

Agreement for Professional Services

This Agreement for Professional Services (the "Agreement") is made and entered into this 20th day of May, 2021 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516, (the "Town"), and Armstrong Consultants, Inc. an independent contractor with a principal place of business at 751 Horizon Ct, Ste 255, Grand Junction, Colorado 81506 ("Contractor") (each a "Party" and collectively the "Parties").

Whereas, the Town requires professional services; and

Whereas, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

Now Therefore, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Scope of Services

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference and known as: Erie Municipal Airport (EIK) Consultant Selection (P21-729).

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. Term, Termination, and Renewal

A. This Agreement shall commence on the Effective Date and shall continue until December 31, 2021.

B. This Agreement shall automatically renew for 4 additional 12-month terms, commencing on January 1, 2022, unless, at least 30 days prior to the expiration of the then-current term, either Party terminates this Agreement. Contractor shall provide the Town with the proposed increase for the following year at least 60 days prior to the expiration of the then-current term.

C. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed

prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

III. Compensation

In consideration for the work performed by Contractor under the Scope of Services, the Town shall pay Contractor as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, as amended for any renewal term pursuant to Section II.C. hereof.

IV. Professional Responsibility

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work except as expressly set forth in the Scope of Services.

D. Contractor shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or

standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

V. Ownership

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

VI. Independent Contractor

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

VII. Insurance

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VIII. Indemnification

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. Illegal Aliens

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the

employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

X. Miscellaneous

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently

appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Force Majeure. No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

M. Federal Clauses. The required federal contract clauses set forth in **Exhibit C** are hereby incorporated herein by this reference.

In Witness Whereof, the Parties have executed this Agreement as of the Effective Date.

Town of Erie, Colorado

Jennifer Carroll, Mayor

ATTEST:

Heidi Leatherwood, Town Clerk

Contractor

By: _____

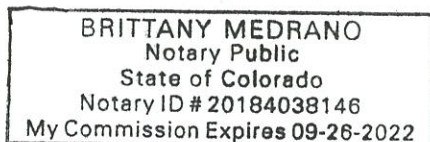
Justin Pietz Armstrong Consultants Inc

State of Colorado)
County of Mesa) ss.
)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 20th day of May, 2021, by Justin Pietz as Principal of Armstrong Consultants Inc

My commission expires: 09/24/2022

(Seal)



Brittany Medrano
Notary Public

No Employee Affidavit

[To be completed only if Contractor has no employees]

1. Check and complete one:

☒ I, Justin Pietz, am a sole proprietor doing business as Armstrong Consultants Inc.. I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Erie (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

☐ I, _____, am the sole owner/member/shareholder of _____, a _____ [specify type of entity – i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

2. Check one.

☐ I am a United States citizen or legal permanent resident.

The Town must verify this statement by reviewing one of the following items:

- *A valid Colorado driver's license or a Colorado identification card;*
- *A United States military card or a military dependent's identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Contractor's citizenship/lawful presence and identity.*

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.

Justin Pietz
Signature

5/26/2021
Date

Department Program Affidavit

***[To be completed only if Contractor participates in the
Department of Labor Lawful Presence Verification Program]***

I, Armstrong Consultants Inc., as a public contractor under contract with the Town of Erie (the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Agreement") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

Justin Pietz
Signature

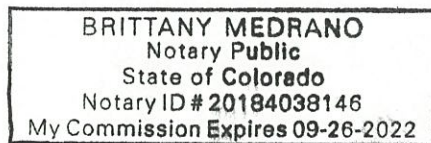
5/20/2021
Date

State of Colorado)
County of _____) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 20th day of May, 2021, by Justin Pietz as Principal of Armstrong Consultants, Inc.

My commission expires: 09/24/2022

(Seal)



Brittany Medrano
Notary Public

Exhibit A Scope of Services

Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

- Survey, geotechnical, civil design, architectural design, estimating, analysis of alternatives, preparation of construction documents using FAA standards, preparation of FAA engineering reports, FAA modification to standards, FAA close out reports, and other work requested.
- Resident engineering services, construction administration and assistance to the Airport and the Town in the bidding process for the following:
 - Pavement Maintenance
 - Construct Apron, Taxilanes, and Taxiways
 - Rehabilitate Apron, Taxilanes, and Taxiways
 - Runway Rehabilitation
 - Hangar Development
 - AWOS Upgrade
 - Airfield Electrical Maintenance and Rehabilitation

All projects are dependent upon federal Airport Improvement Program funding, state funding, and approval from the Town, so some of the services related to the above-listed projects may be deleted or modified. The Town may request additional services not included in the above list. Each project will be subject to a separate agreement detailing the specifics of each project.

Exhibit B Compensation

STAFF ALLOCATION FOR LABOR	<u>HOURLY RATE</u>
Principal	210.00
Department Manager/Senior PM	166.00
Project Manager	151.00
Project Engineer	126.00
Project Planner	123.00
Senior Drafter / Designer	126.00
Designer (CAD)	104.00
Field Eng. Supervisor	126.00
Resident Project Representative	116.00
Project Coordinator	86.00

Exhibit C
Required Federal Clauses

1.1. Access to Records and Reports (2 C.F.R. § 200.333, 2 C.F.R. § 200.336, FAA Order 5100.38). Contractor shall maintain an acceptable cost accounting system. Contractor shall provide the sponsor, the Federal Aviation Administration (the "FAA"), and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of Contractor which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Contractor shall maintain all books, records, and reports required under this Agreement for a period of not less than 3 years after final payment.

1.2. Breach of Contract Terms (2 C.F.R. § 200 Appendix II(A)). Any violation or breach of the terms of this Agreement by Contractor or its subcontractors may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the Parties. The Town shall provide Contractor with written notice that describes the nature of the breach and corrective actions Contractor must undertake to avoid termination of the Agreement. The Town reserves the right to withhold payments to Contractor until such time Contractor corrects the breach or the Town elects to terminate the Agreement. The Town's notice will identify a specific date by which Contractor must correct the breach. The Town may proceed with termination of the Agreement if Contractor fails to correct the breach by the deadline indicated in the 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.

1.3. Civil Rights – General. Contractor shall 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 Contractor and subcontractors from the bid solicitation period through the completion of the Agreement. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

1.4. Civil Rights - Title VI Assurances (49 U.S.C. § 47123, FAA Order 1400.11)

1.4.1. Title VI Solicitation Notice. The Town, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that all persons responding to the Town's solicitation will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

1.4.2. Title VI Compliance with Nondiscrimination Requirements.

a. Contractor shall comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as amended, which are herein incorporated by reference and made a part of this Agreement.

b. Contractor shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

c. In all solicitations, either by competitive bidding, or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor and supplier will be notified by Contractor of Contractor's obligations under this Agreement relative to non-discrimination.

d. Contractor shall provide all information and reports required by applicable law 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 FAA to be pertinent to ascertain compliance with such laws. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the Town or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

e. In the event of Contractor's noncompliance with these non-discrimination provisions, the Town will impose such sanctions as it or the FAA may determine to be appropriate, including without limitation: withholding payments to Contractor; or cancelling, terminating, or suspending the Agreement, in whole or in part.

f. Contractor shall include these nondiscrimination provisions in every subcontract, including procurements of materials and leases of equipment. Contractor shall take action with respect to any subcontract or procurement as the Town or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided that, if Contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, Contractor may request the Town to enter into any litigation to protect the interests of the Town. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

1.4.3. Title VI List of Nondiscrimination Acts and Authorities. During the performance of this Agreement, Contractor shall comply with the following:

a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d, *et seq.*, 78 Stat. 252).

b. 49 C.F.R. Part 21.

c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601).

d. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794, *et seq.*), as amended and 49 C.F.R. Part 27.

- e. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101, *et seq.*).
 - f. Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, 47123), as amended.
 - g. The Civil Rights Restoration Act of 1987 (PL 100-209).
 - h. Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131 – 12189), as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38.
 - i. The FAA's non-discrimination statute (49 U.S.C. § 47123).
 - j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
 - k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (70 Fed. Reg. at 74087 to 74100).
 - l. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § 1681, *et seq.*).
- 1.5. Clean Air and Water Pollution Control (49 C.F.R. § 18.36(i)(12)). Contractor shall 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). Contractor agrees to report any violation to the Town immediately upon discovery. The Town assumes responsibility for notifying the Environmental Protection Agency (EPA) and the FAA.
- 1.6. Debarment and Suspension (2 C.F.R. Part 180 (Subpart C), 2 C.F.R. Part 1200, DOT Order 4200.5).
- 1.6.1. Contractor Certification. By submitting a proposal, Contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this Agreement.
- 1.6.2. Subcontract Certification. Contractor, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" is not presently debarred or otherwise disqualified from participation in this federally assisted project. Contractor shall accomplish this by: checking the System for Award Management at website: <http://www.sam.gov>; collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above; and 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.
- 1.7. Disadvantaged Business Enterprises (49 C.F.R. Part 26).

1.7.1. Solicitation Language: The Town's award of this Agreement is conditioned upon Contractor satisfying the good faith effort requirements of 49 C.F.R. § 26.53. As a condition of bid responsiveness, Contractor must submit the following information with its proposal on the forms provided herein:

- a. The names and addresses of Disadvantaged Business Enterprise ("DBE") firms that will participate in the contract;
- b. A description of the work that each DBE firm will perform;
- c. The dollar amount of the participation of each DBE firm listed;
- d. Written statement from Contractor that attests its commitment to use the DBE firms to meet the Town's project goal; and
- e. If Contractor cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by Contractor as described in appendix A to 49 C.F.R. part 26.

1.7.2. Solicitation Language (49 C.F.R. Part 26). It is the policy of the Town to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Town encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

1.7.3. Prime Contracts (Projects covered by DBE Program), Contract Assurance (§ 26.13): Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by 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 Town deems appropriate, which may include without limitation: withholding monthly progress payments; assessing sanctions; liquidated damages; or disqualifying Contractor from future bidding as non-responsible.

1.7.4. Prompt Payment (§ 26.29) – Contractor agrees to pay each subcontractor under a prime contract for satisfactory performance of its contract no later than ____ days from the receipt of each payment Contractor receives from the Town. Contractor agrees further to return retainage payments to each subcontractor within ____ days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the Town. This clause applies to both DBE and non-DBE subcontractors.

1.8. Distracted Driving (Executive Order 13513, DOT Order 3902.10). 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, the Town encourages Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. Contractor shall include the substance of this clause in all

subcontracts exceeding \$3,500 and involving driving a motor vehicle in performance of work activities associated with the project.

1.9. Energy Conservation (2 C.F.R. § 200, Appendix II(H)). Contractor agrees 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.*).

1.10. Fair Labor Standards Act (29 U.S.C. § 201, *et seq.*). This Agreement and all associated subcontracts incorporate by reference the provisions of 29 C.F.R. Part 201, the Federal Fair Labor Standards Act (the "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. Contractor has full responsibility to monitor compliance with the FLSA, and shall address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

1.11. Foreign Trade Restriction (49 U.S.C. § 50104, 49 C.F.R. Part 30). Contractor certifies that it: 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.); 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 has not entered into any subcontract for any product to be used 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, U.S.C. § 1001. Contractor shall provide immediate written notice to the Town if Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. Contractor shall require subcontractors to provide immediate written notice to Contractor 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 C.F.R. § 30.17, no contract shall be awarded to an offeror or subcontractor: 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.; whose subconsultants are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list; or who incorporates in the 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 Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. Contractor agrees that it will incorporate this provision for certification without modification in all lower tier subcontracts. Contractor may rely on the certification of a 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 Contractor 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 Contractor knowingly rendered an erroneous certification, the FAA may direct through the Town cancellation of the Agreement for default at no cost to the Town or the FAA.

1.12. Lobbying and Influencing Federal Employees (31 U.S.C. § 1352 – Byrd Anti-Lobbying Amendment, 2 C.F.R. part 200, Appendix II(J) 49 C.F.R. Part 20, Appendix A). Contractor certifies by signing and submitting this Agreement, to the best of its knowledge and belief, that: no Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; 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; and Contractor shall include certification in the award documents for all subcontracts. 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 31 U.S.C. § 1352. 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.

1.13. Occupational Safety and Health Act of 1970 (20 C.F.R. Part 1910). This Agreement and all subcontracts under it incorporate by reference the requirements of 29 C.F.R. Part 1910 with the same force and effect as if given in full text. Contractor shall provide a work environment that is free from recognized hazards that may cause death or serious physical harm to employees. Contractor retains full responsibility to monitor its compliance and their subconsultant's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970. Contractor shall address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

1.14. Certification Regarding Tax Delinquency and Felony Convictions (§§ 415 and 416, Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76) & DOT Order 4200.6). Contractor shall complete the following two certification statements. If Contractor responds in the affirmative to either representation, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official ("SDO") that the SDO has considered suspension or

debarment and determined that further action is not required to protect the Government's interests. Contractor therefore must provide information to the owner about its tax liability or conviction to the Town, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made. Felony conviction means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559. A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. Contractor shall incorporate this certification in all subcontracts.

a. Contractor represents that it is (•) is not (•) a corporation that has unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

b. The applicant represents that it is (•) is not (•) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

1.15. Termination (2 C.F.R. § 200 Appendix II(B), FAA Advisory Circular 150/5370-10, § 80-09).

1.15.1. Termination for Convenience (Professional Services). The Town may, by written notice to Contractor, terminate this Agreement for its convenience and without cause or default on the part of Contractor. Upon receipt of the notice of termination, except as explicitly directed by the Town, Contractor shall immediately discontinue all services affected. Upon termination, Contractor shall deliver to the Town all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by Contractor under this contract, whether complete or partially complete. The Town agrees to make just and equitable compensation to Contractor for satisfactory work completed up through the date Contractor receives the termination notice. Compensation will not include anticipated profit on non-performed services. The Town agrees to hold Contractor harmless for errors or omissions in documents that are incomplete as a result of the termination.

1.15.2. Termination for Default (Professional Services). 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 shall provide the breaching Party 7 days' advance written notice of its intent to terminate, specifying the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the

termination. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this Agreement. The Town may terminate this Agreement in whole or in part, for the failure of Contractor to: perform the services within the time specified in this contract or by SPONSOR approved extension; make adequate progress so as to endanger satisfactory performance of the project; or fulfill the obligations of the Agreement that are essential to the completion of the project. Upon receipt of the notice of termination, Contractor shall immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, Contractor shall deliver to the Town all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by Contractor under the Agreement, whether complete or partially complete. The Town agrees to make just and equitable compensation to Contractor for satisfactory work completed up through the date Contractor receives the termination notice. Compensation will not include anticipated profit on non-performed services. If, after termination, the Town determines that Contractor was not in default of the Agreement, the rights and obligations of the Parties shall be the same as if the Town issued the termination for the convenience of the Town. Contractor may terminate this Agreement in whole or in part, if the Town: defaults on its obligations under this Agreement; fails to make payment to Contractor in accordance with this Agreement; or suspends the project for more than 180 days due to reasons beyond the control of Contractor. Upon receipt of a notice of termination, the Town agrees to cooperate with Contractor to terminate the Agreement or portion thereof by mutual consent. If the Town and Contractor cannot reach agreement, Contractor may, without prejudice to any rights and remedies it may have, terminate all or parts of this Agreement based upon the Town's breach. In the event of termination due to a Town breach, Contractor may invoice the Town and, subject to applicable law, may receive full payment for all services performed under this Agreement and all justified reimbursable expenses incurred through the effective date of termination. The Town agrees to hold Contractor harmless for errors or omissions in documents that are incomplete as a result of the termination.

1.16 Veteran's Preference (Reference: 49 U.S.C. § 47112(c)). In the employment of labor (excluding executive, administrative, and supervisory positions), Contractor and all subcontractors shall give preference to covered veterans as defined within 49 U.S.C. § 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.