Airport Authority, shall pay all related fees and charges.
- 4.1.6 The Contractor shall develop a Contractor Quality Control Program (CQCP) for the Work as described in the Contract Documents.

4.2 OCCUPANCY INTERFERENCES

- 4.2.1 The Contractor shall utilize a method of Work which does not interfere with the normal conduct of business in or around the portions of the buildings, facilities or structures in use.
- 4.2.2 The buildings, facilities or structures may be in normal, full-time, use and operation during the Contractor's performance of the Work, and such use and operation shall not be interrupted, except as required for making connections to existing facilities as hereinafter specified.
- 4.2.3 The Contractor shall provide written notification to the Airport Authority requesting an anticipated interruption in facilities at least fourteen (14) Days prior to disruption of services, allowing for temporary relocation of personnel, operations, and equipment during the Work, as required. The Contractor shall provide all temporary facilities deemed necessary by the Airport Authority due to a disruption of services. The Airport Authority, at its sole discretion, may reject or modify the Contractor's requested times

of day and dates for the performance of the Work. The Contractor shall not perform any Work causing interruptions to facilities until receipt of written authorization from the Airport Authority, and the Contractor shall perform the Work in strict compliance with such written authorization.

4.3 CONSTRUCTION LAYOUT AND STAKES

- 4.3.1 Prior to the start of construction, the Contractor shall check all survey control points, identified in the Drawings, for horizontal and vertical accuracy and certify in writing to the Representative that the Contractor concurs with survey control established for the Project. All lines, grades and measurements from control points established by the Contractor for the proper execution and control of the Work on this Project will be provided to the Representative. The cost of replacing lost or destroyed control points which are deemed necessary to complete the work will be charged to the Contractor. Control points include stakes for grade control.
- 4.3.2 The Contractor is responsible for establishing all layout required for the construction of the Project. The Contractor shall lay out its Work and shall be solely responsible for all measurements in connection with the layout. The Contractor shall furnish all stakes, markings, monuments, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. The Contractor is responsible for executing the Work to the lines and grades established in the Contract Documents.
- 4.3.3 The Contractor shall be responsible for maintaining, preserving and/or replacing all survey control monuments and other marks established by the Airport Authority unless authorized to remove them. If survey control monuments and/or marks are damaged or destroyed by the Contractor without authorization from the Airport Authority, the Contractor shall replace any damaged or destroyed survey control monuments and/or marks utilizing a State of California licensed surveyor. Should the Contractor fail to replace damaged or destroyed survey control monuments and/or marks immediately upon notification from the Airport Authority, the Airport Authority may replace them. The cost for replacement of same, whether by the Contractor or the Airport Authority, shall be assessed in accordance with Article 11 of this Contract.

4.4 CONTROL OF MATERIALS

- 4.4.1 The Contractor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. The Airport Authority may require the Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, mock-ups, or other evidence, which, in the sole discretion of the Airport Authority, would lead to a reasonable certainty that any material used, or proposed to be used in the Work meets the requirements of the Contract Documents.

- 4.4.2 The Airport Authority reserves the right to perform inspections and tests as the Airport Authority deems necessary to validate the Contractor's Quality Control Program inspections and tests and to ensure that the quality of the finished product meets the Contract requirements. These inspections and tests will be performed at times and places selected by the Airport Authority. The Contractor shall address and rectify, as appropriate, any problems identified by the verification inspections and tests in a prompt and effective manner.
- 4.4.3 Access to Testing Facilities. The Airport Authority reserves the right to:
 - 4.4.3.1 Check the Contractor's Independent Testing Laboratory equipment for compliance with specified standards and check testing procedures and techniques.
 - 4.4.3.2 Access the testing facilities of independent testing agencies, at no additional cost to the Airport Authority, to witness testing and verify compliance of testing procedures, testing techniques, tester certifications, and test results.
- 4.4.4 Right to Stop Work. If, in the opinion of the Airport Authority, there is evidence that the Contractor's Quality Control Program procedures are not adequate, a problem is encountered during the Airport Authority's oversight reviews, or a problem becomes evident during construction, the Airport Authority may stop Work until appropriate quality procedures have been established and implemented. In addition, the Airport Authority retains authority to stop Work without liability wholly or in part, if the Contractor fails to:
 - 4.4.4.1 Correct conditions that are unsafe for Project personnel or the general public.
 - 4.4.4.2 Correct non-conforming Work.
- 4.4.5 Defective, Deficient or Non-Conforming Work. If, in the opinion of the Airport Authority, Work is not being done in accordance with any applicable codes or laws or the Contract Documents, written notice shall be given to the Contractor documenting the identified non-conforming condition. Written notice to any foreman or agent in charge of any portion of the Work in the absence of the Contractor's Representative shall be considered as notice to the Contractor.
 - 4.4.5.1 Work that is defective in its construction or deficient in any of the requirements of the Contract Documents will not be considered as accepted as a consequence of the failure of the Airport Authority to notify the Contractor of said defects or deficiency during construction. The Contractor shall correct any defective work whenever discovered and the cost of such correction shall be determined in accordance with Article 11.

If the Contractor refuses or neglects to replace defective work, such work may be replaced by the Airport Authority at the expense of the Contractor.

- 4.4.5.2 The Contractor shall not build upon or conceal any feature of the Work containing uncorrected defects.
- 4.4.5.3 If directed by the Airport Authority, the Contractor shall uncover and/or expose for inspection by the Airport Authority any work deemed by the Airport Authority in its sole discretion to be non-conforming. Should the work thus exposed or examined prove to be conforming, adjustments in Contract Time and Contract Price shall, as appropriate, be made pursuant to this Contract for the uncovering or removing, and the replacing of the covering or restoring the parts removed. Should the work exposed or examined prove to be non-conforming, the cost of uncovering or removing and replacing shall be determined in accordance with Article 11.
- 4.4.5.4 If, in the judgment of the Airport Authority, it is undesirable or impracticable to replace any defective or non-conforming Work, the compensation to be paid to the Contractor shall be reduced by Contract Change Order by such amount as the Airport Authority determines will be the cost to remedy the non-conforming or defective work.
- 4.4.5.5 If the Airport Authority's Representative(s) determines that the Contractor's Quality Control Program or its operation are deficient in the identification and correction of nonconforming quality of workmanship or materials, documentation, or other operational procedures, the Contractor shall correct and/or modify the Quality Control Program to resolve the deficiency. In addition, the Contractor shall take prompt action to correct conditions that have resulted or might result in substandard or defective workmanship, materials, equipment, components, or services. This action shall include preventive measures as well as correction of conditions that have occurred. The Contractor shall document the efforts taken to correct existing deficiencies and to minimize their future occurrence. Reports prepared shall carry follow up action on all deficiencies until adequate correction has been made.

ARTICLE 5. - SUBCONTRACTORS AND SUBCONSULTANTS

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5. SUBCONTRACTORS AND SUBCONSULTANTS

5.1 GENERAL RESPONSIBILITIES

- 5.1.1 The Airport Authority reserves the right to audit and review all Subcontractor records, including but not limited to bids, proposals, subcontracts, invoices, change orders and Project correspondence. If requested by the Airport Authority, Contractor shall provide such documents within seven (7) Days of the request.
- 5.1.2 All Subcontractors must be properly licensed throughout the duration of the Project as required by California law.
- 5.1.3 The Contractor shall require each Subcontractor to be bound to the terms and conditions of the Contract Documents and to assume all the obligations and responsibilities that the Contractor assumes toward the Airport Authority. Any Project funding requirements and flow-down provisions must be included in all subcontracts. Contractor shall provide each Subcontractor with a complete copy of the Contract Documents.
- 5.1.4 If requested by the Airport Authority, the Contractor shall provide for the assignment to the Airport Authority of all rights any Subcontractor may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor as required by the Contract Documents. The Contractor shall not prevent the Airport Authority from entering into contracts with any Subcontractors in the event that this Contract is terminated.
- 5.1.5 The Contractor shall not pass-through to its Subcontractors any assessed liquidated damages which are disproportionate to a Subcontractor's responsibility for the delay at issue. Similarly, the Contractor shall not pass-through to its Subcontractors any insurance deductibles which are disproportionate to a Subcontractor's responsibility for the insurance claim at issue. Unless otherwise agreed to by the Airport Authority, the Contractor shall incur a minimum of twenty percent (20%) of any assessment of liquidated damages and insurance deductibles, passing through a maximum of eighty percent (80%) to its Subcontractors.
- 5.1.6 Each subcontract agreement shall preserve and protect the rights of the Airport Authority under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice the Airport Authority's rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with any and all tiered Subcontractors.
- 5.1.7 The Airport Authority may require the Contractor to provide information about the technical experience, financial status, and location of shop, factory or plant and adequacy of the shop, factory, plant or equipment of

each Subcontractor identified to perform Work on the Project. The Contractor, upon the written request of the Airport Authority, shall provide a copy of any subcontract entered into by the Contractor to the Airport Authority for its review. The Contractor shall not begin Work until it provides to the Airport Authority the information required in this Article.

- 5.1.8 The Airport Authority has the right to request the removal of any Subcontractor who is unfit to perform the Work.
- 5.1.9 Prior to substituting any Subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code §4100 et seq.
- 5.1.10 Pursuant to Labor Code sections 1725.5 and 1771.1, all Subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the DIR. The Contractor shall ensure that all Subcontractors maintain active registration with the DIR for the duration of the Project.

5.2 SMALL, VETERAN OWNED, AND LOCAL BUSINESS PARTICIPATION

- 5.2.1 Unless otherwise agreed to by the Airport Authority, the Contractor and Subcontractors shall report payments on a monthly basis to the Airport Authority using the Airport Authority's free web-based reporting software on or before the 10th of every month. The Contractor and Subcontractors shall be provided login/ password information upon execution of this Contract.

5.3 DISADVANTAGED BUSINESS PARTICIPATION (FOR FEDERALLY FUNDED PROJECTS)

- 5.3.1 The Airport Authority has a Disadvantaged Business Enterprise ("DBE") Program, approved by the Board of the Airport Authority and available at www.san.org. Additionally, federally funded projects must comply with 49 CFR Part 26. In the event of any conflicts or inconsistencies between the DBE Regulations and Airport Authority DBE Program, the federal DBE Regulations shall prevail.
- 5.3.2 It is the practice of the Airport Authority that certified DBEs shall have the maximum opportunity to participate in the performance of Airport Authority contracts. Certified DBEs with qualifying experience are encouraged to respond to the request for proposals/bids/quotes, etc.
- 5.3.3 The Contractor agrees to ensure that DBEs have the maximum opportunity to participate in the performance of the Work for this Project, and the Contractor will take all necessary and reasonable steps in accordance with the Contract Documents to ensure DBEs have the maximum opportunity to compete for and perform subcontract work. Each contract the Airport Authority executes with the Contractor and each

subcontract the Contractor executes with a Subcontractor must include the following clause:

- 5.3.3.1 “The Contractor or Subcontractor shall not discriminate on the basis of race, color, or national origin, sex or sexual orientation in the performance of this Contract or subsequent subcontracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Airport Authority deems appropriate.”
- 5.3.4 When the project involves federal funding, the Contractor shall cooperate with the Airport Authority and demonstrate that it intends to subcontract with certified DBEs in accordance with the FAA-approved DBE Program for the Airport Authority.
- 5.3.5 All DBEs must be certified as eligible DBEs before beginning Work on the Project. Only certified DBEs will count toward the Airport Authority’s expectations for DBE participation. If the Contractor qualifies as an eligible DBE and performs at least the prescribed amount of DBE work with its own forces, the Airport Authority’s expectations for DBE participation will be deemed to have been met. If the Contractor fails to achieve the Airport Authority’s expectations for DBE participation stated in the Contract Documents, it will be required to provide documentation demonstrating its good faith efforts in attempting to meet these requirements.
- 5.3.6 In the event of the Contractor’s willful non-compliance with the Airport Authority’s DBE Program or its intentional failure to meet the prescribed DBE portion of the Contract requirements, the Airport Authority will impose such contract sanctions as the Airport Authority may determine to be appropriate including:
 - 5.3.6.1 Withholding payments to the Contractor until the Contractor complies.
 - 5.3.6.2 Cancellation, termination, or suspension of this Contract in whole or in part.
 - 5.3.6.3 Debarment or suspension of the Contractor from eligibility to contract with the Airport Authority in the future or to receive bid packages or request for proposal packages.

ARTICLE 6. - SAFETY

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6. SAFETY

6.1 DEFINITIONS

- 6.1.1 Construction Safety Manual: The San Diego County Regional Airport Authority Construction Safety Manual for Airport Design & Construction ("Construction Safety Manual"), posted at the following web address: <http://www.san.org>, sets forth the minimum standards that the Contractor's Site-Specific Safety Program must meet. The Construction Safety Manual is incorporated into this Contract by this reference. The Construction Safety Manual is a guide to assist the Contractor in drafting its Site-Specific Safety Program, is not intended as a substitute for the Contractor's Site-Specific Safety Program, and is not all-inclusive.

6.2 REQUIREMENTS

- 6.2.1 The Contractor shall be responsible for all damage or injury to property of any character, during the prosecution of the Work resulting from any act, omission, neglect or misconduct in the Contractor's manner or method of executing the Work or at any time due to defective work or materials.
- 6.2.2 The Contractor shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs and for ensuring tiered Subcontractors, vendors, suppliers, visitors, etc. comply with all applicable safety requirements in connection with the performance of this Contract.
- 6.2.3 The Contractor shall take reasonable safety precautions and shall provide reasonable protection to prevent damage, injury or loss to:
- 6.2.3.1 Employees on the Work and other persons who may be affected thereby.
 - 6.2.3.2 The Work, and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor.
 - 6.2.3.3 Other property at or adjacent to the Work, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
 - 6.2.3.4 Any other property of the Airport Authority or construction by separate contractors.
- 6.2.4 The Contractor shall promptly, within seven (7) Business Days, remedy damage and/or loss to property at the Project Site caused in whole or in

part by the Contractor, or by anyone for whose acts the Contractor may be liable.

- 6.2.5 The Contractor shall erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, and will give appropriate notice and warnings to the Airport Authority and users of adjacent sites and utilities.
- 6.2.6 The Contractor shall be responsible for the preservation of all public and private property. Contractor shall protect any and all land monuments from disturbance or damage and shall not move or otherwise disturb any land monuments unless and until the Airport Authority has witnessed or otherwise referenced their location and has specifically so directed.
- 6.2.7 When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of, or failure to execute, the Work, the Contractor shall restore, at the Contractor's own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing or otherwise restoring as may be directed, or the Contractor shall make good such damage or injury in an acceptable manner.

6.3 SPECIAL SAFETY REQUIREMENTS DURING CONSTRUCTION IN THE AOA

- 6.3.1 Construction equipment shall not penetrate the approach surface of any runway unless the runway is closed, the threshold is displaced, or the operation of the equipment is controlled by the Airport Traffic Control Tower (ATCT). Contractor shall coordinate with the Authority's Airport Operations Department, and, as necessary, obtain a No Hazard Determination (7460) from the FAA prior to the use of any equipment exceeding 25 feet in height.
- 6.3.2 Construction activities shall not be permitted within 250 feet of the runway centerline (also known as the Runway Safety Area), except when the runway is closed.
- 6.3.3 Construction activity set-back lines shall be located at a distance of 160 feet from the centerline of an active taxiway or apron (also known as the Taxiway Object Free Area). However, construction activity may be permitted up to the taxiway and aprons in use provided that the activity is first coordinated with the Airport Authority, the FAA and the users; Notices to Air Missions ("NOTAMs") are issued; marking and lighting provisions are implemented; and it is determined that the height of equipment and materials is safely below any part of the aircraft using the Air Operations Areas which might overhang those areas. The use of these areas shall be coordinated with and approved in advance by the Authority's Airport Operations Department.

- 6.3.4 Excavation and open trenches may be permitted up to the edge of structural taxiway and apron pavements provided the drop-off is adequately signed, lighted and marked.
- 6.3.5 Extensive stockpiled materials shall not be permitted within the construction activity areas defined herein.
- 6.3.6 With respect to vehicular traffic, safety during construction is likely to be derogated by four principal causes: (1) increased traffic volume, (2) nonstandard traffic patterns, (3) vehicles without radio communication and marking, and (4) operators untrained in the airport's procedures. Because each construction situation differs, the Contractor will develop and coordinate a construction vehicle traffic plan with airport users, air traffic control and the appropriate construction engineers and contractors. This plan, when signed by all participants, becomes a part of the Contract. The Contractor is responsible for coordinating and enforcing the plan.
- 6.3.7 Open-flame welding or torch-cutting operations shall be prohibited unless adequate fire and safety precautions are provided and have been approved by the Airport Authority Hot Work Permit.
- 6.3.8 All vehicles are to be parked and serviced behind the building restriction line, in an area designated by the Airport Authority.
- 6.3.9 Open trenches, excavations, and stockpiled material at the Project Site shall be prominently marked with orange flags and lighted by flashing red light units (acceptable to the Airport Authority and the FAA) during hours of restricted visibility/darkness. Under no circumstances are flare pots to be used.
- 6.3.10 Material should not be stored near aircraft turning areas or movement areas.
- 6.3.11 For taxiways that have been permanently closed, the lighting circuits shall be disconnected.
- 6.3.12 Hazardous areas, in which no part of an aircraft may enter, are indicated by use of barricades with diagonal, alternate orange and white markings. The barricades are supplemented with orange flags at least 20 inches by 20 inches square and made and installed so that they are always in the extended position and properly oriented. For nighttime use, the barricades are supplemented with flashing red lights. The intensity of the lights and spacing for barricades, flags, and lights must be such to delineate adequately the hazardous area.
- 6.3.13 The Contractor shall provide information on closed or hazardous conditions to the Airport Operations Department so that Notices to Airmen (NOTAM) can be issued.

- 6.3.14 Holding bays, aprons, and taxiways are sometimes provided with shoulder stabilization to prevent blast and water erosion. This stabilization may have the appearance of a full-strength pavement but is not intended for aircraft use. Usually the taxiway edge marking will define this area, but conditions may exist such as stabilized islands or taxiway curves where confusion may exist as to which side of the edge stripe is the full-strength pavement. Where such a condition exists, the stabilized area shall be marked with 3-foot-wide stripes perpendicular to the edge stripes. On straight sections, the marks shall be placed at a maximum of 100-foot spacing. On curves, the marks shall be placed at a maximum of 50 feet apart between the curve tangents. The stripes shall be extended to 5 feet from the edge of stabilized area or to 25 feet in length, whichever is less.

6.4 EMERGENCIES

- 6.4.1 In an emergency affecting safety or protection of persons or property or the Work, the Airport Authority may act without notice to the Contractor, and the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss, and shall promptly as conditions permit, notify the insurance carrier and the Airport Authority of the nature of the emergency and related circumstances. Immediately thereafter, the Contractor shall prepare a written report setting forth in detail the action taken and describing in detail all circumstances and conditions which are related to such action.
- 6.4.2 The Cost of the Work shall also include costs that are incurred by the Contractor in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property. Contractor may seek the Airport Authority's consideration for payment of costs for this work.

6.5 SITE HEALTH AND SAFETY

6.5.1 General

6.5.1.1 Fifteen (15) Days before the start of onsite activities, the Contractor shall submit the following documents to the Airport Authority for acceptance:

6.5.1.1.1 The Contractor's General Injury and Illness Prevention Plan

6.5.1.1.2 The Contractor's Site-Specific Safety Program

6.5.1.1.3 OSHA 300 logs for the preceding three years

6.5.1.1.4 All Cal OSHA and Fed OSHA Inspection and violation reports for the preceding five years

6.5.1.1.5 A Job Hazard Analysis (JHA)

6.5.1.1.6 In the event the Contractor has not had any violations on the Cal OSHA and Fed OSHA Inspection and Violation reports, the Contractor shall submit a letter confirming that there have been no violations, as required by the Construction Safety Manual.

6.5.2 General Illness and Injury Prevention Plan

6.5.2.1 Contractor shall submit a General Illness and Injury Prevention Plan in accordance with the requirements set forth in Cal OSHA Title 8, Chapter 4, Subchapter 7, §3203, General Industry Safety Orders.

6.5.2.2 In addition to the requirements set forth by Cal OSHA, the General Illness and Injury Prevention Plan shall cover specific procedures for fire protection and prevention of damage to property, as well as other procedures and requirements that may be necessary to conduct the Work in a safe manner and provide maximum protection for the health and safety of all employees and the public. The Contractor's General Illness and Injury Prevention Plan shall set forth specific actions that will be taken to require compliance with the Contractor's accident prevention/safety program by its Subcontractors.

6.5.2.3 The Contractor's General Illness and Injury Prevention Plan shall comply with the Airport Authority's most current Construction Safety Manual.

6.5.3 Site Health and Safety Training

6.5.3.1 The Airport Authority will conduct a Preconstruction Site Health and Safety Training Meeting covering site-specific and general Airport Authority requirements in accordance with the Construction Safety Manual.

6.5.4 Site Safety Representative. As required by the Construction Safety Manual, the Contractor shall have a site safety representative onsite during all scheduled work hours.

6.5.5 Emergency Responder. The Contractor shall have at least one "emergency responder" onsite during all scheduled work hours. The emergency responder shall at least:

6.5.5.1 Possess a valid Red Cross first aid card, or equivalent.

6.5.5.2 Possess a valid Red Cross, or equivalent, CPR card with an Automated External Defibrillator (AED) endorsement.

- 6.5.5.3 Be trained in the OSHA requirements of Bloodborne Pathogens.
- 6.5.6 First Aid. The Contractor shall provide at least the following first aid supplies and emergency response equipment in their jobsite office or on the jobsite as appropriate:
 - 6.5.6.1 Properly stocked and maintained First Aid Kits that meet all applicable requirements.
 - 6.5.6.2 Bloodborne Pathogen Protection and Clean Up Kit
 - 6.5.6.3 Automated External Defibrillator (AED).
- 6.5.7 Additional Safety Requirements.
 - 6.5.7.1 Training certification records shall be subject to audit by Airport Authority or its representatives at any time.
 - 6.5.7.2 For Risk Mitigation Planning (Two-Week Look-Ahead), the Contractor shall provide written summaries of upcoming work tasks and associated risks and control measures (based on the Contractor's three-week look-ahead schedule) at the Project Progress Meetings. The Contractor shall discuss Risk Mitigation Planning including the following:
 - 6.5.7.2.1 Subcontractor activities at least three (3) weeks in advance of the Work.
 - 6.5.7.2.2 Upcoming risks, exposures, hazards, mobilization or demobilization tasks, new contractors, changing conditions, competent person changes, training, etc.
 - 6.5.7.2.3 Planned mitigation measures.

6.6 INJURY ACCIDENT/PROPERTY DAMAGE REPORTING

- 6.6.1 The Contractor shall follow all Incident and Claim Reporting Procedures contained in the Construction Safety Manual and the Owner Controlled Insurance Program Contractors Information Manual.

6.7 MONITORING AIR CONDITIONS

- 6.7.1 When the construction area is adjacent to occupied areas, the Contractor shall be responsible for conducting air monitoring, inside the occupied areas, for airborne contaminants (chemicals, asbestos, welding fumes, nuisance dusts, etc.) generated by construction activity in accordance with the Construction Safety Manual.

- 6.7.2 The Contractor shall ensure monitored levels of chemicals, dusts, or both are below established Permissible Exposure Limits as set forth in 29 CFR Part 1926, Subpart D. The Contractor shall submit air monitoring test results to the Airport Authority's Representative within seventy (72) hours of testing.

6.8 HOUSEKEEPING

- 6.8.1 Safety Notices. When the Contractor is notified by the Airport Authority's Representative, the Airport Authority Safety Manager, or both, of any noncompliance with the provisions of the Contract and the actions to be taken, the Contractor shall immediately, if so directed, or within 48 hours after receipt of a notice of violation, correct the unsafe or unhealthy condition.

6.9 CONSTRUCTION CRANE

- 6.9.1 Before authorization is granted for the operation of any crane that might potentially penetrate an imaginary surface of the airport, as described in FAR Part 77, a "crane plan" must have been submitted to and approved by the Airport Authority's Airport Operations Department. Contractor must comply with the provisions of FAR Part 77 which may require the acquisition of an airspace determination by the FAA.
- 6.9.2 At times, one or more cranes may penetrate the airport's imaginary surfaces. All cranes operating under this policy and penetrating an imaginary surface during Instrument Flight Rules (IFR) conditions (less than 1,000 feet ceiling or 3 miles visibility as reported by the Airport Traffic Control Tower) must be lowered below this surface.
- 6.9.3 A NOTAM must be issued identifying location, maximum height of crane and times of operation.
- 6.9.4 Procedures
 - 6.9.4.1 A Construction Crane Operations Form must be completed and submitted to the Airport Operations Supervisor's ("AOS") Office at least 72 hours in advance of all crane operations. This form shall be completed for all cranes proposed to be operated on the Project Site, whether or not they would penetrate any imaginary surfaces. A diagram, map or sketch may also be attached for further clarification.
 - 6.9.4.2 The AOS will complete the form and return one copy.
 - 6.9.4.3 When potential or actual IFR conditions are observed or known to the AOS, the AOS will review all Construction Crane Operation Notification forms still in effect and if the cranes penetrate any imaginary surfaces, will provide the following information to the appropriate contact person:

- 6.9.4.3.1 Date
- 6.9.4.3.2 Time
- 6.9.4.3.3 Weather conditions (Say "IFR" and give ceiling, visibility and trend if known)
- 6.9.4.3.4 Instruction to lower cranes penetrating the imaginary surfaces
- 6.9.4.3.5 Name of the AOS
- 6.9.4.3.6 Phone number to call back for additional information as needed.
- 6.9.4.4 Upon observing and obtaining confirmation that IFR conditions no longer exist, the AOS will call the number mentioned above and leave a message stating the termination of the IFR conditions, the AOS name and time of the day.
- 6.9.4.5 At any time when construction personnel contact the AOS to request a confirmation of "IFR conditions," the AOS will ascertain the weather conditions and advise the requestor accordingly.
- 6.9.4.6 At any time during IFR conditions should the AOS observe a crane might be penetrating any airport imaginary surfaces and a Construction Crane Notification form has not been completed, the AOS will make a reasonable attempt to contact the crane operator or Contractor's site superintendent and require compliance with all provisions of this policy.

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7. AIRPORT SECURITY AND OPERATIONS

7.1 SECURITY SYSTEM PROTECTION

- 7.1.1 The Contractor shall not commence field activities until it has complied with all security requirements and received all required briefings.
- 7.1.2 The Contractor shall take precautions to ensure the existing access control security system is protected and not damaged by Contractor's acts, Errors or Omissions.
- 7.1.3 The Airport Authority shall be notified immediately of damage to the access control security system caused by the Contractor's acts, Errors or Omissions. The Airport Authority will determine if the Contractor can repair the damage. If the Airport Authority instructs the Contractor to repair the access control security system, and Contractor does not repair the system within two (2) hours, the Airport Authority will have its security system maintenance contractor repair the damage to the access control security system.
- 7.1.4 If the access control security system is damaged as a result of the Contractor's acts, Errors or Omissions, the Contractor is responsible for all costs associated therewith, including the following, which will be deducted from the Contractor's Contract Price:
 - 7.1.4.1 If the Airport Authority's security system maintenance contractor repairs the damage to the access control security system, the cost for repairing the damage.
 - 7.1.4.2 The cost to employ sufficient personnel, to be determined by the Airport Authority in its sole discretion, to secure all areas impacted by the damaged access control security system and comply with federal security requirements while the repair is underway.
 - 7.1.4.3 All fines imposed by the FAA pursuant to 14 CFR Part 13 and by the TSA pursuant to 49 CFR Part 1503 and any fines imposed by other regulatory bodies which are incurred as a result of the damage to the access control security system.

7.2 SECURITY INSTRUCTIONS

- 7.2.1 General
 - 7.2.1.1 The Contractor shall comply with all San Diego International Airport Contractor Security Instructions ("Security Instructions"), including the most recent version of those posted at the following web address: <http://www.san.org>. The Security Instructions are incorporated into this Contract by this

reference. The Security Instructions are general in nature and do not include all security requirements.

7.3 AIRPORT OPERATIONAL REQUIREMENTS

7.3.1 General

7.3.1.1 The requirements, standards, procedures set forth herein and included as the most recent version with the Airport Operational Safety and Security Requirements ("Airport Operations Manual"), as incorporated into this Contract by reference, (posted at: <http://www.san.org>) pertain to all construction projects occurring within the Airport's Air Operations Area ("AOA") or its restricted areas as further defined below. The Airport Operations Manual is incorporated into this Contract by this reference. The Airport Operations Manual is general in nature and does not include all airport operations requirements.

7.3.1.2 Unless expressly exempted in advance by the Airport Authority, failure by any person to comply with any of the requirements in this Article may result in: denial of access to the AOA; suspension or revocation and confiscation of the SDIA-issued Security ID badge, Vehicle Permit, or both; removal of the violating vehicle, person, or both from the AOA. Other corrective measures may be taken such as: requiring retraining or testing, temporary suspension of construction activities documented warning, reprimand, citation, or fine.

7.3.1.3 Designated "Airport Operations Representatives" are authorized to enforce the pertinent requirements set forth in this Article and in the Airport Operational Safety and Security Requirements.

7.3.2 Vehicles

7.3.2.1 The Contractor shall comply with all vehicle requirements as set forth in the Airport Operational Safety and Security Requirements. All Contractor vehicles shall be subject to permitting and designated vehicle routes.

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8. INSURANCE AND BONDS

8.1 INSURANCE REQUIREMENTS

- 8.1.1 The Contractor shall procure and maintain the insurance requirements set forth in Special Conditions Special Conditions Article 8. The Airport Authority will not grant the Contractor or its Subcontractors compensation or time extension for failure to timely provide insurance as specified in the Contract.
- 8.1.2 The Airport Authority shall have the right to review the adequacy of any insurance policy coverage and limits specified herein, annually, or as needed throughout the term of this Contract, and may require with thirty (30) Days' written notice, an adjustment to the coverage and levels of insurance as deemed reasonable and adequate by the Airport Authority.
- 8.1.3 No access to the Project Site will be provided to the Contractor or Subcontractors until the required insurance is in effect and the insurance has been accepted by the Airport Authority.
- 8.1.4 Contractor shall submit the evidence of all insurance required by the Airport Authority, as described in the Contract Documents.
- 8.1.5 The Airport Authority's right to audit, as provided in this Contract, shall also apply to the Contractor's insurance cost itemization as required in this Article and any documents related to insurance for the Project.
- 8.1.6 If any insurance policies are written on a "claims made" basis, the Contractor and each Subcontractor, as applicable, shall, at its own expense:
 - 8.1.6.1 Secure and maintain "tail" coverage for a period of three (3) years, if at any time the coverage provided under any such policy is terminated; and
 - 8.1.6.2 Provide proof of continuing coverage under these policies for a period of not less than three (3) years after completion of the Project or the date on which this Contract is terminated, whichever is later.

8.2 GENERAL INSURANCE REQUIREMENTS FOR ALL CONTRACTOR PROVIDED INSURANCE

- 8.2.1 All liability insurance policies with the exception of Workers' Compensation and Contractor's Professional Liability shall:
 - 8.2.1.1 Name, or be endorsed to name, the Airport Authority, its officers, officials, agents, and employees as additional insured and provide coverage on a primary basis;

- 8.2.1.2 Protect the Airport Authority against all liabilities, costs, damages, expenses, and provide for the legal defense of claims and attorneys' fees and the cost thereof to the extent required by the Contract;
 - 8.2.1.3 State, or be endorsed to state, that the insurance is primary and not excess or contributing to any insurance issued in the name of the Airport Authority; and
 - 8.2.1.4 Contain a severability of interest or cross-liability clause.
- 8.2.2 All Contractor provided insurances and any other policy of insurance insuring the Contractor and covering the Work shall include a waiver of subrogation endorsement in favor of the Airport Authority.
- 8.2.3 The Contractor shall provide the Airport Authority at least thirty (30) Days' written notice prior to a reduction in coverage or cancellation of any required policy. All notices shall be delivered to the Airport Authority's Representative(s).
- 8.2.4 All insurance companies, with the exception of the State of California Insurance Fund (aka SCIF or State Fund) must maintain a minimum A.M. Best's Rating of A-VII or equivalent.
- 8.2.5 Notwithstanding any other provision of this Contract, in addition to (and not in lieu of) any other rights and remedies provided by this Contract or by law, the Airport Authority may suspend the performance of this Contract or terminate this Contract for the Contractor's breach if at any time the Airport Authority determines, in its sole discretion, that the Contractor or any Subcontractor at any tier has not complied with any of these insurance requirements.
- 8.2.6 Procuring these required policies of insurance shall not be construed to limit the liability or the obligations of the Contractor or any Subcontractor at any tier under the indemnification provisions and requirements of this Contract.
- 8.2.7 The Contractor and each Subcontractor at any tier shall be responsible for paying all deductibles or self-insured retention in accordance with Article 11.
- 8.2.8 Nothing in these insurance requirements shall be construed as limiting in any way the extent to which the Contractor or any Subcontractor at any tier may be held responsible for the payment of damage to persons or property resulting from its off-site operations or the off-site operations of any Subcontractor under it. In addition to the insurance required by this Contract, the Contractor and each Subcontractor at any tier shall maintain, for all of its off-site operations, insurance adequate to and in accordance with industry standards, given the scope and nature of such operations.

- 8.2.9 Before the Contractor begins work under this Contract, and thereafter during its term upon renewal of the required policies, certificates evidencing all required insurance and endorsements effecting coverage required by this clause shall be delivered to the Authority's Representative. Certificates of insurance shall be delivered to the Airport Authority immediately upon the Airport Authority's request.
- 8.2.10 The Airport Authority reserves the right to require complete, certified copies of all required insurance policies at any time.

8.3 BONDS

8.3.1 Bond Requirements

- 8.3.1.1 The Contractor shall provide a Performance Bond and a Payment Bond, each with a penal sum equal to one hundred percent (100%) of the Contract Price by an admitted surety as defined in Code of Civil Procedure §995.120, authorized to do business in the State of California and acceptable to the Airport Authority on the bond forms provided by the Airport Authority.
- 8.3.1.2 The Contractor shall (and shall cause its surety to) provide any additional certifications or information requested at any time by the Airport Authority, in its sole discretion, to enable the Airport Authority to evaluate the surety's ability to perform its obligations under any bond. To the extent permitted by law, the Airport Authority, in its sole discretion, at any time may reject any bond or require the Contractor to replace any bond or surety at the Contractor's own cost if the surety fails to meet the requirements of Code of Civil Procedure §995.660.
- 8.3.1.3 If, during the term of the Contract, the surety fails to meet the requirements of Code of Civil Procedure §995.660, the Airport Authority in its sole discretion, may deem the surety to be unacceptable, then, to the extent permitted by law, the Airport Authority may require additional or replacement bonds, which the Contractor shall provide at the Contractor's own cost within thirty (30) Days after receiving notice from the Airport Authority. If the Contractor does not deliver such bonds within such thirty (30)-Day period, then the Airport Authority may suspend or terminate the Contract for cause in accordance with the Contract Documents.
- 8.3.1.4 If the Contract Price is increased, the Contractor shall advise the surety of the increased amount, and the Performance Bond and Payment Bond shall be increased accordingly.

- 8.3.1.5 Bonds shall comply with Civil Code section 9554 and shall be enforceable pursuant to Civil Code sections 9552, 9558, 9560, 9562, 9564, 9566.
- 8.3.2 Payment Bond. The Contractor shall maintain the Payment Bond (Labor and Materials) for the Work in full force and effect until:
 - 8.3.2.1 The Contractor has delivered to the Airport Authority evidence satisfactory to the Airport Authority that all persons eligible to file a claim against the bond have been fully paid, and the Contractor has delivered to the Airport Authority unconditional releases of stop payment notices from all Subcontractors who filed preliminary notices of a claim against the bond.
 - 8.3.2.2 Expiration of the statutory period for Subcontractors to file a claim against the bond. If the price is increased in connection with a CCO, the Airport Authority may, in its sole discretion, require a corresponding proportionate increase in the amount of the Payment Bond.
 - 8.3.2.3 No Relief from Liability. Notwithstanding any other provision set forth herein, performance by a surety of any of the obligations of the Contractor shall not relieve the Contractor of any of its obligations under the Contract.

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9. CHANGES IN THE WORK

9.1 GENERAL

- 9.1.1 The processes required in accordance with this Article must be completed prior to the submission of any claim pursuant to Article 14.
- 9.1.2 The Contractor acknowledges and agrees that the Contract Price and Contract Time, as may be amended, constitute full compensation and duration for performance of all Work, subject only to those exceptions specified in this Article.
- 9.1.3 This Article establishes the sole method for any adjustment to the Project involving either time, cost or scope, which may be authorized only by a Contract Change Order (CCO).
 - 9.1.3.1 The Airport Authority shall not be obligated to compensate Contractor for changes in work not duly authorized by a CCO.
 - 9.1.3.2 In order to be valid, all CCOs must be signed by the Airport Authority's President/CEO or its authorized designee.
 - 9.1.3.3 The Contractor shall not invoice and shall not be paid for change order work performed until a CCO has been properly issued.
 - 9.1.3.4 Upon Written Direction, the Contractor shall commence and diligently perform the Work during negotiation of all CCOs and all disputes or disagreements with the Airport Authority. No Work required by Written Direction shall be delayed or postponed pending resolution of any CCOs, disputes, or disagreements, unless the parties otherwise agree in writing.
 - 9.1.3.5 Issuance of a Written Direction does not indicate that a change occurred or has been authorized.
- 9.1.4 No course of conduct or dealings between the parties, express or implied, or acceptance of alterations, or additions to the Work not authorized by the Airport Authority's Representative(s) shall be the basis for a CCO.

9.2 AIRPORT AUTHORITY INITIATED CHANGE ORDERS

- 9.2.1 Prior to issuing a Written Direction for preparation of a Change Order Request (COR), the Airport Authority may, at its discretion, request and the Contractor shall provide, within three (3) Business Days, or such other period as may be mutually agreed upon by the parties, a preliminary estimate for budgeting purposes and analysis.
- 9.2.2 The Airport Authority may issue a Written Direction requesting a COR for potential changes in the Work. In addition to a COR, the Contractor shall

provide any information or further detail as requested in the Written Direction for this work. Should the Contractor proceed in performing work without the authorization of the Airport Authority's Representative(s), it does so at its own risk, and the Airport Authority shall not be liable for costs incurred unless and until it issues a CCO.

- 9.2.3 Within three (3) Business Days of the Contractor receiving a Written Direction, or such other period as may be mutually agreed upon by the parties, the Airport Authority and the Contractor shall consult to define the proposed scope of the change and to discuss any logistics and estimated cost and time impacts associated with the change and the Contractor's development of a COR ("Scope Consultation").
- 9.2.4 Within three (3) Business Days after the Scope Consultation, or such other period as may be mutually agreed upon by the parties, the Contractor shall submit any analysis and supporting data as requested by the Airport Authority as well as a plan for its development of the COR, which shall be subject to the Airport Authority's acceptance ("COR Development Plan").
- 9.2.5 Within fifteen (15) Days after the issuance of a Written Direction requesting a COR, or such time as may be mutually agreed upon by the parties, the Contractor shall submit a COR which establishes the details agreed upon by the parties.
- 9.2.6 The Airport Authority will evaluate and respond to the COR in accordance with this Article 9.
- 9.2.7 If the Contractor fails to timely submit a COR and the Airport Authority is aware of the change, it may order the Contractor, in writing, to commence the Work immediately on a Time and Materials basis or issue a Unilateral CCO in accordance with the Airport Authority's estimate of cost.

9.3 CONTRACTOR INITIATED CHANGE ORDERS

- 9.3.1 The Contractor may only request a CCO for an increase to the Contract Price and/or Contract Time for a Changed Condition, which shall include a change in the Work not identified in the Contract Documents, which could not have been reasonably anticipated by the Contractor and is beyond the control and without the fault of the Contractor ("Changed Condition").
 - 9.3.1.1 Changed Conditions include the following:
 - 9.3.1.1.1 Differing Site Conditions, as defined herein;
 - 9.3.1.1.2 Changes caused by the Airport Authority or others, such as by utility companies or other contractors not associated with the Contractor;

9.3.1.1.3 Changes in the law, in accordance with Article 3.

- 9.3.2 An increase to the Contract Time will only be granted if a delay to the Project's critical path is directly attributable to a Changed Condition or a Force Majeure (which is a noncompensable delay).
- 9.3.3 The Contractor shall submit a Notice of Changed Condition pursuant to Article 3 as soon as possible but in no event later than three (3) Business Days from when it became aware of or, if utilizing reasonable diligence, should have become aware of the Changed Condition. The Contractor shall certify that its Notice of Changed Condition is based on a good faith belief that a Changed Condition exists. Timely submission of a Notice of Changed Condition is a condition precedent to submission of a valid COR, unless waived by the Airport Authority in writing.
- 9.3.4 The Contractor shall immediately initiate any necessary consultations with the Airport Authority to avoid any delays or adverse consequences associated with the Changed Condition, including a Scope Consultation and/or COR Development Plan, if necessary.
- 9.3.5 The Contractor shall submit a COR to the Airport Authority not later than fifteen (15) Days following submission of a Notice of Changed Condition, or such time as mutually agreed upon by the parties, memorializing the terms of the requested change as agreed upon by the Airport Authority and Contractor.
- 9.3.6 The Airport Authority will evaluate and respond to the COR in accordance with this Article 9.
- 9.3.7 The Contractor shall be responsible for maintaining an updated Changed Condition Log that will be provided as requested by the Airport Authority.
- 9.3.8 The submission of a COR in conformance with the requirements and timelines set forth in this Article is a condition precedent to obtaining a CCO. If the Contractor fails to satisfy the requirements of this Article, the parties agree that the Changed Condition will not result in an increase in the Contract Time or Contract Price.

9.4 MATTERS NOT ELIGIBLE FOR A CHANGE

- 9.4.1 Matters that are the Contractor's exclusive responsibility and therefore not eligible for a change pursuant to a CCO include, but are not limited to, the following:
 - 9.4.1.1 Mistakes, errors, and omissions in the submittals, Shop Drawings, or other deliverables provided by the Contractor.
 - 9.4.1.2 Defective or incorrect schedules or changes in the planned sequence of performance of the Work.

- 9.4.1.3 Costs caused by the Contractor's breach of contract, fault, negligence, or act or failure to act by the Contractor's employees, suppliers, or Subcontractors.
- 9.4.1.4 Untimely delivery of equipment or material, or unavailability or defectiveness of material, equipment, or products specified by the Contract Documents.
- 9.4.1.5 Correction of nonconforming Work, including rejected design submittals.
- 9.4.1.6 Failure to provide proper notifications to Airport tenants, concessions, utility owners, and others.
- 9.4.1.7 Delays not on the critical path.
- 9.4.1.8 Failure to satisfy the requisite standard of care in submitting all required documentation and demonstrating diligence in obtaining governmental or utility owner approvals in a timely manner.
- 9.4.1.9 Failure to comply with all requirements of the Contract Documents, including the COR notification requirements in this Article. Further, the Contractor hereby expressly waives all rights to assert claims based on changes in the Work, delay, suspension, inefficiency, or constructive acceleration for which the Contractor failed to provide proper and timely notice or failed to provide a timely COR and agrees that it shall not be entitled to compensation for damages in connection with the Work.
- 9.4.1.10 Work performed outside the scope of the Work of this Contract. Furthermore, the Airport Authority may require the Contractor to remove or otherwise undo the unauthorized work at Contractor's sole expense.
- 9.4.1.11 Any costs covered by insurance proceeds received by (or on behalf of) the Contractor.
- 9.4.2 The Contractor hereby assumes responsibility for all such matters, and acknowledges and agrees that responsibility for such risks, and the consequences and costs and delays that result, is reasonable under the Contract.

9.5 CHANGE ORDER REQUEST

- 9.5.1 The Airport Authority will provide the Contractor with a standard COR form, which the Contractor shall complete and timely submit to the Airport Authority. In general, a COR must state and justify the reason for the

request and specify the amount of any requested adjustment to the Contract Price and/or Contract Time.

9.5.2 The COR shall include, at a minimum, the following supporting information:

9.5.2.1 Scope of Work and Narrative:

9.5.2.1.1 Detailed description of all activities associated with the CCO, including a description of additions, deletions, and modifications to the existing Contract requirements.

9.5.2.1.2 Detailed narrative describing the circumstances underlying the proposed change, identifying the specific Contract provisions that allow a CCO to be issued and describing the data and documents that establish the necessity and amount of the proposed change.

9.5.2.2 Cost Estimate. Contractor shall provide a complete breakdown of costs of both credits and extras itemizing labor, materials, equipment, taxes, premiums, overhead, and profit in a format provided by the Airport Authority. Subcontract Work shall be so indicated and written proposals for Subcontractors, including all tiers, shall be furnished with similar breakdowns. Following submissions of cost breakdowns, the Contractor shall meet with the Airport Authority, if requested, to discuss all aspects of the scope, costs, scheduling, and construction methods to ensure agreement. The Contractor shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or nonoccurrence of an event.

9.5.2.3 Time Extension Requests. If requesting a time extension for excusable delay to Work on the critical path schedule, the Contractor shall prepare and submit with a COR a Time Impact Evaluation (TIE) in accordance with Article 10, which includes both a written narrative and a small time-scaled logic diagram (fragnet). The fragnet shall indicate how the Contractor proposes to incorporate the changed Work into the schedule and how the changed Work impacts the current schedule's critical path and contractual milestones, if at all.

9.5.2.4 Certification. Contractor shall provide a certification, executed by an individual authorized to contractually bind the Contractor, stating that the information contained within the COR, including Subcontractor claims, is submitted in good

faith, is factual and true, and conforms with the California False Claims Act, codified in Government Code sections 12650-12656.

- 9.5.3 Cost, preauthorized in writing by the Airport Authority, for any design and engineering work required for preparation of the COR may be included in the CCO as itemized reimbursable items or compensated as a Reimbursable Cost.
- 9.5.4 Before submission by Contractor of any COR that is based in whole or in part on a Subcontractor claim, the Contractor shall have reviewed the Subcontractor's claim, which constitutes the basis for the COR, and determined that it is in conformance with the provisions of this Contract regarding compensable changes. Each COR involving Subcontractor work, and each update to an incomplete COR, involving Subcontractor work shall include a summary of the Contractor's analysis of the Subcontractor claims. Any COR involving Subcontractor Work that is not accompanied by such analysis and certification shall be considered incomplete.
- 9.5.5 The Contractor shall only submit a COR to the Airport Authority for a Changed Condition or a Force Majeure. The Contractor shall not submit a COR related to Subcontractor work if it is based on a change in the scope of the subcontract but not a change in the scope of this Contract.
- 9.5.6 If, due to a time critical change in the Work, it is not practical for the Contractor to provide a complete COR at the time the CCO work must be performed, and the Airport Authority provides Written Direction to perform the work in advance of the issuance of the CCO, the Contractor shall provide a proposal that includes all current information available. The proposal shall include a list of information that is lacking, together with an explanation stating why the information that is lacking is not available at the time of the proposal. The proposal shall include information regarding the following:
 - 9.5.6.1 Sufficient detail to establish the basis for a proposed CCO.
 - 9.5.6.2 Justification for any associated price increase, to the extent such amount is then ascertainable.
 - 9.5.6.3 Projected impact on a critical path to the extent an impact is ascertainable.
- 9.5.7 When requested by the Airport Authority, the Contractor shall provide additional information as may be required to clarify the facts or issues involved. In the event that the Airport Authority requests additional information, the Contractor has an affirmative duty to provide all information requested, and conduct a Scope Consultation with the Airport Authority and submit a COR Development Plan as necessary, within five

(5) Days or as mutually agreed upon by the parties. The Contractor agrees that it shall give the Airport Authority access to the Contractor's books, records, and other materials relating to the proposed CCO, and shall require its Subcontractors to do the same. The Contractor shall provide the Airport Authority with a monthly update to all outstanding CORs describing the status of all previously unfulfilled requirements stating any changes in projections previously delivered to the Airport Authority, expenditures to date, and time anticipated for completion of the activities for which the time extension is claimed.

- 9.5.8 The Airport Authority may return a COR for correction at any point in the process. If the COR is returned, the Contractor may within ten (10) Days resubmit the returned COR with such additional accompanying documentation the Contractor deems appropriate to support the resubmitted COR to the Airport Authority for reconsideration. The Airport Authority shall promptly respond to the Contractor with a decision regarding the request for reconsideration of the COR. Should the Contractor continue to disagree with the decision rendered by Airport Authority, the Contractor may submit a claim in accordance with the Contract Documents.
- 9.5.9 Within a reasonable time after receiving the COR and supporting data, the Airport Authority shall notify the Contractor whether it will:
 - 9.5.9.1 Issue a CCO to the Contractor; or
 - 9.5.9.2 Issue a Written Direction to proceed while a CCO is being processed; or
 - 9.5.9.3 Return the COR with comments and request a resubmittal of the COR; or
 - 9.5.9.4 Reject the COR if it no longer desires to issue a CCO.
- 9.5.10 If a CCO is issued, the Contractor shall notify its surety in accordance with Article 8. In executing the bonds for this Project the surety shall be deemed to have expressly agreed to any such change in the Work, increase in the Contract Price, or extension of Contract Time.

9.6 TYPES OF CHANGE ORDERS

- 9.6.1 **Bilateral Change Orders.** A Bilateral CCO is one in which the Contractor and Airport Authority negotiate and execute for all mutually agreed upon changes to the Contract Time and/or Contract Price on an Airport Authority provided form which includes a full and final release with no reservation of rights and includes language stating that by signing the CCO, the Contractor accepts its terms and conditions as full and final settlement of any and all claims arising out of or related to the subject of the CCO and acknowledges that the compensation, in both time and/or

price, set forth therein comprises the total compensation due for the work or change defined in the Bilateral CCO.

9.6.2 Unilateral Change Orders

- 9.6.2.1 If the Airport Authority and the Contractor fail to agree on the terms of a Bilateral CCO, the Contractor may be directed to proceed immediately with the changed work in the form of a Unilateral CCO which sets forth the Airport Authority's determination of the reasonable changes in the Contract Price and/or Contract Time attributable to the change defined in the CCO. Such determination shall become final and binding if the Contractor fails to submit a claim in writing to the Airport Authority within ten (10) Business Days of the issuance of the Unilateral CCO, disputing the terms of the Unilateral CCO and providing such supporting documentation for its position as the Airport Authority may reasonably require.
- 9.6.2.2 Upon issuance of a Unilateral CCO, the Contractor shall commence work immediately and diligently perform the CCO work in accordance with the Contract.
- 9.6.2.3 The Contractor shall keep complete time and materials records for all work performed under a Unilateral CCO. Within fifteen (15) Days of the completion of the work, the Contractor shall submit documentation necessary to substantiate all costs incurred that the Contractor deems to be outside the scope of work required for the original Project Work.
- 9.6.2.4 The Contractor and Airport Authority agree that they will take all necessary actions to seek final agreement on the value of the Unilateral CCO work and to convert it into a Bilateral CCO. This may be an ongoing process as work progresses but shall conclude in no event later than thirty (30) Days after completion of the work unless otherwise agreed upon by the Airport Authority.
- 9.6.2.5 If a Unilateral CCO remains in dispute, the Contractor may submit a claim in accordance with the provisions of Article 14, but shall be obligated to comply with the Unilateral CCO.

9.7 **CALCULATING ADJUSTMENTS IN CONTRACT PRICE AND CONTRACT TIME**

- 9.7.1 All adjustments to the Contract Price shall only be for such Reimbursable Costs and mark-ups as defined and calculated in accordance with Article 11.
- 9.7.2 All adjustments to the Contract Time shall be calculated in accordance with Article 10.

9.8 INSURANCE CONSIDERATIONS

- 9.8.1 Concurrent with filing any Notice of a Changed Condition, the Contractor will cooperate with the Airport Authority to determine if insurance proceeds may be available to cover costs in connection with such item.
- 9.8.2 The Airport Authority will promptly notify the Contractor if it is determined that insurance proceeds may be available to cover an item, in which instance the COR process will be tolled while the insurer evaluates the item, and the Contractor shall maintain contemporaneous records of all costs incurred by it pending the insurer's determination regarding the claim.
- 9.8.3 If an insurance claim is denied, the Contractor or the Airport Authority will receive a Notice of Denial from the insurer, and the tolling of the COR process shall be lifted at which time Contractor shall resume the COR process outlined herein, including the provision of any updates to any COR that was previously prepared.
- 9.8.4 When the Airport Authority reasonably believes that a Changed Condition is covered by insurance, the Airport Authority shall not be liable for its failure to compensate the Contractor until it receives a final determination denying coverage from the insurer.
- 9.8.5 Upon denial of any such claim by the insurer and receipt of a COR, if not already received, the Airport Authority will evaluate the COR and determine whether a CCO is appropriate. If an insurance claim is still pending upon Final Acceptance of the Project, the Contractor shall commence the COR process within 10 Days following Final Acceptance.
- 9.8.6 The Airport Authority shall have the right to contest the denial of any insurance claim, and the Contractor shall cooperate with the Airport Authority in that regard. If a Changed Condition exists, the Airport Authority will process a CCO while an insurance appeal is in process.
- 9.8.7 Unless otherwise agreed upon by the parties in writing, no carrying costs associated with the delay in payment to the Contractor while an insurance appeal is in process will be paid by the Airport Authority.
- 9.8.8 It shall be the Contractor's responsibility to review the Airport Authority's OCIP Contractor's Informational Manual.

9.9 MAINTENANCE OF RECORDS

- 9.9.1 The Contractor shall maintain its records in such a manner as to provide a clear distinction between the cost of Work related to Changed Conditions and the cost of the original Contract Work. This requirement pertains to CORs, Bilateral or Unilateral CCOs, and work the Contractor considers to be potential CCOs.

ARTICLE 10. - TIME

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10. TIME

10.1 NOTICE TO PROCEED

- 10.1.1 Unless otherwise specified, the Contractor shall begin performance of the Work as directed in the Notice to Proceed (NTP) issued by the Airport Authority. The NTP may be for individual Elements of the Project, if applicable, as defined in the Special Conditions, and/or for the entire Project.
- 10.1.2 If the Contractor fails to begin performance of the Work as directed in the NTP, the Contract Time specified in the NTP, if any, shall nonetheless begin to accrue on the date established by the NTP.

10.2 PROGRESS AND COMPLETION

10.2.1 Progress

- 10.2.1.1 Time is of the essence, and the Contractor shall diligently prosecute the Work to Final Acceptance and Completion. The Contractor shall at all times keep on the Project Site sufficient equipment and material and employ sufficient supervision and workers working such hours, including weekends, night shifts and overtime as may be necessary to prosecute the Work to reach Final Acceptance and Completion of the Work required within the Contract Time and in accordance with the Master Project Schedule.
- 10.2.1.2 The Contractor shall develop and maintain detailed Progress Schedules for construction of the Work, in such way so as to not delay the progress of the Work or the schedules of other contractors and workers who may be employed by the Airport Authority on any work in the vicinity of the Work. The Contractor's Progress Schedules shall include time required for the Airport Authority's review and for approval of all submissions, commissioning requirements and turnover requirements by all authorities and or agencies having jurisdiction over the Project.
- 10.2.1.3 The Contractor is required to cooperate in every reasonable way with other contractors or workers in order to complete the Work within the Contract Time. Except as otherwise provided, no additional compensation will be paid for such cooperation.

10.2.2 Master Project Schedule

- 10.2.2.1 The Contractor shall develop and maintain the Master Project Schedule to deliver the Project, including but not limited to construction, management, completion, start up and turn over, in accordance with the provisions of this Contract. The

Master Project Schedule shall be a CPM schedule that complies with the standards for schedule development and analysis established within the latest published AACE International Recommended Practices and the Airport Authority Schedule Guideline Manual, which is incorporated herein by reference. Airport Authority acceptance or rejection of schedule submittals shall not modify the Contractor's requirements and obligations under the Contract Documents.

10.2.2.2 The Master Project Schedule shall include the dates of submittal preparation, submittal approval, manufacture and shipment of major items of equipment or materials used in the Work.

10.2.2.3 The Contractor shall use the criteria defined in the Airport Authority Schedule Guideline Manual for the preparation development and maintenance of the Master Project Schedule, all Progress Schedules, Time Impact Evaluations, and recovery schedules.

10.2.2.4 A Master Project Schedule and/or a progress update schedule submitted by the Contractor showing either an early or late completion date does not constitute a change in the Contract Time. The Contract Time shall only be modified pursuant to a CCO.

10.2.2.5 All float calculated in the Master Project Schedule and subsequent progress update schedules is a resource that belongs to the Project and is available for the use of all parties.

10.2.3 Substantial Completion. When the Work or designated portion thereof is Substantially Complete, the Airport Authority will prepare and sign a Certificate of Substantial Completion that will establish the Substantial Completion Date.

10.2.4 Milestones. Contract Time milestone dates shall be those established pursuant to the Contract for completion of discrete components of the Work. These milestones may be enforced by the Airport Authority's assessment of liquidated damages pursuant to the Special Conditions. The Contractor cannot claim a Delay resulting from its failure to meet a milestone.

10.3 DELAYS AND EXTENSIONS OF TIME

10.3.1 Delays. A delay is any impact to the Project that results in an extension of the Project's critical path or the critical path associated with a Contract Time milestone ("Delay").

10.3.2 Cooperation with Airport Authority. The Contractor shall cooperate with the Airport Authority to minimize Delays to the Project and is obligated to

mitigate, in a manner approved by the Airport Authority, any impacts of the Delay to the Contract Time and/or Contract Price.

- 10.3.3 Recovery Schedule. If, in the sole discretion of the Airport Authority, the Contractor has fallen behind with the Work, or a potential future impact to progress that may result in the Contractor falling behind with the Work has been identified but not yet realized, the Contractor shall submit a written recovery plan acceptable to the Airport Authority to demonstrate the measures that will be taken to mitigate the schedule slippage. The Contractor shall take all actions necessary to improve its progress and recover the Project schedule at no additional cost to the Contract Price.

10.3.4 Notice of Delay

- 10.3.4.1 The Contractor shall promptly notify the Airport Authority in writing of any anticipated Delay in the prosecution of the Work, regardless of the cause of the Delay, or within seven (7) Days after Contractor knows or reasonably should have known of the occurrence of the Delay.

- 10.3.4.2 The Airport Authority may take steps to prevent the occurrence or continuance of the Delay and may determine to what extent the Completion of the Work is delayed.

- 10.3.4.3 A Time Impact Evaluation ("TIE") using a critical path method schedule indicating the occurrence of Delays along the longest critical path is the only method of demonstration that will be accepted by the Airport Authority to document and claim delays. If notice of a Delay is not submitted on or before seven (7) Days after the occurrence of such a Delay, the Contractor waives its right to claim for an extension of time, and no extension of time or extra compensation will be granted by the Airport Authority or is due to the Contractor. Said notice shall constitute a request for an extension of time only if the notice requests an extension and sets forth the Contractor's analysis of the justification for additional time.

- 10.3.5 Non-Excusable Delays. Non-excusable Delays are generally Delays caused by events that are within the control of the Contractor ("Non-excusable Delay"). Non-excusable Delays shall not entitle the Contractor to an increase in Contract Time or Contract Price. Non-excusable Delays shall include but are not limited to Delays that could have been avoided by the exercise of care and diligence on the part of the Contractor or its Subcontractors, are caused by the Contractor or its Subcontractors, or are attributable to the Contractor or its Subcontractors including action or failure to act.

- 10.3.5.1 By signing this Contract, the Contractor agrees to bear the risk of Non-excusable Delays and acknowledges that, except and

only to the extent otherwise provided herein, the occurrence of events that result in any Delay in completion of the Work shall not excuse the Contractor from its obligation to complete the Work within the Contract Time and shall not entitle the Contractor to an adjustment of the Contract Price.

- 10.3.5.2 If the Airport Authority stops the Work because of conduct by the Contractor, its agents, representatives, or Subcontractors, no compensation in time or money shall be owed to the Contractor for such stoppage.

10.3.6 Excusable Delay

- 10.3.6.1 Excusable Delay is a Delay of the Work beyond the control of the Contractor and that the Contractor could not have avoided by the exercise of care, prudence, foresight, and diligence ("Excusable Delay"). A Contractor experiencing an Excusable Delay may be entitled to an extension in the Contract Time and may, subject to an approved CCO, be entitled to additional costs only if it is determined by the Airport Authority that the Delay is compensable.

- 10.3.6.2 When asserting an Excusable Delay, the Contractor must demonstrate that the Delay extends the current critical path or that it requires the formulation of a new, longer critical path.

- 10.3.6.3 Events constituting an Excusable Delay include, but are not limited to, the following:

- 10.3.6.3.1 Force Majeure.

- 10.3.6.3.2 Other events which prevent or prohibit progression of the Work caused solely by the Airport Authority or a third party, and which could not have been avoided or mitigated by the Contractor or its Subcontractors.

- 10.3.6.3.3 Delays caused by an injunction, judgment, or other decree or order of a court of competent jurisdiction, if not caused by the Contractor.

- 10.3.6.4 The amount of time allowed in any extension of time for any Excusable Delay shall be limited to the duration of the Delay as determined by the Airport Authority. Should the Airport Authority grant an extension of time because of Delay, such extension shall not operate as a waiver on the part of the Airport Authority of the right to collect damages or of any other right to which the Airport Authority is entitled.

- 10.3.6.5 The Contractor may only request an extension to the Contract Time for delays due to adverse weather conditions beyond the weather conditions that could have been reasonably anticipated. The Contractor shall include, as weather days in the Master Project Schedule, sixteen (16) working days for every 365 Days of Contract Time. The total number of weather days calculated is to be cumulative for the entire period of performance.
- 10.3.6.5.1 The use of weather days may be requested only for days during which: (i) there is greater than 0.10 inches of precipitation, (ii) the Contractor planned to work, and (iii) the precipitation impacted weather dependent tasks on the longest driving critical path of the Master Project Schedule.
- 10.3.6.5.2 The Contractor may also request the use of weather days for days that the Contractor had planned to work following utilized weather days during which job conditions caused by the weather forced the Contractor to lose a full day of work on weather dependent tasks on the longest driving critical path of the Master Project Schedule.
- 10.3.6.5.3 The Contractor shall submit a request to utilize a weather day to the Airport Authority within seven (7) Days of the requested weather day. The Airport Authority will review the request and determine if the request has merit.
- 10.3.6.5.4 Once all weather days included within the total Contract Time have been exhausted, the Contractor may submit a request for a Contract Time extension for additional days during which: (i) there is greater than 0.10 inches of precipitation, (ii) the Contractor planned to work, and (iii) the precipitation impacted weather dependent tasks within the longest driving critical path of the Master Project Schedule and/or detailed progress schedule updates.
- 10.3.6.6 **Compensable Delays.** The Contract Price may only be adjusted in the event that an Excusable Delay is compensable, meaning that it is caused by one of the following and provided that the Work would not have been suspended, delayed, or interrupted by any other cause ("Compensable Delay"):

- 10.3.6.6.1 Differing Site Conditions as defined in this Contract.
- 10.3.6.6.2 The Airport Authority's failure to perform identified and agreed to obligations of the Airport Authority which caused a Delay, provided, however, that such failure was not caused by or contributed to any fault, action or failure to act by the Contractor or its Subcontractors.
- 10.3.6.6.3 Discovery of unknown hazardous materials, but only to the extent defined in this Contract.
- 10.3.6.6.4 Other Delays expressly approved by the Airport Authority as compensable in writing.
- 10.3.6.7 Non-Compensable Delays. Unless otherwise provided by law or the provisions of this Contract, no monetary damages or compensation of any kind shall be paid to the Contractor, or any Subcontractor because of Delays that are not the responsibility of the Airport Authority. To the fullest extent permitted by law, the Contractor and its Subcontractors waive all claims against the Airport Authority, its consultants, and their respective directors, officers, members, employees and authorized representatives, for loss or damage sustained by reason of Delays in the Completion of the Work beyond the Contract Completion Date that are not the responsibility of the Airport Authority.
- 10.3.6.8 Concurrent Delays. In the event that an Airport Authority-caused Delay occurs simultaneously with a Contractor-caused Delay ("Concurrent Delay"), as identified in the Master Project Schedule, the Contract Time may be extended, as determined by the Authority; however, such Delay is non-compensable, and the Contract Price shall not be adjusted.

10.4 LIQUIDATED DAMAGES

- 10.4.1 It is expressly understood and agreed that the time for the completion of the Work and the completion of milestones are reasonable times for completion and that the amount of liquidated damages established by the Contract is reasonable.
- 10.4.2 If the Contractor fails to complete the Work within the Contract Time or any portion of the Work as indicated by Contract Time milestone(s), as defined in the Master Project Schedule or any proper extension granted by the Airport Authority, then the Contractor agrees to pay to the Airport Authority the fixed amount specified in this Contract, not as a penalty but as liquidated damages, for such breach of Contract for each Day that the

Contractor shall be in default after the Contract Completion Date or Contract Time milestone(s).

- 10.4.3 Beneficial Occupancy of the Work or partial use of the Work by the Airport Authority as defined in the Contract Documents before Final Acceptance and Completion does not waive or modify the Contract Completion Date or Contract Time milestone dates for purposes of computing and assessing liquidated damages as further defined herein.
- 10.4.4 The Airport Authority may establish and implement multiple liquidated damages in accordance with the Contractor Agreement.
- 10.4.5 The Contractor understands and agrees that the Airport Authority may reduce the Contract Price by the amount of liquidated damages accrued.
- 10.4.6 The Airport Authority may deduct liquidated damages from progress payments or withhold from retention in the Airport Authority's sole discretion. The Airport Authority's failure to withhold liquidated damages from a progress payment does not constitute a waiver of liquidated damages.
- 10.4.7 Allowing or requiring the Contractor to continue and finish the Work or any part thereof after a completion deadline (milestone, Substantial Completion, Final Acceptance and Completion) shall not act as a waiver of Airport Authority's right to receive liquidated damages hereunder or any rights or remedies otherwise available.

ARTICLE 11. - CONTRACT CHANGE ORDER AND OWNER ALLOWANCE COSTS

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11. CONTRACT CHANGE ORDER AND OWNER ALLOWANCE COSTS

11.1 BASIS OF COMPENSATION FOR CONTRACT CHANGE ORDERS AND OWNER ALLOWANCE UTILIZATION

11.1.1 Reimbursable Costs for purposes of Contract Change Orders and Owner Allowance utilization may be calculated pursuant to any combination of the following bases for compensation:

11.1.1.1 Fixed Price: Work will be compensated as a lump sum based on a competitive bidding process or negotiated process acceptable to both parties.

11.1.1.2 Unit Price: Work will be compensated based on unit prices for specific, measurable units of work determined by a competitive bidding process or negotiated process acceptable to both parties.

11.1.1.3 Time and Materials ("T&M"): Work will be compensated based on actual documented and approved labor, material, and equipment costs reasonable and necessary to perform the Work, including any applicable mark-ups.

11.1.2 Not-to-Exceed ("NTE"): Work may be compensated up to an agreed-upon maximum cost to complete as calculated by any combination of the bases for compensation listed above.

11.2 REIMBURSABLE COSTS

11.2.1 The amount initially awarded in the Contract is a Reimbursable Cost so long as the Work is completed in accordance with the Plans and Specifications.

11.2.2 The Airport Authority will only compensate the Contractor for substantiated Reimbursable Costs. In no event shall the Contract Price be adjusted, or payments made, for Reimbursable Costs unless such Reimbursable Costs have been substantiated in accordance with the Contract Documents. The Airport Authority will not compensate the Contractor for any costs asserted by a Subcontractor, regardless of whether the Contractor is obligated to pay the Subcontractor for those costs in its subcontract, unless they are substantiated in accordance with this Article 11.

11.2.3 Change Orders and Owner Allowances Competitively Bid: Reimbursable Costs may be actual payments properly and reasonably made to Contractor and Subcontractors for the proper performance of the Work pursuant to and in accordance with substantiated Fixed Price or Unit Price subcontracts or agreements which have been procured through a competitive process accepted by the Airport Authority.

- 11.2.4 Change Orders and Owner Allowances Not Competitively Bid: Reimbursable Costs may be substantiated costs that are incurred by the Contractor or its Subcontractors for the proper performance of the Work that is not included in Fixed Price or Unit Price subcontracts or agreements. These costs shall not be at rates higher than those customarily paid in the San Diego region, except with the Airport Authority's prior consent, and must be substantiated in accordance with the Contract Documents.
- 11.2.5 Reimbursable Costs are limited exclusively to the following types of costs and must be fair, reasonable, and actual costs:
- 11.2.5.1 Field Labor. Field labor costs including wages, burdens, and fringes of workers directly employed by the Contractor or its Subcontractors to perform the Work at the Project Site or, with the Airport Authority's agreement, at off-site workshops. This includes working foremen who are performing manual labor.
- 11.2.5.1.1 The Airport Authority shall not be responsible for any labor rates in excess of the prevailing wage rate or the actual rate previously and consistently paid to workers by the Contractor which must be substantiated by the payroll rates submitted to the Airport Authority.
- 11.2.5.1.2 Wages, burdens, and fringes will be paid at actual cost as verified as part of the labor compliance reporting process and are fully auditable. They shall include the following:
- 11.2.5.1.2.1 Actual wages paid to employees.
- 11.2.5.1.2.2 Labor burden, including charges for social security taxes, Medicare taxes, Federal unemployment taxes, State unemployment taxes, and other taxes pertaining to labor.
- 11.2.5.1.2.3 Employer payments to or on behalf of the workers for health, welfare, pension, vacation, apprenticeship funds, travel subsistence, and similar purposes, as well as assessments or benefits required by lawful collective bargaining agreements.
- 11.2.5.1.3 Premium and overtime rates shall not be paid by the Airport Authority unless authorized in

advance or directed by the Airport Authority in writing.

11.2.5.2 Materials

11.2.5.2.1 Costs, including purchase, transportation, inspection, testing, storage and handling, of materials and equipment incorporated or to be incorporated into the Work.

11.2.5.2.2 Costs of materials described in the preceding paragraph in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage, as approved by the Airport Authority. Unused excess materials, if any, shall be handed over to the Airport Authority at the completion of the Work or, at the Airport Authority's option, shall be sold by the Contractor; amounts realized, if any, from such sales shall be credited to the Airport Authority as a deduction from the Cost of the Work.

11.2.5.2.3 The Airport Authority reserves the right to furnish materials for the Work, and no fee or mark-up shall be allowed by the Contractor for the cost of such materials.

11.2.5.3 Equipment

11.2.5.3.1 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the Project Site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented will be subject to the Airport Authority's prior approval.

11.2.5.3.2 Individual pieces of equipment having a replacement value of one thousand dollars (\$1,000.00) or less shall be considered to be small tools or small equipment and no payment will be made for them. Small tools are part of the Contractor's mark-up.

11.2.5.4 Expenses. Unless otherwise compensated pursuant to the Special Conditions, payment for costs, third-party services

and materials (collectively, "Expenses") related to travel over 60 miles from the Airport Authority offices shall be pre-approved by the Airport Authority in writing and shall not exceed published General Services Administration (GSA) rates. The Contractor may be reimbursed for the following Expenses:

- 11.2.5.4.1 Air, Rail, and Bus Transportation. The Contractor may be reimbursed for the price of airline, bus, and rail tickets if the expense is actual, reasonable, and directly related to the performance of Work required under this Contract. Reimbursement shall be limited to the cost of the lowest coach fare available.
- 11.2.5.4.2 Travel by Passenger Vehicle. The Contractor may be reimbursed for the cost of travel by passenger vehicle if the expense is actual, reasonable, and directly related to the performance of Work required under this Contract. IRS standard mileage rates shall be used to calculate the Reimbursable Costs.
- 11.2.5.4.3 Lodging. The Contractor may be reimbursed for lodging if the expense is actual, reasonable, and directly related to the performance of Work required by this Contract. Airport Authority payment for lodging shall be for actual costs below the published GSA rates applicable to the area. In lieu of requiring the provision of receipts, the Airport Authority, at its discretion, may choose to pay a per diem rate equal to the GSA rate with the addition of applicable State and local taxes.
- 11.2.5.4.4 Other Travel-Related Expenses. The Contractor may be reimbursed for the cost of other actual, reasonable, and necessary travel expenses if the expense is actual, reasonable, and directly related to the performance of Work required by this Contract. Airport Authority payment for meals, including applicable taxes and tips shall not exceed the published GSA rates for meals, incidentals, and expenses for the area. In lieu of requiring the provision of receipts, the Airport Authority, at its discretion, may choose to pay a per diem rate equal to the GSA rate, with a lower rate for the first and last days of travel.

- 11.2.5.5 Taxes. Sales or other similar taxes imposed by a governmental authority which are directly required for the Work and for which the Contractor is liable, not including corporate or other similar taxes.
- 11.2.5.6 Permits. Fees and assessments for permits, licenses, and inspections for which the Contractor is required to pay in accordance with the Contract Documents.
- 11.2.5.7 Testing. Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work.
- 11.2.5.8 Royalties. Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents.
- 11.2.5.9 Emergency. Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.
- 11.2.5.10 Safety. Costs incurred in implementing the safety requirements in accordance with the Contract Documents.
- 11.2.5.11 Insurance:
 - 11.2.5.11.1 Insurance policy deductibles.
 - 11.2.5.11.2 That portion of premiums for insurance required in addition to the OCIP. All insurance premiums shall be actual and auditable, inclusive of all premium adjustments, credits, and/or rebates.
- 11.2.5.12 Bonds. The actual cost for bonds incurred by the Contractor as permitted by the Contract Documents.
- 11.2.5.13 BIM and VD&C services as authorized by the Airport Authority.
- 11.2.5.14 Other Fixed Price, Unit Price or Bid Item cost components in accordance with the provisions herein as approved by the Airport Authority.
- 11.2.5.15 Other costs that may be incurred in the performance of the Work, if any, to the extent the Airport Authority provides prior written approval.

11.3 NON-REIMBURSABLE COSTS

- 11.3.1 The Contract Price shall not include and the Contractor shall therefore not be compensated for the following:
 - 11.3.1.1 Costs due to Errors and Omissions or Contractor's Negligence, as defined by the Contract Documents.
 - 11.3.1.2 Costs reasonably recoverable from sources including, but not limited to, Subcontractors, suppliers, or insurance.
 - 11.3.1.3 Costs previously paid or otherwise included in the Contract Price.
 - 11.3.1.4 Costs in excess of Not-to-Exceed amounts that have been negotiated and agreed upon by the Airport Authority and the Contractor.
 - 11.3.1.5 Overhead and general expenses, except as otherwise expressly included in this Article, including but not limited to:
 - 11.3.1.5.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or Contractor's field office unless specifically approved by the Airport Authority.
 - 11.3.1.5.2 Expenses of the Contractor's principal office and offices other than the field office, except as otherwise expressly included in this Article.
 - 11.3.1.5.3 Temporary Facilities / Field Office / Temp Utilities / Services:
 - 11.3.1.5.3.1 Costs, including transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the Project Site and fully consumed in the performance of the Work. Costs of those items that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project Site less the fair market value of the item when it is no longer used at the Project Site.

- 11.3.1.5.3.2 Costs of removal of debris from the Project Site and its proper and legal disposal as directed by the Airport Authority.
 - 11.3.1.5.3.3 The costs and expenses incurred in the maintenance of the Contractor's field office.
 - 11.3.1.5.3.4 Temporary utilities, including, but not limited to, power, fuel and water used during start-up and commissioning.
 - 11.3.1.5.4 Travel costs not authorized by the Airport Authority.
 - 11.3.1.5.5 The Contractor's capital expenses, including interest on the Contractor's capital.
- 11.3.1.6 The Contractor's expenses associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings or unpaid retention.
- 11.3.1.7 Costs derived from the computation of a "home office overhead" rate by application of the Eichleay, Allegheny, burden fluctuation, or other similar methods.
- 11.3.1.8 Costs of special consultants or attorneys, whether or not in the direct employ of the Contractor, employed for services specifically related to the resolution of a claim, dispute, or other matter arising out of or relating to the performance of the Work.
- 11.3.1.9 Bonuses, profit sharing, and other discretionary compensation.
- 11.3.1.10 Costs specifically included in or compensated by mark-ups as stipulated in this Article or the Special Conditions.
- 11.3.1.11 Contractor and Subcontractor Overhead. All Contractor and Subcontractor overhead shall be included within the mark-up as set forth in Article 11.5 and shall constitute satisfaction of all costs incurred as a result of performing additional work and shall be considered to include the following:
 - 11.3.1.11.1 Incidental job burdens such as office equipment and supplies, computer services, reproduction costs and services, temporary toilets, telephone, facsimile, office personnel, and conformance to regulatory requirements.

- 11.3.1.11.2 Review and coordination, estimating, recording, proposal preparation and expediting.
- 11.3.1.11.3 Preparation of additional Shop Drawings, coordination drawings, and submittals, including those prepared using a BIM and VD&C process except where additional work is of a sufficient complexity as to require significant additional BIM and VD&C coordination, subject to specific written pre-approval by the Airport Authority.
- 11.3.1.11.4 Superintendents, Assistant Superintendents, Project Engineers, Project Managers, Schedulers and Estimators, except when major additional work requires the use of additional full-time supervisory staff, subject to specific written pre-approval by the Airport Authority.
- 11.3.1.11.5 Small tools, consumables with a dollar value of up to \$25 each, onsite or offsite trailer and storage rental and expenses, site fencing, data processing costs, light duty trucks with a capacity rating of up to 1.75 ton as defined by the Rental Rate Blue Book unless they are Work Trucks as defined earlier in this Article, and similar miscellaneous costs.
- 11.3.1.11.6 All other home office overhead including, but not limited to, accountants, payroll, office and administrative staff.
- 11.3.1.11.7 Vehicles or vehicle allowances provided for the use of an employee to travel to and from the jobsite. No separate or additional reimbursement shall be made.
- 11.3.1.12 Cost and expenses of any kind or item not explicitly or expressly included as a Reimbursable Cost in this Article.
- 11.3.1.13 The Airport Authority will not compensate the Contractor for any non-reimbursable costs incurred by or asserted by any Subcontractor regardless of whether the Contractor is obligated to pay the Subcontractor for those costs.

11.4 SUBSTANTIATION OF REIMBURSABLE COSTS

11.4.1 Contents and Sufficiency of Submittal

- 11.4.1.1 The Contractor may submit Reimbursable Costs to the Airport Authority for substantiation in any of the formats described in

this Article, providing, however, that all submittals shall have been thoroughly reviewed for accuracy, appropriateness and clarity.

- 11.4.1.2 In the sole discretion of the Airport Authority, any submittal that does not contain the required information in sufficient detail, in a format that is satisfactory to the Airport Authority, including but not limited to, all/any bids, quotations, invoices, receipts and estimates, shall be rejected as without merit. Should the Contractor repeatedly fail to provide sufficient submittals, in addition to all other remedies available to the Airport Authority, the associated costs may be deemed non-reimbursable.
- 11.4.1.3 The Contractor shall include with each submittal a written certification that the submittal is complete, accurate, and in compliance with the requirements of this Article.
- 11.4.1.4 The Contractor shall maintain its records, and shall require all Subcontractors to maintain their records, in such a manner as to provide a clear distinction between the costs of the original scope of work and the Contract Change Order or Owner Allowance work.

11.4.2 Fixed Price

11.4.2.1 Actual Costs Based on a Competitive Process

- 11.4.2.1.1 For purposes of substantiating Fixed Price Work as actual costs in a Contract Change Order or Owner Allowance, Contractor shall provide detailed documentation and evidence in a form satisfactory to the Airport Authority that such costs have been procured through a competitive bid or negotiation process in accordance with the Contract Documents. Bid items for which such substantiation has been satisfactorily provided shall be considered equivalent to substantiated actual Reimbursable Costs and payment may be made on a "percent complete" basis.
- 11.4.2.1.2 The Contractor shall, upon request of the Airport Authority, permit inspection of the original unaltered bid, subcontract agreements, and purchase orders relating to the Work and documents substantiating all costs associated with the cost proposal.

11.4.2.2 Estimated Costs Based on Approved Estimating Methodology.

11.4.2.2.1 For the purposes of substantiating estimated Reimbursable Costs as a Fixed Price in a Contract Change Order or Owner Allowance, the Contractor shall submit a Fixed Price Proposal, in a form satisfactory to the Airport Authority which shall include a detailed estimate with a complete breakdown of costs of both credits and extras itemizing labor, materials, equipment, taxes, markups and any other necessary or relevant supporting materials in accordance with the Contract Documents to demonstrate that the proposed Fixed Price is accurate, fair and reasonable for the proposed Work. Subcontracted work in the Fixed Price Proposal shall be so indicated and written proposals from Subcontractors shall be furnished with similar details and relevant supporting materials. The supporting documentation shall include agreed-upon scope definition criteria.

11.4.2.2.1.1 Labor rates for Design, Engineering, and other Professional Services not subject to prevailing wages shall be no higher than the rates previously accepted by the Airport Authority pursuant to the Contract Documents.

11.4.2.2.1.2 Labor rates for Subcontractor staff not subject to prevailing wages and not included in mark-ups shall be hourly rates derived from the actual wages; labor burden, including charges for social security taxes, Medicare taxes, Federal unemployment taxes, State unemployment taxes, and other taxes pertaining to labor; and employer payments to or on behalf of the workers for health, welfare, pension, vacation, and similar purposes, as well as assessments or benefits required by lawful collective bargaining agreements. If documentation, acceptable to the Airport Authority, of actual salaries is not available, hourly rates no higher than those customarily paid for the applicable services in the

San Diego region, except with the Airport Authority's consent.

- 11.4.2.2.1.3 Labor rates subject to prevailing wages shall be no higher than the prevailing wage rate or the actual rates previously accepted by the Airport Authority pursuant to the Contract Documents.
- 11.4.2.2.1.4 Equipment rates shall be listed for that equipment in the Rental Rate Blue Book Federal Highway Administration (FHWA) for San Diego which is in effect on the date the Airport Authority authorized the work and shall be calculated pursuant to the requirements of the Time and Materials provision below.
- 11.4.2.2.1.5 Cost of materials may be substantiated as follows: actual itemized invoices or bills of sale; or multiple detailed quotes or price lists from material suppliers; or mutually agreed upon discounts.
- 11.4.2.2.2 The Airport Authority shall review the estimate and supporting materials to determine if the Fixed Price Proposal is fair and reasonable as follows:
 - 11.4.2.2.2.1 Estimate/ Proposal Reconciliation: The Airport Authority will review the detailed estimate and all supporting materials provided by the Contractor justifying the estimate and will either accept or reject the Fixed Price Proposal stating its justification for such action. The Contractor may respond to the Airport Authority and resubmit a revised Fixed Price Proposal addressing the issues raised by the Airport Authority, and the parties will negotiate until a satisfactory Fixed Price agreement is reached.
 - 11.4.2.2.3 Airport Authority Cost Estimate: If a satisfactory Fixed Price agreement is not reached, and at the sole discretion of the Airport Authority, the Airport Authority may prepare its own cost estimate of the Work based on the same agreed-

upon scope definition criteria used by the Contractor. The process to reconcile the Contractor's estimate with the Airport Authority's estimate shall be as follows:

11.4.2.2.3.1 The two (2) estimates will be reconciled for any differences in scope quantities or assumptions.

11.4.2.2.3.2 If the Airport Authority Cost Estimate is less than or equal to \$1,000,000, then the following apply:

11.4.2.2.3.2.1 If the Contractor's estimate in its Fixed Price Proposal is less than or equal to 103% of the Airport Authority's Cost Estimate, the Contractor's Fixed Price Proposal will be accepted and deemed to be the actual cost of the Work.

11.4.2.2.3.2.2 However, if the Contractor's estimate in its Fixed Price Proposal is greater than 103% of the Airport Authority's Cost Estimate, the Contractor must either agree to a Fixed Price no greater than 103% of the Airport Authority's Cost Estimate, or the Work will be performed on a T&M basis.

11.4.2.2.3.3 If the Airport Authority Cost Estimate is greater than one million (\$1,000,000) and less than or equal to ten million (\$10,000,000), then the following apply:

11.4.2.2.3.3.1 If the Contractor's estimate in its Fixed Price Proposal is less than or equal to 102% of the Airport Authority's Cost Estimate, the Contractor's Fixed Price Proposal will be accepted and deemed to be the actual cost of the Work.

11.4.2.2.3.3.2 However, if the Contractor's estimate in its Fixed Price Proposal is greater than 102% of the Airport Authority's estimate, the Contractor must either agree to a Fixed Price no greater than 102% of the Airport Authority's Cost Estimate, or the Work will be performed on a T&M basis.

11.4.2.2.3.4 If the Airport Authority Cost Estimate is greater than ten million (\$10,000,000), then the following apply:

11.4.2.2.3.4.1 If the Contractor's estimate in its Fixed Price Proposal is less than or equal to 101% of the Airport Authority's Cost Estimate, the Contractor's Fixed Price Proposal will be accepted and deemed to be the actual cost of the Work.

11.4.2.2.3.4.2 However, if the Contractor's estimate in its Fixed Price Proposal is greater than 101% of the Airport Authority's Cost Estimate, the Contractor must either agree to a Fixed Price no greater than 101% of the Airport Authority's estimate, or the Work will be performed on a T&M basis.

11.4.2.2.4 If the Airport Authority does not prepare its own cost estimate and the parties are unable to agree upon a satisfactory Fixed Price agreement, the Work will be compensated on a T&M basis. The Contractor shall maintain T&M records for the work from the beginning of work until a Fixed Price agreement for that work is reached, even if that portion of work is submitted by the Contractor for substantiation on a Fixed Price basis. Once a Fixed Price agreement is reached, the Contractor's T&M Reports shall be discontinued and the disposition of the

previously signed T&M Reports shall be negotiated as part of the agreement.

11.4.3 Unit Price

11.4.3.1 Actual Costs Based on a Competitive Process

- 11.4.3.1.1 For purposes of substantiating Unit Price Work as actual costs in a Contract Change Order or Owner Allowance, Contractor shall provide detailed documentation and evidence on a form provided by the Airport Authority that such costs have been procured through a competitive bid or negotiation process in accordance with the Contract Documents. Bid items for which such substantiation has been satisfactorily provided shall be considered equivalent to substantiated unit prices for actual Reimbursable Cost and payment may be made on a unit price basis.
- 11.4.3.1.2 If approved by the Airport Authority, the Contractor may utilize the unit rates submitted by bidders in their original competitive bids so long as the rates were a substantial part of the award criteria and used to calculate the Bidder's bid price.
- 11.4.3.1.3 The Contractor shall, upon request of the Airport Authority, permit inspection of the original unaltered bid, subcontract agreements, and purchase orders relating to the Work and documents substantiating all costs associated with the cost proposal.
- 11.4.3.1.4 Bid unit rates shall not be subject to additional mark-up for overhead and profit if the mark-ups were included in the unit prices as part of the bid process.
- 11.4.3.1.5 Bid unit prices may be applied to actual or estimated quantities for the purpose of substantiating Reimbursable Costs.
- 11.4.3.1.6 Should the actual quantity of an item of work covered by a bid unit price exceed the bid quantity by more than twenty-five percent (25%), the unit price shall be decreased in an amount mutually agreed to by the Contractor and Airport

Authority, and payment for the quantity will be made on the basis of the adjusted Unit Price.

11.4.3.1.7 Should the actual quantity of an item of work covered by a bid unit price be less than seventy-five percent (75%) of the bid quantity, an adjustment in payment will not be made unless so requested in writing by the Contractor. If the Contractor so requests, payment will be made on the basis of an adjustment in the Unit Price mutually agreed to by the Contractor and the Airport Authority; however, in no case will payment be less than would be made for the actual quantity of the Unit Price nor more than would be made for seventy-five percent (75%) of the bid quantity at the Unit Price.

11.4.3.2 Estimated Costs Based on an Approved Estimating Methodology

11.4.3.2.1 For the purposes of substantiating estimated Reimbursable Costs as a Unit Price in a Contract Change Order or Owner Allowance, the Contractor shall submit a Unit Price Proposal on a form provided by the Airport Authority, which shall include a detailed estimate and any other necessary or relevant supporting materials in accordance with the Contract Documents to demonstrate that the proposed Unit Price is accurate, fair and reasonable for the proposed Work. Subcontracted work in the proposed Unit Price shall be so indicated and written proposals from Subcontractors shall be furnished with similar details and relevant supporting materials. The supporting documentation shall include agreed-upon scope definition criteria.

11.4.3.2.1.1 Labor rates shall be no higher than prevailing wages or the actual rates previously accepted by the Airport Authority pursuant to the Contract Documents.

11.4.3.2.1.2 Equipment rates shall be listed for that equipment in the Rental Rate Blue Book Federal Highway Administration (FHWA) which is in effect on the date the Airport Authority authorized the work and shall be calculated pursuant

to the requirements of the Time and Materials provision below.

11.4.3.2.1.3 Cost of materials may be substantiated as follows: actual itemized invoices or bills of sale, or multiple detailed quotes or price lists from material suppliers, or mutually agreed upon discounted published price indexes.

11.4.3.2.2 The Airport Authority shall review the estimate and supporting materials to determine if the Unit Price Proposal is fair and reasonable as follows:

11.4.3.2.2.1 Estimate/Proposal Reconciliation. The Airport Authority will review the detailed estimate and all supporting materials provided by the Contractor justifying the estimate and will either accept or reject the Unit Price Proposal stating its justification for such action. The Contractor may respond to the Airport Authority and resubmit a revised Unit Price Proposal addressing the issues raised by the Airport Authority, and the parties will negotiate until a satisfactory Unit Price agreement is reached.

11.4.3.2.2.2 Airport Authority Cost Estimate. If a satisfactory Unit Price agreement is not reached, and at the sole discretion of the Airport Authority, the Airport Authority may prepare its own cost estimate of the Work based on the same agreed-upon scope definition criteria used by the Contractor. The process to reconcile the Contractor's estimate with the Airport Authority's estimate shall be as follows:

11.4.3.2.2.3 The two (2) estimates will be reconciled for any differences in scope quantities or assumptions.

11.4.3.2.2.4 If the Airport Authority Cost Estimate is less than or equal to one million (\$1,000,000), then the following apply:

11.4.3.2.2.4.1 If the Contractor's estimate in its Unit Price Proposal is less than or equal to 103% of the Airport Authority Cost Estimate, the Contractor's Unit Price Proposal will be accepted and deemed to be the actual cost of the Work.

11.4.3.2.2.4.2 However, if the Contractor's estimate in its Unit Price Proposal is greater than 103% of the Airport Authority Cost Estimate, the Contractor must either agree to a Unit Price no greater than 103% of the Airport Authority Cost Estimate, or the Work will be performed on a T&M basis.

11.4.3.2.2.5 If the Airport Authority Cost Estimate is greater than one million (\$1,000,000) and less than or equal to ten million (\$10,000,000), then the following apply:

11.4.3.2.2.5.1 If the Contractor's estimate in its Unit Price Proposal is less than or equal to 102% of the Airport Authority Cost Estimate, the Contractor's Unit Price Proposal will be accepted and deemed to be the actual cost of the Work.

11.4.3.2.2.5.2 However, if the Contractor's estimate in its Unit Price Proposal is greater than 102% of the Airport Authority Cost Estimate, the Contractor must either agree to a Unit Price no greater than 102% of the Airport Authority Cost Estimate, or the Work will be performed on a T&M basis.

11.4.3.2.2.6 If the Airport Authority Cost Estimate is greater than ten million (\$10,000,000), then the following apply:

11.4.3.2.2.6.1 If the Contractor's estimate in its Unit Price Proposal is less than or equal to 101% of the Airport Authority Cost Estimate, the Contractor's Unit Price Proposal will be accepted and deemed to be the actual cost of the Work.

11.4.3.2.2.6.2 However, if the Contractor's estimate in its Unit Price Proposal is greater than 101% of the Airport Authority Cost Estimate, the Contractor must either agree to a Unit Price no greater than 101% of the Airport Authority Cost Estimate, or the Work will be performed on a T&M basis.

11.4.3.2.2.7 Approved unit prices may be applied to actual or estimated quantities for the purposes of substantiating Reimbursable Cost.

11.4.3.2.3 If the Airport Authority does not prepare its own cost estimate and the parties are unable to agree upon a satisfactory Unit Price agreement, the Work will be compensated on a T&M basis. The Contractor shall maintain T&M records for the work from the beginning of the work until a Unit Price agreement for that work is reached, even if that portion of work is submitted by the Contractor for substantiation on a Unit Price basis. Once a Unit Price agreement is reached, the Contractor's T&M Reports shall be discontinued and the disposition of the previously signed T&M Reports shall be negotiated as part of the agreement.

11.4.4 Time and Materials (T&M)

At the discretion of the Airport Authority, the Contractor will proceed on a T&M basis for a defined scope of Work in a Contract Change Order or Owner Allowance and shall be paid at the reasonable and proper Reimbursable Cost. The Contractor shall at all times prosecute the T&M Work with such forces and equipment as, in the opinion of the Airport Authority, are appropriate to complete the different portions of

the Work, within the specified time and to ensure a satisfactory quality of work.

11.4.4.1 Miscellaneous Staff

- 11.4.4.1.1 Labor rates for Contractor and Subcontractor staff not subject to prevailing wages and not included in mark-ups shall be hourly rates derived from actual wages; labor burden, including charges for social security taxes, Medicare taxes, Federal unemployment taxes, State unemployment taxes, and other taxes pertaining to labor; and employer payments to or on behalf of the workers for health, welfare, pension, vacation, and similar purposes, as well as assessments or benefits required by lawful collective bargaining agreements.

11.4.4.2 Labor

- 11.4.4.2.1 The costs of labor will be the actual cost substantiated by timesheets, agreed upon labor rates and/or certified payroll for wages prevailing for each worker performing the Work, plus employer payments of reimbursable benefits and fringes as defined earlier in this Article.
- 11.4.4.2.2 Equipment Operator Exception. Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental.

11.4.4.3 Material

- 11.4.4.3.1 The cost of materials reported shall be itemized at invoice price supported by valid copies of supplier invoices or lowest current price at which materials are locally available and delivered to the Project Site in the quantities involved, plus the cost of sales tax, freight, delivery, and storage.
- 11.4.4.3.2 Trade discounts available to the purchaser shall be credited to the Airport Authority notwithstanding the fact that such discounts may not have been taken by Contractor.
- 11.4.4.3.3 If in the opinion of the Airport Authority the cost of materials is excessive, or Contractor does not furnish satisfactory evidence of the cost of such

materials, then the cost shall be deemed to be the lowest current wholesale price for the total quantity concerned delivered to the Project Site less trade discounts.

- 11.4.4.3.4 The Airport Authority reserves the right to furnish materials for the Work and no fee or mark-up shall be allowed by Contractor for costs of such materials.

11.4.4.4 Equipment

- 11.4.4.4.1 Contractor-Rented Equipment. Unless the Contractor provides invoices or quotations from multiple local rental agencies that establish, to the satisfaction of the Airport Authority, a different market rental rate, the Contractor will be paid for the use of equipment at the rental rates listed for that equipment in the Rental Rate Blue Book Federal Highway Administration (FHWA) for San Diego which is in effect on the date the Airport Authority authorized the Work. The Contractor shall not be allowed to alter FHWA rates. Such rental rate will be used to compute payments for equipment whether the equipment is under Contractor's control through leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to the Airport Authority for the total period of use. If it is deemed necessary by Contractor to use equipment not listed in the publication, an equitable rental rate for the equipment will be established by the Airport Authority. Upon the Airport Authority's request, the Contractor must furnish cost data which may assist the Airport Authority in the establishment of the rental rate.

- 11.4.4.4.2 Contractor-Owned Equipment. For Contractor-owned equipment, the allowed equipment rate will be limited to the hourly equipment rental rate, which is found in the Rental Rate Blue Book Federal Highway Administration (FHWA) for San Diego in effect on the date the Airport Authority authorized the Work. The Contractor shall not be allowed to alter FHWA rates.

- 11.4.4.4.3 All equipment, whether owned or rented, shall, in the opinion of the Airport Authority, be in good working condition and suitable for the purpose for which the equipment is to be used. No payment will be made for time while equipment is inoperative due to breakdowns or for time periods where Work is not being performed.
- 11.4.4.4.4 Before construction equipment is used on the Work, Contractor shall plainly display an identifying number thereon at a conspicuous location and shall furnish to Airport Authority a photo and a description of the equipment and its identifying number, and the scheduled Work activities planned.
- 11.4.4.4.5 Computation Method. The following method shall be used in computing reimbursement for all equipment on the Project Site.
 - 11.4.4.4.5.1 When hourly rates are listed, any part of an hour less than thirty (30) minutes of operation shall be considered to be ½-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.
 - 11.4.4.4.5.2 When hourly rates are not listed, any part of a day less than four (4) hours of operation shall be considered to be ½-day of operation.
 - 11.4.4.4.5.3 Whenever equipment is ordered by the Airport Authority to be held on the Work on a standby basis, or when the Airport Authority is obligated to pay for idle equipment, the rate will be according to the Rental Rate Blue Book Non-Active Use Rates. Standby or idle time, as defined by the Rental Rate Blue Book, cannot exceed eight (8) hours per day and will not be allowed for Saturdays, Sundays, or holidays.
 - 11.4.4.4.5.4 Construction vehicles directly utilized in performance of the work, such as service bodies, service utility vans, platform bodies, contractor bodies and combo bodies, carrying specialty tools

and equipment and are required to advance the work when light duty trucks cannot be utilized, will be compensated according to Standby Rates published in the Rental Rate Blue Book, unless recorded as "in use" and incurring operating costs and approved by the Airport Authority.

11.4.4.4.5.5 Non-operating time for equipment required for T&M work is not considered standby or idle time and shall be compensated as follows:

11.4.4.4.5.5.1 No payment will be made for Contractor-owned equipment not in use.

11.4.4.4.5.5.2 Rented equipment will be paid in accordance with the rental invoice, provided that the equipment rental was managed in a cost efficient way resulting in the least total cost to the Airport Authority.

11.4.4.4.5.6 Rental time shall not include the time required to move the equipment to the Project Site and to return it to the source.

11.4.4.4.5.7 Fuel cost for rented equipment will be compensated in accordance with the Rental Rate Blue Book hourly fuel operating cost.

11.4.4.4.6 The amount to be paid to the Contractor for the use of the equipment as set forth above shall constitute full compensation to the Contractor for the cost of fuel (except for rented equipment), power, oil, lubricants, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage insurance, labor, (including mechanic's wages but excluding equipment operators not included in the equipment rate), and any and all costs to the Contractor incidental to the use of the equipment.

11.4.4.5 Other Costs.

- 11.4.4.5.1 All other Reimbursable Costs approved by the Airport Authority and substantiated by the Contractor.

11.4.4.6 T&M Reports and Substantiation.

- 11.4.4.6.1 T&M Reports. Whenever any Work in the field is being performed on a T&M basis, the quantity, but not the price, of all Work performed shall be entered by the Contractor on a T&M Report.

- 11.4.4.6.1.1 These T&M Reports shall be the true record of the Work performed.

- 11.4.4.6.1.2 The T&M Report shall be in a format acceptable to the Airport Authority.

- 11.4.4.6.1.3 Each T&M Report shall cover only a single working day or work shift. Each T&M Report shall include only a single company per page of the T&M Report.

- 11.4.4.6.1.4 The T&M Reports shall be reviewed and signed by an authorized Contractor representative and an Airport Authority representative assigned to monitor the T&M work, no later than the end of the Business Day following the date the particular work is performed.

- 11.4.4.6.1.5 No claim for compensation for Work will be allowed unless this T&M Report is furnished by the Contractor and countersigned by the Airport Authority.

- 11.4.4.6.1.6 It is the Contractor's responsibility to obtain the Airport Authority's countersignature on T&M Reports.

- 11.4.4.6.1.7 Unless otherwise authorized by the Airport Authority, the T&M Reports shall not be modified in any way after they are countersigned by the Airport Authority.

- 11.4.4.6.2 In the event that any costs submitted for T&M reimbursement have not been properly substantiated or documented in accordance with

the Contract the Airport Authority shall have the right, in its sole discretion, to either reject the T&M Reports or to reasonably establish such costs as follows:

- 11.4.4.6.2.1 Labor and equipment as estimated by the Airport Authority.
- 11.4.4.6.2.2 Materials at the lowest current wholesale prices at which such materials are available, in the quantities used and delivered to the location of the Work, less any discounts available.
- 11.4.4.6.3 The Contractor shall bear all of its costs of administering and recording T&M Work. These costs are considered included within the Contractor and Subcontractor mark-up for overhead on the Project.
- 11.4.4.6.4 The Contractor's cost records pertaining to the work paid for on a T&M basis shall be open to inspection or audit by representatives of the Airport Authority at any time during the life of the Contract and for a period of not less than four (4) years after Project Final Acceptance and Completion, and the Contractor shall retain such records for that period, or such other period required by law, whichever is longer.
- 11.4.4.7 Contractor must notify the Airport Authority in writing when it has incurred Reimbursable Costs in an amount of ninety percent (90%) of the authorized T&M maximum, if applicable. In no case shall the Contractor be compensated for amounts in excess of the authorized T&M maximum without prior written authorization from the Airport Authority.
- 11.4.4.8 Conversion to Fixed Price or Unit Price Basis of Compensation. If the Contractor and the Airport Authority reach agreement to convert from a T&M basis to a Fixed Price or Unit Price basis the Contractor's T&M Reports shall be discontinued and the disposition of previously signed T&M Reports shall be negotiated as part of the agreement.
- 11.4.5 Not-to-Exceed
 - 11.4.5.1 The Contractor and the Airport Authority may negotiate a Not-to-Exceed ("NTE") cost for any portion of the Work.

- 11.4.5.2 The Contractor will be compensated for all substantiated Reimbursable Costs up to the agreed upon NTE amount. In no case shall the Airport Authority be liable to compensate the Contractor for any Reimbursable Costs in excess of the NTE.

11.4.6 Taxes

- 11.4.6.1 Federal excise tax shall not be included.
- 11.4.6.2 State and city sales taxes and payroll taxes shall be shown separately and will be allowed on extras and shall be credited on credits.

11.5 OVERHEAD MARK-UPS

- 11.5.1 When Work is added to or deleted from the original scope of work pursuant to a Contract Change Order, the Contractor will be entitled to mark-ups as follows:
 - 11.5.1.1 For Work Self-Performed by the Contractor, the allowable mark-up shall not exceed fifteen percent (15%) of Contractor's Reimbursable Costs.
 - 11.5.1.2 For work performed by Subcontractors, the Contractor's allowable mark-up shall not exceed five percent (5%) of the Subcontractor's Reimbursable Costs.
 - 11.5.1.3 For work Self-Performed by Subcontractors, the allowable mark-up shall not exceed fifteen percent (15%) of the Subcontractor's Reimbursable Costs
 - 11.5.1.4 For work not Self-Performed, Subcontractors shall receive a maximum of five percent (5%) mark-up on the total cost of the work of their tier Subcontractors.
 - 11.5.1.5 Self-Performed work includes all labor, materials, and equipment integral to the completion of the Work performed by the Contractor or a Subcontractor's own employees, rather than by employees of another Contractor, Subcontractor, or any third party, subject to the interpretation and sole discretion of the Airport Authority.
 - 11.5.1.6 In no case shall the total mark-up exceed twenty-five percent (25%) of the Reimbursable Costs as described herein, regardless of the number of subcontract tiers.
 - 11.5.1.7 For deleted Work, the Contractor shall increase the amount of the credit by the mark-ups described above.

11.5.1.8 For deleted Work, the Contractor or Subcontractor shall not be allowed a positive mark-up on its own work or its Subcontractors to administer the credit.

11.5.1.9 For the proportionate cost of insurance premiums applicable to the extra work involved and required by the Contract. Mark-up shall not include any premiums for any insurance provided by OCIP.

11.6 MAINTENANCE OF RECORDS

The Contractor shall maintain its records, and shall require all Subcontractors to maintain their records, in such a manner as to provide a clear distinction between the direct costs of extra work and the cost of the original Contract Work.

11.7 CHANGES TO THE WORK

The Contract Price may be increased or decreased in accordance with Article 9.

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12. PAYMENTS

12.1 SCHEDULE OF VALUES

- 12.1.1 Prior to submitting the first Payment Application for any portion of the Work, the Contractor shall provide a preliminary Schedule of Values ("SOV") in a format acceptable to the Airport Authority for Airport Authority review and approval.
 - 12.1.1.1 The SOV must add up to the Contractor's overall bid price.
 - 12.1.1.2 For SOVs containing unit price items, include quantity units of measure, unit prices, and extended total price for each element of the Work.
 - 12.1.1.3 For SOVs containing fixed price items, all SOVs shall include a breakdown of the Work in such a form and supported by such data to substantiate its accuracy as the Airport Authority may require.
 - 12.1.1.4 Lump sum bid items shall be broken down with sufficient detail to satisfy the Airport Authority.
- 12.1.2 For contracts with separate fees, bonds, insurance, allowances, and contingencies, the SOV shall contain separate rows for these items.
- 12.1.3 Any proposed line-item transfers on the Contractor's SOV shall be subject to the Airport Authority's approval, which it will grant or deny at its sole discretion.

12.2 PAYMENT APPLICATION

- 12.2.1 Prior to submittal of a Payment Application and at the request of the Airport Authority, the Contractor shall provide an accrual, which shall consist of a detailed estimate, in the format requested by the Airport Authority, of the value of the Work performed during the current month that has not yet been invoiced. Additionally, at the end of the Airport Authority's fiscal year, ending in June of each year, the Contractor may be required to provide additional documentation as part of the accrual and Payment Application process.
- 12.2.2 The Contractor shall submit a Payment Application to the Airport Authority on a monthly basis in a form provided by the Airport Authority, and Contractor shall certify that all item of work for which payment is being requested have been completed in accordance with the terms of the Contract, that no part of the amount requested has been previously received, and that previous payments, if any, have been applied to discharge its obligations to its Subcontractors and vendors.

- 12.2.3 The Payment Application shall be in accordance with the SOV and shall be based upon the Work completed and materials suitably stored on the Project Site or at other locations approved by the Airport Authority.
- 12.2.4 The Contractor shall prepare and submit a monthly schedule update with each of the Contractor's Payment Applications. The Airport Authority will not approve a Payment Application without the Contractor's submission of an acceptable monthly schedule update.
- 12.2.5 Approval of Payment Applications for stored materials shall be conditioned upon submission by the Contractor of bills of sale and applicable insurance or such other procedures satisfactory to the Airport Authority to establish the Airport Authority's title to such materials, or otherwise to protect the Airport Authority's interest, including transportation to the Project Site. The Contractor is responsible for properly storing and managing such materials and maintaining insurance covering them; however, if the Airport Authority pays for said materials, they shall legally belong to the Airport Authority.
- 12.2.6 The Contractor shall submit documentation for all use of Owner Allowances, if applicable, with each Payment Application.
- 12.2.7 The Contractor shall submit with each Payment Application, a detailed accounting of the value of Work performed to date by certified Disadvantaged Business Enterprise ("DBEs"), Small Business Enterprise ("SBEs"), Veteran Owned Small Businesses ("VOSBs"), Local Businesses ("LBs"), and other similar designations as may be requested by the Airport Authority. The Airport Authority may withhold payment on a Payment Application that does not contain this detailed accounting. This accounting shall include the names, addresses, description of work, and the value of Work performed by each of the firms with the certifications listed above that have participated under the Contract. The Contractor shall submit this information within an Airport Authority compliance software at the request of the Airport Authority.
- 12.2.8 At the request of the Airport Authority, the Contractor shall provide, on a monthly basis and in a format acceptable to the Airport Authority, an estimate cost at completion and a cash flow forecast through completion of the Work.
- 12.2.9 The Contractor shall assist the Airport Authority in determining the value of fixed assets created by the Work for capitalization purposes by structuring its SOV and providing additional information as required by the Airport Authority.
- 12.2.10 Prior to the Contractor's submittal of each monthly preliminary Payment Application, the Contractor and the Airport Authority shall conduct a quantity verification meeting to review the quantities and percent

complete that the Contractor is invoicing for every Subcontractor and Self-Performed work.

12.2.10.1 The quantity verification meeting shall occur after the 20th of the month but not later than seven (7) Business Days before the end of the month.

12.2.10.2 If the parties disagree on the quantity or percent of completion, the Contractor and the Airport Authority will review their respective records to verify that work was performed. If the parties continue to disagree, they will meet on the Project Site with any relevant Subcontractors to verify and agree upon the actual percent complete. If the parties still disagree, the Contractor shall only bill for the amount or percent complete authorized by the Airport Authority.

12.2.11 On or before 5:00 PM on the second Business Day of the month, the Contractor shall transmit its preliminary Payment Application to the Airport Authority through the Airport Authority's electronic project management system. Unless otherwise agreed to by the Airport Authority, the Contractor shall also upload the Payment Application to the Airport Authority's web-based electronic review system and send a link to the Airport Authority.

12.2.11.1 The Payment Application shall include sufficient back-up documentation to justify all amounts billed and shall include, at a minimum, Subcontractor SOVs and detailed invoices.

12.2.11.2 The Contractor shall also provide copies of the actual spreadsheet files, in their original format, used to create the Contractor's SOV.

12.2.12 Following receipt of each monthly preliminary Payment Application, the Airport Authority will review and comment on the Payment Application in the web-based electronic review system and provide comments on the Payment Application to the Contractor. Prior to the 10th Business Day after receipt of the Payment Application, the Airport Authority and the Contractor shall conduct a Payment Application review meeting to discuss any Payment Application comments, review errors, and any additional needed back-up documentation.

12.2.13 Following the Payment Application review meeting, the Contractor shall provide any final corrections of the Payment Application to the Airport Authority within two (2) Business Days. The Contractor shall provide all corrections and missing documentation to the Airport Authority through the previously utilized web-based electronic review system and send a link to the Airport Authority.

- 12.2.13.1 The Airport Authority may request original hard copies of specific Pay Application pages at its discretion.
- 12.2.13.2 If corrections are not made and/or missing documentation is not provided, the Airport Authority shall only pay the amounts the Airport Authority believes are valid and will disallow the remainder.
- 12.2.14 Upon receipt of any final corrections, the Airport Authority will complete its final review and pay to the Contractor the undisputed amount for which Payment Application is made, less amounts previously paid by the Airport Authority and adjustments made by the Airport Authority during the review and approval process.
- 12.2.15 If the Airport Authority and the Contractor cannot agree on a revised amount, then, within thirty (30) Days after its initial rejection in part of such a Payment Application, the Airport Authority shall pay directly to the Contractor the undisputed amount for which the Payment Application is made, less amounts previously paid by the Airport Authority and adjustments made by the Airport Authority during the review process. Those items rejected by the Airport Authority may be due and payable in later Payment Applications if the reasons for the rejection are later resolved.
- 12.2.16 Adjustments to Payment Applications
 - 12.2.16.1 The Airport Authority may deduct from each progress payment and the final payment the following:
 - 12.2.16.1.1 The amount of third-party claims associated with the responsibilities of the Contractor pursuant to the Contract Documents that exceeds the amount of retention held by the Airport Authority. These include claims that have been filed or for which the Airport Authority has reasonable evidence indicating probable filing.
 - 12.2.16.1.2 Any liquidated damages that have accrued as of the date of the Payment Application.
 - 12.2.16.1.3 If a Stop Payment Notice is filed with the Airport Authority, due to the Contractor's failure to pay for labor or materials used in the work, money due for such labor or materials, plus the twenty-five percent (25%) prescribed by law, will be withheld from payment to Contractor. The Airport Authority may, at its sole discretion, accept a bond by a properly-licensed corporate surety who is jointly and severally liable to the stop

payment notice claimant with the sureties on any payment bond provided in accordance with Civil Code §9364 in lieu of withholding payment. The cost of such bond shall be non-reimbursable under the terms of the Contract Documents.

12.2.16.1.4 Any sums expended by or owing to the Airport Authority as a result of the Contractor's failure to maintain the As-Built Plans and the associated BIM/VD&C model.

12.2.16.1.5 Any sums expended by the Airport Authority in performing any of the Contractor's obligations under the Contract that the Contractor has failed to perform.

12.2.16.1.6 Any sums required to repair damages to the Airport Authority's access control security system which occur as a result of the Contractor's acts, Errors or Omissions.

12.2.16.1.7 Any sums required as a result of the Contractor's failure to complete all Punch List items.

12.2.16.1.8 Any other sums that the Airport Authority is entitled to recover from the Contractor under the terms of the Contract.

12.2.17 Payment Warranty and Guarantee

12.2.17.1 Contractor shall issue a signed statement with each Payment Application that warrants and guarantees that ownership of all Work, materials and equipment covered by each Payment Application, whether incorporated in the Project or not, will pass to the Airport Authority upon receipt of such payment by the Contractor free and all Work is clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens." The statement shall also warrant and guarantee that all Subcontractors have been paid for their portion of the Work covered by previous Payment Applications paid by the Airport Authority.

12.2.17.2 The Airport Authority's payment shall not be deemed a waiver of any Airport Authority rights under the Contract Documents or an acceptance by the Airport Authority of any Work not conforming to the requirements of the Contract Documents.

12.2.18 Neither final payment nor amounts retained, if any, will be paid to the Contractor until the Contractor submits to the Airport Authority:

- 12.2.18.1 An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Airport Authority might be responsible (less amounts withheld by the Airport Authority) have been paid or otherwise satisfied.
 - 12.2.18.2 A certificate evidencing that insurance required by the Contract Documents shall remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Airport Authority.
 - 12.2.18.3 A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents.
 - 12.2.18.4 Consent of surety, if any, to final payment.
 - 12.2.18.5 If required by the Airport Authority, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Airport Authority.
- 12.2.19 The Contractor will furnish releases or waivers as may be required to satisfy the Airport Authority that there are no outstanding claims for payment; the Airport Authority may require the Contractor to furnish a bond satisfactory to the Airport Authority to indemnify the Airport Authority against such claims. The cost of such bond shall be non-reimbursable under the terms of the Contract Documents.

12.3 RETENTION

- 12.3.1 Unless otherwise specified in the Special Conditions, the Airport Authority will withhold five percent (5%) retention from each Payment Application until Final Acceptance and Completion of the Work.

12.4 SUBSTITUTION OF SECURITIES

- 12.4.1 Pursuant to §22300 of the California Public Contract Code, the Contractor may request the Airport Authority to make retention payments directly to an escrow agent or may substitute securities or a letter of credit for any money withheld by the Airport Authority to ensure performance under this Contract. No such substitution shall be accepted until these securities or letter of credit have been approved by the Airport Authority as qualifying for substitution, the value of such securities has been established to the Airport Authority's reasonable satisfaction, the parties have entered into an escrow agreement (if the securities are to be held in escrow) in substantially the form provided in §22300 of the Public Contract Code, and all documentation necessary for assignment of the

securities to the Airport Authority or to the escrow agent, as appropriate, has been delivered in form reasonably satisfactory to the Airport Authority.

- 12.4.2 If the Contractor has substituted securities for any of the withheld retention, then the Airport Authority may request that such securities be revalued from time to time, but not more often than monthly. Such revaluation would be made by the person designated by the Airport Authority and approved by the Contractor. If such revaluation results in a determination that the securities have a market value that is less than the amount of retention for which they were substituted, then notwithstanding anything to the contrary, the amount of the retention required under the Contract shall be increased by such difference in market value. Increased retention shall be withheld from the next progress payment due the Contractor, until such time when the substitute securities and/or letters of credit are adjusted to the full amount of the calculated retention.

ARTICLE 13. - COMPLETION AND ACCEPTANCE

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13. COMPLETION AND ACCEPTANCE

13.1 CLEANING

- 13.1.1 The Contractor shall coordinate with the Representative to determine the minimum cleaning requirements for any areas of the Work that the Airport Authority must begin using prior to Substantial Completion.
- 13.1.2 The Contractor shall thoroughly and professionally clean and detail the Project Site and all elements of the Work prior to requesting Airport Authority inspection for Substantial Completion or Final Acceptance and Completion. All cleaning shall be to a level of cleanliness generally provided by professional cleaners using commercial quality building maintenance equipment and materials. Cleaning shall include removing dust, dirt, stains, marks, foreign materials and like defects from all surfaces. Cleaning shall be as described herein, as identified in the Technical Specifications, and as required by the Representative.
- 13.1.3 Project Site cleaning shall include removing all trash, debris, surplus materials, tools, equipment, vehicles, field offices, and other items that are not part of the completed Work. Project Site cleaning shall also include sweeping and/or power washing and vacuuming all paved surfaces and washing and cleaning all hardscape features. Landscape areas shall be free of weeds and dead plant materials.
- 13.1.4 Interior cleaning for Work related to buildings shall also include wiping down and cleaning all walls, ceilings, light fixtures, windows, mirrors, equipment, fixtures, mechanical registers, HVAC ducts, mill work, exposed pipes and ducts, furnishings, and trim, such as baseboards, window frames and door frames. Carpets shall be cleaned and vacuumed, and hard surface floors shall be cleaned and polished. Door hardware, handrails, and bathroom sinks, faucets, toilets, and other fixtures shall be cleaned, polished and sanitized.
- 13.1.5 Exterior cleaning for Work related to buildings shall also include washing and cleaning all exterior surfaces including windows, doors, cladding, exposed piping and ducts, equipment, and other architectural features.

13.2 BENEFICIAL OCCUPANCY OR USE

- 13.2.1 The Contractor acknowledges and agrees that the Project may require continuing operation of public facilities throughout the duration of the Project. The Airport Authority's routine and recurring use of such facilities does not constitute Beneficial Occupancy.
- 13.2.2 The Contractor acknowledges and agrees that the Project may be constructed in phases and that use of a portion of the Project while Work continues on the Project does not constitute Beneficial Occupancy as defined by Public Contract Code §7107(c)(1).

- 13.2.3 Beneficial Occupancy or use of the Project, whether in whole or in part, does not constitute Substantial Completion or Final Acceptance and Completion.

13.3 SUBSTANTIAL COMPLETION

- 13.3.1 Substantial Completion of the Work, or of a designated portion, occurs on the date when all of the construction is sufficiently complete in accordance with the Contract Documents so that the Airport Authority can occupy or utilize the entire Project for the use for which it is intended, in accordance with the terms of this Contract. The Airport Authority's use of portions of the Project which are operational public facilities does not constitute Substantial Completion.
- 13.3.2 When the Contractor considers that the whole Work, or a portion thereof designated in the Contract Documents for separate completion, is substantially complete, the Contractor shall submit to the Airport Authority all required certificates of testing, inspection or approval, occupancy permits, certificates of final inspection of any part of the Contractor's Work and operating permits which may be required to permit full use and occupancy of the premises by the Airport Authority. Receipt of such permits and/or certificates by the Airport Authority will be a condition precedent to accepting Substantial Completion of the Work or designated portion of the Work. The Contractor shall also submit a written request for inspection of the completed Work by the Airport Authority.
- 13.3.3 Upon receipt of the Contractor's request for inspection, the Airport Authority will perform an inspection with the Contractor to determine whether the Work or designated portion thereof is Substantially Complete. The Airport Authority's inspection may extend over multiple Business Days should the area being inspected necessitate inspections over multiple Business Days. If the Airport Authority's inspection discloses any items of Work which, in the opinion of the Airport Authority, are not in accordance with the requirements of the Contract Documents, the Airport Authority will provide a list of such items to the Contractor which shall be promptly completed by the Contractor. The Contractor will also prepare and submit to the Airport Authority a separate, comprehensive list of items, including those items on the list prepared by the Airport Authority, to be completed or corrected prior to the Work being considered Substantially Complete. The Contractor shall promptly complete such items, and all such items shall be completed prior to the Work being considered Substantially Complete. Once such items are completed or corrected, the Contractor shall request a second inspection by the Airport Authority to determine if Substantial Completion has been obtained.
- 13.3.4 It shall be the Contractor's responsibility to complete all the Work identified for Substantial Completion prior to calling for a second inspection by the Airport Authority. The Contractor shall reimburse the

Airport Authority for costs incurred by the Airport Authority for inspections beyond the second inspection for Work that the Contractor knew or should have known to be incomplete or substandard at the time of the call for the second inspection.

- 13.3.5 The Airport Authority and the Contractor shall collaborate to prepare a comprehensive Punch List. The inspections required to produce this Punch List may extend over multiple Business Days should the area being inspected necessitate inspections over multiple Business Days.
- 13.3.6 The date of Substantial Completion shall be confirmed by a certificate of Substantial Completion signed by the Airport Authority and Contractor. The certificate shall state the respective responsibilities of the Airport Authority and Contractor for security, maintenance, utilities, damage to the Work, warranties and insurance. The certificate shall be accompanied by a Punch List, and an established time for completion and/or correction of the items on the Punch List.
- 13.3.7 In accordance with all other terms and conditions of this Contract, after Substantial Completion of the whole Work, the Airport Authority may, at the Airport Authority's discretion and with the consent of the Contractor's surety, approve a Payment Application for payment from which will be retained an amount not less than 150% of the remaining Contract value or 150% of the estimated cost of the Work remaining to be done, whichever is greater.

13.4 FINAL ACCEPTANCE AND COMPLETION

- 13.4.1 Final Acceptance and Completion occurs on the date when the Contractor's obligations under this Contract are fully complete and accepted by the Airport Authority. When the Contractor deems all Work on the overall Project to be fully complete, the Contractor shall submit a written Request for Final Acceptance and Final Inspection to the Airport Authority.
- 13.4.2 The Contractor and Airport Authority shall jointly perform a final inspection of the Work and prepare a written Final Acceptance Punch List, documenting all Work required to be completed for Airport Authority acceptance of full and final Work completion.
- 13.4.3 Upon completion of all items on the Final Acceptance Punch List, the Contractor shall submit a written notice to the Airport Authority that the whole Work is ready for final inspection and acceptance. The Airport Authority will make such inspection. When the Airport Authority finds the Work to be in full conformance with the requirements of Contract Documents, the Airport Authority will issue the Letter of Final Acceptance and Completion.

- 13.4.4 Upon receipt of the Letter of Final Acceptance and Completion, the Contractor may submit Payment Applications for all Work not previously submitted for payment and any remaining retention withheld by Airport Authority. If a dispute exists as to whether one or more items identified on the list have been completed pursuant to the Contract Documents, the Airport Authority may continue to withhold an amount not to exceed 150% of the total costs to complete such disputed items.
- 13.4.5 Neither partial nor entire use nor Beneficial Occupancy of the Project by the Airport Authority will constitute an acceptance of Work not in accordance with the Contract Documents.
- 13.4.6 Following final payment, the Airport Authority retains all rights, in law or equity, for everything including but not limited to those set forth pursuant to California Code of Civil Procedure sections 337.1 and 337.15.
- 13.4.7 Once the Airport Authority determines that all Work has been completed and the Contractor's obligations under the Contract Documents have been fulfilled, the Airport Authority may record a Notice of Completion with the County Recorder. Final payment including remaining retention will then be made or as required by Public Contract Code §7107, whichever occurs first.
- 13.4.8 Acceptance of final payment will constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of final application for payment.

13.5 PROJECT CLOSEOUT

13.5.1 Close-out Submittals.

- 13.5.1.1 The Contractor, upon Completion of the Project, or at any other time at the Airport Authority's request, shall turn over any/all documentation associated with the Project, including, but not necessarily limited to:
 - 13.5.1.1.1 "Permitted" (perforated) set of construction documents (working drawings)
 - 13.5.1.1.2 "Signed-off" inspection card (original)
 - 13.5.1.1.3 Original (or copy if original is not available) of all plan review comment sheets
 - 13.5.1.1.4 Copy of permit application form
 - 13.5.1.1.5 Copy of hazardous materials questionnaire forms

- 13.5.1.1.6 Any/all notifications received in the field from City of San Diego Building Inspection Department (or other relevant agency) relative to the Project.
- 13.5.1.1.7 Water meter data card.
- 13.5.1.2 Operation and Maintenance Manuals.
 - 13.5.1.2.1 The Contractor shall provide one (1) set of the operation and maintenance manuals, bound in three ring binders with durable plastic covers. In addition, the Contractor shall submit the operation and maintenance manuals in a fully text searchable electronic file format approved by the Airport Authority. Final manuals shall be furnished to the Airport Authority at the date of Substantial Completion.
 - 13.5.1.2.2 The Contractor shall collaborate with the Airport Authority to develop a table of contents and sample layout for the manuals that shall be submitted to the Airport Authority at least one (1) month prior to the scheduled dates of the applicable commissioning or field demonstration activity or at least three (3) months prior to Substantial Completion, if no associated commissioning activities are required.
 - 13.5.1.2.3 Draft manuals shall be provided to the Airport Authority for review at least two (2) weeks prior to the scheduled dates of the applicable commissioning or field demonstration activity or at least one (1) month prior to Substantial Completion, if no associated commissioning activities are required. Failure to submit draft and final manuals as required herein may result in the Airport Authority retaining an amount equal to the cost that the Airport Authority calculates it will cost for the Airport Authority to prepare final manuals. Upon receipt of the required operation and maintenance manuals, such withheld amounts will be released with the next progress payment. Until such time as the operation and maintenance manuals are provided, no final payment shall be due and owing.
 - 13.5.1.2.4 The Contractor shall organize each manual into separate sections for each piece of related equipment. Each manual shall contain at least

the following information in a format and with a level of detail acceptable to the Airport Authority:

- 13.5.1.2.4.1 Title Page. The first sheet of the manual shall be a title page identifying the subject matter covered by the manual, the name and address of the Project, the date of submittal, the name and contact information of the Contractor, and cross-references to related systems in other operation and maintenance manuals.
- 13.5.1.2.4.2 Table of Contents. The manual shall include a comprehensive table of contents for each volume of the manual.
- 13.5.1.2.4.3 General Information. The manuals shall include a general information section that lists each product included in the manual, identified by product name and model number, name of manufacturer, and serial number of each product component. The name, address, and telephone number of the Subcontractor or installer contractor shall be identified for each product.
- 13.5.1.2.4.4 Product Data. Where the manuals include manufacturer's standard printed data, only sheets that are pertinent to the part or product installed shall be included. Mark each sheet to identify each part or product included in the installation. Identify data that is applicable to the installation and delete references to information that is not applicable.
- 13.5.1.2.4.5 Written Text. The Contractor shall prepare written text to provide all supplemental information necessary for proper operation and maintenance of equipment or systems, including any necessary sequence of instructions. This text shall include applicable design factors and assumptions,

normal operating procedures, and emergency operating procedures.

- 13.5.1.2.4.6 Drawings. Provide specially prepared drawings where necessary to supplement manufacturer's printed data to illustrate the relationship of component parts of equipment or systems or to provide control or flow diagrams. These drawings include any applicable Shop Drawings and wiring diagrams associated with the product and shall be coordinated with information contained in the Project record drawings and BIM/VD&C model to ensure correct illustration of the completed installation.
- 13.5.1.2.4.7 Maintenance Plan. Provide a maintenance plan for each component for the Airport Authority's use. The maintenance plan shall include a description of the maintenance schedule, activities, tools, supplies, and materials required. The maintenance plan shall also include inspection and test procedures, precautions against improper use and maintenance, repair instructions including a list of spare parts required, and local sources of required maintenance materials and services.
- 13.5.1.2.4.8 Warranties, Bonds, and Service Contracts. The Contractor shall provide a copy of each warranty, bond, or service contract in the appropriate manual for the information of the Airport Authority's operating personnel. The Contractor shall provide written data outlining procedures to follow in the event of product failure and list circumstances and conditions that would affect validity of warranty or bond.
- 13.5.1.2.5 The electronic copy of manuals shall be organized in the same manner as the paper copy manuals and shall be saved in a fully

text searchable electronic file format approved by the Airport Authority. They shall be fully bookmarked and electronically cross-referenced, in order to increase ease of searching and ease of use of the manuals. The electronic files shall not be created from scans or photographs of hard copy manuals.

13.5.1.3 Record Documents and As-Built Plans.

13.5.1.3.1 The Contractor shall maintain at the Project Site a record set of full-size Project drawings upon which all field changes are recorded on a daily basis. The Contractor may choose to utilize an electronic process utilizing software such as Bluebeam Revu or similar to record field changes on the Project drawings. The Contractor shall provide the Airport Authority simultaneous access to these electronic drawings. The BIM/VD&C model, if applicable, shall also be maintained and updated on a daily basis.

13.5.1.3.2 Records shall be kept up to date with all entries checked before the Work is buried or otherwise concealed. In the event the Contractor fails to maintain record drawings up to date on a monthly basis, as required herein, the Airport Authority shall retain an amount equal to ten percent (10%) of the estimated value of the work performed during the month from the next submitted Payment Application, except that such retention shall not exceed \$10,000, nor be less than \$1,000. Upon the Contractor producing the required up to date record drawings, any such withheld amounts will be released with the next progress payment. Until such time as the final up to date record drawings are produced, no final payment shall be due and owing.

13.5.1.3.3 Upon Completion of the Work and as a condition precedent to Final Acceptance of the Project and the issuance of final payment, the Contractor shall provide to the Airport Authority the following deliverables which shall be considered the property of the Airport Authority:

13.5.1.3.3.1 If applicable, the complete and fully updated BIM/VD&C model that

complies with the requirements of the Contract. The BIM/VD&C model shall be submitted with accompanying letters from the Contractor and from the architects or engineers of record involved in the preparation of the model certifying that the BIM/VD&C model represents an accurate record of the as-built condition of the Work.

13.5.1.3.4 The Contractor shall record all changes, deletions, additive, rerouting, stub-outs, offsets or any other deviation from the Contract Documents. All underground and concealed Work shall be recorded with exact location by dimension and elevation as detailed below:

13.5.1.3.4.1 Elevations shall refer to NAVD 88 datum, unless otherwise authorized by the Airport Authority.

13.5.1.3.4.2 The horizontal datum shall be based on California Coordinate System 83, Zone VI, Epoch 2010.00 unless otherwise authorized by the Airport Authority.

13.5.1.3.4.3 Dimensions shall be shown from permanent installations rather than from fencing or other temporary locations that are subject to change.

13.5.1.3.4.4 Two reference dimensions shall be given for each underground or concealed installation.

13.5.1.3.4.5 Trenches for underground lines shall not be backfilled, nor shall concealed Work be covered until elevations and dimensions are recorded complete on As-Built Plans and a check has been made of lines versus recorded data. Original data that is superseded shall be lined out and still remain legible. Original figures shall not be eradicated, nor corrections made over item.

13.5.1.4 Final Site Survey. The Contractor shall provide a new survey performed by a licensed surveyor after completion of foundations, verifying location and level of permanent

benchmarks and control points, utility access points, and principal improvements.

- 13.5.1.5 Spare Parts and Maintenance Materials. The Contractor shall provide products, spare parts, maintenance materials and tools in quantities specified in the Contract Documents, in addition to that used for construction of Work.
- 13.5.1.6 Equipment Tagging. The Contractor shall coordinate with the Airport Authority to provide equipment/system tags that align with the Airport Authority's existing identification nomenclature.
- 13.5.1.7 Final Certificate of Occupancy. The Contractor shall provide certification by building officials and all other governing departments of agencies having jurisdiction, that the building has been inspected, approved and accepted. The Contractor shall provide to the Airport Authority the original certificate for occupancy.

13.5.2 Demonstration and Training

- 13.5.2.1 The Contractor shall provide demonstrations and training for all equipment and systems installed as part of the Work to operations and maintenance personnel, designated by the Airport Authority.
- 13.5.2.2 In addition to items requested by the Airport Authority, training shall address operation, control, adjustment, shutdown, servicing, troubleshooting, care, maintenance, and repair or replacement materials.
- 13.5.2.3 If not otherwise specified, demonstrations and training shall be conducted onsite, with understandable video recordings provided by the Contractor.

ARTICLE 14. - CLAIMS AND DISPUTE RESOLUTION

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14. CLAIMS AND DISPUTE RESOLUTION

14.1 PARTNERING

- 14.1.1 In recognition of the need for good faith and fair dealing between the parties, the Contractor and the Airport Authority may, by mutual agreement, designate representatives to attend partnering meetings to develop and to establish clear communications regarding CCOs, scheduling, and other information needed to complete the Project within the time and cost limits established for it and to establish dispute avoidance procedures.
- 14.1.2 The Contractor shall develop and provide an Escalation Tree pursuant to Article 3. If a dispute arises and the parties reach an impasse, the Escalation Tree must be utilized prior to initiating the formal dispute resolution procedures set forth below.

14.2 DISPUTE RESOLUTION PROCEDURES

- 14.2.1 Notice. A written notice of claim shall be made within ten (10) Days after the occurrence of the event giving rise to such claim or the party recognizes or should have recognized the event giving rise to such claim, whichever is later, but in no event after the applicable legal or equitable statute of limitations for such claim would have run in the State of California or within the time required under the Government Tort Claims Act (Cal. Gov. Code §§810, et seq.). The notice of claim shall be conveyed via written notice to the representative of the other party designated in this Contract and its insurer, surety, or other applicable parties. In the event that a continuing series of events forms the basis for a single claim, only one notice need be conveyed, provided that the ongoing nature of the claim is identified in the notice of claim.
- 14.2.2 Overview. Effective January 1, 1991, Sections 20104 et seq., of the California Public Contract Code prescribe a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, §9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims, regardless of the monetary value. The intent of this Article is to implement both Sections 20104 et seq. and §9204 of the California Public Contract Code. This Article shall be construed to be consistent with said statutes.
- 14.2.3 Claims. For purposes of these procedures, "claim" means a separate demand by the Contractor, after the Airport Authority has denied Contractor's timely and duly made request payment for extra work and/or a time extension in accordance with the General Conditions for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Contract for a public work

and payment of which it is not otherwise entitled to, or (C) an amount the payment of which is disputed by the Airport Authority. Submission of a COR pursuant to Article 9 does not constitute a claim pursuant to this Article and is a prerequisite to submission of such a claim.

- 14.2.4 Prerequisites. The Contractor shall timely comply with all notices and requests for extra work and extensions of time, including but not limited to all requirements of Article 9 and Article 11, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice or request payment for extra work or an extension of time, or to timely provide any other notice or request required by the Contract Documents shall constitute a waiver of the right to these procedures.

14.2.5 Claim Submission

- 14.2.5.1 Within ten (10) Days of the written notice described above, a claim submission must be submitted to the other party or parties affected thereby. Failure to bring the claim submission in accordance with this Article within the specified time shall constitute a waiver of the party's right to assert the claim.

- 14.2.5.2 The claim shall be in writing and include the documents necessary to substantiate the claim. Claims governed by this procedure must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by the Contract for the filing of claims, including all requirements pertaining to compensation or payment for extra work, disputed work, and/or Changed Conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

- 14.2.6 Supporting Documentation. The Contractor shall submit all claim submissions in the following format:

- 14.2.6.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made;

- 14.2.6.2 List of documents relating to claim:

- 14.2.6.2.1 Specifications

- 14.2.6.2.2 Drawings

- 14.2.6.2.3 Clarifications (Requests for Information)

- 14.2.6.2.4 Schedules

- 14.2.6.2.5 Other

14.2.6.2.6 Chronology of events and correspondence

14.2.6.2.7 Analysis of claim merit

14.2.6.2.8 Analysis of claim cost

14.2.6.2.9 Time Impact Evaluation (TIE) in CPM format

14.2.6.2.10 If Contractor's claim is based in whole or in part on an allegation of errors or omissions in the Construction Documents for the Project, Contractor shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.

14.2.7 Airport Authority's Response. Upon receipt of a claim submission pursuant to this Article, the Airport Authority shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the Airport Authority issues its written statement.

14.2.7.1 If the Airport Authority needs approval from the Board to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the Board does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the Airport Authority shall have up to three (3) Days following the next duly publicly noticed meeting of the Board after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

14.2.7.2 Within 30 Days of receipt of a claim, the Airport Authority may request in writing additional documentation supporting the claim or relating to defenses or claims the Airport Authority may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of Airport Authority and the Contractor.

14.2.7.3 The Airport Authority's written response to the claim, as further documented, shall be submitted to the Contractor within 30 Days (if the claim is less than \$50,000, within 15 Days) after receipt of the further documentation, or within a

period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

- 14.2.8 Meet and Confer. If the Contractor disputes the Airport Authority's written response, or the Airport Authority fails to respond within the time prescribed, the Contractor may so notify the Airport Authority, in writing, either within 15 Days of receipt of the Airport Authority's response or within 15 Days of the Airport Authority's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the Airport Authority shall schedule a meet and confer conference within 30 Days for settlement of the dispute.
- 14.2.9 Mediation. Within 10 Business Days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Airport Authority shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 Days after the Airport Authority issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the Airport Authority and the Contractor sharing the associated costs equally. The Airport Authority and the Contractor shall mutually agree to a mediator within 10 Business Days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.
 - 14.2.9.1 If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
 - 14.2.9.2 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
 - 14.2.9.3 Unless otherwise agreed to by the Airport Authority and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under §20104.4 of the California Public Contract Code to mediate after litigation has been commenced.

14.2.9.4 If, following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with §900) and Chapter 2 (commencing with §910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation.

14.2.10 Airport Authority's Responses. The Airport Authority's failure to respond to a claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the claim being deemed rejected in its entirety. The Airport Authority's failure to respond shall not waive the Airport Authority's rights to any subsequent procedures for the resolution of disputed claims.

14.3 CIVIL ACTIONS

The following procedures are established for all civil actions filed to resolve claims of three hundred seventy-five thousand dollars (\$375,000) or less that are subject to this Article:

14.3.1 Within 60 Days, but no earlier than 30 Days, following the filing of responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code §9204 and the terms of these procedures. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

14.3.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with §1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding §1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with §2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

14.3.2.1 In addition to Chapter 2.5 (commencing with §1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment

of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

14.4 GOVERNMENT CODE CLAIMS

In addition to any and all Contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, construction claims and/or Changed Conditions, the Contractor must comply with the claim procedures set forth in Government Code Sections 900 et seq. prior to filing any lawsuit against the Airport Authority. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or Changed Conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the Airport Authority may be filed. A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

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15. TERMINATION OR SUSPENSION OF THE CONTRACT

Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the Airport Authority may immediately order the Contractor to cease Work until such safety or liability issues are addressed to the satisfaction of the Airport Authority or the Contract is terminated.

15.1 TERMINATION FOR CAUSE

- 15.1.1 The Airport Authority may, without prejudice to any other right or remedy, serve written notice upon Contractor of its intention to terminate this Contract in whole or in part if the Contractor: (i) refuses or fails to commence Work as required by the Contract Documents or refuses or fails prosecute the Work or any part thereof with such diligence as will ensure its completion within the Contract Time; (ii) fails to complete the Work within the Contract Time; (iii) files a bankruptcy petition or is adjudged bankrupt; (iv) makes a general assignment for the benefit of its creditors; (v) has a receiver appointed; (vi) refuses or fails to supply enough properly skilled workers or proper materials to complete the Work; (vii) fails to make prompt payment to Subcontractors or for material or labor; (viii) disregards applicable laws, other requirements or instructions of the Airport Authority; or (ix) violates any of the provisions of the Contract Documents.
- 15.1.2 The Notice of Default and Intent to Terminate ("Notice of Default") shall state the reason(s) for termination. Within seven (7) Days after the service of the Notice of Default, Contractor must submit a detailed written plan to cure which shall be implemented within thirty (30) Days unless otherwise agreed in writing between the Airport Authority and the Contractor. The Airport Authority and the Contractor must agree in writing to a detailed schedule for the Contractor to resolve the circumstances giving rise to the Notice of Default.
- 15.1.3 If Contractor fails to timely submit a written plan to cure, fails to implement the plan to cure or resolve the circumstances giving rise to the Notice of Default to the Airport Authority's satisfaction, the Airport Authority may terminate this Contract with no further notice to the Contractor.
- 15.1.4 The decision of the Airport Authority to terminate this Contract, when approved by the Airport Authority President/CEO or by the Board, shall be final.
- 15.1.5 Upon termination, the Airport Authority may take over and complete the Work by any method it may deem appropriate, including enforcement of the Performance Bond. Contractor and its surety shall be liable to the Airport Authority for any costs in excess of the Contract Price or other damages, including Liquidated Damages, incurred by the Airport Authority in completing the Work. If the Airport Authority takes over the Work, the Airport Authority may, without liability for so doing, take

possession of and utilize such materials, tools and other property belonging to the Contractor as may be on the Project Site.

- 15.1.6 Should the Airport Authority terminate the Contract for cause, the Contractor shall not be entitled to receive any further payments until the Work is complete and the Airport Authority has determined that original Contract funds remain unencumbered after all payments to complete the Work are made and the Airport Authority has been fully compensated for all claims and damages, including Liquidated Damages, incurred by the Airport Authority in completing the Work. Liquidated Damages, if any, will continue to accrue as set forth in the Contract until Final Acceptance and Completion.
- 15.1.7 Termination of the Contract, or portion thereof, will not relieve the Contractor or the Contractor's surety of its liability for all damages, losses or claims arising out of Contractor's default. The Airport Authority reserves all rights to pursue any cause of action which it may have by law, equity or under the Contract.
- 15.1.8 If the Contractor is debarred by the Board pursuant to Airport Authority Codes or Policies, this Contract and any other existing Contract by and between the Airport Authority and the Contractor shall be terminated. Notwithstanding the foregoing, the Board may continue this Contract, and any other existing Contract, upon advice from the Airport Authority President/CEO as to the effect of termination of this Contract.
- 15.1.9 If the Airport Authority terminates Contractor for cause, and if it is later determined that the termination was wrongful, such Termination for Cause shall automatically be converted to and treated as a Termination for Convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this Article, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

15.2 TERMINATION FOR CONVENIENCE

- 15.2.1 At any time, upon at least seven (7) Days' written notice to Contractor, the Airport Authority may terminate the Contract in whole or in part. Airport Authority shall terminate by delivering to the Contractor a written Notice of Termination for Convenience or Notice of Partial Termination for Convenience specifying the extent of the termination and the effective date of such termination ("Effective Date of Termination").
- 15.2.2 The Notice of Termination shall specify the extent of termination, and the Effective Date of Termination.
- 15.2.3 Termination (or partial termination) of the Contract shall not relieve the Contractor or the Contractor's surety of its obligations for any claims arising out of the Work performed.

- 15.2.4 Contractor's Responsibilities after Receipt of Notice of Termination. After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, and except as otherwise directed by the Airport Authority, the Contractor shall immediately proceed with the following obligations:
- 15.2.4.1 Stop Work as specified in the Notice of Termination.
 - 15.2.4.2 Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - 15.2.4.3 Terminate all subcontracts and purchase orders to the extent that they relate to the portions of the Work terminated and notify all affected Subcontractors that their subcontracts (including orders for materials, services or facilities) should be terminated unless otherwise authorized in writing by the Airport Authority.
 - 15.2.4.4 As authorized by the Airport Authority in writing, use best efforts to sell, return, or restock all materials, supplies or other property produced, purchased or ordered from suppliers for use in the Work and not yet incorporated into the Work. The credits or proceeds of any restocking, transfer or disposition will be credited to the Contract Price and reduce payments made by the Airport Authority to the Contractor.
 - 15.2.4.5 No later than thirty (30) Days from the Notice of Termination, provide the Airport Authority with an inventory list of all materials, supplies or other property produced, purchased or ordered from suppliers for use in the Work and not yet incorporated into the Work that cannot be sold, returned or restocked. The inventory must include storage location, and such other information as the Airport Authority may request. Upon written agreement of the Airport Authority, Contractor shall transfer title and deliver to the Airport of all such materials, supplies or property.
 - 15.2.4.6 No later than thirty (30) Days from the Notice of Termination, submit all BIM/VD&C models, specifications, records, samples, information and other property that would have been required to be furnished to the Airport Authority if the Project had been completed. In the event of termination of this Contract at any point in the Project, the Airport Authority shall retain as its sole property all documents developed by the Contractor and its Subcontractors for this Project.
 - 15.2.4.7 Complete performance in accordance with the Contract Documents of all Work not terminated.

- 15.2.4.8 Leave the Project Site and any other property upon which the Contractor was working in a safe and sanitary manner and remove any materials, supplies or components of the Work if directed by the Airport Authority.
- 15.2.4.9 Take all action that may be necessary, or that the Airport Authority may direct, for the safety, protection and preservation of (a) the public, including public and private vehicular movement, (b) the Work, and (c) equipment, machinery, materials and property that is in the control or possession of the Contractor or is impacted by the Work.
- 15.2.5 Payment for Termination for Convenience. Contractor must submit to the Airport Authority, within fifteen (15) Days from the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment from the date of the last Payment Application up to the Notice of Termination. These costs must be submitted pursuant to the approved Schedule of Values and Payment Application process contained herein.
 - 15.2.5.1 All documentation substantiating costs incurred by the Contractor solely as a result of the Airport Authority's exercise of its right to terminate this Contract pursuant to this provision, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to the Airport Authority no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Incurred Due to the Airport Authority's Termination for Convenience."
 - 15.2.5.2 The Airport Authority's total liability to Contractor by reason of the termination shall be limited to the total (without duplication of any items) of:
 - 15.2.5.2.1 The reasonable cost to the Contractor for all Work performed prior to the Effective Date of Termination, including the Work done to secure the Project for termination.
 - 15.2.5.2.2 Any Work required by the Termination for Convenience that is not included in Contract Documents, which will be negotiated pursuant to the Contract Change Order provisions.
 - 15.2.5.2.3 Reasonable costs to the Contractor of handling material returned to vendors, delivered to the Airport Authority or otherwise disposed of as directed by the Airport Authority.

- 15.2.5.2.4 A reasonable allowance for the Contractor's internal administrative costs in preparing termination accounting and documentation.
- 15.2.5.2.5 Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.
- 15.2.5.3 In no event shall the Airport Authority be liable for unreasonable costs incurred by the Contractor or Subcontractors resulting from termination. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety insurance or costs of any type, or costs of preparing and submitting any claim arising out of termination.
- 15.2.5.4 The Airport Authority shall have no obligation to pay the Contractor under this Article unless and until the Contractor provides the Airport Authority with all updated and acceptable As-Built Plans and Record Documents for Work completed prior to termination as required by the Contract Documents.
- 15.2.5.5 In arriving at the amount due the Contractor under this clause, there shall be deducted in whole, or in the appropriate part(s) if the termination is partial:
 - 15.2.5.5.1 All payments previously made to the Contractor, including without limitation all payments which are applicable to the terminated portion of the Contract Documents,
 - 15.2.5.5.2 Any claim the Airport Authority may have against the Contractor in connection with the Work or any amounts that may be withheld in accordance with the Contract Documents, and
 - 15.2.5.5.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the Contractor and not otherwise recovered by or credited to the Airport Authority.
- 15.2.5.6 Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination.

15.3 SUSPENSION OF WORK

- 15.3.1 The Airport Authority may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to Contractor. Such notice of suspension of Work will designate the amount and type of labor, material, and equipment to be committed to the Project during the period of suspension. Contractor shall use its best efforts to utilize its labor, material, and equipment in such a manner as to minimize costs associated with suspension.
- 15.3.2 Upon receipt of any such notice of suspension, Contractor shall, unless the notice requires otherwise:
 - 15.3.2.1 Promptly discontinue Work on the date and to the extent specified in the notice;
 - 15.3.2.2 Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice and require all of its Subcontractors to do the same;
 - 15.3.2.3 Promptly make every reasonable effort to obtain suspension on terms satisfactory to the Airport Authority of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and
 - 15.3.2.4 Continue to protect and maintain the Work including those portions on which Work has been suspended.
- 15.3.3 No adjustment of Contract Price or extension of Contract Times shall be granted if the suspension results from Contractor's non-compliance with the requirements of the Contract.

15.4 NO CONSEQUENTIAL DAMAGES

Under no circumstances shall the Contractor be entitled to anticipatory or unearned profits or consequential damages as a result of termination or suspension under this Article. The payment to the Contractor determined in accordance with this Article constitutes the Contractor's exclusive remedy for termination or suspension hereunder.

15.5 NON-RECOVERABLE COSTS

In no event shall the Airport Authority be liable for costs incurred by the Contractor or any of its Subcontractors after receipt of a notice of suspension, interruption or termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Contract post-suspension, post-interruption or post-termination employee salaries, administrative expenses, overhead or unabsorbed overhead, the costs of preparing and submitting its original Proposal, or any other expense which is not reasonable or authorized under this Article 15.

15.6 SUBCONTRACTS

- 15.6.1 The Contractor shall ensure that the provisions of this Article are included in each subcontract (at all tiers) establishing terms and conditions relating to termination or suspension, including procedures for determining amounts payable to Subcontractors.
- 15.6.2 Each subcontract shall specifically state that the Subcontractor will not be entitled to any anticipatory or unearned profit on Work terminated or partly terminated or to any payment which constitutes consequential damages on account of the termination or suspension.
- 15.6.3 The Contractor shall not include any provision in its subcontracts which prevent the Airport Authority from entering into contracts with any of the Contractor's Subcontractors in the event that this Contract is terminated.

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16. MISCELLANEOUS PROVISIONS

16.1 ANTI-TRUST CLAIMS

These provisions are included in this Contract as required by California law:

- 16.1.1 In entering into a public works Contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Airport Authority all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the Airport Authority tenders final payment to the Contractor, without further acknowledgement by the parties.
- 16.1.2 In submitting a bid to the Airport Authority, the Bidder offers and agrees that if the bid is accepted, it will assign to the Airport Authority all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials or services by the Bidder for sale to the Airport Authority pursuant to the bid. Such assignment shall be made and become effective at the time the Airport Authority tenders final payment to the Bidders, without further acknowledgement by the parties.

16.2 GRATUITIES AND CONFLICTS OF INTEREST

- 16.2.1 Neither the Contractor nor any of its employees, agents and representatives shall offer or give to an officer, official, or employee of the Airport Authority gifts, entertainment, payments, loans, or gratuities. The Contractor represents and warrants that it has not previously offered or given any gifts, entertainment, payments, loans, or gratuities in violation of such prohibitions.

16.3 NOTICE AND COMMUNICATIONS

- 16.3.1 Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by email or other digital means of communication followed by a hard copy and with receipt confirmed by telephone. Notices shall be sent to the addresses set forth below:

If to the Airport Authority:	President/CEO
	San Diego County Regional Airport

P.O. Box 82776
San Diego, CA 92138-2776

If to the Contractor:

[INSERT CONTACT INFO]

- 16.3.2 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other person making the delivery. Notwithstanding the foregoing, notices sent after 2:00 p.m. Pacific Standard or Daylight Time (as applicable) and all other notices received after 2:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a digital document to be deemed received on the same Day, at least the first page must have been received before 2:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by the Contractor's Representative and technical representatives designated by the Airport Authority. The Airport Authority's Representative shall be available at all reasonable times for consultation. Except as otherwise provided, each party's representative shall be authorized to act on behalf of such party in matters concerning the Work.
- 16.3.3 The Contractor shall copy the Airport Authority on all written correspondence pertaining to the Contract between the Contractor and any person other than the Contractor's Subcontractors and attorneys.

16.4 CONFIDENTIAL INFORMATION; PUBLIC RECORDS ACT

- 16.4.1 All data, documents, discussions or other information developed or received by or for the Contractor in performance of the Contract and marked in writing as "confidential" are to be considered confidential and not to be disclosed to any person for a period of five (5) years after Final Acceptance of the Project, except as authorized by the Airport Authority, or as required by Governmental Rules. In addition, the Contractor shall comply with Section 101(e) of the Aviation and Transportation Security Act, 49 U.S.C. §40119(b) and the implementing regulations, 49 CFR 1520, Protection of Sensitive Security information.
- 16.4.2 If the Contractor is presented with a request from a third party (other than the Contractor's Subcontractors under the Contract) for any records, data or documents which may be in the Contractor's possession by reason of the Contract, the Contractor shall refer such request to the Airport Authority's Representative and the Contractor shall not provide any such records, data or documents to any such third-party without prior written authorization from the Airport Authority's Representative. If the Contractor is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in the Contractor's possession by reason of the Contract, the Contractor must immediately give notice

to the Airport Authority with the understanding that the Airport Authority will have the opportunity to contest such process by any means available to it before the records or documents are submitted to a court or other third-party. The Contractor, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

- 16.4.3 The Contractor acknowledges and agrees that all records, documents, drawings, Plans, Specifications and other materials in the Airport Authority's possession, including materials submitted by the Contractor, are subject to the provisions of the California Public Records Act (Government Code sections 6250 et seq.). The Contractor shall be solely responsible for all determinations made by it under such law, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret" or "Confidential" as it determines to be appropriate. The Contractor is advised to contact legal counsel concerning such law and its application to the Contractor.
- 16.4.4 If any of the materials submitted by the Contractor to the Airport Authority are clearly and prominently labeled "Trade Secret" or "Confidential" by the Contractor, the Airport Authority will endeavor to advise the Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will the Airport Authority be responsible or liable to the Contractor or any other person for the disclosure of any such labeled materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake or negligence on the part of the Airport Authority.
- 16.4.5 In the event of litigation concerning the disclosure of any material submitted by the Contractor to the Airport Authority, the Airport Authority's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk.

16.5 EMPLOYMENT OF APPRENTICES

- 16.5.1 California Labor Code §1777.5 requires the Contractor or Subcontractor employing tradesmen in any apprenticeable occupation to apply to the joint apprenticeship committee in the area of the site of the public works project and which administers the apprenticeship program for a certificate of approval. The Contractor or Subcontractor shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of apprentices to journeymen and contributions to funds to administer apprenticeship programs shall be determined by said §1777.5 and the responsibility for compliance with that §for all apprenticeable occupations shall be with the Contractor.

- 16.5.2 Labor Code §1777.5 does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors, involve less than Thirty Thousand Dollars (\$30,000.00) or twenty (20) working days. A contractor who willfully violates Labor Code §1777.5 shall be denied the right to bid on or receive a public works contract for a period of up to one (1) year for the first violation, and for a period up to three (3) years for the second and subsequent violations, from the date the determination of noncompliance made by the Administrator of Apprenticeship becomes an order of the California Apprenticeship Council. The Contractor shall also be subject to the payment of the civil penalty as provided in Labor Code §1777.7. Interpretation and enforcement of said sections 1777.5 and 1777.7 shall be in accordance with the rules and procedures of the California Apprenticeship Council.

16.6 CONFORMANCE WITH RULES AND REGULATIONS

- 16.6.1 Contractor agrees to abide by any and all:
- 16.6.1.1 Applicable rules, regulations, resolutions, policies, codes, orders and restrictions which are now in force or which may be hereafter adopted by the Airport Authority with respect to operation of the Airport.
 - 16.6.1.2 Orders, directives, or conditions issued, given or imposed by the President/CEO with respect to the use and operation of the Airport; and
 - 16.6.1.3 Applicable laws, ordinances, statutes, rules, regulations, or orders of any federal, state, county, municipal or other governmental entity, exercising jurisdiction over the Airport.
- 16.6.2 Contractor shall be responsible for familiarity with the Americans with Disabilities Act (ADA) (42 U.S.C. §12101 et seq.). The Work will be performed in compliance with ADA regulations.
- 16.6.3 Contractor acknowledges that it has reviewed and accepts the SDIA Security Instructions posted on the Airport Authority's website at www.san.org. If TSA, imposes a fine or penalty on the Airport Authority for Contractor's non-compliance with federal laws and or TSA rules and regulations, then Contractor shall reimburse and indemnify the Airport Authority for the entire amount of the fine or penalty.

16.7 PREVAILING WAGE

State prevailing wage rates may apply to work performed under this Contract. State prevailing wage rates apply to all public works contracts as set forth in California Labor Code, including but not limited to sections 1720, 1720.2, 1720.3, 1720.4 and 1771. Contractor is solely responsible to determine if state prevailing

wage rates apply and, if applicable, pay such rates in accordance with all laws, ordinances, rules, and regulations.

16.8 DOCUMENT RETENTION AND EXAMINATION

In accordance with Government Code §8546.7, records of both the Airport Authority and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

16.9 BANKRUPTCY

In the event Contractor commences a proceeding under the Federal Bankruptcy Act or is adjudicated bankrupt or insolvent, or a judicial sale is made of Contractor's interest under this Contract, this Contract shall at the option of the Airport Authority immediately terminate and all rights of Contractor hereunder shall immediately cease and terminate. If during the term of this Contract, Contractor files for bankruptcy protection, it covenants and agrees to serve the Airport Authority with a copy of the court filing documents within five (5) Days thereafter.

16.10 LICENSES AND PERMITS

Contractor shall possess all licenses, permits, qualifications, and approvals of whatever nature legally required for Contractor to perform the Work under this Contract. Contractor represents and warrants that it, at its sole cost and expense, shall keep in effect at all times during the term of this Contract any and all licenses, permits, and approvals that are required for Contractor to practice its profession and/or perform the Work.

16.11 CONFLICT OF INTEREST

Contractor is not now a party to, and during the term of this Contract shall not enter into, any contract or agreement that will create a conflict of interest with its duties to the Airport Authority under this Contract.

16.12 ENTIRE UNDERSTANDING

This Contract contains the entire agreement of the Parties and supersedes all prior negotiations, discussions, obligations, and rights of the Parties regarding this Contract. Contractor acknowledges that there is no other written or oral understanding between the Parties. No modification, amendment, or alteration of this Contract shall be valid or enforceable against the Airport Authority unless it is in writing, properly approved and executed by all Parties.

16.13 NON-DISCRIMINATION/ EQUAL EMPLOYMENT OPPORTUNITY

16.13.1 Pursuant to Labor Code §1735 and other applicable provisions of law, the Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender,

gender expression, age, sexual orientation, military and veteran status or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law. If the use provided for in this Contract allows Contractor to offer accommodations or services to the public, such accommodations, or services shall be offered on fair and reasonable terms.

- 16.13.2 By executing this Contract, the Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. The Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Contract, and shall not violate any such law at any time during the term of the Contract. The Contractor shall avoid any violation of any such law during the term of this Contract by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. The Contractor shall maintain records of each such verification, and shall make them available to the Airport Authority or its representatives for inspection and copy at any time during normal business hours. The Airport Authority shall not be responsible for any costs or expenses related to the Contractor's compliance with the requirements provided for or referred to herein.
- 16.13.3 To the same extent and under the same conditions as the Contractor, the Contractor shall require all of its Subcontractors performing any part of the Work or of this Contract to make the same verifications and comply with all requirements and restrictions provided for herein.
- 16.13.4 Each person executing this Contract on behalf of the Contractor verifies that he or she is a duly authorized officer of the Contractor, and understands that any of the following shall be grounds for the Airport Authority to terminate this Contract for cause: (1) failure of the Contractor or its Subcontractors to meet any of the requirements provided for herein; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

16.14 PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.

16.15 INTERPRETATION

- 16.15.1 Section Headings: Section headings in this Contract are for the convenience and reference of the Parties, and do not define or limit the scope of any section or provision.
- 16.15.2 Fair Meaning: The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either Party.
- 16.15.3 Two Constructions: If any provision in this Contract is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.
- 16.15.4 Governing Law: This Contract and all of its terms and conditions shall be construed, interpreted and applied in accordance with, governed by, and enforced under the laws of the State of California.
- 16.15.5 Venue: Notwithstanding applicable provision of 28 U.S.C. §1391 or of California Code of Civil Procedure §394, the Parties agree that the venue in all matters arising out of this Contract shall be the Superior Court of California, County of San Diego.
- 16.15.6 Gender: The use of any gender shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.
- 16.15.7 Integrated Agreement: The Parties agree that this Contract and any documents to which it refers contain the whole agreement between the Parties relating to the terms and conditions by which Contractor is to provide the Work. The Parties further agree that this Contract supersedes all previous understandings and agreements between the Parties regarding such terms and conditions. Each party to this Contract acknowledges that, in agreeing to enter into this Contract, it has not relied on any representation, warranty, collateral contract or other assurance that is not set out in this Contract or in any Contract Documents to which it refers, that was made before the execution of this Contract. Each party waives all rights and remedies which, but for this provision, might otherwise be available to it in respect to any such representation, warranty, collateral contract or other assurance. However, nothing in this provision shall limit or exclude any liability for willful misconduct or fraud. The Parties further agree that no alteration or variation of the terms of

this Contract shall be valid unless made in writing and signed by the Parties.

- 16.15.8 Other Agreements Not Affected: Except as specifically stated herein, this Contract and its terms, conditions, provisions and covenants shall not in any way change, amend, modify, alter, enlarge, impair or prejudice any of the rights, privileges, duties or obligations of either of the Parties under or by reason of any other agreement between the Parties.

16.16 JOINT AND SEVERAL LIABILITY

If Contractor is a limited liability company (LLC), partnership, or joint venture or is an entity comprised of more than one party or entity, the obligation imposed on Contractor under this Contract shall be joint and several, and each member, general partner, joint venturer, party or entity of Contractor shall be jointly and severally liable for all obligations.

16.17 WAIVER

Waiver by either party of any breach by the other party of any one or more of the terms or conditions of this Contract shall not be construed to be a waiver of any subsequent or other breach of the same or any other term or condition of this Contract. Failure on the part of either party to require full and complete compliance by the other party with any of the terms or conditions of this Contract shall not be construed as changing the terms or conditions or preventing full enforcement of other provisions to this Contract.

16.18 AIRPORT AUTHORITY'S RIGHT TO CONTRACT WITH OTHERS

The rights granted Airport Authority by this Contract are not exclusive, and Airport Authority reserves the right to enter into other agreements covering the same or similar services that are described in the Contract.

16.19 EFFECT OF DEBARMENT OF CONTRACTOR ON EXISTING CONTRACTS

Contractors or Subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code sections 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. For the term of this Contract, the Airport Authority reserves the right to immediately terminate this Contract in the event that Contractor or any Subcontractor is debarred from contracting or providing services by the Airport Authority, the federal government, or by any other California governmental entity. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the Project shall be returned to the Airport Authority. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

16.20 NOTICE OF THIRD-PARTY CLAIMS

Pursuant to Public Contract Code §9201, the Airport Authority shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The Airport Authority is entitled to recover reasonable costs incurred in providing such notification.

16.21 STATE LICENSE BOARD NOTICE

Contractors are required by law to be licensed and regulated by the Contractors' State License Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

16.22 NOTICE OF TAXABLE POSSESSORY INTEREST

In accordance with California Revenue and Taxation Code §107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which the Contractor will be responsible.

16.23 PROHIBITION OF BENEFITS

Contractor is familiar with the Airport Authority's prohibition against receipt of benefits by Authority personnel as set forth in Authority Code §2.10. The Airport Authority's Code is posted on the Airport Authority website at www.san.org. Contractor agrees not to offer any Airport Authority personnel any benefit prohibited by said Code. The offer or giving of any benefit prohibited by the Airport Authority Code shall constitute a material breach of this Contract by Contractor. In addition to any other remedies the Airport Authority may have in law or equity, Airport Authority may terminate this Contract for breach as provided herein.

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17. FEDERAL AVIATION ADMINISTRATION (FAA) REGULATIONS

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor," "Offeror," or "Bidder") agrees to the current requirements of the FAA, which are subject to change by the FAA and will be communicated to the Contractor accordingly, as follows:

17.1 CIVIL RIGHTS - GENERAL (49 U.S.C. § 47123)

17.1.1 In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin, creed, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required of the Title VI of the Civil Rights Act of 1964.

17.1.2 The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

17.2 CIVIL RIGHTS – TITLE VI

- 17.2.1 Title VI Clauses for Compliance with Nondiscrimination Requirements. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:
- 17.2.1.1 Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
 - 17.2.1.2 Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin creed, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21, including amendments thereto.
 - 17.2.1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
 - 17.2.1.4 Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
 - 17.2.1.5 Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Authority will impose such contract sanctions as

it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- 17.2.1.5.1 Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- 17.2.1.5.2 Cancelling, terminating, or suspending a contract, in whole or in part.
- 17.2.1.6 Incorporation of Provisions: The Contractor will include the provisions of paragraphs 17.2.1.1 through 17.2.1.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17.2.2 Title VI List of Pertinent Nondiscrimination Authorities

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

- 17.2.2.1 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);
- 17.2.2.2 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) including amendments thereto;
- 17.2.2.3 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);
- 17.2.2.4 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) (Nondiscrimination on the

Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);

- 17.2.2.5 The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age);
- 17.2.2.6 Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- 17.2.2.7 The Civil Rights Restoration Act of 1987 (P.L. 100-259) (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);
- 17.2.2.8 Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.) (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) as implemented by U.S. Department of Transportation regulations at 49 CFR Parts 37 and 38; and
- 17.2.2.9 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.)

17.3 FEDERAL FAIR LABOR STANDARDS ACT (29 USC §201, ET SEQ.; 2 CFR §200.430).

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

17.4 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (29 CFR PART 1910).

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and

their subcontractor's compliance with the applicable requirements of the Occupational Safety Health Act of 1970 (29 CFR Part 1910). The 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.

17.5 AIRPORT DEVELOPMENT

The Authority reserves the right to further develop or improve the landing area as it sees fit, regardless of the desires or views of Contractor and without interference or hindrance.

17.6 REPAIR OF AIRPORT

The Authority reserves the right, but shall not be obligated to Contractor, to maintain and keep the landing area and all its facilities in repair as well as the right to direct and control all activities of Contractor in this regard.

17.7 SUBORDINATION

This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the Authority and the United States, relative to the development, operation, or maintenance of the Airport.

17.8 RIGHT OF AIR NAVIGATION

The Authority reserves for itself, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein covered by this Agreement. This public right of flight shall include the right to cause any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation on the Airport.

17.9 14 CFR PART 77

Contractor agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction, modification or alteration of any present or future building or structure is planned for the premises related to this Agreement.

17.10 OBSTRUCTIONS

Contractor, by accepting this Agreement, expressly agrees for itself, its successors, and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on Authority land above the mean sea level elevation of fifty (50) feet. In the event the aforesaid covenants are breached, the Authority reserves the right to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Contractor.

17.11 NO INTERFERENCE

Contractor agrees for itself, its successors and assigns that it will not make use of Authority premises in any manner which might interfere with the landing and taking off of aircraft or

otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Authority reserves the right to cause the abatement of such interference at the expense of Contractor.

17.12 EXCLUSIVE RIGHTS

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of §308a of the Federal Aviation Act of 1958 (49 U.S.C. § 40103; P.L. 103-272; 108 STAT. 1102, and as it may be amended in the future).

17.13 SEISMIC SAFETY (49 CFR PART 41)

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

17.14 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (2 CFR §200, APPENDIX II(K); 2 CFR §200.216).

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

17.15 CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS (2 CFR §200.322; 2 CFR PART 200, APPENDIX II(L)).

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.