

**AMENDMENT NO. 6  
TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR  
DESIGN & PLANNING SERVICES FOR  
RUNWAY & TAXIWAY IMPROVEMENTS AT THE  
SAN ANTONIO INTERNATIONAL AIRPORT**

This Amendment (hereinafter called the "Amendment") to the Professional Services Agreement for Design & Planning Services for Runway & Taxiway Improvements at the San Antonio International Airport is entered into by and between the City of San Antonio (herein called the "City"), a Texas municipal corporation, acting by and through its City Manager, and Kimley-Horn and Associates, Inc. (hereinafter called "Consultant"), acting by and through its duly authorized corporate representative, as set out below. WITNESSETH:

**WHEREAS**, on January 31, 2013, the City and Consultant entered into a Professional Services Agreement for Design & Planning Services for Runway & Taxiway Improvements (2012) at the San Antonio International Airport. (Hereinafter called the "Agreement") pursuant to Ordinance No. 2013-01-31-0065; and

**WHEREAS**, City desires to add \$1,985,500.42 in contract capacity to the Agreement for Consultant to provide the additional design and construction phase services set out herein, of which \$531,778.71 shall be applied to Parts I-V, and \$1,453,721.71 to be applied to Part VI of the Scope of Services as shown in Exhibit 2, Fee Breakdown by Work Phase ; and

**WHEREAS**, it is now necessary to amend the Agreement to add scope and increase the compensation to Consultant for these additional services; and

**WHEREAS**, this Amendment adds Medina Consulting Company, Inc. as a subconsultant to the Agreement and includes its overhead rate in Exhibit 2, Fee Schedule, of the Agreement;

**NOW THEREFORE**, in consideration of the terms, covenants, agreements and demises herein contained, and in consideration of other good and valuable consideration, each to the other given, the sufficiency and receipt of which are hereby acknowledged, the Agreement entered into by and between the City and the Consultant is amended as follows:

1. **Article 6.2.** The first sentence of Article 6.2 of the Agreement is hereby deleted and replaced in its entirety with the following, increasing the not to exceed contract sum by \$1,985,500.42:

“The total compensation for all work to be performed by Consultant as fully defined in the Scope of Services, to include all travel and other expenses, shall not exceed FIFTEEN MILLION, FIVE HUNDRED THOUSAND, EIGHT HUNDRED SIXTY TWO DOLLARS AND 19/1000 DOLLARS (\$15,500,862.19).”

2. **Exhibit 1, Scope of Services.** The scope of work set out in Exhibit A, Additional Scope, is hereby added to and made a part of Exhibit 1, Scope of Services, of the Agreement.
3. **Exhibit 2, Fee Schedule.** Medina Consulting Company, Inc. is hereby added to the subconsultants listed under the Approved Overhead Rates set out in Exhibit 2, Fee Schedule, of the Agreement. The fee schedule and Medina Consulting Company’s approved overhead rate set out in Exhibit B, Additional Fee and Labor Categories, is hereby added to and made a part of Exhibit 2, Fee Schedule, of the Agreement.
4. **Section XVIII AMENDMENTS.** Section XVIII of the Agreement is replaced, in its entirety, with the following:

“Any alterations, additions, or deletions to the terms of this Agreement shall be effected by amendment, in writing, executed by City and Consultant. The Director shall have the authority to execute amendments that require up to \$50,000.00 in increased cost on behalf of the City without further action by the San Antonio City Council, subject to appropriation of funds for the increase in cost. Any other change will require approval of the City Council by passage of an ordinance therefore. **The Director may reallocate appropriated and budgeted funds within projects and between projects, without further Council approval.**”

5. **Federal Contract Provisions.** The Federal Contract Provisions—Architectural/Engineering Professional Services Contracts contained in Exhibit 5 of the Agreement are replaced, in their entirety, with the provisions contained in Exhibit C, Federal Contract Provisions.

Except as amended hereby, all other provisions of the Agreement are hereby retained in their entirety and remain unchanged.

EXECUTED AND AGREED TO this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF SAN ANTONIO

KIMLEY-HORN AND ASSOCIATES,  
INC.

By: \_\_\_\_\_  
Sheryl Sculley  
City Manager

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

BRENT MUTTI - Sr. VP  
Printed Name & Title

APPROVED:

By: \_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**ADDITIONAL SCOPE**

**Task 1.14 (a) – Additional Stakeholder Meetings and Safety Risk Assessments (SRAs)**

Consultant shall provide administrative tasks throughout the project including scheduling meetings with necessary team members, and planning for the group that will be in place. Executive Meetings will be held quarterly for the duration of the Temporary Taxiway J project. While Airline Manager's Meetings are monthly, consultant participation will coincide with Executive meetings throughout the duration. Monthly Coordination meetings will be held with stakeholders through completion of the Temporary Taxiway J project. An SRA will be conducted following the standard deliverables outlined under Part I, Task 1.11. It is estimated that the SRA for the New Cross Taxiway J bid package should be completed in less than a day of meetings.

**Task 1.14 (b) – Additional Stakeholder Meetings and Safety Risk Assessments (SRAs)**

Consultant shall provide administrative tasks throughout the project including scheduling meetings with necessary team members, and planning for the group that will be in place. Executive Meetings will be held quarterly for the duration of the Taxiway R Connector Bridge Reconstruction project. While Airline Manager's Meetings are monthly, consultant participation will coincide with Executive meetings throughout the duration. Monthly Coordination meetings will be held with stakeholders through completion of the Taxiway R Bridge Reconstruction/Mitigation project. An SRA will be conducted following the standard deliverables outlined under Part I, Task 1.11. It is estimated that the SRA for the Taxiway R Reconstruction/Mitigation bid package should be completed in less than a day of meetings.

**Task 3.8 (a) – Additional Topographic Survey and Geotechnical Services for the Temporary Taxiway J**

Survey and geotechnical services required for design and construction of a new temporary Taxiway J to the north and connect to Taxiway RC. The new cross Taxiway J is an enabling project so that the Taxiway R connector can be reconstructed.

**Task 3.8 (b) – Additional Topographic Survey Services for the Taxiway R Connector Bridge**

Survey services required for design of the Taxiway R Connector Bridge Reconstruction project as well as the area required for the lay down and processing of the overburden soils and MSW.

**Task 4.6 (a) – Taxiway R Reconstruction/Mitigation – Temporary Taxiway J**

Design services to implement the recommended option for the connector Taxiway R bridge resulting from Task 3.6.1. – bridge removal, removal and remediation of the MSW material beneath this bridge, the replacement of the base material, and reconstruction of the taxiway as a slab on grade. A temporary taxiway, currently anticipated to be named Taxiway J, is required to maintain tenant access to the airfield when the connector Taxiway R bridge is removed and replaced. Services will be provided following the standard deliverables outlined under Part 4 of the Agreement, and will include all coordination and approval

requirements in the development of FAA Compliant technical specifications and airfield geometrics (30% design). This project is anticipated to be advertised for bid in FY2019 and awarded to the low bid contractor in FY2020.

**Task 4.6 (b) – Taxiway R Reconstruction/Mitigation – Connector Bridge**

Design services to implement the recommended option for the connector Taxiway R bridge resulting from Task 3.6.1. – bridge removal, removal and remediation of the MSW material beneath this bridge, the replacement of the base material, and reconstruction of the taxiway as a slab on grade. Services will be provided following the standard deliverables outlined under Part 4 of the Agreement, and will include all coordination and approval requirements in the development of TCEQ and FAA Compliant technical specifications related to the MSW remediation. This project is anticipated to be advertised for bid in FY2020 and awarded to the low bid contractor in FY2021.

**Task 5.0 (a) – Bid Phase Services – Bid Package 6**

Services will be provided following the standard deliverables outlined under Part 5 of the Agreement for construction year 2019.

**Task 5.0 (b) – Bid Phase Services – Bid Package 7**

Services will be provided following the standard deliverables outlined under Part 5 of the Agreement for construction year 2020.

**Task 6.26 – Pre- and Post-Construction Environmental Assessments**

For construction package 5 and onward, this task entails the completion of the Limited Phase II Environmental Assessment prior to construction and following the contractor site cleanup. The contractor will be responsible to mitigate any findings that were not present to using the site. This task must be completed prior to Task 6.19 Final Completion.

**Task 6.6.1 – Construction Phase Environmental Oversight**

Services will be provided for the pre-construction and construction phases of the Taxiway R Reconstruction/Mitigation Projects. Services to be performed to remediate the MSW include pre-construction and construction observations, environmental testing, oversight and assistance with segregation and removal of impacted soils and storm water, development of Health & Safety Plans and Waste Management Plan, manifesting, air monitoring, TCEQ coordination, closure report preparation, and construction coordination.

**EXHIBIT B**

**ADDITIONAL FEE & LABOR CATEGORIES**

<b><u>TASK</u></b>	<b><u>NOT TO EXCEED AMOUNT</u></b>
Task 1.14 (a)	\$ 172,846.00
Task 1.14 (b)	\$ 183,372.00
Task 3.8 (a)	\$ 49,357.00
Task 3.8 (b)	\$ 15,518.00
Task 4.6 (a)	\$ 397,520.00
Task 4.6 (b)	\$ 421,208.00
Task 5.0 (a)	\$ 35,523.00
Task 5.0 (b)	\$ 36,497.00
<b>Sub-Total</b>	<b>\$1,311,841.00</b>
Less reallocated existing Fees	<u>(\$ 780,062.29)</u>
<b>Sub-Total</b>	<b>\$ 531,778.71</b>
Task 6.0 – FY 2017	<u>\$1,453,721.71</u>
<b>TOTAL</b>	<b>\$1,985,500.42</b>

**Approved Overhead Rates**

Medina Consulting Company, Inc. 146.83%

## EXHIBIT C

### FEDERAL CONTRACT PROVISIONS— ARCHITECTURAL/ENGINEERING PROFESSIONAL SERVICES CONTRACTS

#### REQUIRED FEDERAL CONTRACT PROVISIONS

As used in this Exhibit, the term “contractor” or “Contractor” shall refer to Consultant. Consultant shall include the provisions of set out in this exhibit in every subcontract, including procurements of materials and leases of equipment, unless exempt by Federal regulations and directives issued pursuant thereto.

#### I. ACCESS TO RECORDS AND REPORTS

Consultant must maintain an acceptable cost accounting system. Consultant agrees to provide the City, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

#### II. GENERAL CIVIL RIGHTS PROVISIONS

Consultant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Consultant and subtier contractors/consultants from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

#### III. TITLE VI CLAUSES COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

**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.

**Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor

will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

**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.

**Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the contractor under the contract until the contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

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

#### IV. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

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



Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;

The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

**V. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to  
ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to abide by and comply with the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” set forth herein the goals and timetables for minority and female participation set out below.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

**Timetables**

Goals for minority participation for each trade:

Goals for female participation in each trade: 6.9%

These goals are applicable to all of the contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is the State of Texas, Bexar County and City of San Antonio.

**VI. ENERGY CONSERVATION REQUIREMENTS**

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

**VII. FEDERAL FAIR LABOR STANDARDS ACT**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given

in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

Consultant has full responsibility to monitor compliance to the referenced statute or regulation.

Consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

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

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Consultant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Consultant retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Consultant 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.

### **IX. TRADE RESTRICTION CERTIFICATION**

Consultant by entering into the Agreement certifies that:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R; and
- c. has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Consultant must provide immediate written notice to the City if the Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. Consultant must require subcontractors provide immediate written notice to Consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to Consultant or subcontractor:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- (3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and

information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Consultant agrees that it will incorporate this provision for certification without modification in all lower tier subcontracts. Consultant may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless Consultant has knowledge that the certification is erroneous.

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

#### **X. VETERAN'S PREFERENCE**

In the employment of labor (excluding executive, administrative, and supervisory positions), Consultant and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

#### **XI. SEISMIC SAFETY**

Consultant 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.

#### **XII. TEXTING WHEN DRIVING**

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

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

#### **XIII. EQUAL OPPORTUNITY CLAUSE**

Any reference to "contractor" in this contract clause shall refer to and mean the Consultant.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identify or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **XIV. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS**

Any reference to "contractor" in this contract clause shall refer to and mean the Consultant.

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
  - (1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever Consultant, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If Consultant is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal

procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period and the contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with

all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a



through 7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246. 12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

## **XV. PROHIBITION of SEGREGATED FACILITIES**

(a) Consultant agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Consultant agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

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

(c) Consultant shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

## **XVI. TERMINATION FOR CONVENIENCE**

The City may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the City, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the City all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

City agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

City further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

## **XVII. TERMINATION FOR DEFAULT**

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

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

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

1. Perform the services within the time specified in this contract or by City approved extension;

2. Make adequate progress so as to endanger satisfactory performance of the Project;
3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the City all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

City agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

City further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

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

- b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the City:
1. Defaults on its obligations under this Agreement;
  2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
  3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

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

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

#### **XVIII. CERTIFICATION OF CONSULTANT REGARDING DEBARMENT**

By entering into this Agreement contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

#### **XIX. CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT**

Consultant, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", shall verify each lower tier participant of a "covered transaction" under the project is not

presently debarred or otherwise disqualified from participation in this federally assisted project. Consultant will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant

## **XX. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

Any reference to "contractor" in this contract clause shall refer to and mean the Consultant.

### **1. Overtime Requirements.**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

### **2. Violation; Liability for Unpaid Wages; Liquidated Damages.**

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

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

The Federal Aviation Administration (FAA) or the City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this clause.

### **4. Subcontractors.**

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier

subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

## **XXI. CERTIFICATION REGARDING LOBBYING**

Consultant certifies by signing this Agreement, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **XXII. BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the Consultant or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

City will provide Consultant written notice that describes the nature of the breach and corrective actions the Consultant must undertake in order to avoid termination of the contract. City reserves the right to withhold payments to Consultant until such time the Consultant corrects the breach or the City elects to terminate the contract. The City's notice will identify a specific date by which the Consultant must correct the breach. City may proceed with termination of the contract if the Consultant fails to correct the breach by deadline indicated in the City's notice.

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

### **XXIII. CLEAN AIR AND WATER POLLUTION CONTROL**

Consultant agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Consultant agrees to report any violation to the City immediately upon discovery. The City assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

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

### **XXIV. DRUG-FREE WORKPLACE**

(a) Definitions. As used in this clause—

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Consultant in connection with a specific contract where employees of the Consultant are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Consultant directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Consultant employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Consultant, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Consultant’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;

- (2) Establish an ongoing drug-free awareness program to inform such employees about—
    - (i) The dangers of drug abuse in the workplace;
    - (ii) The Consultant's policy of maintaining a drug-free workplace;
    - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;
  - (4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
  - (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
  - (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
    - (i) Taking appropriate personnel action against such employee, up to and including termination; or
    - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
  - (7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.
- (c) The Consultant, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Consultant's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR [23.506](#), render the Consultant subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.