



DARE COUNTY AIRPORT AUTHORITY

Dare County Regional Airport

P.O. Box 429 ~ 410 Airport Road
Manteo, NC 27954
(252) 475-5570 ~ Fax (252) 473-1196



**DARE COUNTY AIRPORT AUTHORITY
MINUTES of the
March 28, 2023 MEETING**

- Members Present:** Charlie Davidson, Fred Newberry, Wally Overman, Joe Blakaitis, David Crownover, Pete Burkheimer, Jim Kenny
- Members Absent:** George Henderson
- Also Attending:** Robert Hobbs, Hornthal, Riley, Ellis & Maland; Stacy Ambrose, Airport Director; Margaret Stauffer, Clerk to the Board; John Massey & Steve Bright, Talbert & Bright
- Public Attending:** None

Chairman Davidson called the March 28, 2023 meeting of the Dare County Airport Authority to order at approximately 4:05 pm.

ITEM 1 - Public Comments:

No Comments submitted prior to the meeting.

- MOTION:** Jim Kenny motioned to amend the agenda to add a Close Session between Item 1 and Item 2.
- SECOND:** Pete Burkheimer
- DISCUSSION:** None
- OPPOSED:** None
- OUTCOME:** Carried

MOTION: Jim Kenny motioned to go into Closed Session. A motion has been requested to enter closed session pursuant to G.S. 143-318.11(a)(5) to establish or instruct the Dare County Airport Authority staff or negotiating agents concerning the position to be taken by or on behalf of the Dare County Airport Authority in negotiating the price and other material terms of a contract or proposed contract for the acquisition, by purchase, option, exchange, or lease, of the following real property: 1099 Driftwood Drive, Manteo, NC, owned of record by City Beverage Company, Inc., for any public purpose.

SECOND: Wally Overman

DISCUSSION: None

OPPOSED: None

OUTCOME: Carried

5:10PM - Board came out of Closed Session.

ITEM 2 – Community Garden License Agreement:

Current License Agreement will be expiring soon and a few minor changes and added a paragraph 5 for an automatic 1 year extension. This will allow the Agreement to renew yearly as is and no resigning will be needed.

MOTION: Pete Burkheimer to approve the updated License Agreement for the Community Garden as presented and authorized the Chairman to execute the Agreement.

SECOND: Wally Overman

DISCUSSION: None

OPPOSED: None

OUTCOME: Carried

ITEM 3 – Engineering and Related Work Contract:

Attorney Hobbs stated that Talbert & Bright is still reviewing. Tabled until next board meeting.

ITEM 4 - Capital Project Ordinance:

The grant was approved in a prior authority meeting and a Capital Project Ordinance is requested for finance to setup the budget.

MOTION: Pete Burkheimer motioned to approve the Capital Project Ordinance as presented with the modification in Section 4 to read Runway Approach Clearing grant # 36237.35.19.1 in the about of \$9,668 with a local match of \$1,075.

SECOND: David Crownover

DISCUSSION: None

OPPOSED: None

OUTCOME: Carried

MOTION: Pete Burkhimer Pete Burkhimer motioned to approve the Capital Project Ordinance as presented with the modification in Section 4 to read Runway Approach Clearing grant # 36237.35.19.2 in the about of \$83,692.00 with no local match.

SECOND: David Crownover

DISCUSSION: None

OPPOSED: None

OUTCOME: Carried

TEM 5 – Engineer’s Report:

No report.

ITEM 6 - Attorney’s Report:

Attorney Hobbs reports:

That the attorney agreement was approved by the board two years ago and it was suggested to revise rate sheet. A new agreement was circulated for review with a new rate sheet based on the CPI for the last two years. Added in paragraph 5 was added that states the attorney represents the board as a whole and does not represent individual members.

New hourly rate
\$250 to \$275 attorney
\$150 to 165 paralegal
\$200 summer law clerk

MOTION: Pete Burkhimer motioned the Chairman to sign the agreement Hornthal, Riley, Ellis & Maland with the suggestions.

SECOND: Wally Overman

DISCUSSION: None

OPPOSED: None

OUTCOME: Carried

Member Pete Burkhimer left the meeting.

Attorney Hobbs informed the members that the state law requires the board to appointing a Finance Officer, which is the person who signs off on the pre-audit certificates and make other certifications related to the budget and other financial papers. It was suggested that the Director be appointed, which not uncommon for smaller towns to do.

MOTION: Jim Kenny motioned to elect Stacy Ambrose as the Finance Officer.

SECOND: Wally Overman

DISCUSSION: None

OPPOSED: None

OUTCOME: Carried

Johnny Hallow has prepared a Resolution for the county to look at regarding the removal and relocation of the cemetery in the apron. He hopes to have a draft available at the next board meeting. Jim Kenny asked if this resolution will be the final hurdle for the graves. Director Ambrose inquired about the how long the family members have to agree.

Attorney Hobbs replied that it will be the final hurdle for the county by the action we are going to propose that all the responsibilities will be delegated to the airport. The family members don't have an objective, they just have to be notified. The consultant company will be the one who does all the preparation, research, notifications that are required.

ITEM 7 – Chair's Report:

No reports.

ITEM 8 – Director's Reports:

Director Ambrose reports the following:

- Bipartisan infrastructure Bill – Denied approval for this bill. 658 applied, 99 awarded, 3 in the state of North Carolina.
- Hatchell Concert finished with work at Andy's hangar and the apron repairs.
- Rental house is occupied and new tenant is very happy.
- NCAA Conference was in Pinehurst and it had a great turnout.
- Rescue boat has a new motor installed and is ready when needed. This boat has been out of service for over 10 years.
- R.W. Williams is building a skid unit 200 gallon unit for back of truck. The old fire truck will listed on GOGO.V website to be sold.
- New EMS hangar has fencing and flag marking the area. Ground breaking will be soon. Jim Kenny inquired about the fence and the location; it looks like there will no room for hangar tenants to access their own hangars.
- Vacant airport operation tech position – interviews will start again next week.

Wally Overman asked if the beaver dams are still in the channel area and do we need a permit to open up the opening to clear the sand away?

Director Ambrose replied that the no dams have been sighted and the beach is built up causing the water to backup.

ITEM 9 - Consent Agenda:

Tabled.

ITEM 10 – Committee Report:

No reports.

ITEM 11 – Comments from the Authority Members:

Jim Kenny – would like Wi-Fi for all the hangars. Also the dumpsters are all gone now. Mr. Kenny pays \$450 a month and should have basic services for all hangar tenants. The people who are violating airport policy by dumping personal trash in there, then they should be singled out.

Director Ambrose stated that he did check with the IT department and there is no-way. The county cannot allow private companies' access to its Wi-Fi for security purposes. As for the dumpsters; they are all gone since they are being used for personal use. The Director will look into a possibly having a few small trash cans.

Chairman Davidson added that the Currituck airport does not have a dumpster at all on the property. He suggested that next year for the NCAA conference that we get more members to attend. There is a lot of good information and networking that we all can benefit from. While at the conference he gained information about the three fuel companies that operate in the North Carolina. Perhaps we can compare the companies; Titan being the one that we currently use.

Wally Overman – thanked Talbert & Bright for their quick and accurate information this past few weeks.

ITEM 12 – Adjourn:

MOTION:	Wally Overman motioned to adjourn.
SECOND:	Joe Blakaitis
DISCUSSION:	None
OPPOSED:	None
OUTCOME:	Carried

The meeting was adjourned at 5:18 PM ET

Margaret Stauffer, Clerk to the Board
Dare County Airport Authority

**DARE COUNTY AIRPORT AUTHORITY
410 AIRPORT ROAD, MANTEO, NC
Tuesday, March 28, 2023
AGENDA**

4:00 PM CONVENE AUTHORITY FOR MONTHLY MEETING

ITEM 1 PUBLIC COMMENTS

**ITEM 2 COMMUNITY GARDEN LICENSE AGREEMENT
Manteo Rotary Club 3 Year Agreement**

**ITEM 3 ENGINEERING AND RELATED WORK CONTRACT
Talbert & Bright 5 Year Contract**

**ITEM 4 CAPITAL PROJECT ORDINANCE
Runway Approach Clearing
Grant 36237.35.19 & 36237.35.19.2**

ITEM 5 ENGINEER'S REPORT

ITEM 6 ATTORNEY'S REPORT

ITEM 7 CHAIR'S REPORT

ITEM 8 DIRECTOR'S REPORT

**ITEM 9 CONSENT AGENDA
February 22, 2023**

ITEM 10 COMMITTEE REPORT

ITEM 11 COMMENTS FROM THE AUTHORITY MEMBERS

ITEM 12 ADJOURN

Prepared by Robert B. Hobbs, Jr., Airport Attorney
Hornthal, Riley, Ellis & Maland, LLP
2502 South Croatan Highway
Nags Head, North Carolina 27959

LICENSE AGREEMENT

STATE OF NORTH CAROLINA
COUNTY OF DARE

THIS LICENSE AGREEMENT (the "Agreement") is effective as of _____, 2023 (the "Effective Date"), by and between Dare County Airport Authority, a body politic and corporate, PO Drawer 429, Manteo, NC 27954 ("DCAA"), and Manteo Rotary Club, a North Carolina nonprofit corporation, whose mailing address is PO Box 1621, Manteo, NC 27954 ("MRC") (each a "Party" and collectively, the "Parties").

STATEMENT OF PURPOSE

DCAA is the owner of that certain real property and related improvements located at 1114 N. Highway 64/264, Manteo, NC, known as Dare County Tax Parcel 025189000, and more specifically described as a portion of said property on the south side of Fields Drive, to be more particularly defined and described pursuant to Section 3 below (the "DCAA's Property").

DCAA desires to grant a license to MRC for the purposes set forth in this Agreement, and MRC desires to accept a license from the DCAA for same.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto do hereby agree as follows:

1. Grant of License. DCAA hereby grants to MRC, subject to all of the terms and conditions hereof, a license to use the DCAA's Property for the purposes set forth in this Agreement, and under the terms and conditions contained in this Agreement. DCAA agrees not to charge a fee to MRC for this Agreement.
2. MRC Has No Interest or Estate. MRC agrees that it does not and shall not claim at any time any ownership, interest or estate of any kind or extent whatsoever in the Premises. DCAA's Property, by virtue of this Agreement or MRC's occupancy or use hereunder. DCAA conveys no interest in the DCAA's Property to MRC by this Agreement.
3. Changes to the DCAA's Property. The DCAA's Director (the "Airport Director") shall designate the precise description, location and dimensions of the portion of the DCAA's Property that MRC may use under this Agreement and shall advise MRC of same. The Airport Director shall have the right to unilaterally modify, change, increase or diminish the size and location of the DCAA's Property at any time in the Airport Director's sole and exclusive discretion, and such change shall be effective upon notice of same by the Airport Director to MRC.

4. Maintenance. The DCAA's Property shall be maintained by MRC, at MRC's sole cost and expense.

5. Term; Renewal. The initial term of this Agreement is three (3) years starting on the Effective Date. After the initial term of this Agreement, this Agreement shall be automatically extended for additional periods of one (1) year each, upon the same terms and conditions of the initial term of this Agreement, unless one Party gives to the other Party thirty (30) days' written notice before the end of the term about to expire in order that this Agreement shall not be so extended. This paragraph is subject to the early termination provision in Section 10 herein.

6. No Improvements. MRC shall not improve the DCAA's Property.

7. County Water. In the event that Dare County sends bills to the DCAA for County water service supplied by the County to the DCAA's Property and utilized by MRC and its gardeners, MRC agrees to reimburse DCAA for all such billed water charges.

8. Access. MRC and the gardeners who contract with MRC shall only use such access road to the DCAA's Property as shall be designated in writing by the Airport Director to MRC.

9. Parking or Storage of Equipment, Tools or Materials. MRC and its gardeners shall not allow vehicles, equipment, gardening tools, materials or supplies, or any personal property to be left on the DCAA's Property unattended or overnight, except for the small garden shed owned by MRC that contains donated equipment and tools, which shall be kept locked.

10. Early Termination. Either Party may terminate this Agreement at any time and for any reason (or no reason) prior to the expiration date of the current term by giving the other Party at least thirty (30) days written notice of such early termination.

11. No Fencing. MRC or its gardeners shall not install any fencing on the DCAA's Property.

12. Use. MRC and the gardeners under contract with MRC shall use the DCAA's Property for the sole purpose of installing and maintaining private-use gardens. Garden plots shall be used only for growing vegetables and flowers for the gardener's own use or for donation to charitable organizations. Growing vegetables and flowers for commercial use is prohibited. Garden products shall not be sold. The planting of fruit trees may only be permitted if approved in advance by the Airport Director in writing and in each instance. Notwithstanding the foregoing, MRC shall not permit any fruit tree that is existing on the DCAA's Property as of the date of this Agreement or planted with permission after the date of this Agreement, to grow to more than fifteen (15) feet tall measured from ground level. Other than fruit trees that are planted and maintained in compliance with the requirements of this Paragraph 12, the planting of trees on the DCAA's Property is prohibited.

13. No Use of Chemicals. There shall not be any use of chemical pesticides, herbicides, weed killers, artificial fertilizers, insecticides, and chemical fertilizers on the DCAA's Premises. Use of raw human or animal waste including manure is not allowed due to environmental and health concerns; however, fully composted manures such as steer or chicken manures are allowed. Non-synthetic fertilizers such as fish meal, bone meal, kelp meal, may be used.

14. No Pets. Dogs, cats and other pets are not allowed on the DCAA's Property at any time.

15. Selection of Gardeners. DCAA must approve the criteria used by MRC to select those persons who MRC will allow to plant a garden on the DCAA's Property. Such selection criteria shall not discriminate on the basis of race, color, ethnicity, national origin, gender, disability, age, religion, marital status, pregnancy, sexual orientation or gender identity.

16. Management of Gardeners. MRC shall have the sole and exclusive duty to manage the gardens and gardeners who use the gardens on the DCAA's Property. DCAA must approve MRC's rules and regulations that pertain to the gardeners and use of the DCAA's Property for gardens.

17. No Loud Noises. MRC shall not permit its gardeners to use noisy equipment, or to play loud radios or other amplified sound equipment, at any time. MRC and its gardeners shall be respectful of the persons who occupy homes near the DCAA's Property.

18. No Use of Alcohol or Illegal Substances. There shall be no use of alcoholic beverages or illegal substances on the DCAA's Property at any time.

19. Removal of Dead Plants. MRC or its gardeners shall promptly remove all dead plants and gardening materials after each growing season.

20. Indemnification. MRC shall indemnify DCAA and hold DCAA harmless from any and all liability for personal injuries, property damage, or for loss of life or property resulting from, or in any way connected with, the condition or use of the DCAA's Property by MRC, or the MRC's gardeners, invitees, customers, or guests of the MRC.

21. Modification. The terms, covenants, conditions and provisions of this Agreement may not be extended, abrogated, modified, rescinded or amended in whole or in part only except with the consent of DCAA and MRC and only in writing.

22. Applicable Law. This Agreement shall be governed in all respects by the laws of the State of North Carolina.

23. Parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. As used herein, words in

singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

24. Notices. Any notices or other communications to be given hereunder shall be in writing and shall be deemed to have been given if delivered in person or mailed by United States certified or registered mail, postage prepaid, return receipt requested, to the parties at the addresses stated above, or to such other address as shall be given in writing by one Party to the other.

25. Waiver. No waiver of any condition, covenant or restriction of this Agreement by either Party shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant of this Agreement.

26. Captions. The captions of the various paragraphs of this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

27. No Recordation. The parties agree that neither Party will record this Agreement in the public land records of Dare County, North Carolina.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, all as of the day and year first above written.

DCAA:

MRC:

DARE COUNTY AIRPORT AUTHORITY

MANTEO ROTARY CLUB, a North Carolina nonprofit corporation

BY: _____
Charles Davidson, Chair

BY: _____(SEAL)

Name: _____

Title: _____

(Affix Corporate Seal)

ATTEST:

Marge Stauffer, Clerk to the Board

This instrument has been preaudited
in the manner required by the Local
Government Budget and Fiscal Control Act.

Prepared by Robert B. Hobbs, Jr., Attorney

Signature of Finance Officer

CONTRACT
FOR ENGINEERING AND RELATED WORK
DARE COUNTY REGIONAL AIRPORT

THIS CONTRACT (the "Contract"), effective as of February 1, 2023, by and between DARE COUNTY AIRPORT AUTHORITY, a body politic and corporate under the laws of the State of North Carolina, PO Box 429, 410 Airport Road, Manteo, NC 27954, hereinafter called the OWNER, and TALBERT & BRIGHT, INC., a corporation organized and existing under the laws of the State of North Carolina, 4810 Shelley Drive, Wilmington, NC 28405, hereinafter called the ENGINEER.

WHEREAS, OWNER intends to perform projects that may include, but are not limited to: land acquisition and obstruction removal, update the ALP and/or Master Plan, apron rehabilitation, hangar taxiway, hangar construction, maintenance building, road relocation, construct runway extensions and/or runway safety areas, runway and taxiway lighting systems, terminal building improvements, AWOS relocation, NAVAIDS, extension of taxiway A, inspect and rehabilitate storm drain pipe, drainage and storm water improvements, hangar access roads, utilities, fueling systems, as well as perform grant administration, engineering, environmental studies, architectural services, feasibility studies, land use planning, and surveying as needed engineering, planning, and general consulting services and other improvements and such other work for OWNER as may be mutually agreed to, each such work herein after called a "Project," and

WHEREAS, OWNER desires to engage a qualified and experienced engineer to perform professional engineering services as hereinafter set forth, and ENGINEER has represented that it is qualified to provide such services and desires to do so.

NOW THEREFORE, OWNER and ENGINEER, for the considerations hereinafter set forth, agree as follows:

SECTION I - BASIC SERVICES

A. General

1. This Contract shall cover the basic terms of services to be rendered by ENGINEER for OWNER relating to such Projects for which OWNER may engage ENGINEER for assistance. Each Project will be described in detail in a Work Authorization to be prepared by ENGINEER for review, approval and signature by OWNER. Each Work Authorization shall specify the Project, the scope of the work, the ENGINEER's rates negotiated and approved by OWNER and ENGINEER, such other terms and conditions required under this Contract, and such additional terms and conditions as may be agreed upon by ENGINEER and OWNER. The Work Authorizations approved by ENGINEER and OWNER shall become supplements to this Contract.

2. For the purpose of this Contract, the Airport Director is hereby designated as the OWNER's representative to act for the OWNER in giving approvals and authorizations for the OWNER as hereinafter required and set forth. The ENGINEER will be notified in writing of any change in the OWNER's representative.

3. When mutually agreed by the OWNER and the ENGINEER, and after having received from the OWNER written approval of the ENGINEER's Work Authorization, including an estimated cost for specified services, the ENGINEER shall provide professional engineering services as described in this Contract.

B. Project Development Phase: After OWNER and ENGINEER have signed a Work Authorization for a Project, the ENGINEER shall:

1. Consult with OWNER, and state and federal government agencies (when required) to clarify and define the requirements for the Project and review available data.

2. Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the types described in **Section II** of this Contract. ENGINEER shall also assist the OWNER in contracting for such services.

3. Prepare preliminary design necessary to determine the type, size, and scope of the Project based upon projected aviation activity and current airport standards in effect at the date of this Contract.

4. Prepare preliminary opinion of probable cost for the Project. It is recognized the ENGINEER does not have direct control over the cost of many of the project elements (such as construction, land acquisition, permitting, etc.), which can affect the final project cost.

5. Make minor revisions to the airport layout plan as necessary to reflect the details of the Project.

6. Prepare pre-applications for federal and/or state assistance grants for funding of the Project.
 7. Furnish copies of drawings, sketches, forms and reports as appropriate to the OWNER for submission to government agencies.
 8. Assist the OWNER in obtaining funding or financing for the Project.
 9. Perform additional work as described and required by the work authorizations.
- C. Design Phase: After OWNER and ENGINEER have signed a Work Authorization for a Project, the ENGINEER shall:
1. In consultation with the OWNER and other government agencies through conferences, meetings, or submission of preliminary reports as appropriate, determine the extent of the Project and the design criteria to be used in the final design.
 2. Prepare an engineer's report in accordance with FAA criteria which shall include but not necessarily be limited to:
 - a. An analysis and reasons for the design choices;
 - b. An analysis of the manner in which the work will be accomplished; and
 - c. A Project opinion of probable cost based upon the final design.
 3. Advise the OWNER of needed special services as described in **Section II** of this Contract and assist the OWNER in the evaluation and selection of other professionals to provide special services, such as soil borings, laboratory tests and surveys, or provide such services in accordance with this Contract and any related Work Authorization(s).
 4. Prepare final design, contract drawings, specifications, contract documents and any other documents which ENGINEER determines is appropriate for the Design Phase of the Project. Prepare for review and approval by OWNER contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitation to bid and instructions to bidders, and assist in the preparation of other related documents.
 5. Assist OWNER in submitting appropriate documents to state and federal agencies for necessary approvals and permits. ENGINEER shall work with and assist OWNER in identifying permits and license required for each Project.

6. Furnish to the OWNER two (2) copies of the completed documents. Upon OWNER's request, ENGINEER shall also furnish to OWNER an electronic version of the completed documents. OWNER will notify ENGINEER of any questions or issues associated with the electronic document(s) within 30 days of receipt by OWNER.

7. Perform additional work as described and required by Work Authorizations.

D. Construction Phase: During the Construction Phase, the ENGINEER shall provide the following services:

1. Assistance to the OWNER in obtaining bids (once), tabulations, and analysis of bid results, and furnishing recommendations in connection with the award of construction contracts.

2. Assistance in preparation of formal contract documents for the award of construction contracts.

3. Consult with and advise the OWNER and act as provided in the approved construction specifications and contract documents.

4. Make visits to the site at intervals appropriate to the various stages of construction to observe as experienced and qualified design professionals the progress and quality of the executed work of contractor(s) and to determine in general if such work is proceeding in accordance with the contract documents. ENGINEER shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of such work. ENGINEER shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by the contractor(s) or the safety precautions and programs incident to the work of the contractor(s). ENGINEER's efforts will be directed toward providing a greater degree of confidence for OWNER that the completed work of the contractor(s) will conform to the contract documents, but ENGINEER shall not be responsible for the failure of the contractor(s) to perform the work in accordance with the contract documents. During such visits and on the basis of on-site observations, ENGINEER shall keep OWNER informed of the progress of the work, shall endeavor to guard OWNER against defects and deficiencies in such work and may recommend to OWNER disapproval or rejection of work failing to conform to the contract documents.

5. Review and approve (or take other appropriate action in respect of) shop drawings and samples, the results of tests and inspections and other data which each contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the contract documents. Such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto; or to determine the acceptability of substitute materials and equipment proposed by the contractor(s); or to receive

and review (for general content as required by specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by the contractor(s) in accordance with the contract documents.

6. Review laboratory, shop and mill test reports and prepare a tabulation or summary of laboratory test results to assist in monitoring the quality of construction.

7. Recommend to OWNER change orders and/or supplemental agreements to the construction contract incidental to existing field conditions or improvements in the project design. Prepare estimates of cost or saving from proposed change order(s), prepare change order(s) along with basis for recommendation and negotiate on behalf of OWNER with the contractor to arrive, if possible, at an appropriate compensation resulting from the proposed revisions. The ENGINEER is not required by this provision to accomplish extensive design revisions and drawings resulting from a change in project scope or major changes in design concept previously accepted by the OWNER where changes are due to causes beyond the ENGINEER's control.

8. Advise the OWNER of needed special services and assist the OWNER in acquisition of such services as appropriate.

9. Based upon ENGINEER's on-site observations as an experienced and qualified design professional and based upon a review of applications for payment and the accompanying data and schedules, determine the amounts owing to the contractor(s) and recommend in writing payments by OWNER to the contractor(s) in such amounts. Such recommendations of payment will constitute ENGINEER's representation to OWNER, based on such observation and review, that (i) the work has progressed to the point indicated, (ii) that to the best of ENGINEER's knowledge, information and belief, the quality of such work is in accordance with the contract documents, subject to an evaluation of such work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the contract documents, and to any qualifications stated in ENGINEER's recommendation, and (iii) that payment of the amount recommended is due to the contractor(s). By recommending any payment, ENGINEER will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by ENGINEER to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incident thereto or that ENGINEER has made an examination to ascertain how or for what purposes any contractor has used the monies paid on account of the contract price, or that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claim, security interest or encumbrance, or that the contractor(s) have completed their work exactly in accordance with the contract documents.

10. Prepare OWNER's applications for partial and final payments for submission to government agencies.

11. Conduct an inspection to determine if the Project is substantially complete. Conduct a final inspection to determine if the work has been completed in accordance with the contract documents and if each contractor has fulfilled all of its obligations thereunder. Once ENGINEER determines the contractor has performed the work in substantial accordance with the contract documents, after conducting the final inspection, ENGINEER shall provide to OWNER in writing its recommendation regarding OWNER's final payment to each contractor, and shall provide written notice to OWNER and the contractor(s) whether the work is acceptable (subject to any conditions therein expressed), but such recommendation and notice shall be subject to the limitations expressed herein.

12. ENGINEER shall prepare and deliver to OWNER a set of record drawing prints showing those changes made during the construction process, based upon the marked-up prints, drawings and other data furnished by the contractor(s) to ENGINEER and which ENGINEER considers material.

13. The ENGINEER shall not be responsible for the acts or omissions of any contractor, or subcontractor, or any of the contractor(s) or subcontractor(s)' agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise performing any of the contractor(s)' work; however, nothing contained herein shall be construed to release the ENGINEER from liability for failure to perform properly duties undertaken by the ENGINEER under this Contract.

SECTION II - SPECIAL SERVICES

- A. Upon the advance written request of the OWNER in each instance, the ENGINEER shall perform such special services as required by the OWNER to complete each Project. At the option of the OWNER, special services may be provided by the OWNER through contracts with other professionals or may be provided by the ENGINEER. When the ENGINEER is requested to provide special services, such services may be provided by ENGINEER's own forces or through subcontracts with other professionals. Compensation for Special Services provided by ENGINEER shall be in accordance with one of the methods identified in Section V - Payment for Services of this Contract.
- B. For each project, OWNER may request in writing special services from ENGINEER including, but are not necessarily limited to the following:
1. When requested, assist the OWNER in determining funding justification or assist in obtaining financing for the project, including attendance at meetings with funding agencies and preparation of airport development preliminary cost opinions, sketches, schedules, and narratives in support of capital improvement project funding requests.
 2. Appraisals, environmental audits, and relocation services for property acquisition.

3. Special environmental studies and analyses.
4. Updating or revising the Airport Layout Plan documents.
5. When requested, perform review of Contractor certified payrolls and sales tax reports.
6. Land surveys as necessary to establish property boundaries required for property acquisition purposes or preparation of property maps.
7. Soils and material investigations including test boring, laboratory testing of soils and materials, related analyses and recommendations.
8. Engineering surveys (for design and construction) to include topographic surveys, base line surveys, cross section surveys, etc.
9. Technical inspection of construction by full time Resident Project Representative, as required and approved by the OWNER. Section IV of this Contract contains provisions relating to the Resident Project Representative.
10. Reproduction of additional copies of reports, contract documents and specifications above the specified number furnished in Basic Services.
11. Assistance to the OWNER as expert witness in litigation arising from development or construction of each Project.
12. The accomplishment of special surveys and investigations, and the preparation of special reports and drawings as may be requested or authorized in writing by the OWNER in connection with each Project.
13. Extra work created by design changes, after advance written approval of plans and specifications by the OWNER, and beyond the control of the ENGINEER, that may be requested or authorized in advanced and in writing by the OWNER in connection with each Project.
14. Extra work required to revise or prepare contract documents, plans and specifications to facilitate the award of more than one construction contract; in the event the OWNER adopts such construction program.
15. Services resulting from significant changes in extent of each Project or its design including but not limited to, changes in size, complexity, OWNER's schedule, or character of construction or method of financing, and revising previously accepted studies, reports, design documents or contract documents when such studies, reports, design documents or contract documents when such revisions are due to causes beyond ENGINEER's control.
16. Providing renderings or models for OWNER's use.

17. Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for each Project; detailed quantity surveys of material, equipment and labor and audits or inventories required in connection with construction performed by OWNER.

18. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of the contractor(s), (3) prolongation of the contract time of any prime contract by more than five (5) business days, (4) acceleration of the process schedule involving services beyond normal working hours, (5) default by the contractor(s), and (6) the furnishing of a resident project representative other than one furnished by ENGINEER under Section IV of this Contract.

19. Preparation of operating and maintenance manuals; protracted or extensive assistance in the utilization of any equipment or system (such as initial start-up, testing, adjusting and balancing); and training personnel for operation and maintenance.

20. Services after completion of the construction phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.

SECTION III - RESPONSIBILITIES OF THE OWNER

A. As a party to this Contract, the OWNER shall:

1. Make available for ENGINEER's use all record drawings, maps, soil data, etc. in OWNER's possession.
2. Designate a person to act with authority on OWNER's behalf and respond in a timely manner to submissions by ENGINEER, and providing approvals and authorizations as appropriate so that work may continue at a normal pace.
3. Pay all costs associated with special services expressly authorized by the OWNER, and all costs associated with obtaining bids from contractors.
4. When required provide independent fee review and record of negotiations.
5. Furnish ENGINEER as required for performance of ENGINEER's basic services, any of the following data in the possession of OWNER: (i) data prepared by or services of others, including without limitation, core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; (ii) appropriate professional interpretations of all the foregoing; (iii) environmental assessment and impact

statements; (iv) property, boundary, easement, right-of-way, topographic and utility surveys and property descriptions; (v) zoning, deed and other land use restrictions; and (vi) other special data or consultations not covered herein, all of which ENGINEER may rely upon in performing its services.

6. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform its services.

7. Examine all Documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination, and render decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

8. Furnish approvals and permits from all governmental authorities having jurisdiction over each Project and such approvals and consent from others as may be necessary for completion of each Project.

9. Provide such accountings, independent opinions of probable cost and insurance counseling services as may be required for each Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to each Project including any issues that may be raised by the contractor(s), such auditing services as OWNER may require to ascertain how or for what purpose any contractor has used the monies paid to such contractor(s) under the construction contract, and such inspection services as OWNER may require to ascertain that the contractor(s) are complying with any law, rule or regulation applicable to the contractor(s)' performance of the work on each Project.

10. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of the ENGINEER's services, or any defect in the work of the contractor(s).

SECTION IV - RESIDENT PROJECT REPRESENTATIVE

- A. ENGINEER may furnish a Resident Project Representative, assistants and other field staff to a Project to assist ENGINEER in observing performance of the work of a contractor. The Resident Project Representative will be hired or retained by ENGINEER, and will be an employee or independent contractor of ENGINEER, in the sole discretion of ENGINEER.
- B. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work; but the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or

responsibility for a contractor's failure to perform the work in accordance with the contract documents.

- C. The duties and responsibilities of the Resident Project Representative are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction contract documents, and are further described as follows:

1. The Resident Project Representative is ENGINEER's agent and representative at the site and will solely act as directed by and under the sole supervision of ENGINEER. The Resident Project Representative will not have any duty to confer with OWNER except as directed or approved by ENGINEER. The Resident Project Representative's involvement in matters pertaining to the on-site work shall in general be with the ENGINEER and the contractor, keeping OWNER advised as necessary. The Resident Project Representative's contact with subcontractors shall only be through or with the full knowledge and approval of the contractor.

2. OWNER shall cooperate with the ENGINEER'S Resident Project Representative by providing to the Resident Project Representative such additional details or information as may be requested by ENGINEER or by the Resident Project Representative for proper execution of the work, according to the contract documents.

3. ENGINEER or the Resident Project Representative shall immediately report to OWNER the occurrence of any accident at or involving the Project.

- D. Limitations of Authority. OWNER acknowledges and agrees that the Resident Project Representative shall not have the power or authority to do any of the following:

1. To authorize any deviation from the contract documents or substitution of materials or equipment, unless authorized by ENGINEER.

2. To exceed limitations of ENGINEER's authority as set forth in the contract documents.

3. To undertake any of the responsibilities of the contractor, subcontractors or the contractor's superintendent.

4. To advise or issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the contract documents.

5. To advise on, issue directions regarding or assume control over safety precautions and programs in connection with the work.

6. To accept shop drawing or sample submittals from anyone other than from the contractor.

7. To authorize OWNER to occupy a Project in whole or in part until completion of the Project.
8. To participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

SECTION V - PAYMENT FOR SERVICES

- A. The OWNER agrees to compensate the ENGINEER for services performed in accordance with one of the following methods as hereinafter set forth. The method of payment and the amount for specified services for each Project shall be detailed in a Work Authorization, which shall be prepared by the ENGINEER and submitted to the OWNER for review and approval. OWNER shall have the right to request from ENGINEER changes in any proposed Work Authorization. OWNER is not required by this Contract to accept any or all of ENGINEER's Work Authorizations. The receipt from OWNER of a Work Authorization approved and signed by OWNER in each instance will constitute the ENGINEER's Notice-to-Proceed.
- B. The ENGINEER shall not undertake any work prior to the receipt of an approved Work Authorization executed and approved by the OWNER.
- C. Methods of Payment: OWNER and ENGINEER shall agree and approve one or more of the following methods of payment for each phase of the work, and such method of payment shall be stated in the approved and signed Work Authorization. Each method of payment is defined as follows:
 1. Per Diem:

Under this method of payment, the ENGINEER's compensation will be equal to the days expended on a Project multiplied by the rates established in the approved Work Authorization, which shall be inclusive of all overhead and profit. The approved Work Authorization shall provide whether direct nonsalary expenses shall be paid by OWNER separately or whether such direct nonsalary expenses are included in the per diem rate.
 2. Hourly Rate:

Under this method of payment, the ENGINEER's compensation will be equal to the actual hours expended on a Project multiplied by the rates established in the approved Work Authorization, which shall be inclusive of all overhead and profit. ENGINEER may establish in the approved Work Authorization a separate charge for direct nonsalary expenses.
 3. Lump Sum:

For work that can be defined and delineated in advance, payment to the ENGINEER will be made on the basis of a lump sum as stated in the approved Work Authorization. The agreed lump sum shall represent full payment for all

payroll, overhead, profit, and other direct nonsalary expenses as hereinafter described. The lump sum will neither increase nor decrease unless there should be a change in the scope, complexity, or duration of the work as evidenced by a written and signed Work Authorization Amendment. In that event, the lump sum would be subject to renegotiation and reflected in a Work Authorization Amendment approved and signed by OWNER.

4. Fixed Fee:

Under this method of payment, when subconsultant services are required for the accomplishment of a project, the ENGINEER will negotiate a fixed-fee with the OWNER to compensate the ENGINEER for benefits provided to the OWNER, and willingness to serve for providing the subconsultant services.

D. Terms and Conditions: The basis of compensation described is based upon the following terms and conditions:

1. Actual time charged to the Project by ENGINEER will include the actual time that the applicable employees of ENGINEER are engaged in actual work on the Project at the ENGINEER's office, at the site of the Project, or travel status solely in connection with the Project.
2. Only the personnel of ENGINEER that are needed and required to accomplish the services in keeping with the prescribed schedule shall be assigned to the Project.
3. Charges will not be made to the Project during periods of sickness, vacation or at any other times when ENGINEER's personnel assigned are not gainfully employed on the Project.
4. It is recognized that the ENGINEER reserves the right to make annual or periodic adjustments to the standard bill rates.

E. Invoicing for ENGINEER's Services: Invoices sent by ENGINEER to OWNER shall be due and payable within 30 days after the date of invoice. A service charge of one percent (1.0%) per month shall be added to all accounts which have not been paid within 30 days after the date of invoice.

SECTION VI - MISCELLANEOUS PROVISIONS

- A. Estimates: Since the ENGINEER has no control over the cost of labor and materials or over competitive bidding market conditions, the estimates of construction cost provided for in each Work Authorization are to be made on the basis of experience and qualifications. ENGINEER does not guarantee the accuracy of such estimates as compared to the contractor's bids of a Project's construction cost.
- B. Extra Work: For purposes of this Contract, the term "Extra Work" shall mean (i) significant changes in general scope of a Project or its design, including but not

necessarily limited to, changes in size, complexity, Project schedules, character of construction, revisions to previously accepted studies, reports, design documents or contract documents and for preparation of documents for separate bids, when such revisions are due to causes beyond the ENGINEER's control and when requested or authorized by the OWNER, and/or (ii) special services as identified in Section II - Special Services compensation for extra work and any associated special services in accordance with one of the methods identified in Section V - Payment for Services. It is mutually understood and agreed that if Extra Work from the ENGINEER is needed, OWNER will compensate the ENGINEER for such Extra Work, but only if prior to the ENGINEER providing such Extra Work, OWNER approves and signs a Change Order to the Work Authorization.

- C. Reuse of Documents: All Documents prepared by ENGINEER pursuant to this Contract, are instruments of service in respect of each Project. The Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of a Project or on any other Project. Any reuse of the Documents without written verification or adaptation by ENGINEER for the specific purposes intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER. OWNER shall indemnify, defend and hold harmless ENGINEER from all claims, damages, losses and expenses including attorney's fees arising out of or resulting from OWNER's use of the Documents for any purposes other than for the Project for which the Documents were intended to be used. If OWNER expressly requests ENGINEER to verify or adapt the Documents for use in another Project, OWNER will compensate ENGINEER at rates to be agreed upon by OWNER and ENGINEER. Notwithstanding these provisions, if OWNER requests from ENGINEER copies of any drawings of other Documents in addition to the two (2) sets of copies of the Documents provided by ENGINEER to OWNER as part of this Contract pursuant to Section I(C)(6) of this Contract, ENGINEER agrees to provide to OWNER such additional copies of the Documents at the actual cost of reproduction.
- D. Responsibility of ENGINEER:
1. ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of final plans, specifications, final reports and other services furnished by the ENGINEER under this Contract.
 2. Approval by the OWNER or FAA of Documents and incidental engineering work or materials furnished hereunder shall not in any way relieve the ENGINEER of his responsibility for the technical adequacy of ENGINEER's work.
- E. Period of Services:
1. The provisions of this Section and the various rates of compensation for ENGINEER's services provided for in this Contract and in each Work Authorization have been agreed to in anticipation of the orderly and continuous progress of each Project through completion of the construction phase. ENGINEER's obligation to render services hereunder will extend for a period

which may reasonably be required for the design, award of contracts and construction of each Project.

2. If OWNER requests significant modifications or changes in the extent of the Project or the time of performance of ENGINEER's services, then ENGINEER shall have the right to submit and obtain an approved work authorization amendment prior to proceeding with the work.

3. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Contract.

4. If ENGINEER's services for design or during construction of a Project are delayed or suspended in whole or in part for reasons beyond ENGINEER's control, ENGINEER shall on written demand to OWNER (but without termination of this Contract) be paid as provided for in Section V. If such delay or suspension extends for more than six (6) months for reasons beyond ENGINEER's control, or if ENGINEER for any reason is required to render services more than six (6) months after substantial completion, the various rates of compensation provided for in the Work Authorization shall be subject to an increase not to exceed ten percent (10%) per year. ENGINEER shall not impose such rate increase on OWNER until and unless ENGINEER first provides OWNER at least sixty (60) days' advance written notice in each instance of such rate increase before such rate increase becomes effective.

F. Termination

1. This Contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligation under this Contract or under any Work Authorization contemplated by this Contract, through no fault of the terminating party provided that no such termination may be effected unless the other party is given:

a. Not less than ten (10) calendar days written notice of intent to terminate; and

b. An opportunity for consultation with the terminating party prior to termination.

2. This Contract may be terminated in whole or in part in writing by the OWNER for its convenience provided that such termination is for good cause (such as legal or financial reasons or major changes in the work program requirements) and ENGINEER is given:

a. Not less than ten (10) calendar days written notice of the intent to terminate; and

b. An opportunity for consultation with the terminating party prior to termination.

3. This Contract may be terminated in whole or in part in writing by the OWNER for its convenience provided that such termination occurs at the completion of a phase of work or Work Authorization and ENGINEER is given:

a. Not less than ten (10) calendar days written notice of the intent to terminate; and

b. An opportunity for consultation with the terminating party prior to termination.

4. Upon receipt of a termination notice, the ENGINEER shall promptly discontinue all services relating to the Project (unless the notice directs otherwise) and deliver or otherwise make available to the OWNER all Documents and such other information and materials as may be accumulated by the ENGINEER performing this Contract, whether completed or in process.

5. If this Contract is terminated by either party, the ENGINEER shall be paid for services rendered and for any expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by the ENGINEER relating to financial commitments to third parties which have become firm prior to termination. If the termination of the Contract occurs at the conclusion of one phase and prior to authorization of the OWNER to begin the next phase, payment by the OWNER of the completed phase shall be considered full compensation due the ENGINEER. If Contract is terminated by the OWNER for default of the ENGINEER, the amount due the ENGINEER may be adjusted to the extent of any additional cost incurred by the OWNER as a result of the ENGINEER's default.

G. Audit and Access to Records: ENGINEER shall maintain an acceptable cost accounting system. ENGINEER agrees to provide OWNER, 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. ENGINEER 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.

H. Civil Rights Act of 1964, Title VI: During the performance of this Contract, ENGINEER, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations. ENGINEER shall comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities as they may be amended from time to time which are herein incorporated by reference and made a part of this Contract.

2. Nondiscrimination. ENGINEER, 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. ENGINEER shall not participate either directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Contract covers a program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, including procurements of materials and equipment. In solicitations, either by competitive bidding, or negotiation made by ENGINEER for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier shall be notified by ENGINEER of ENGINEER's obligations under this Contract and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.
4. Information and Reports. ENGINEER shall provide 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 OWNER or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of ENGINEER is in the exclusive possession of another who fails or refuses to furnish this information, ENGINEER will so certify to the OWNER or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance. In the event of ENGINEER's noncompliance with the nondiscrimination provisions of this Contract, the OWNER shall impose such Contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to ENGINEER under the Contract until ENGINEER complies, and/or
 - b. Cancelling, termination, or suspension of the Contract, in whole or in part.
6. Incorporation of Provisions. ENGINEER shall include the provisions of Section VI(L), subparagraphs 1 through 5 of this Contract, in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. ENGINEER will take action with respect to subcontract or procurement as the OWNER or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the ENGINEER becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, ENGINEER may request the OWNER to enter into such litigation to protect the interests of the OWNER. In addition, ENGINEER may request the

United States to enter into such litigation to protect the interests of the United States.

7. During the performance of this contract, the ENGINEER, for itself, its assignees, and successors in interest 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).

I. DISADVANTAGED BUSINESS ENTERPRISES (DBE):

1. Contract Assurance: ENGINEER or any subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. ENGINEER shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by ENGINEER 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 recipient deems appropriate.

2. Prompt Payment ENGINEER agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the OWNER. ENGINEER agrees further to return retainage payments to each subcontractor within 60 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 OWNER. This clause applies to both DBE and non-DBE subcontractors.

J. RIGHTS TO INVENTIONS: All rights to inventions and materials generated under this Contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this Contract is executed.

K. TRADE RESTRICTION CLAUSE:

1. ENGINEER, by submission of an offer and/or execution of a contract, certifies that it:
 - 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 published by the Office of the United States Trade Representative (USTR);
 - 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 on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
 - c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.
2. Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If ENGINEER knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through OWNER cancellation of the Contract at no cost to the Government.
3. Further, ENGINEER agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. ENGINEER may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.
4. ENGINEER shall provide immediate written notice to OWNER if ENGINEER learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to ENGINEER if at any time it learns that its certification was erroneous by reason of changed circumstances.
5. This certification is a material representation of fact upon which reliance was placed when making the award, if it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through OWNER cancellation of the Contract or subcontract for default at no cost to the Government.
6. 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 are not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

7. 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.

- L. **CERTIFICATION REGARDING DISBARMENT:** The ENGINEER certifies, by acceptance of this contract, that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction. The ENGINEER, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", will verify that 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. The ENGINEER will accomplish this by 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.

- M. **Seismic Safety:** In the performance of design services for new buildings and additions to existing buildings under this contract that are financed in whole or in part through the Airport Improvement Program, the ENGINEER agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the ENGINEER agrees to furnish the OWNER a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.
- N. **Texting When Driving:** ENGINEER will ban text messaging while driving motor vehicles while performing work activities associated with the project. The ENGINEER will include the substance of this clause in sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.
- O. **Prohibition of Segregated Facilities:** The ENGINEER 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. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract. "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 restrooms or necessary dressing or sleeping areas provided to assure privacy between the sexes. The ENGINEER shall include this clause in every subcontract that is subject to the Equal Opportunity clause of this contract.

- P. Clean Air and Water Pollution Control: ENGINEER agrees to comply with applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The ENGINEER agrees to report any violation to the OWNER immediately upon discovery. The OWNER assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. ENGINEER must include this requirement in all subcontracts that exceeds \$150,000.
- Q. Certification Regarding Lobbying. The ENGINEER certifies by signing and submitting this proposal, 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 the ENGINEER, 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) and that all sub-recipients shall certify and disclose accordingly.
- R. RELATIONSHIP OF THE PARTIES. The parties intend that an independent contractor relationship will be created by this Contract. OWNER is interested only in the results to be achieved, and the conduct and control of the work will lie solely with ENGINEER except as provided otherwise by this Contract. ENGINEER is not to be considered an agent or employee of OWNER for any purpose, and the employees of ENGINEER are not entitled to any of the benefits that OWNER or Dare County, North Carolina provides for its or their employees. It is understood that OWNER does not agree to use

ENGINEER exclusively. It is further understood that ENGINEER is free to contract for similar services to be performed for other persons while ENGINEER is under contract with OWNER.

S. INDEMNIFICATION.

1. ENGINEER shall indemnify and hold harmless OWNER, its officers and employees, against all liability or loss, and against all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature to the extent caused by or arising out of the negligent acts, errors or omissions of ENGINEER, or violation of any statute, ordinance or regulation. ENGINEER shall also indemnify OWNER against all liability and loss in connection with, and shall assume full responsibility for, payment of all Federal, State and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to ENGINEER's employees, including any subcontractors, engaged in performance of this Contract.
2. OWNER shall indemnify and hold harmless ENGINEER, its officers and employees, against all liability or loss, and against all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature to the extent caused by or arising out of the negligent acts, errors or omissions of OWNER, or violation of any statute, ordinance or regulation. OWNER shall also indemnify ENGINEER against all liability and loss in connection with, and shall assume full responsibility for, payment of all Federal, State and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to OWNER's employees, including any subcontractors, engaged in performance of this Contract.

T. PROFESSIONAL LIABILITY INSURANCE. ENGINEER shall maintain at its own expense Professional Liability Insurance, issued by a responsible insurance company licensed to do business in the State of North Carolina. The insurance shall afford limits of liability of at least \$1,000,000 for each claim and at least \$1,000,000 aggregate.

U. CONFLICTS. In the event of a conflict between this Contract and any Work Authorization or Change Order, this Contract shall control unless the Work Authorization or Change Order expressly provides that a provision of the Work Authorization or Change Order amends a provision of this Contract.

V. SEVERABILITY. Every provision of this Contract is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract.

W. MEDIATION OF DISPUTES.

1. Agreement to Mediate Dispute. The parties will attempt to settle any dispute, claim or controversy arising out of this Contract through consultation and negotiation in good faith and in a spirit of mutual cooperation. If those attempts fail, then the claim or dispute will be mediated by a mutually-acceptable mediator

before either party resorts to arbitration or court action. Mediation is a process in which parties attempt to resolve a dispute by submitting it to an impartial, neutral mediator who is authorized to facilitate the resolution of the dispute, but who is not empowered to impose a settlement on the parties.

2. Demand for Mediation. A demand for mediation must be submitted in writing to the other party. Mediation shall proceed in advance of legal or equitable court proceedings, which shall be stayed pending mediation for a period of 60 days from the date of the demand for mediation, unless stayed for a longer period by agreement of the parties or court order.

3. Selection of Mediator. The parties shall jointly select a mediator within forty-five (45) days after written notice by either party demanding mediation. The mediator shall be a member of the North Carolina State Bar. Failing this joint action, the parties shall each separately designate a mediator and, within fifteen (15) days after their appointment, the two designated mediators shall jointly designate a third mediator. The third mediator shall then become the sole mediator for purposes of this paragraph. The failure of either party to appoint a mediator within the time allowed shall be deemed equivalent to appointing the mediator appointed by the other party. Each mediator shall be disinterested in the subject matter of this Contract.

4. Mediation Procedure. The mediation procedure shall be that which is contained in the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted pursuant to N.C. Gen. Stat. Sec. 7A-38.1 as same may be amended from time to time.

5. Miscellaneous provisions.

a. The mediation fee, if any, shall be divided equally among the parties involved.

b. Each party shall pay its own attorneys' fees and other costs.

c. Before the mediation begins, the parties agree to sign a document limiting the admissibility in arbitration or any civil action of anything said, any admission made, and any documents prepared, in the course of the mediation.

d. If any party commences a court action based on a dispute or claim to which this paragraph applies without first attempting to resolve the matter through mediation, then, in the discretion of the judge, that party shall not be entitled to recover attorneys' fees even if they would otherwise be available to that party in any such court action. However, the filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not in itself constitute a loss of the right to recover attorneys' fees under this provision.

e. The following matters are excluded from the requirement of mediation hereunder: (a) a judicial or non-judicial foreclosure or other action or proceeding to enforce a mortgage, (b) an unlawful detainer action, (c) the filing or enforcement of a mechanic's lien, (d) any matter which is within the jurisdiction of a probate court, (e) good faith efforts to resolve the dispute under these procedures have been unsuccessful, or (f) interim relief from a court is necessary to prevent serious and irreparable injury to one party or to others.

- X. **SUIT COSTS.** In the event either party shall institute an action to enforce the provisions of this Contract, the party prevailing in such action, whether by adjudication, arbitration, or settlement, shall be entitled to recover suit costs, including reasonable attorneys' fees, from the other party.
- Y. **LEGAL ACTIONS.** This Contract shall be enforceable in Dare County, North Carolina, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in the District or Superior Court of Dare County, North Carolina.
- Z. **APPLICABLE LAW.** This Contract shall be construed and interpreted under the laws of the State of North Carolina.
- AA. **PARTIES.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. As used herein, words in singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.
- BB. **NO ASSIGNMENT:** Neither this Contract nor any rights or duties hereunder may be assigned or delegated to any other person or entity by either party, except as provided by this Contract or in a Work Authorization, without the express written consent of the other party in each instance.
- CC. **NOTICES.** Notices hereunder shall be effective and deemed given when deposited in the United States Mails, postage prepaid, registered or certified mail with return receipt requested. Alternatively, the party may use a nationally recognized overnight delivery service. If notice is given by telefax, notice is effective when the telefax is transmitted to the party's telefax number given below, and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next business day. The transmitting party shall follow the telefax with an original notice sent by certified or registered mail or by an overnight service. Notices shall be addressed to the parties at their addresses shown on page 1 of this Contract. Any party may change the address to which such notices are to be addressed by giving each other party notice in the manner herein set forth.
- DD. **NON-WAIVER.** The waiver by either party hereto of a breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision of this Contract.

- EE. COUNTERPARTS. This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.
- FF. HEADINGS. The headings, subheadings and captions in this Contract and in any exhibit hereto are for reference purposes only and shall not affect the meaning or interpretation of this Contract.
- GG. ENTIRE AGREEMENT. This Contract contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all negotiations, prior discussions, agreements, arrangements and understandings, written or oral, relating to the subject matter hereof.
- HH. AMENDMENTS. This Contract may not be amended except by written instrument duly executed by or on behalf of all of the parties hereto.

(signatures begin on the following page)

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract as of the date and year first written above.

OWNER:

ENGINEER:

DARE COUNTY AIRPORT AUTHORITY

TALBERT & BRIGHT, INC.

BY: _____
Charles Davidson, Chair

BY: _____

Name: _____

Title: _____

DARE COUNTY AIRPORT AUTHORITY

Capital Project Ordinance

For

Runway Approach Clearing

at the Dare County Regional Airport

BE IT ORDAINED by the Dare County Airport Authority of Dare County, North Carolina that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following Capital Project Ordinance is adopted:

Section 1: The project authorized is for the Runway Approach Clearing (Design and Bidding Phase): To Provide Project Formulation, Grant Administration, Approach Obstruction Analysis, Design and Bidding Services for the Runway Approach Clearing Project to be financed by the Federal NPE Grant funds from the Fiscal year 2019 funds and by using the In-Kind funds allocated to the Airport as local match.

Section 2: The following budget shall be conducted within the Capital Projects Fund (fund #95).

Section 3: The following revenues are anticipated to be available to complete the project:

State Aid (Grant 36237.35.19.1)	953785-422270-10777	\$ 9,668.00
Trans from DCAA Oper Fund	953785-499400-10777	\$ 1,075.00

Section 4: The following amount is appropriated for the project:

Runway Approach Clearing		
TBI Project # 2301-2203	955785-737620-10777	\$ 10,743.00

Section 5: The Finance Officer is directed to report, on a monthly basis, the financial status of the project as a part of the normal monthly reporting process currently in place.

Section 6: Copies of this capital project ordinance shall be furnished to the Budget Officer, the Finance Officer and to the Clerk to the Dare County Authority.

Adopted this 28th day of March, 2023

[SEAL]

Charles Davidson, Chair DCAA

Margaret L. Stauffer, Clerk to the DCAA

Dare County Airport Authority

FUND 94

BUDGET AMENDMENT #2022-02

F/Y 2022-2023

ACCOUNT	CODE			INCREASE	DECREASE
	Org	Object	Project		

Revenues:

Expenditures:

Transfer to DCAA Capital Project Fund	944785	599500	10777	1,075	
Contingency	944785	550000			1,075

Explanation:

To appropriate local matching funds to the Capital Project Fund
Grant 36237.35.19.1

Approved by:

Board: _____ Date: _____

Manager: _____ Date: _____

(sign in red)

Finance only:

Date entered: _____ Entered by: _____ Reference number: _____

DARE COUNTY AIRPORT AUTHORITY

Capital Project Ordinance

For

Runway Approach Clearing

at the Dare County Regional Airport

BE IT ORDAINED by the Dare County Airport Authority of Dare County, North Carolina that, pursuant to Section 13.2 of Chapter 159 of the General Statues of North Carolina, the following Capital Project Ordinance is adopted:

Section 1: The project authorized is for the Runway Approach Clearing (Design and Bidding Phase): To Provide Project Formulation, Grant Administration, Approach Obstruction Analysis, Design and Bidding Services for the Runway Approach Clearing Project to be financed by the Federal NPE Grant funds from the Fiscal year 2020 funds and by using the In-Kind funds allocated to the Airport as local match.

Section 2: The following budget shall be conducted within the Capital Projects Fund (fund #95).

Section 3: The following revenues are anticipated to be available to complete the project:

State Aid (Grant 36237.35.19.2) 953785-422270-10778	\$ 83,692.00
Trans from DCAA Oper Fund 953785-499400-10778	\$ 0.00

Section 4: The following amount is appropriated for the project:

Runway Approach Clearing		
TBI Project # 2301-2203	955785-737620-10778	\$ 83,692.00

Section 5: The Finance Officer is directed to report, on a monthly basis, the financial status of the project as a part of the normal monthly reporting process currently in place.

Section 6: Copies of this capital project ordinance shall be furnished to the Budget Officer, the Finance Officer and to the Clerk to the Dare County Authority.

Adopted this 28th day of March, 2023

[SEAL]

Charles Davidson, Chair DCAA

Margaret L. Stauffer, Clerk to the DCAA