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**ENGINEERING, PROCUREMENT  
AND CONSTRUCTION AGREEMENT**

by and between

**Ameresco, Inc.**

and

**City of Killeen**

Dated as of July 12, 2023

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**Lighting Retrofit and Solar PV Installation at  
Killeen – Fort Hood Regional Airport**

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## **SCHEDULES**

Schedule 3.2	Owner Acquired Governmental Approvals
Schedule 4.3	Form of Substantial Completion Certificate
Schedule 4.4	Form of Final Acceptance Certificate

## **EXHIBITS**

Exhibit A	Form of Notice to Proceed
Exhibit B	Description of Premises, Facility and Site
Exhibit C	Scope of Work
Exhibit D	Site Guidelines
Exhibit E	Schedule of Values
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## **ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT**

This ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT (this “Agreement”), dated as of July 12, 2023 (the “Effective Date”), is entered into by and between **Ameresco, Inc.**, a Delaware corporation (“Contractor”), and the City of Killeen, Texas, a home-rule city and municipal corporation organized under the law of the State of Texas, having its principal place of business located at 101 N. College Street, Killeen, Texas 76541 (“Owner”), with reference to the following matters:

### **RECITALS**

WHEREAS, Owner wishes to engage Contractor for the design and construction of a lighting retrofit and solar photovoltaic system (the “System”) at Customer’s facilities described in Exhibit B hereto (the “Premises”); and

WHEREAS, Owner desires to retain Contractor to provide, and Contractor desires to provide engineering, procurement, and construction services for the Project, as set forth in this Agreement; and

WHEREAS, Owner has the authority to execute this Agreement and perform obligations hereunder with regard to the Premises; and

NOW, THEREFORE, in consideration of the sums to be paid to Contractor hereunder and the mutual promises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Contractor, intending to be legally bound, hereby agree as follows:

### **ARTICLE 1.**

#### **DEFINITIONS; INTERPRETATION; EXHIBITS**

1.1 Defined Terms Capitalized terms used in this Agreement without other definition shall have the meanings specified in this Section 1.1, unless the context requires otherwise.

“Affiliate” means, with respect to any Person, any other Person controlling, controlled by or under common control with such first Person. For purposes of this definition and the Agreement, the term “control” (and correlative terms) means (1) the ownership of 50% or more of the equity interest in a Person, or (2) the power, whether by contract, equity ownership or otherwise, to direct or cause the direction of the policies or management of a Person.

“Agreement” has the meaning set forth in the preamble to this Agreement, and shall include all Recitals, Exhibits and Schedules hereto along with all attachments, addenda, annexes, and any documents attached hereto or delivered hereunder, each of which is incorporated by reference and made a part of the Agreement for all purposes, and each as may be amended from time to time.

“Agreement Price” has the meaning set forth in Section 5.1.

“Business Day” means any day other than a Saturday, Sunday, or legal holiday in the state in which the Premises are located.

“Change” or “Changes” has the meaning set forth in Section 7.1(a).

“Change in Law” means the enactment, adoption, promulgation, modification (including a written change in interpretation by a Governmental Authority), or repeal after the date of this Agreement of any applicable Law, or the modification (including a written change in interpretation by a Governmental Authority) after the date of this Agreement of any Governmental Authorization issued or promulgated by any Governmental Authority that establishes requirements that affect Contractor’s costs or schedule for performing the Work or the issuance, after the date of this Agreement, of any Governmental Authorization that includes requirements, that affect Contractor’s costs or schedule for performing the Work; provided, however, a change in any national, federal, state, provincial or any other income or franchise tax law shall not be a Change in Law pursuant to this Agreement.

“Change Order” means a written order signed by Owner and Contractor authorizing a change in the Work (in the form of an addition, deletion, or revision to the Work after the Effective Date) or an adjustment in the Agreement Price or schedule for performance or delivery of the Work.

“Closing Deliverables” means those documents set forth on Exhibit G.

“Completion Cost” means the total reasonable and necessary (and reasonably documented) expenses incurred and accrued in completing the Work, including all amounts charged by any replacement contractor to finish the Work based on the obligations such replacement contractor assumes under this Agreement and under any of Contractor’s subcontract(s) or other contractual agreement(s) that Owner elects to have assigned to such replacement contractor.

“Commissioning” means the process of ensuring that the System and all its parts and components are installed, tested and perform in accordance with the Design Documents.

“Commissioning Procedures” are set forth on Exhibit F.

“Contractor” has the meaning set forth in the preamble to this Agreement, and shall include all successors and permitted assigns of Contractor.

“Contractor Event of Default” has the meaning set forth in Section 11.2.

“Contractor Lien” has the meaning set forth in Section 2.5(a).

“Day” or “day” means a calendar day, unless expressly specified otherwise.

“Design Documents” means the package of system descriptions, shop drawings, models, designs, specifications, calculations, notes, permitted drawings, documents required to be submitted in connection with the Governmental Approvals, or similar materials, documents or similar information obtained or prepared by Contractor in accordance with the terms of this Agreement or in connection with the Work.

“Dispute” has the meaning set forth in Section 11.6.

“Effective Date” has the meaning set forth in the preamble to this Agreement.

“Equipment” means all of the equipment, materials, spare parts, machinery, tools, apparatus, structures, supplies and other appurtenances and goods required by the terms of this Agreement to complete the Work and to be incorporated into the System. Equipment shall not include any materials, apparatus or tools owned by Contractor or any Subcontractor that are used to complete the Work but are not contemplated under this Agreement to become part of the Work.

“Equipment Documentation” means copies or originals of all recommended operating specifications, warranties, manuals, test reports, vendor information and all other similar information obtained or prepared, and to be delivered, by Contractor in accordance with the terms of this Agreement.

“Facility” means, collectively, the Owner’s building located on the Premises on which the System is to be installed, as more particularly described in Exhibit B.

“Final Acceptance” means the final acceptance of all the Work by Owner, as demonstrated by the issuance of a Final Acceptance Certificate by Owner.

“Final Acceptance Certificate” has the meaning set forth in Section 4.4.

“Final Acceptance Date” has the meaning set forth in Section 4.4.

“Force Majeure Event” means the occurrence of any act or event beyond the reasonable control of the Party affected that prevents the affected Party from performing its obligations under this Agreement, in full or part, if such act or event is beyond the reasonable control of, and not the result of the fault or negligence of, the affected Party and such Party has been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums), including the following:

(a) drought, flood, earthquake, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, terrorism, accident, or restraint, order or decree by a Governmental Authority, including failure of a Governmental Authority to promptly issue applicable permits or authorizations duly applied for;

(b) adverse weather conditions or natural phenomena, including floods, sustained winds over manufacturer’s installation or warranty requirements, snowfall of more than four (4) inches accumulation at the Site during any twenty-four (24) period, the existence of snow accumulation of more than four (4) inches at the Site during daylight hours in any given twenty-four (24) hour period, explosions or fires arising from natural causes, earthquakes, hailstorms, tornados, hurricanes, landslides, volcanic eruptions, range or forest fires, and unsafe or hazardous conditions arising from such adverse weather conditions or natural phenomena;

(c) strikes, walkouts, lockouts or similar industrial or labor actions (including disruptive union activity meant to force the use of union work force) or disputes;

(d) delays which result from the conduct of the Local Electric Utility.

“Governmental Approvals” means all authorizations, consents, licenses, leases, rulings, certifications, registrations, exemptions, permits, certificates, and approvals from any Governmental Authority.

“Governmental Authority” means any federal, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, public or private utility, administrative agency, authority, body or other entity having jurisdiction over the performance of the Work, the System or its operations, or the health, safety or environmental conditions of the Facility or the Site or otherwise over the Parties.

“Indemnified Parties” has the meaning set forth in Section 10.1.

“Interest Rate” means a fluctuating interest rate per annum equal to the sum of the lesser of (i) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus two (2) percentage points, or (ii) ten percent

(10%). In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by Owner and reasonably acceptable to Contractor. The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of three hundred and sixty-five (365) days and the actual number of days for which such interest is due.

“Invoice” has the meaning set forth in Section 5.4.

“Law” means any constitution, act, statute, law, ordinance, code, rule, regulation, order, objective criteria contained in any applicable permit or approval (which criteria must be met in order for the Work to be performed lawfully) or other legislative or administrative action of any Governmental Authority or a final decree, judgment or order of a court or tribunal, including the requirements set forth in the codes and standards set forth in the Scope of Work.

“Liabilities” has the meaning set forth in Section 10.1.

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Owner at the Facility.

“Notice to Proceed” means the written notice to be delivered to the Contractor by Owner instructing Contractor to commence the Work in the form of Exhibit A hereto.

“Owner” has the meaning set forth in the preamble to this Agreement, and shall include all successors and permitted assigns of Owner.

“Owner Acquired Governmental Approvals” means the approvals listed on Schedule 3.2.

“Owner Event of Default” has the meaning set forth in Section 11.1.

“Owner’s Representative” means the person designated by Owner in accordance with Section 3.3 to act as Contractor’s primary point of contact.

“Parties” means Owner and Contractor.

“Party” means Owner or Contractor.

“Payment and Performance Bond” has the meaning set forth in Section 10.8.

“Person” means any individual, partnership, corporation, association, business, trust, government or political subdivision thereof, governmental agency or other entity.

“Premises” has the meaning set forth in the Recitals.

“Project” means, generally, the design and construction of the System by Contractor under this Agreement.

“Project Manager” means the Project Manager designated by Contractor pursuant to Section 2.4(h).

“Project Schedule” means the Project Schedule attached hereto as Exhibit C.

“Punchlist” means the list of Work uncompleted upon the achievement of Substantial Completion.

“Retainage” has the meaning set forth in Section 5.4.

“Schedule of Values” means the schedule of values set forth in Exhibit E, according to which Contractor earns progress payments against the Agreement Price in accordance with the provisions of Article 5.

“Scope of Work” means the Scope of Work attached hereto as Exhibit C.

“Site” means the location of each part of the System on the Premises as further described in Exhibit B.

“Subcontract” or “Subcontracts” has the meaning set forth in Section 2.6(a).

“Subcontractor” means any Person with whom Contractor enters into an arrangement for the performance of the Work or for the supply of services, equipment or materials to Contractor, including Persons at any tier with whom any Subcontractor has further subcontracted any part of the Work, and the legal or personal representatives, successors, and assigns of such Person.

“Substantial Completion” means that the System meets the requirements of Section 4.3.

“Substantial Completion Certificate” means the form attached hereto as Schedule 4.3.

“System” means, collectively, the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, transformers, disconnects, combiners, switches, wiring devices and wiring, more specifically described in the Scope of Work and interconnected with the Owner and the Local Electric Utility, to be designed and constructed on the Facility by Contractor as further defined in the Scope of Work.

“Warranty Period” has the meaning set forth in Section 8.1.

“Work” means all phases of this Agreement, including engineering and design, procurement, construction, installation of each phase of the Project including start up (including calibration, inspection and startup operation) and testing operation with respect to the System, to be performed by Contractor pursuant to this Agreement. Work includes all labor, materials, equipment, services, and any other items to be used by Contractor or its Subcontractors in the prosecution of this Agreement in accordance with the requirements of the Local Electric Utility, all applicable Laws, and all Governmental Approvals.

1.2 Interpretation As used in this Agreement, the terms “herein,” “herewith” and “hereof” are references to this Agreement, taken as a whole, the terms “includes” or “including” shall mean “including, without limitation,” and references to a “Section,” “Article” or “Exhibit” shall mean a Section, Article or Exhibit of this Agreement, as the case may be, unless in any such case the context requires otherwise. All references to a given Exhibit, agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. A reference to a Person includes its permitted successors and permitted assigns. The singular shall include the plural and the masculine shall include the feminine and neuter, and vice versa.

## **ARTICLE 2.**

### **CONTRACTOR RESPONSIBILITIES**

2.1 General Services of Contractor Upon Contractor’s receipt of a (i) Notice to Proceed and (ii) evidence reasonably acceptable to Contractor that Owner has adequate funds for payment of the Agreement

Price, Contractor shall design, engineer, and procure all Equipment for, and install, test, start-up, and perform related activities for the successful completion of the Work and the delivery of the Project in compliance with this Agreement. The Parties understand that Contractor is obligated to perform all tasks required by the Scope of Work to be necessary to deliver to Owner the completed and fully operational System meeting the requirements of this Agreement. Owner agrees and acknowledges that its obligation to make the payments to Contractor set forth in this Agreement are in no way contingent on the effectiveness of any financing which Owner intends to enter into to pay for the Work.

2.2 Compliance with Laws Throughout the performance of all aspects of the Work, Contractor shall comply with, and shall ensure that each Subcontractor complies with, all applicable Laws and with respect to the System, with all applicable requirements of the Local Electric Utility.

2.3 Environmental and Hazardous Material Regulations Throughout performance of the Work, Contractor shall conduct all operations in compliance with all applicable environmental and hazardous material regulations. In the event Contractor encounters on the Site material reasonably believed to be a toxic or hazardous material, Contractor shall immediately stop work in the affected area and notify Owner of the condition. Until receipt of written instructions from Owner, Contractor shall not resume work in the affected area.

2.4 Specific Services of Contractor Without limiting the generality of Sections 2.1 and 2.2, Contractor shall perform all of the specific tasks in accordance with the Scope of Work:

- (a) Supply and Procurement. Contractor shall at its own expense procure or supply and pay for all of the Equipment, and arrange and pay for the delivery of all of the Equipment to the Site.
- (b) Engineering and Design. Contractor shall at its own expense design and provide engineering services with respect to the Project in a manner that shall be consistent with the actual conditions existing at the Facility and the Site and consistent with the requirements set forth in the Scope of Work.
- (c) Contract Documents. Contractor shall provide to Owner the following:
  - (i) Contractor shall furnish the 100% Design Documents to Owner. If Owner requests any changes to such Design Documents that require or result in an increase in Contractor's cost or that require an extension to the Project Schedule, Owner shall issue to Contractor a Change Order in accordance with Section 7.1.
  - (ii) Contractor shall provide to Owner the following information with respect to the Equipment: vendor information, available equipment specifications, data sheets and any other available information related to the Equipment that is reasonably requested by Owner.
- (d) Construction and Installation. Contractor shall provide, install, complete and pay for all labor, Equipment, tools, supplies, construction equipment and machinery, utilities and consumables, transportation and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the Work. All construction and installation performed by Contractor under this Agreement shall be in accordance with the given manufacturer's written instructions.
- (e) Utilities. Contractor shall provide all of the utilities used or required at the Site in connection with the installation, start up, commissioning and testing of the System.



(f) Commissioning Procedures. Contractor shall at its own expense conduct the Commissioning Procedures in accordance with Section 4.2.

(g) Equipment Training. At Owner's request, Contractor shall provide Owner's personnel with up to two (2) days of on-site training in the use and operation of the System.

(h) Project Manager. Contractor will identify a Project Manager who shall act as Owner's primary point of contact with Contractor with respect to prosecution of the Work and shall be available to meet with Owner as reasonably requested by Owner to discuss the Work or any issue related thereto.

(i) Project Meetings/Status Updates. During the construction of the Project, Contractor shall confer with Owner to review equipment, scope of work, and installation plans that relate to the design and construction of the Project. Also during the course of the Work, Contractor shall provide to Owner monthly reports on the general status and progress of the Work.

(j) Governmental Approvals. Except for Owner Acquired Governmental Approvals, Contractor shall obtain, maintain, and pay for all Governmental Approvals (including all fees and permits) required to perform the Work. Contractor shall promptly provide Owner with copies of all such Governmental Approvals upon Contractor's obtaining such Governmental Approvals. In order to assist Contractor in obtaining such Governmental Approvals, Owner shall provide Contractor with such reasonable assistance as Contractor may request.

(k) Security. During construction, Contractor shall be responsible for the security of Contractor's materials and equipment prior to Substantial Completion and shall coordinate with Owner for the ingress and egress of Contractor's personnel to and from the Site so as to minimize disruption of Owner's operations.

(l) Conduct at Facility. Contractor shall comply with reasonable work rules and work hours established by Owner. Contractor shall promptly remove from the jobsite and Project any Person employed by Contractor or any Subcontractor whom Owner so designates to be removed due to violation of any applicable Law or rules applicable to the Facility. Contractor shall comply with and cause its Subcontractors to comply with the Owner's Site Guidelines set forth in Exhibit D.

2.5 Subcontractors Contractor shall have the right to have all or any portion of the Work performed by a Subcontractor qualified to perform such Work pursuant to written subcontracts or written purchase orders ("Subcontracts"); *provided* that Contractor shall not be relieved from any liability or obligation under this Agreement. Except as otherwise expressly provided in this Agreement, Contractor shall be solely responsible for engaging, managing, supervising, and paying all such Subcontractors. Contractor shall be solely liable for all acts, omissions, liabilities, and Work of such Subcontractors. Owner shall not have any obligation or liability to any Subcontractor. Nothing in any contract, subcontract or purchase order with any Subcontractor shall in any way diminish or relieve Contractor from any duties and obligations under this Agreement.

### ARTICLE 3.

#### OWNER RESPONSIBILITIES

3.1 Access to Site Owner shall arrange for Contractor, its employees, subcontractors, and agents to have reasonable access to the Facility to enable Contractor to perform its obligations hereunder, subject to

the Site Guidelines. Owner shall arrange for Contractor to have sufficient construction laydown and secure storage at the Site for each part of the Project.

3.2 Required Approvals Contractor shall obtain, maintain, and pay for the Governmental Approvals set forth on Schedule 3.2 hereto. Owner shall provide Contractor with reasonable assistance in obtaining any additional Governmental Approvals.

3.3 Owner's Representative Owner shall designate in writing an Owner's Representative to represent Owner and to receive communications from Contractor and who shall have full authority to act for Owner under this Agreement; provided that Owner's Representative shall under no circumstances have the authority to amend, except for the issuance of Change Orders, terminate or assign this Agreement.

3.4 Duty to Cooperate Owner shall throughout the performance of the Work cooperate with Contractor and perform its responsibilities, obligations, and services under this Agreement in a timely manner to facilitate Contractor's timely and efficient performance of the Work and Contractor's obligations under the Agreement. Owner shall provide timely reviews as set forth in the Project Schedule.

3.5 Contractor Not Relieved of Duties or Responsibilities Notwithstanding anything contained herein to the contrary, Owner's review, approval and/or acceptance of the Work, or any portion thereof, shall not in any way relieve Contractor of any of its obligations or warranties set forth herein, including, but not limited to, its full responsibility for the accuracy, integrity and quality of the Work.

3.6 Responsibility If the Project Manager is not performing his duties in a timely and professional manner, as determined in the reasonable discretion of Owner, then Owner may request that Contractor remove the Project Manager. The Contractor shall remove the Project Manager upon Owner's request and shall provide a replacement Project Manager in compliance with Section 2.3(g). Nothing in this Section 3.6 is intended or shall be construed to require Owner to evaluate or otherwise take responsibility for the performance of the Project Manager.

## ARTICLE 4.

### SCHEDULE, COMPLETION, AND TESTING

4.1 Project Schedule The Project Schedule includes anticipated dates for achievement of significant construction milestones, including but not limited to the dates when construction shall begin and the expected Completion Date. Contractor shall prepare and submit to Owner such progress schedules, progress reports and other reports relating to the Work on a monthly basis. Contractor shall attend such meetings as Owner may reasonably require to review progress and predict future progress.

(b) Contractor is responsible for timely procurement and delivery of all Equipment and for obtaining permits and obtaining all Governmental Approvals necessary to commence construction as planned and to continue the Work in accordance with the Project Schedule, subject to Section 6.4 (Force Majeure) and Article 7 (Changes) hereof.

4.2 Commissioning Procedures System Testing. As soon as possible after Contractor considers the System to be Substantially Complete, Contractor shall begin to conduct, or cause to be conducted, the Commissioning Procedures. Contractor shall provide Owner at least five (5) Business Days' prior notification of the commencement of the Commissioning Procedures and thereafter regular updates on the schedule of the Commissioning Procedures. Contractor may perform and repeat any number of

Commissioning Procedures, and Contractor, at its discretion, may prematurely terminate any Commissioning Procedures.

(b) Owner Personnel. Owner, at its own expense, may arrange for its representatives (including technical or engineering consultants) to be present at the Site throughout Contractor's conduct of any Commissioning Procedures provided that such personnel do not interfere with the Commissioning Procedures and comply with all safety requirements.

4.3 Substantial Completion. With respect to the System, Substantial Completion shall occur when the Equipment is then operating in a manner such that Owner is deriving beneficial use thereof which shall occur within [Number] of days following issuance of Notice to Proceed.

(a) When Contractor considers that the criteria for Substantial Completion for any part of the Project have been met (but for Owner's issuance of the Substantial Completion Certificate), Contractor shall so notify Owner in writing by sending Owner the Substantial Completion Certificate. Within ten (10) Business Days thereafter, Owner shall either (i) deliver to Contractor the written Substantial Completion Certificate or (ii) advise Contractor in writing of any discovered defects or deficiencies in the Work for which Contractor is responsible or of any other reason why the requirements of Substantial Completion have not been met and shall deliver to Contractor such list of defects or deficiencies contemplated by Section 4.3(b). Upon receipt of any notice from Owner of defects or deficiencies or other outstanding Work to be performed by Contractor according to this Agreement, Contractor shall confer with Owner and be given an opportunity to respond to such notice, or Contractor may proceed to correct such defects or deficiencies and/or perform such Work, and the foregoing notice procedure shall be repeated until the requirements for Substantial Completion have been met.

(b) Punchlist. On or prior to Owner's execution of a Substantial Completion Certificate, Owner and Contractor shall inspect the subject Work and Contractor shall prepare a Punchlist for such Work. Contractor shall provide the Punchlist to Owner together with an estimate of the time to complete or correct each item. Owner shall review and comment upon the proposed Punchlist not later than ten (10) Business Days after receipt from Contractor. Contractor shall issue a revised Punchlist thereafter to take account of or respond to Owner's comments. Unless Owner notifies Contractor of any additional comments within ten (10) Business Days after Owner's receipt, such revised Punchlist shall be deemed final. Contractor shall use diligent efforts to complete the Punchlist within sixty days after it is deemed final.

4.4 Final Acceptance The criteria for Final Acceptance of all Work shall be the date (the "Final Acceptance Date") when:

- (a) Substantial Completion for the System has occurred,
- (b) Owner has received from Contractor all as-built drawings for the Work,
- (c) Owner has received from Contractor all Closing Deliverables and Equipment Documentation,
- (d) all Contractor's wastes have been removed from the Facility and the Site and properly disposed of, and
- (e) all Punchlist work has been completed to Owner's reasonable satisfaction,

- (f) the Contractor has completed commissioning of the System as set forth in Exhibit F, and
- (g) the requirements of the Local Electric Utility have been met.

When Contractor considers that the criteria for Final Acceptance have been met, Contractor shall so notify Owner in writing by sending Owner the Final Acceptance Certificate. Within ten (10) Days thereafter, Owner shall either (i) deliver to Contractor written notice of Final Acceptance in the form attached hereto as Schedule 4.4 (the "Final Acceptance Certificate") or (ii) advise Contractor in writing of any discovered defects or deficiencies in the Work for which Contractor is responsible or of any other reason why the requirements of Final Acceptance have not been met. Upon receipt of any notice from Owner of defects or deficiencies or other outstanding Work to be performed by Contractor according to this Agreement, Contractor shall confer with Owner and be given an opportunity to respond to such notice, or Contractor may then complete such outstanding tasks before again requesting Owner's issuance of the Final Acceptance Certificate, and the foregoing notice procedure shall be repeated until the requirements for Final Acceptance have been met. If Owner does not accept or reject the Final Acceptance Certificate within such ten (10)-Business Day period, it shall be deemed accepted.

## ARTICLE 5.

### **COMPENSATION AND PAYMENT**

5.1 Agreement Price Owner shall pay Contractor progress payments in an amount, not to exceed, \$7,018,065.27 (the "Agreement Price") for completion of the Work.

5.2 Taxes The Agreement Price is inclusive of any and all sales or use taxes or other taxes, duties, stamp taxes, tariffs, or other impositions of any amount that may be imposed or assessed by any Governmental Authority on Contractor with respect to this Agreement or Contractor's installation of the System and performance of the Work as of the Effective Date. The Owner agrees to make a tax exemption certificate available for this System if available.

5.3 Payments Exhibit E hereto sets forth the Schedule of Values for the Agreement Price. The Schedule of Values shall be used as the basis for preparation of progress invoices as set forth below, and, except as otherwise set forth herein, shall establish the amount to be paid to Contractor on an aggregate basis through each month of the Project Schedule. Progress payments shall be made in accordance with the milestones achieved and percentages set forth in under the Schedule of Values. All payments shall be due within thirty (30) days after receipt of invoice to the account designated by Contractor. Any overdue amounts shall accrue interest at the Interest Rate from the due date of such amount until paid in full.

5.4 Invoices and Payments On or before the 20<sup>th</sup> day of each month after the date hereof, Contractor shall submit to Owner: (i) a detailed application for payment ("Invoice"), which Invoice shall include the items from the Schedule of Values that were completed during the previous month and the corresponding amount of payment owed, together with such supporting documentation for such completed Work as Owner shall reasonably require, including without limitation any applicable bill of lading documents associated with equipment delivery (to the Site or to an off-site warehouse),. If Owner rejects Contractor's application for payment with respect to any portion of the Work because of a failure to provide necessary supporting documentation in accordance with this Agreement, Contractor shall cure such failure without the necessity of resubmitting such Invoice, unless such failure in Owner's reasonable judgment is material, in which case Contractor shall submit a revised Invoice and delete the relevant portion of the Work from such

Invoice. Within thirty (30) days after receiving a properly completed Invoice and all required supporting documentation, Owner shall pay Contractor 90% of the approved amount due, with the remaining 10% of such payment (the “Retainage”) to be released upon Final Acceptance, pursuant to Section 5.5 below.

5.5 Final Acceptance – Retainage When Contractor delivers notice to Owner pursuant to Section 4.4 that Contractor believes that the criteria for Final Acceptance have been achieved, Contractor shall submit (a) statements for the Agreement Price summarizing and reconciling all previous payments and Change Orders; and (b) consent of the surety as to final payment. Within fifteen (15) days after Owner has delivered the Final Acceptance Certificate to Contractor, Owner shall pay to Contractor the Retainage.

## ARTICLE 6.

### **TITLE; RISK OF LOSS;** **FORCE MAJEURE**

6.1 Title Ownership and title to the Equipment shall automatically pass to Owner upon Contractor’s receipt of both (i) the executed Substantial Completion Certificate, and (ii) the indefeasible payment in full of all of Owner’s payment obligations to Contractor pursuant to such Substantial Completion Certificate. Prior to satisfaction of the conditions set forth in (i) and (ii) in the previous sentence with respect to the Equipment, title to the Equipment shall remain in the name of Contractor. If, notwithstanding the intent of the Parties, Owner is deemed to hold title to any or all of the Equipment prior to the satisfaction of the conditions set forth in (i) and (ii) above, as security for the payment in full of the Owner’s obligations with respect to such Equipment, Owner hereby assigns, transfers and grants to Contractor a security interest in such Equipment. Owner hereby authorizes Contractor to file, from time to time, Uniform Commercial Code financing statements in such jurisdictions as may be necessary to perfect and maintain its security interest in such Equipment. If requested by Contractor, Owner agrees to execute and deliver all further instruments and documents and take all further action that may be necessary in order to create, perfect and protect Contractor’s security interest in the Equipment and hereby irrevocably appoints Contractor as Owner’s attorney-in-fact with full power to sign such instruments and documents. Upon delivery of the Substantial Completion Certificate and satisfaction of clause (ii) above for the Equipment, Contractor’s interest in the Equipment shall be released and terminated, in each case without further action on any party’s part.

#### 6.2 Risk of Loss

Notwithstanding anything herein to the contrary, Contractor shall have the full responsibility for care, custody and control of material and Equipment incorporated into the Work (including all Equipment and materials used in connection therewith) and shall bear the risk of loss for the Work in each case until the earlier of Substantial Completion of the System, or the termination of this Agreement, at which time risk of loss shall pass to Owner. Following the Substantial Completion Date with respect to the System, Owner shall bear the risk of loss for the System.

6.3 Force Majeure If either Party is rendered wholly or partly unable to perform its obligations under this Agreement because of a Force Majeure Event, that Party shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected; provided that:

- (a) such Party gives the other Party written notice describing the particulars of the Force Majeure Event as soon as is reasonably practicable;
- (b) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(c) no obligations of the Party that arose before the occurrence causing the suspension of performance shall be excused as a result of the occurrence of the Force Majeure Event unless the performance of such obligations is impaired by the Force Majeure Event;

(d) the Party uses commercially reasonable efforts to overcome or mitigate the effects of the Force Majeure Event; and

(e) when the Party is able to resume performance of its obligations under this Agreement, such Party shall give the other Party written notice to that effect and shall promptly resume performance hereunder.

## **ARTICLE 7.**

### **CHANGES**

7.1 Owner Requested Change Orders Owner may at any time, by written notice to Contractor, request an addition to or deletion from or other changes in the Work or Project Schedule (together with any necessary or requested amendments to this Agreement with respect thereto) (hereinafter “Change” or “Changes”) by submitting a written request for a Change Order to Contractor. Contractor shall review and consider such requested Change and shall make a written response thereto within ten (10) days after receiving such request. If Contractor believes that giving effect to any Change requested by Owner will increase or decrease its cost of performing the Work, shorten or lengthen the time needed for completion of the Work, require modification of its warranties, or require a modification of any other provisions of this Agreement, its response to the Change request shall set forth such changes (including any amendments to the Agreement) that Contractor deems necessary as a result of the requested Change and its justification therefor. If Contractor accepts the Changes requested by Owner (together with any amendments to the Agreement specified therein) or if the Parties agree upon a modification of such requested Changes, the Parties shall set forth the agreed upon Change in the Work and agreed upon amendments to the Agreement, if any, in a Change Order. Each Change Order shall constitute a final settlement of all items covered therein, including any compensation for impact on, or delay or acceleration in, performing the Work.

#### 7.2 Contractor Requested Changes.

(a) Subject to Section 7.2(b), Contractor may at any time, by written notice to Owner, request a Change in the Work (together with any necessary or requested amendments to the Agreement) and Owner may accept or reject such request in its reasonable discretion. If Contractor believes that such requested Change will increase or decrease its cost of performing the Work, lengthen or shorten the time needed for completion of the Work, or require a modification of any other provisions of the Agreement, it shall notify Owner of such, setting forth its justification for and effect of such changes, within ten (10) days after making a request for a Change. If Owner accepts the Changes requested by Contractor (together with amendments to the Agreement specified therein, if any), or if the Parties agree upon a modification of such requested Changes, the Parties shall set forth the agreed upon Change in the Work and agreed upon amendments to the Agreement, if any, in a written Change Order signed by all Parties. The Parties agree that the Owner’s Representative and Contractor Representative shall both have authority to approve Change Orders. The Parties acknowledge and agree that one or more of the documents and agreements, including agreements with Subcontractors, may not be amended orally or through course of conduct. The Parties hereby express their intention that this Agreement shall not be modified orally, through course of conduct or otherwise (regardless of whether any other agreements or documents relating to the System have been so amended or modified). For greater clarity, changes to the Scope of Work through a Change

Order shall begin only upon Contractor's receipt of Owner's approved and signed Change Order request.

(b) Conditions on Requesting Certain Changes. Contractor may at any time, by written notice to Owner, propose Changes in the Work or the Project Schedule due to:

(i) The occurrence of a Force Majeure Event or any delay by Owner, provided that such Force Majeure Event or Owner delay has an impact that will actually, demonstrably, adversely and materially affect Contractor's ability to achieve complete the Project on schedule and further provided that Contractor complies with all requirements provided in Section 6.3 and Section 7.2(a); or

(ii) A Change in Law, provided that such Change in Law prevents Contractor from performing all or a portion of the Work, has a demonstrable material cost increase to Contractor and/or has a schedule impact that will adversely, and further provided that Contractor shall diligently make adjustments to minimize the effect of such Change in Law on the System; or

(iii) Subsurface or physical conditions at or contiguous to the Sites that are uncovered or revealed to be materially different from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement, it being acknowledged that Contractor shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties.

Unless the foregoing conditions are met, Contractor may not request a Change in the Work, or Project Schedule, due to a Force Majeure Event, Owner delay, Change in Law or differing conditions.

(c) Execution of Change Order. If Owner agrees that Contractor has met all of the applicable conditions precedent for a requested Change, then the Parties agree to bargain reasonably and in good faith for the execution of a mutually acceptable Change Order. If in such event the Parties are unable to agree on a mutually acceptable Change Order, then the dispute shall be resolved in accordance with Section 11.6. Any extension permitted under this Section 7.2 shall be of an equitable duration designed to reflect the delay actually caused by the relevant event despite Contractor's reasonable efforts to mitigate the same. Contractor shall continue other portions of the Work not affected or impacted by a proposed Change Order.

7.3 Compensation for Change Orders; Disputes A Change Order initiated by either Party may have the effect of either increasing or decreasing the Agreement Price. Any Contractor response to a Change Order under Section 7.1 and any Contractor request for Changes under Section 7.2 shall be accompanied by a proposed all inclusive final lump sum cost (separating materials and labor) to Owner.

7.4 Information Requests; Change Order Contents Owner may request that Contractor provide written information (prior to the issuance of a request for Changes) regarding the effect of a contemplated Change on pricing, scheduling, or on other terms of the Agreement. The purpose of such a request shall be to determine whether or not a Change will be implemented.

## ARTICLE 8.

### WARRANTIES

#### 8.1 Warranties

(a) Contractor warrants to Owner that all Equipment shall be new and of good quality and free from defects in materials and workmanship under normal operating conditions;

(b) Contractor warrants to Owner that the Work will be performed in a good and workmanlike manner, will be free from defects in workmanship, and will conform to the specifications, drawings, descriptions and requirements of this Agreement; and the Work will contain the Equipment, supplies and materials described in the Scope of Work;

Provided, that Contractor's warranties with respect to Equipment shall be limited to the corresponding warranties made by the suppliers and manufacturers of such Equipment; and further provided, that Contractor's warranties in Section 8.1(a) and 8.1(b) expressly exclude defects caused by Owner's failure to comply with the operation and maintenance manuals and manufacturers' guidelines applicable to the Equipment and other exclusions set forth in Section 8.2(c).

(c) System Warranty Period. Contractor warrants that it shall remedy, in accordance with Section 8.2, any defects or breaches of Warranty, which appear prior to the date that is one (1) year from the Substantial Completion Date with respect to the Work (the "Warranty Period").

**8.2 Repair of Nonconforming Work** If Owner discovers a breach of the Warranties, Owner will notify Contractor in writing of such failure promptly upon discovery. Contractor shall (i) conduct preliminary trouble shooting in accordance with the Operations and Maintenance Manual, and/or (ii) contact additional support for troubleshooting. If Work or Equipment covered under the Warranties fails to conform to the Warranties as described in such notice from Owner or as otherwise discovered by Contractor, Contractor shall, at its option, either repair or replace any defective parts including re-installation and all resulting damage to the System caused by such defect, at its own expense as promptly as possible. Contractor shall pay the cost of removing any defective Equipment, shipping and installation of replacement parts and the cost of reinstalling or replacing such Equipment and shall be entitled to any monetary reimbursement from the manufacturer for same. Contractor shall not be required to repair or replace consumable items including but not limited to fuses, batteries, lubricants and filters unless such consumable items were damaged due to faulty workmanship.

(b) If Contractor does not use its reasonable efforts to commence and diligently pursue the activities required under Section 8.2(a) within sixty (60) days after receipt of written notice of a nonconformity (subject to material and equipment availability or shipping delays), then Owner, after written notice to Contractor, may perform or have performed by qualified and experienced third parties the necessary remedy consistent with such activities required under Section 8.2(a), and Contractor shall be liable for all direct, reasonable and documented costs (including overhead), charges and expenses (including transportation and expediting fees) incurred by Owner in connection with such remedy.

(c) Contractor's warranties herein do not cover damage, malfunction or services failures caused by: (i) Owner's failure to follow operation and maintenance manuals, (ii) repair, service or modification by any party other than Contractor or a third party contracted by Contractor; (iii) abuse, neglect, misuse or negligent acts or omissions by someone other than Contractor; (iv) damage or deteriorated performance of the Equipment caused by electrical surges, lightning, fire, flood, extreme weather, pest damage, accidental breakage, actions of third parties and other causes not arising under normal operating conditions; (iv) any Force Majeure Event; or (v) normal wear and tear.



(d) Notwithstanding any other term or provision herein to the contrary, Contractor shall not be responsible for the cost of correcting a breach of Warranty or defect to the extent that the manufacturers of the modules, inverters, data acquisition system, metering or transformers do not honor their respective applicable manufacturer's warranty as a result of its termination of operations, insolvency, liquidation, bankruptcy, or similar occurrence, or due to a contention that such Equipment is obsolete; provided that Contractor uses reasonable efforts to pursue and preserve such claim against the applicable manufacturer(s).

(e) With respect to the System, Contractor shall enforce the warranties for and on behalf of Owner during the Warranty Period so long as Contractor has a current and ongoing operation and maintenance agreement with Owner for the System.

8.3 Assignment of Warranties As of the Final Acceptance Date, Contractor shall assign to Owner all warranties for major Equipment which are assignable. Notwithstanding the assignment, during the Warranty Period, in the event that Owner makes any warranty claim against Contractor and Contractor fulfills its obligations with respect to such claim by Owner, Contractor shall be entitled to enforce for its own benefit any warranty given by such Subcontractor with respect to such Equipment and services.

#### 8.4 Limitations

EXCEPT FOR THE WARRANTIES SET FORTH IN THIS ARTICLE 8, OWNER EXPRESSLY AGREES THAT CONTRACTOR MAKES NO OTHER WARRANTIES OR GUARANTEES IN CONNECTION WITH THE INSTALLATION OF THE EQUIPMENT AND SYSTEM PROVIDED HEREUNDER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN. CONTRACTOR SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR CONTRACTOR'S OBLIGATIONS UNDER SECTION 8.2, OWNER'S SOLE REMEDIES FOR A BREACH OF WARRANTY UNDER THIS AGREEMENT SHALL BE REPAIR OR REPLACEMENT OF THE DEFECTIVE OR NONCONFORMING WORK, SUBJECT TO SECTIONS 8.1 and 8.2 OF THIS AGREEMENT.

#### 8.5 Survival of Warranties

The provisions of this Article 8 shall survive the expiration or termination of this Agreement.

### ARTICLE 9.

#### LIMITATIONS ON LIABILITY

9.1 No Consequential Damages Anything in this Agreement to the contrary notwithstanding, neither Party nor its respective officers, directors, agents, employees, parent, subsidiaries or affiliates or their officers, directors, agents or employees shall be liable to any other Party, or its parent, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns, or their respective insureds, for any incidental, indirect, punitive or consequential damages, connected with or resulting from performance or non-performance of this Agreement (irrespective of whether such claim of liability is based upon breach of warranty, strict liability, tort, contract, operation of law or otherwise) or anything done in connection therewith including, without limitation, claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), and increased expense of, reduction in or loss of power generation production or equipment used therefor.

## ARTICLE 10.

### **INDEMNIFICATION; INSURANCE; BONDS**

10.1 Indemnity Contractor agrees to indemnify and hold Owner, its officers, agents and employees, harmless from and against any and all third party claims for damages arising by reason of bodily injury, death or damage to property caused by Contractor's negligence (or the negligence of any sub-contractor hired by Contractor) or willful misconduct. To the extent that any such damages are covered by the Commercial General Liability Insurance policy that is maintained by Contractor, Contractor shall not be required to indemnify Owner in excess of the proceeds of the Commercial General Liability Insurance maintained by Contractor pursuant to the requirements of this Agreement. Contractor, however, in no event shall be obligated to indemnify Owner to the extent that any injury or damage is caused by the negligence of Owner or any entity for which Owner is legally responsible.

10.2 Contractor Insurance Contractor hereby agrees to obtain and maintain insurance coverage on the terms set forth on Exhibit H.

10.3 Owner Insurance Owner hereby agrees to obtain and maintain insurance coverage on the terms set forth on Exhibit I.

#### 10.4 Payment and Performance Bonds

Contractor shall, after receipt of the Notice to Proceed and prior to the commencement of construction, deliver to Owner payment and performance bonds in a sum equal to the Agreement Price (the "Payment and Performance Bonds") with sureties licensed by the State of Texas and reasonably satisfactory to Owner. Such Payment and Performance Bonds shall be in form and substance reasonably satisfactory to Owner and shall be conditioned upon the faithful performance by Contractor, for the implementation of the Work. The Payment and Performance Bonds shall only apply to the installation portion of this Agreement and do not apply in any way to any maintenance provisions, except that the Performance Bond shall guarantee that the installation will be free of defective materials and workmanship for the applicable Warranty Periods, not to exceed twelve months after Substantial Completion of the applicable part of the Project.

## ARTICLE 11.

### **DEFAULT AND REMEDIES; TERMINATION; DISPUTE RESOLUTION**

11.1 Owner Events of Default The following shall constitute events of default on the part of Owner (each, an "Owner Event of Default") under this Agreement:

(a) If Owner fails to make any payment required hereunder within thirty (30) days after written notice thereof from Contractor;

(b) If Owner makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of Owner, or if Owner files a petition seeking to take advantage of any other Law relating to bankruptcy, insolvency, reorganization, winding up or composition of or readjustment of debts and, in the case of any such proceeding instituted against Owner (but not by Owner) such proceeding is not dismissed within sixty (60) days of such filing;

(c) If Owner fails to comply with any material terms of this Agreement not otherwise set forth as an Owner Event of Default in this Section 11.1 and fails to cure or remedy such failure within thirty (30) days after notice and a written demand is made by Contractor to Owner

to cure the same or, if such failure cannot be cured within thirty (30) days, Owner fails to commence to cure such breach within thirty (30) days after such notice and written demand and thereafter diligently pursue such cure to completion, which shall in no event be later than one sixty (60) days after such notice; or

(d) If any representation or warranty of Owner in this Agreement proves to have been false or misleading in any material respect when made, and Owner has not, within thirty (30) days after written notification thereof from Contractor, either fully remedied, or commenced and diligently pursued the remedy, of all adverse impacts on Contractor resulting therefrom, which full remedy shall be achieved in no event later than forty-five (45) days after such notice, all to the reasonable satisfaction of Contractor.

11.2 Contractor Events of Default The following shall constitute events of default on the part of Contractor (each, a "Contractor Event of Default") under this Agreement:

(a) If Contractor fails to comply with any material terms of this Agreement not otherwise set forth as a Contractor Event of Default in this Section 11.2 and fails to cure or remedy such failure within thirty (30) days after notice and a written demand is made by Owner to Contractor to cure the same or, if such failure cannot be cured within thirty (30) days, Contractor fails to commence to cure such breach within thirty (30) days after such notice and written demand and thereafter diligently pursue such cure to completion;

(b) If any representation or warranty of Contractor in this Agreement proves to have been false or misleading in any material respect when made, and Contractor has not, within thirty (30) days after written notification thereof from Owner, either fully remedied, or commenced and diligently pursued the remedy, of all adverse impacts on Owner resulting therefrom, which full remedy shall be achieved in no event later than forty-five (45) days after such notice, all to the reasonable satisfaction of Owner; or

(c) If Contractor makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of Contractor, or if Contractor files a petition seeking to take advantage of any other Law relating to bankruptcy, insolvency, reorganization, winding up or composition of or readjustment of debts and, in the case of any such proceeding instituted against Contractor (but not by Contractor) such proceeding is not dismissed within sixty (60) days of such filing.

11.3 Contractor Remedies upon Owner Event of Default Upon the occurrence and during the continuation of an Owner Event of Default, Contractor has the right to suspend its performance of Work upon five (5) days written notice to Owner and, if such Owner Event of Default is not cured within thirty (30) days after the commencement of such suspension, to terminate this Agreement upon an additional ten (10) days written notice. Upon such termination by Contractor, Owner shall pay to Contractor the amounts set forth in Section 11.5. Contractor shall be entitled to any available legal or equitable remedies.

11.4 Owner Remedies upon Contractor Event of Default Upon the occurrence and during the continuation of a Contractor Event of Default, Owner has the right to terminate this Agreement upon ten (10) days' written notice. Owner shall be entitled to any available legal or equitable remedies.

(b) If Owner terminates this Agreement pursuant to this Section 11.4, upon Owner's request, Contractor shall withdraw from the Facility and the Site, shall assign to Owner such of Contractor's subcontracts, purchase orders, and permits as Owner may request, and shall deliver and make available to Owner all Equipment Documentation reasonably necessary to permit

Owner to complete or cause the completion of the Work, and in connection therewith Contractor authorizes Owner and its agents to use such information in completing the Work. Owner shall have the right to take possession of all Equipment, and Contractor shall remove such materials, equipment, tools, and instruments used by and any debris or waste materials generated by Contractor in the performance of the Work as Owner may direct. While Owner shall use reasonable efforts to mitigate the cost for completion of the Work, Owner may employ any other qualified person, firm, or corporation to finish the Work by whatever method Owner may deem reasonable and expedient, and may undertake such commercially reasonable expenditures as in Owner's sole judgment will best accomplish the timely completion of the Work (including, where necessary, the entry into contracts without prior solicitation of proposals). In such event Contractor shall not be entitled to receive any further payments under this Agreement except for payments for Work performed prior to such termination.

(c) As soon as practicable after Final Acceptance of the Work, Owner shall determine the Completion Cost. If the Completion Cost exceeds the unpaid portion of the Agreement Price at the time of the termination of this Agreement, then Contractor shall pay to Owner the amount of such excess within ten (10) Business Days following receipt of Owner's demand for such payment.

11.5 Termination Payment If Contractor terminates this Agreement under Section 11.3, Owner shall pay to Contractor a termination payment (the "Termination Payment"). Payment of the Termination Payment shall be the sole and exclusive liability of Owner, and the sole and exclusive remedy of Contractor, with respect to termination of this Agreement pursuant to Section 11.3.

(b) The Termination Payment shall consist of:

- (A) amounts due, but not yet paid, for Work performed prior to the effective date of termination;
- (B) direct costs paid, contracted or for which Contractor is liable at the time of termination that are in addition to amounts otherwise paid or due as of the effective date of termination;
- (C) cancellation costs payable to a Subcontractor or vendor under the terms of the applicable contract between Contractor and such Subcontractor or vendor;
- (D) direct, out of pocket costs reasonably incurred by Contractor in protecting the Work; and
- (E) direct, out of pocket costs reasonably incurred by Contractor in closing out the construction site.

11.6 Dispute Resolution In the event that any question, dispute, difference or claim arises out of or is in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a "Dispute"), which either Party has notified to the other, senior management personnel from both Contractor and Owner shall meet and diligently attempt in good faith to resolve the Dispute for a period of thirty (30) days following one Party's written request to the other Party for such a meeting. If, however, either Party refuses or fails to so meet, or the Dispute is not resolved by negotiation, either Party may pursue any remedy available either in law or equity. Each Party shall continue to perform its obligation under this Agreement during the period of any dispute resolution, provided that, in Contractor's case, such obligation

to continue Work is conditioned on Contractor having been paid all undisputed amounts payable to Contractor.

## **ARTICLE 12.**

### **ASSIGNMENT**

12.1 Consent Requirements Neither Party shall assign this Agreement or in any other manner transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party which consent shall not be unreasonably conditioned, withheld or delayed. Notwithstanding the foregoing, either Party, without relieving itself from liability hereunder, and without the need for consent from the other Party provided that any such assignee shall agree to be bound by the terms and conditions hereof, may (a) transfer, pledge or assign this Agreement as security for any financing, and/or to an affiliated special purpose entity created for financing or tax credit purposes related to the System ("Collateral Assignment"); (b) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of the assigning Party, or (c) assign its rights under this Agreement to a successor entity in a merger or acquisition transaction. Any purported assignment or transfer without such consent, whether voluntary or involuntary, by operation of Law, under legal process or proceedings, by receivership, in bankruptcy or otherwise made in contravention of this clause shall be void and unenforceable. Notwithstanding the foregoing, nothing herein shall prohibit Contractor from subcontracting all or any portion of the Work in accordance with Section 2.6, provided that no such subcontracting shall relieve Contractor of any obligations hereunder.

## **ARTICLE 13.**

### **REPRESENTATIONS**

13.1 General Representations and Warranties Each Party hereby represents and warrants to the other Party that:

(a) It is duly organized, validly existing and in good standing under the Laws of the state of its formation and is duly qualified to do business in the State of Texas.

(b) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; its execution, delivery and performance of this Agreement have been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

(c) It is not in violation of any judgment entered by any federal, state, local or other Governmental Authority, which violations, individually or in the aggregate, would adversely affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to its best knowledge) threatened against it which, if adversely determined, could have a material adverse effect upon its financial condition, operations, prospects or business, as a whole, or its ability to perform under this Agreement.

(d) No authorization, approval, exemption, or consent of or by any Person is required by it in connection with the execution, delivery, and performance of this Agreement. In addition,

each Party represents and warrants to the other Party that the Governmental Approvals required to be obtained by such Party either have been obtained by such Party and are in full force and effect on the date hereof or will be obtained by such Party and will be in full force and effect on or prior to the date on which they are required, under applicable Law, to be in full force and effect, so as to permit Contractor to commence and prosecute the Work to completion in accordance with the Project Schedule.

(e) The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and compliance with the terms and provisions hereof by it will not conflict with or result in a material breach of, or require any consent under, any of its constitutive documents.

13.2 Survival of Representations The representations and warranties given by each Party to the other Party shall survive execution, expiration, cancellation or termination of this Agreement.

## ARTICLE 14.

### NOTICES

14.1 Writing Except as set forth in Section 14.2, any notice, statement, demand, claim, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be sent by hand messenger delivery, overnight courier service, or certified mail (receipt requested) to the other Party at the address set forth below:

If to Owner:  
City of Killeen, Texas  
101 N. College Street  
Killeen, Texas 76541  
Attention: City Manager

With a copy to:  
City of Killeen, Texas  
101 N. College Street  
Killeen, Texas 76541  
Attention: City Attorney

If to Contractor:  
Ameresco, Inc.  
2355 E. Camelback Rd., Suite 525  
Phoenix, AZ 85016  
Attention: Bob Georgeoff

With a copy to:  
Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01701  
Attention: General Counsel

Each Party shall have the right to change the place to which notice shall be sent or delivered or to specify one additional address to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party. All notices shall be effective upon receipt.

14.2 Technical Communications Any technical or other communications pertaining to the Work shall be between Contractor's Project Manager and Owner's Representative or other representatives appointed by the Project Manager or Owner's Representative. Each Party shall notify the other in writing of the name of such representatives. Contractor's representatives shall be satisfactory to Owner, have knowledge of the Work and be available at all reasonable times for consultation.

## ARTICLE 15.

### MISCELLANEOUS

15.1 Reasonability The Parties shall act in a reasonable manner and in accordance with principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement and whether or not stated: (a) where this Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned, or delayed; and (b) wherever this Agreement gives a Party a right to determine, require, request, specify, or take similar action with respect to a matter, such determination, requirement, request, specification, or similar action must be reasonable.

15.2 Entire Agreement This Agreement, together with all Exhibits hereto, embodies the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties, verbal or written, relating to the subject matter hereof.

15.3 Waiver Any waiver of the provisions of this Agreement must be in writing and shall not be implied by any usage of trade, course of dealing or course of performance. No exercise of any right or remedy by Owner or Contractor constitutes a waiver of any other right or remedy contained or provided by Law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance hereunder shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

15.4 Governing Law; Submission to Jurisdiction; Venue Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS EXCLUDING ANY CHOICE OF LAW RULES.

(b) Submission to Jurisdiction, Venue. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought exclusively in Bell County, Texas. By execution and delivery of this Agreement, each Party (for itself, its affiliates and its designees) irrevocably and unconditionally consents and submits to the exclusive jurisdiction of such courts and the appellate courts therefrom, and waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding. The Parties irrevocably consent to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, first class postage prepaid to the addresses set forth in Section 15.1.

15.5 Construction This Agreement is to be construed so as to effectuate the normal and reasonable expectations of a sophisticated buyer and seller of the equipment and services covered by this Agreement and shall not be construed either for or against either Party. No provision of this Agreement shall be construed or interpreted for or against either Party because such Party drafted or caused its legal representative to draft the provision.

15.6 Headings The titles or headings of the various sections, articles and paragraphs hereof are intended solely for convenience and ease of reference and are not intended, and are not to be deemed for any

purpose, to modify or explain or place any interpretation or construction upon any of the provisions of this Agreement.

15.7 Status of the Parties Contractor and its Subcontractors shall be independent contractors to Owner with respect to the Work, irrespective of whether such Subcontractors are approved by Owner, and neither Contractor nor its Subcontractors, nor the employees or agents of either, shall be deemed to be the employees, representatives or agents of Owner in connection with any matter relating to this Agreement. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties.

15.8 No Third Party Beneficiaries This Agreement is made and entered into for the sole protection and legal benefit of Owner and Contractor, and their permitted successors and assigns, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

15.9 Further Assurances Each Party agrees to execute and deliver all further instruments and documents, and take all further action, as may be reasonably necessary to complete performance by the Parties hereunder and to effectuate the purposes and intent of this Agreement.

15.10 Amendments No change, amendment or modification of this Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

15.11 Severability If any provision of this Agreement is determined to be illegal or unenforceable, such determination will not affect any other provision of this Agreement and all other provisions will remain in full force and effect.

15.12 Conflicting Provisions In the event of any conflict between this document and any Exhibit hereto, the terms and provisions of this document, as amended from time to time, shall control.

15.13 Counterparts This Agreement may be executed in any number of separate counterparts and delivered by electronic means, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument.

15.14 Contract Verification

(a) Acknowledgment – “Boycott Israel” By signing this Agreement, Contractor hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. Boycotting Israel is defined in Texas Government Code Section 808.001 to mean refusing to deal with, terminating business activities with, or taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

(b) Acknowledgment – “Boycott Energy Companies” By signing this Agreement, Contractor hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of this Agreement. Boycotting energy companies is defined in Texas Government Code Section 809.001.

(c) Acknowledgment – “Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries” By signing this Agreement, Contractor



hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Discriminate against a firearm entity and firearm trade association is defined in Texas Government Code Chapter 2274.

[Signatures on Next Page]

IN WITNESS WHEREOF, the Parties have caused this Engineering, Procurement and Construction Agreement to be executed by their duly authorized representatives as of the date first set forth above.

OWNER:  
CITY OF KILLEEN, TEXAS

By: \_\_\_\_\_  
Name: Kent Cagle *Kent Cagle*  
Title: City Manager

CONTRACTOR:  
AMERESCO, INC.

By:   
Name: Robert Georgeoff  
Title: Executive Vice President 06.05.2023

## **Schedule 3.2**

### **Owner Acquired Governmental Approvals**

### Schedule 4.3

#### Form of Substantial Completion Certificate

SUBSTANTIAL COMPLETION DATE: \_\_\_\_\_

Description of Equipment Substantially Completed: \_\_\_\_\_.

1. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner (the "Agreement"), dated as of \_\_\_\_\_.
2. Contractor certifies and represents to Owner that the installation of the System under the Agreement is Substantially Complete. By signing below, Owner has reviewed and found the System to be Substantially Complete. The date of Substantial Completion is the date above. The Substantial Completion Date set forth above is the date of commencement of applicable warranties for the System. A list of items to be completed or corrected is identified below as the Punchlist.
3. Punchlist: [INSERT]

The person signing below is authorized to submit this Substantial Completion Certificate to Owner for and on behalf of Contractor.

Contractor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Owner agrees that Substantial Completion has been achieved with respect to System as set forth herein.

Owner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*This form must be signed by the person authorized to sign this Certificate of Substantial Completion for and on behalf of Owner.*

**Schedule 4.4**  
**Form of Final Acceptance Certificate**

**FINAL ACCEPTANCE DATE:** \_\_\_\_\_

1. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner (the "Agreement"), dated as of \_\_\_\_\_.

2. Contractor certifies and represents to Owner that the following statements are true with respect to the System as of the date of delivery hereof to Owner:

- (a) Substantial Completion for the System has occurred,
- (b) Owner has received from Contractor all as-built drawings for the Work,
- (c) Owner has received from Contractor all Closing Deliverables and Equipment Documentation,
- (d) all Contractor's wastes have been removed from the Facility and the Site and properly disposed of,
- (e) all Punchlist work has been completed to Owner's reasonable satisfaction,
- (f) the Contractor has completed commissioning of the System as set forth in Exhibit F,
- (g) the requirements of the Local Electric Utility have been met.

The person signing below is authorized to submit this Final Acceptance Certificate to Owner for and on behalf of Contractor.

Contractor: Ameresco, Inc.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Owner agrees that Final Acceptance has been achieved and the Work is accepted. This certificate was received by Owner on the date first written above and is effective as of such date.

Owner:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*This form must be signed by the person authorized to sign this Final Acceptance Certificate for and on behalf of Owner.*

**Exhibit A**

**Form of Notice to Proceed**

[PLACE ON OWNER LETTERHEAD]

\_\_\_\_\_  
Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01701

**SUBJECT: NOTICE TO PROCEED**

Dear \_\_\_\_\_:

In accordance with the Engineering, Procurement and Construction Agreement (the “**EPC**”) dated as of \_\_\_\_\_, 202\_\_, by and between \_\_\_\_\_ (“**Owner**”) and Ameresco, Inc. (“**Contractor**”), Owner hereby submits to Contractor this Notice to Proceed in relation to the Scope of Work as defined in the EPC.

Sincerely,

[OWNER]

By: \_\_\_\_\_  
Duly Authorized Signatory  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **Exhibit B**

### **Description of Premises, Facility and Site**

The following buildings, facilities, and areas, which are owned and operated by Owner, are included in the Scope of Work detailed in Exhibit C:

<b>Facility</b>	<b>Address</b>
Main Terminal	8101 S Clear Creek Road, Killeen, TX 76549
Maintenance Building	8101 S Clear Creek Road, Killeen, TX 76549
Ancillary Buildings	8101 S Clear Creek Road, Killeen, TX 76549
Rental Car Parking Lot	8101 S Clear Creek Road, Killeen, TX 76549
Short- and Long-Term Parking Lot	8101 S Clear Creek Road, Killeen, TX 76549

## Exhibit C

### Scope of Work

The following table summarizes the Scope of Work to be performed at each Facility:

Facility	Scope of Work
Main Terminal	Interior/Exterior Lighting
Maintenance Building	Interior Lighting
Ancillary Buildings	Interior Lighting
Rental Car Parking Lot	Solar PV
Short-Term Parking Lot	Solar PV
Short- and Long-Term Parking Lot	Exterior Lighting

### **Detailed Project Scope – Lighting Retrofits**

The scope of work includes the retrofit of 1,966 fixtures in buildings which were counted during Ameresco's detailed room-by-room lighting survey. This measure will include the installation of LED tubes, LED retrofit kits, and LED fixtures needed for a complete project. A complete line-by-line list of the entire lighting project is provided in the Appendix of the IGA (Dated September 4, 2020). Cutsheets for final selections will be provide for approval as part of the submittal review process.

The project scope of work includes:

- Before installation, the existing lighting fixtures will be inspected for pre-existing damage to the fixture housing or wiring.
- Reporting any damage to KFHRA for correction.
- Replacing any damaged or broken lamp sockets that are still being used. In the event of de-lamping any fixtures, all the unused lamp sockets will be removed from the fixtures.
- Wiping the inside surfaces of the light fixtures.
- Repairing/replacing ceiling tile due to removal of old fixtures.
- Cleaning work area and disposing of any construction debris in Ameresco-supplied waste bins and removal from site.
- Complying with applicable local, state, and federal codes.
- Recycling of existing lamps and ballasts with proper handling of hazardous materials.
- Disconnect and remove existing components or fixtures as required for the specific retrofit.
- Install equipment per manufacturer's instructions.
- Dual switched fixtures are expected to retain dual switching capability. Where retrofit quantities are found not to retain dual switching, Ameresco will coordinate what, if any, quantities will be adjusted or if a checkerboard or front-half/back-half of the room pattern is acceptable for that space.
- All miscellaneous material necessary for a complete retrofit, including, but not limited to wire, wire nuts, screws, and miscellaneous supporting hardware will be provided.

Exclusions to the scope of work include:

- Sampling, testing, or removing asbestos or lead or any other hazardous material.
- Repairing existing damaged or faulty electrical equipment and wiring.
- Upgrading electrical distribution system to meet current electrical codes.
- Replacing any lenses.



- Stamping and signing engineering plans and specifications. The work will be performed using the line-by-line audit in section K.0 Appendix to the IGA (Dated September 4, 2020).

Ameresco has included lamp and ballast recycling and disposal in the project scope of work. Recycling certificates will be provided to KFHR for all recycled material. Polychlorinated bi-phenyl (PCB) ballasts will be disposed of using the appropriate containers and hazardous material handling procedures.

### **Detailed Project Scope – Solar Carports**

The scope of work includes the installation of solar carports totaling at least 396.0 kW-DC for the rental car lot and 765.5kW-DC for the short-term lot, and a non-solar walkway from the terminal to rental car lot. Please refer to the attached Site Plan for more information. To prepare a completed project scope and guaranteed maximum price (GMP), Ameresco created a 50 percent design package by performing the following development and engineering tasks: geotechnical analysis, electrical engineering, energy modeling, and a glare study (note: the glare study and some engineering needs to be redone as it was completed over five years ago).

The solar carport and shaded walkway include:

- Pricing is turnkey and includes engineering, design, utility coordination, procurement of solar equipment, structures and electrical infrastructure, construction of the system, FAA form 7460 and glare study submittals, and commissioning.
- Includes Federal prevailing wage rates.
- Includes two phases of construction, one for the Rental Car lot, and another for the Short-Term parking lot, as detailed in the construction schedule.
- Temporary construction fencing will not be screened.

#### **Covered Walkways**

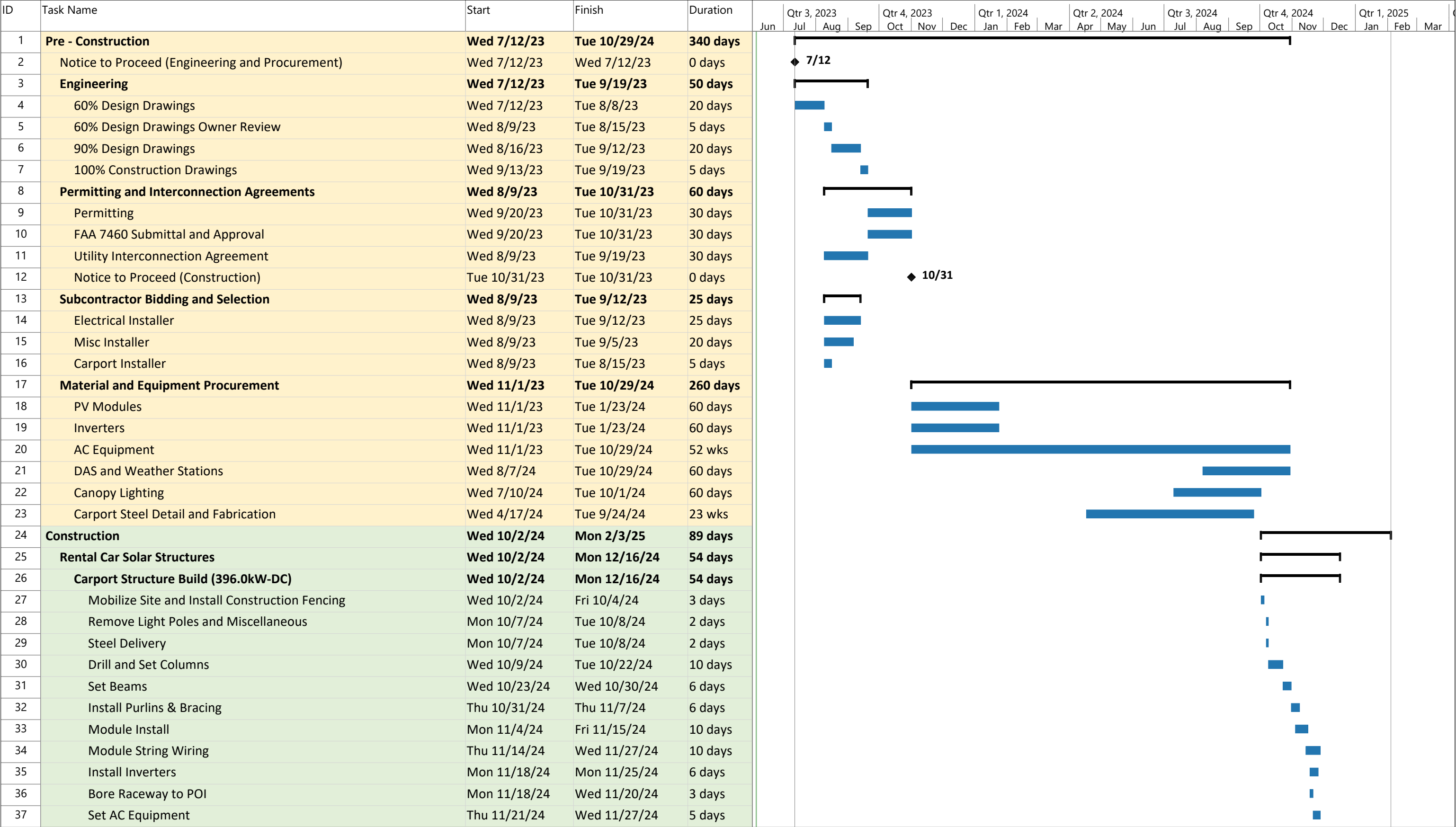
- Shaded walkway to be semi-cantilever, non-solar and not waterproof with 10' minimum height with (5) walkway sections and (54) roof panels.
- Non-solar shade panels on walkway to be AlumaCorr panel corrugated/fluted or equal.
- Walkway to include (10) wet set columns with raised pedestal bases and veneered in Austin Stone.
- Walkway lighting system includes under-canopy lighting to keep similar lighting levels to existing lighting.

#### **Solar PV Carports**

- Carports to have 9' minimum clearance.
- Includes painted fascia on all sides of each carport. Paint will be applied by preparing the steel with a wire wheel followed by pressure washing to remove and scaling or rust. One coat (approximately 1.5 – 2 mils) of rust inhibitive primer will be applied followed by one coat of enamel paint (approximately 2 mils).
- Includes under decking on all carports for waterproofing, and mesh added for bird mitigation.
- Includes (37) raised concrete bases veneered in Austin Stone on columns around north, west, and east sides of the parking lot. The other (47) columns to be wet set columns flush to grade with no raised bases.
- New LED light fixtures under the solar canopies are included.
- Pricing for each design incorporates today's solar module unit pricing (\$/W). Ameresco can hold this solar module pricing until August 11, 2023 – any future price increases, if applicable, for solar modules after this date would need to be added to Ameresco's GMP,

unless Ameresco has received a mutually executed contract and Notice to Proceed issued by the City by August 11, 2023.

- Includes temporary construction signage.
- Includes metering and monitoring of arrays.
- Includes system monitoring at inverter level for 5 years.
- Includes 10-year product warranties for inverters.
- Includes 25-year production warranties and 10-year product warranties for modules.
- Included engineering and interconnection of ECM at existing onsite Service Entrance Section (SES) and electrical infrastructure.
- Not included are major electrical upgrades for implementation of photovoltaic array.
- Assumes reasonable design and construction standards.
- Payment and Performance Bond included in base bid.
- KFHRA acknowledges that Ameresco's price for this project is based on the market cost as of the date of the contract for steel, copper, and other raw materials incorporated into equipment and material used for the ECM. Price increases for such equipment and materials after the contract is issued may either result in a project price increase or decrease in the project size if contract is not mutually executed and Notice to Proceed issued by the City by August 11, 2023.





Proposed Schedule for the Killeen Regional Airport Solar Project



## **Exhibit D**

### **Site Guidelines**

The Operations Center is a 24x7 area; airline counters are vacant from 12:00am to 4:00am; common areas are typically vacant from 10:00pm-6:00am; office areas are typically vacant from 7:00pm to 6:00am. Contractor will plan to do as much lighting retrofit work as possible during unoccupied hours. Contractor will coordinate with airport staff and work with airport personnel to minimize disruption and operational impact.

**Exhibit E**

**Schedule of Values**

SCHEDULE OF VALUES				City of Killeen - Fort Hood Regional Airport PROJECT #				APPLICATION NO :					
								APPLICATION DATE :					
								PERIOD TO :					
								PURCHASE ORDER NO :					
A	B	C	D	E	F	G		H	I				
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK	COMPLETED	MATERIAL STORED DT IN D of	TOTAL COMPLETED & STORED TO DATE		BALANCE TO FINISH (C - G)	RETAINAGE (IF APPLICABLE) 10%				
			FROM PREVIOUS PLICATK	THIS PERIOD		D + E + F	(%)						
1	Mobilization	\$ 350,904	\$ -	\$ -		\$ -	0%	\$ 350,904	\$ -				
2			\$ -				0%						
3	Interior and Exterior Lighting	\$ 653,317	\$ -	\$ -		\$ -	0%	\$ 653,317	\$ -				
4	PV - Rental Lot	\$ 2,639,780	\$ -	\$ -		\$ -	0%	\$ 2,639,780	\$ -				
5	PV - Short Term Lot	\$ 2,678,526	\$ -	\$ -		\$ -	0%	\$ 2,678,526	\$ -				
6	Covered Walkway	\$ 149,704	\$ -	\$ -		\$ -	0%	\$ 149,704	\$ -				
7	Adders	\$ 545,834	\$ -	\$ -		\$ -	0%	\$ 545,834	\$ -				
8			\$ -				0%						
9			\$ -				0%						
			\$ -				0%						
10			\$ -				0%						
11			\$ -				0%						
12			\$ -				0%						
13			\$ -				0%						
14			\$ -				0%						
15			\$ -				0%						
ORIGINAL CONTRACT TOTAL:		\$7,018,065.27	\$ -	\$ -	\$ -	\$ -	0.00%	\$7,018,065.27	\$ -				

**Exhibit F**  
**Commissioning Procedures**



## PV Commissioning & Close Out Plan

*Presented by  
Ameresco, Inc.  
2375 E. Camelback Rd, Ste 400  
Phoenix, AZ 85016*

*The commissioning & close out plan shown and described here is proprietary and cannot be copied, duplicated or commercially exploited – in whole or in part – without the express written permission of Ameresco.*



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## 1. Overview

### 1.1. Abbreviations & Definitions

Cx	Commissioning
ESCO	Energy Services Company
PT	Performance Test
PV	Photovoltaic
IP	Initial Proposal
kW	Kilowatt
kWh	Kilowatt hour
M&V	Measurement and Verification
MW	Megawatt
MWh	Megawatt-hour
NFPA	National Fire Protection Association
O&M	Operations and Maintenance
PFT	Pre-Functional Test
PM	Project Manager
EM	Engineering Manager
SCADA	Supervisory Control and Data Acquisition
SF	Square Feet
SOW	Scope of Work
VAC	Volt Alternating Current

### 1.2. Commissioning & Close Out Overview

Commissioning is a Quality Assurance & Quality Control (QA/QC) process which verifies that the owner's project requirements and expectations have been achieved. It also verifies that specified components and the system as a whole, have been properly installed through testing. Commissioning activities for this project were developed in accordance with the following industry standards:

- a. International Electrotechnical Commission (IEC) 62446- Grid Connected PV Systems- Minimum requirements for System Documentation, Commissioning Tests and Inspections
- b. National Electrical Manufacturing Association (NEMA)
- c. American Society for Testing & Materials (ASTM) E2848-13 – Standard Test Method for Reporting Photovoltaic Non-Concentrator System Performance

*Note: The listed standards are utilized to produce project specific equipment commissioning sheets.*

The purpose of the Commissioning plan is to establish a quality-oriented methodology for verifying and documenting that the Project is mechanically, electrically and structurally constructed in accordance with the Scope of Work, Industry Standards and the Contract Documents. The plan will identify what equipment and systems will be commissioned and to what level they will be commissioned. It will also identify parties involved in the commissioning process, their roles and responsibilities regarding inspections, tests, analyses, and required deliverables.

Close Out is another facet of the QA/QC process, where drawing revisions, specifications, installed equipment, change orders and field changes are recorded and archived during construction. Construction Close Out is necessary to retain an accurate trail of all applicable activities related to the construction project involving any and all phases.

The Ameresco Project Manager (PM) will be the primary point of contact during construction, as well as be responsible for redirecting Commissioning and Close Out documentation as necessary. The documents herein will be provided to the contractors during the bidding and Pre-Construction phase.

Substantial Completion will depend upon, among other things, the successful completion of a series of Offline and Live Commissioning Activities. This document describes the relevant Commissioning procedures, inspections and documentation in detail.

Contractor personnel, with the assistance of the equipment manufacturer(s) as needed, will perform a complete commissioning of the DC and AC system equipment. All testing and commissioning will be conducted in accordance with the manufacturer's specifications. The contractor's technician or engineer shall initial any inspection or test completed, in addition to photo documentation of the inspection or test, while not under the supervision of the Ameresco PM.

### **1.3. Commissioning Scope/Objectives**

Commissioning can be defined as “the process of ensuring that systems are designed, installed, functionally tested, and capable of being operated and maintained to perform in conformity with the project intent”. Upon completion of this commissioning plan, the project has met the Capacity Test requirements for Mechanical and Substantial Completion as described in the contractual agreements. This means that the facility has been made ready for

initial operations and all adjustment and testing has been successfully completed in accordance with the appropriate contract exhibits.

## **1.4. Safety**

- a. During the planning and execution of the processes and procedures described in this commissioning plan, safety will be considered the number one priority. All personnel will use thinking compliance and exercise conservative decision making when performing procedures. Conservative decision-making means when faced with a decision, personnel, environmental and equipment safety have precedence over all other considerations.
- b. All personnel participating in the commissioning process must be familiar with all the safety regulations pertaining to the work being performed including working in or around high-voltage equipment as dictated by OSHA, the corporate safety manual, site specific safety manual and local codes and must also have a complete understanding of the equipment's features and functions.
- c. Contractor will ensure that lock-out tag-out procedures are in place before Project energization. All locks and signage will be in place prior to energization of the applicable Equipment.
- d. Contractor will maintain qualified personnel on each Site during operational hours until Commissioning is completed. Personnel will be trained on inverter operation, substations and Interconnection Facilities, and emergency shutdown procedures.
- e. Appropriate personal protection equipment will be worn per manufacturers' recommendations and those recommendations made by the Arc Flash Hazard Analysis and permanent arc flash labeling installed by the contractor.

## **2. Commissioning Team: Roles & Responsibilities**

### **2.1. Commissioning Team Members**

As the general contractor for the project, Ameresco will serve as the Commissioning Authority. Ameresco personnel will schedule, coordinate, witness, record, report, and direct all commissioning activities both on and off the project site to assure optimal compliance with the design intent. All commissioning activities will be performed by qualified technical and engineering personnel from Ameresco and the various equipment and systems providers' factory trained engineers and/or startup technicians. The Commissioning & Close Out Team members are listed in the table below.

**Table 2.1: Commissioning & Close Out Team Members**

Contractor	Company	Team	Position
General	Ameresco	Construction	Construction Director
	Ameresco		Project Manager
	Ameresco	Engineering	Engineering Manager
	Ameresco		Project Development Engineer
	Ameresco	O&M/M&V	M&V Regional Manager
	Ameresco		Commissioning Agent
Electrical	TBD		TBD
Commissioning (Third Party)	Sunsystem Technology or Other		TBD

## 2.2. Roles & Responsibilities: Ameresco

### a. Construction Team

#### **Construction Director (CD)**

The Construction Director will oversee all of the Commissioning & Close Out activities related to construction. The CD will ensure that the Construction Team is following the Commissioning & Close Out Process as defined herein. The CD will ensure that the Project Manager completes all required Commissioning & Close Out Deliverables, in addition to all of the Punchlist Items.

#### **Project Manager (PM)**

The Project Manager will be responsible for developing, implementing and managing the Project Schedule for commissioning activities. The PM will make all decisions regarding procurement and scheduling with input from the Client, Construction Director, Engineering Manager, Commissioning Agent and Project Development Engineer(s).

The PM is responsible for overseeing all documentation as described in *section 3.3*. The PM will coordinate with all parties to see that tests and inspections are handled in such a way as to ensure both quality and safety. The PM will also be responsible for contracting with specialty/professional testing companies (i.e., those that perform transformer testing or other large AC distribution equipment) and scheduling their activities. The PM will direct those firms regarding distribution of their reports. The PM will compile all test documentation described in *section 3.3* and submit to the Commissioning Agent for his approval.

The PM will also be responsible for overseeing the completion of the Ameresco PV Punchlist, obtaining all the appropriate signatures when complete.

**b. Engineering Team**

**Engineering Manager (EM)**

The Engineering Manager will ensure the Commissioning Agent, M&V Regional Manager and Project Development Engineer review the required documentation and have input into the Close Out Compliance Review and Ameresco Punchlist. The EM will make final decisions pertaining to the commissioning process.

**Project Development Engineer (PDE)**

The Project Development Engineer will work alongside the Commissioning Agent to review as-builts and Commissioning reports to determine if the project was constructed as the design intended.

**c. O&M/M&V Team**

**M&V Regional Manager (MVRM)**

The M&V Regional Manager will serve as the Close Out Authority and sign off on the Ameresco PV Punchlist. The M&V Regional Manager will determine if the Close Out documentation is assembled by the Construction Team is complete. Any necessary revisions or additions will be documented via the Ameresco Punchlist.

**Commissioning Agent (CA)**

The Commissioning Agent will be responsible for reviewing all commissioning documentation to ensure compliance with the design intent. The Commissioning Agent will direct the Project Manager to take Corrective Action when necessary to rectify any field or design issues. These issues will be documented via the Ameresco Punchlist.

## **3. Commissioning Process**

### **3.1. The Commissioning Process: Purpose & Best Practices**

The Commissioning Process consists of electrical tests and inspections performed to confirm that facility systems and components have been installed in accordance with specifications and drawings, checked out in accordance with manufacturer's requirements and are ready for operation.

The Commissioning Process begins when the prerequisites to perform the specific testing have been satisfied. This generally means that physical installation has been completed in accordance with design drawings and manufacturer's specifications and the conditions for testing can be established. For example, DC Megger Testing may commence when

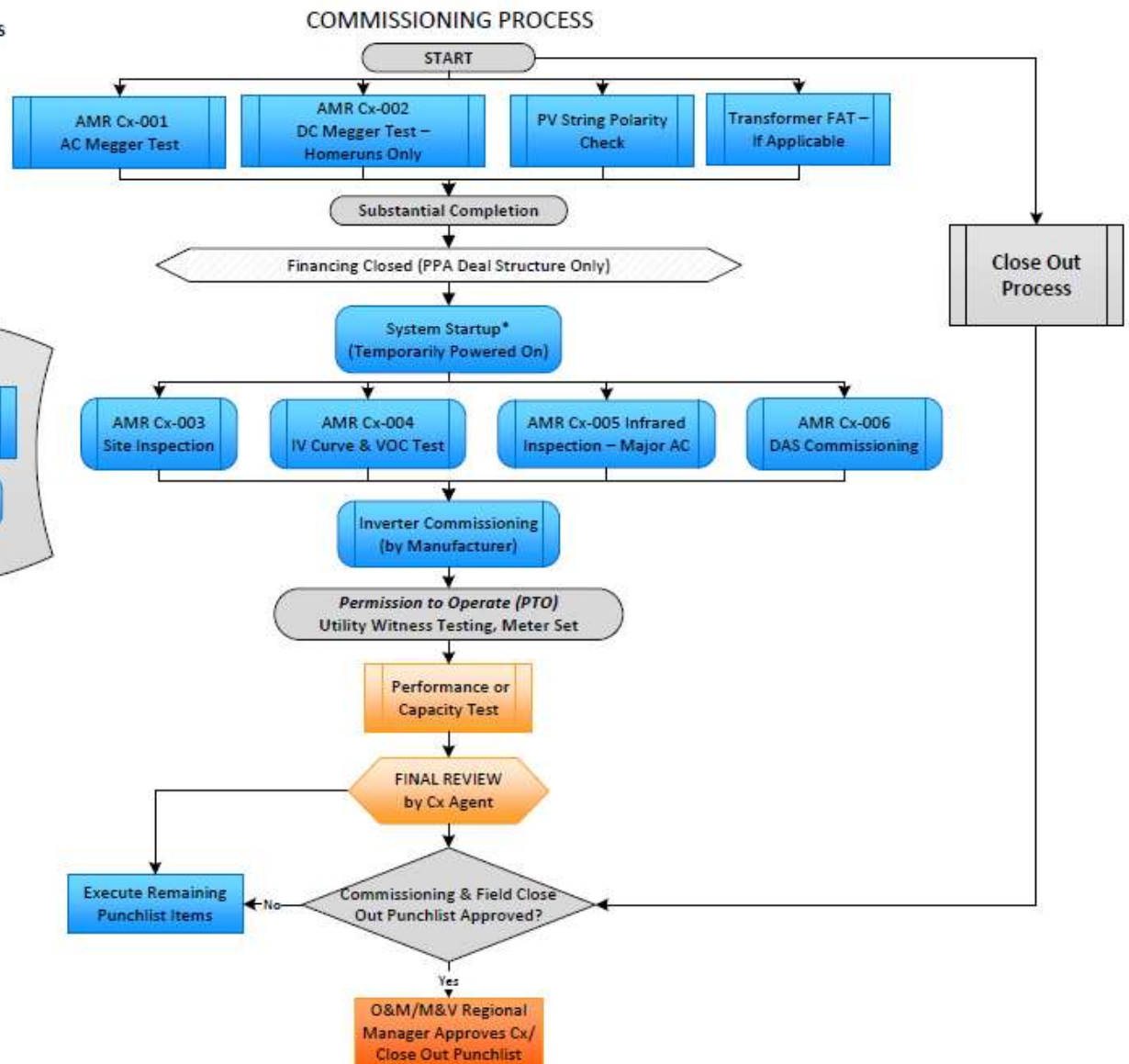
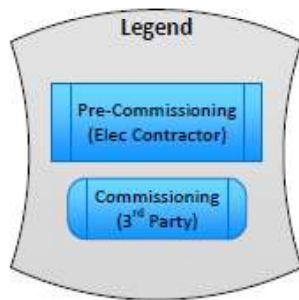
construction of the array is complete and the DC home runs (whips) have been installed up to the associated inverter but not yet terminated. It is best practice for the required Turnover Documents to be completed during construction, especially once the modules have been installed (i.e. Module Serial Mapping, String Wiring Diagram, O&M Data Form etc). Specific commissioning test prerequisites are stated in each of the commissioning procedures.

Portions of the commissioning testing are completed prior to initial energization, these are described in this document as **Pre-Commissioning Activities** and can be performed prior to the Mechanical Completion milestone and System Startup. The remaining **Commissioning Activities** are performed when backfeed electrical power is available to support the outstanding tests. Several of these tests can be performed within a 12hr period and with utility approval these tests can be performed prior to the Utility Witness Test. *With utility approval*, **System Startup** can commence to allow these tests to be performed. **System Startup** is the act of temporarily energizing the PV System, typically for a period not longer than 12 hrs (one full day of sun). This allows the Commissioning Team to diagnose any potential system issues prior to the Utility Witness Test, saving the utility, customer and field team additional trips for testing. Once the Utility Witness Test is complete and the utility has given Permission to Operate (PTO), the Capacity Test can be performed. Note that the Capacity Test will take at least three days and continue until at least 480 data points are obtained above 200 W/m<sup>2</sup> are collected, with at least 250 data points above 500 W/m<sup>2</sup>. Due to the extensive time the PV System is required to be energized for the Capacity Test, it is recommended that the Commissioning Team plan for this to be completed after the Utility Witness Test.

The results of the commissioning tests are evaluated to confirm that the component or system meets the established acceptance criteria by the Commissioning Agent. If deficiencies are discovered they are either corrected during the test and the test is re-performed, or the deficiency is documented via the Punchlist Items on each Commissioning Procedure. All Punchlist Items must either be corrected onsite or added to the Ameresco Punchlist.

## 3.2. Commissioning Process: Flow Chart

### Roles & Responsibilities



\*Verify with the utility if the PV System can be temporarily powered to perform the Commissioning Activities prior to Utility Witness Testing. PV System shall be powered off once the Commissioning Activities are complete.



### 3.3. Final Deliverables: Submittals & Test Documentation

The following deliverables are required to complete the Commissioning Process.

**Table 3.3 Commissioning Final Deliverables: Submittals & Documentation**

Type	Test/Inspection or Submittal, Reference Name	Deliverable	Responsible Party
Pre-Commissioning	AC Megger Test, AMR Cx-001	AMR Test Form	Electrical Subcontractor
		AC Cable Insulation Resistance Datasheet	
	DC Megger Test, AMR Cx-002	AMR Test Form	
		DC Cable Insulation Resistance Datasheet	
	PV String Polarity Check	All PV Strings shall be checked for polarity prior to closing inverter fuse holders.	
	Transformer Factory Acceptance Test (FAT)	FAT from Supplier	
Commissioning	Site Inspection, AMR Cx-003	Site Inspection Checklist/AMR Test Form (pdf)	Commissioning (Third Party) Subcontractor
		Site Photo Journal – can be integrated into final report. Photos requested in AMR Cx-003 & AMR Cx-006	
	IV Curve Test, AMR Cx-004	IV Curve Test Report (pvapx file)	
	Infrared Inspection, AMR Cx-005	AMR Test Form (pdf)	
		Infrared Photos (zip file)	
	DAS Commissioning, AMR Cx-006	<b>Point to Point Testing</b>  Confirm all sensors are communicating to onsite DL	

		<b>DAS Commissioning Checklist</b>  Includes terminal resistor setting and inverter modbus address programming	
	Inverter Commissioning	Commissioning Report	Inverter Manufacturer
	Performance Test or Capacity Test (AMR Cx-007)	If Capacity Test is required deliverables are the Final Test Report, Calculation Workbook, & PVSyst Energy Model	Ameresco

*Note: Responsible Parties shall be defined in the Contract and Subcontractor SOW.*

### 3.4. Bid & Pre-Construction Meetings

The Commissioning Plan, Deliverables and Schedule shall be discussed during the Pre-Bid and Pre-Construction Meetings.

- a. Pre-Bid Meeting Goal: Establish an understanding of the Commissioning SOW for each contractor.
- b. Pre-Construction Meeting Goal: Establish roles and responsibilities and key points of contact.

### 3.5. Pre-Commissioning Activities

Mechanical Completion AMR Cx Test Procedures describe the methodology used to ensure constructed facility meets the design and code intent. The Test Procedures were created as fillable forms and include relevant datasheets for onsite documentation during testing. The checklists and data sheets will be subject to review and approval of the CA.

The Service Provider is subject to change. Ultimate review and approval lies with Ameresco.

Pre-Commissioning includes the following activities:

Test/Inspection	Reference Document	Service Provider
AC Megger Test*	AMR Cx-001	Electrical Subcontractor
DC Megger Test*	AMR Cx-002	
PV String Polarity Check	-	
Transformer Factory Acceptance Test (FAT)	-	

*\* All Megger Tests on DC and AC cables will be carried out during the construction process and before terminations are made. Any Owner approved splices must be complete before any testing commences.*

### 3.6. Commissioning Activities

After the Pre-Commissioning Activities are complete, the system can be temporarily turned on (with utility approval). Safety is paramount at this stage. Contractor is to ensure that all safety protocol is being followed per the individual Test Procedures.

Commissioning includes the following activities:

Test/Inspection	Reference Document	Service Provider
Site Inspection	AMR Cx-003	Commissioning (Third Party) Subcontractor
IV Curve & VOC Test	AMR Cx-004	
Infrared Inspection	AMR Cx-005	
DAS Commissioning	AMR Cx-006	
Inverter Commissioning	-	Inverter Manufacturer
Performance or Capacity Test	AMR Cx-007	Ameresco

## 4. Close Out Process

### 4.1. Close Out: Purpose & Best Practices

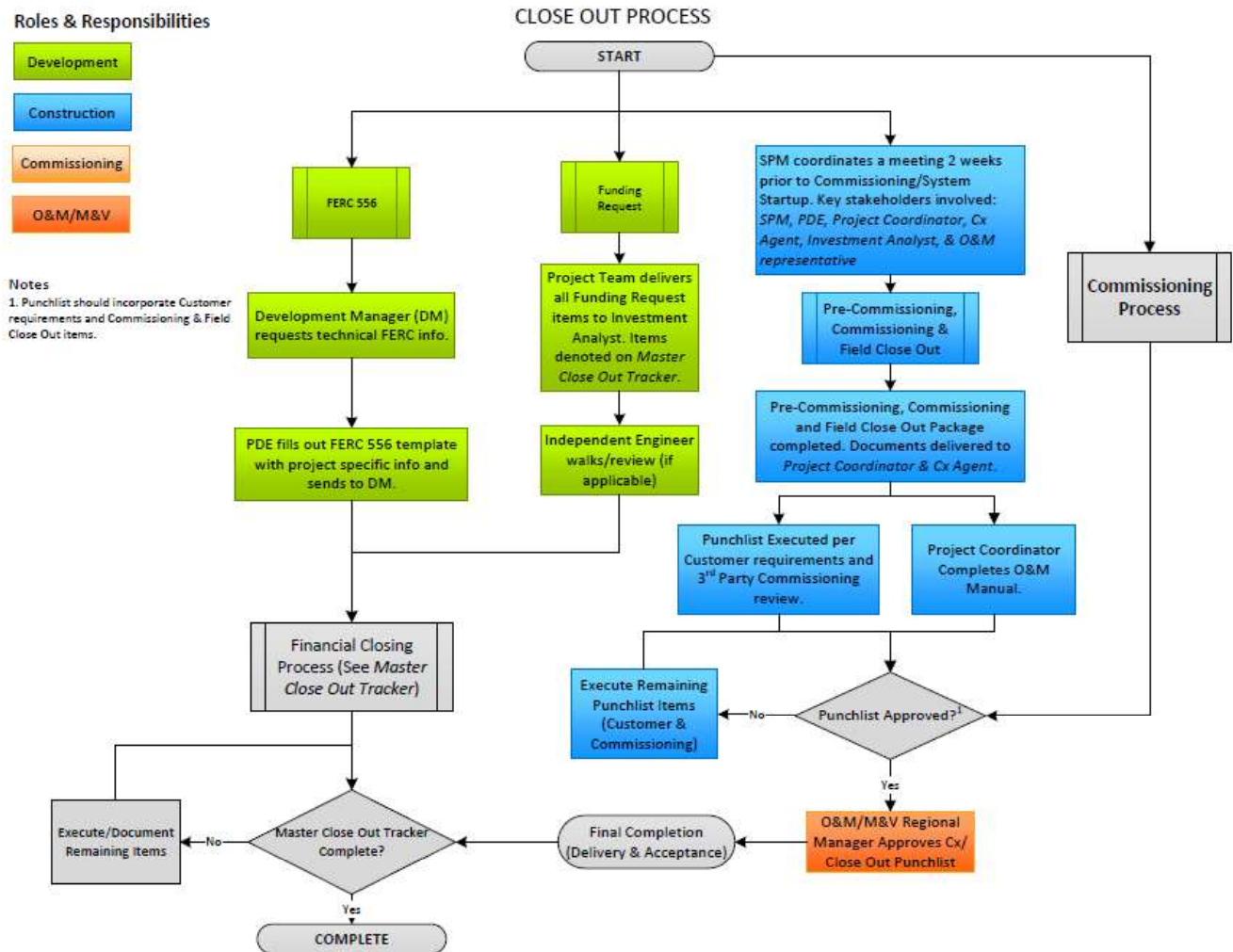
The Close Out Process is critical to maintaining accurate records of construction for O&M and M&V purposes over the life of the system. Close Out includes finalizing the Punchlist, finishing and submitting all paperwork (as-built drawings, data packages, guarantees and warranties, installed equipment information, etc.). All contractual obligations must be complete for the Construction Phase to conclude and transition to the owner and/or the asset manager.

Close Out begins with the assembly of all required Final Deliverables as described in *section 4.3*. As-Built Redlines are sent to the PDE for review and completion by the EOR(s). The Turnover Documents and O&M Manual Form are used by the Commissioning Agent to complete the O&M Manual. After notification from the PM the PDE, MVRM and CA will review all documentation, referred to as the *Close Out Compliance Review*. Any necessary additions or changes will be documented via the Punchlist.

The PM will also perform a walkdown with the Client to add any additional items to the Punchlist. This can be completed at any time after Mechanical Completion and is not included in the Close Out Process in *section 4.2*.

Close Out is not considered complete until all Punchlist items have been addressed and are completed. Once complete the Ameresco PM, Client and Regional M&V Manager sign off on the Punchlist. This signals the last step of the Construction Phase is complete and the Contractor can invoice for Final Completion.

## 4.2. Close Out Process: Flow Chart



### 4.3. Final Deliverables: Submittals & Documentation

The following tables describe each Close Out deliverable with regard to the responsible party.

**Table 4.3.1: Close Out Deliverables: ELECTRICAL CONTRACTOR**

Type	Test/Inspection or Submittal, Reference Name	Deliverable
Close Out	Record Dwg	Construction Dwg Redlines <sup>1</sup>
		DAS Communication Map
		String Wiring Diagram <sup>2</sup>
	Turnover Documents/Confirmation Email	Contractor shall confirm in writing if any equipment submittals have changed since the procurement phase. If said equipment changes during construction, contractor will send updated equipment submittals.

1. Construction Dwg Redlines shall be recorded on the Construction Dwgs relevant to the particular trade (electrical field changes shall be redlined on the Electrical Drawing Sheets). Electrical changes redlined by the contractor on a structural or conceptual drawing will NOT be accepted.
2. The String Wiring Diagram can be included with the Construction Dwg Redlines.

**Table 4.3.2: Close Out Deliverables: AMERESCO PROJECT MANAGER**

Document	Deliverable
Punchlist	-
Final Inspections	Final Building/Electrical Inspections, Special Inspection Reports
O&M Manual	O&M Manual Field Form
Training	Training Manual
SC & D&A Certificate	Substantial Completion Certificate
	Delivery & Acceptance Certificate
Change Orders	Executed Change Orders

**Table 4.3.3: Close Out Deliverables: PROJECT DEVELOPMENT ENGINEER/CX AGENT**

Test/Inspection or Submittal, Reference Name	Deliverable
Interconnection Agreement	Executed Interconnection Agreement
Field RFIs	Any RFIs
Energy Models & Shade Analysis	PVSyst Report (pdf & project file), Shade Analysis Report
Flash Test Data	-

#### **4.4. O&M Manuals & Warranties**

The O&M Manual contains the information required for operation, maintenance and decommissioning of a PV System. It includes the following information:

- Description of the work performed
- Maintainable equipment list
- Maintainable equipment data sheets
- Details of each maintainable piece of equipment including manufacturer, model number, and any sub-type information such as paint color
- Module serial map
- Module flash test data
- All relevant safety information (MSDS, etc.)
- Textural maintenance information or reference to manufacturer's literature that has this information
- Manufacturer and supplier contact details
- Guarantee / Warranty information
- Commissioning & Close Out Plan

To assemble the O&M Manual, first the O&M Manual Form, Turnover Documents and necessary photos are assembled by the Construction Team. Once complete PM sends the relevant information to the CA to create a draft of the O&M Manual. After the draft is reviewed by the Ameresco PM, the O&M Manual can be completed unless revisions are required.

## 5. Training

Ameresco provides on-site training to the maintenance facility team responsible for executing emergency shutdown procedures when necessary. The local maintenance facility team should only execute emergency shutdown procedures when absolutely necessary (electrical infrastructure work, other construction activities requiring LOTO, etc.). In the event of a fire the local Fire Department will perform the emergency shutdown. Operations and Maintenance should only be performed by qualified personnel.



## **Exhibit G**

### **Closing Deliverables**

Refer to Exhibit F, Sections 4.3 and 4.4, for close out deliverable documentation.

**Exhibit H**  
**Contractor Insurance Requirements**

(d) On or before the date of commencing any work at the Site through the Substantial Completion Date, Contractor shall and shall cause its subcontractors to obtain and maintain, with insurers authorized to do business in the state of Texas of recognized responsibility, having a current A.M. Best rating of no less than A- the following insurance, which shall include the minimum coverages and limits set forth below:

1. **Workers' Compensation.** Workers' compensation insurance in compliance with Texas state laws.

2. **Employer's Liability.** Employers Liability Insurance covering Bodily Injury by Accident \$100,000 each accident; Bodily Injury by Diseases \$500,000 policy limit, Bodily Injury by Diseases \$100,000 each employee;

3. **Commercial General Liability.** Commercial general liability insurance, occurrence form, as follows, with coverage for contractual liability, contractor's protective liability, explosion, collapse and damage to underground utilities, completed operations for twenty-four months after the work has been completed:

i. Combined single limit \$1,000,000; or

ii. General Aggregate limit \$2,000,000

iii. Products-Completed Operations Aggregate \$1,000,000

iv. Personal Injury and Advertising Injury \$1,000,000

v. Each occurrence limit \$1,000,000; Fire damage limit \$50,000; Medical expense limit \$5,000;

The policy shall be primary and non-contributory by endorsement or terms and conditions of the policy.

4. **Automobile Liability.** Commercial automobile liability insurance, including vehicles owned, hired and non-owned, with a combined single limit of not less than \$1,000,000 per accident, \$1,000,000 uninsured motorist.

(e) The commercial general liability, commercial automobile liability policies shall be endorsed to include Owner as an additional insured/loss payee.

(f) The coverage afforded Owner shall be primary and noncontributing with any other insurance maintained by Owner and shall be endorsed with a waiver of subrogation in favor of Owner; Owner shall be given thirty (30) days advance written notice of cancellation or non-renewal of any policy by the insurer.

(g) Prior to commencement of work under this Agreement, Contractor shall provide Owner with Certificates of Insurance evidencing compliance with the foregoing requirements, accompanied by copies of the required endorsements. Certificates of Insurance shall specify that

the insurer shall give Owner thirty (30) days advance written notice of cancellation or non-renewal of the policy by the insurer, except ten (10) days for non-payment of premium.

Contractor shall cause its subcontractors to carry the insurance coverage required under subsections (1), (2), (3), (4) above. The amounts of such insurance may be adjusted based on the subcontractors' scope of work.

## **Exhibit I**

### **Owner Insurance Requirements**

Owner shall obtain and maintain, with insurers of recognized responsibility, the following insurance, which shall include the minimum coverages and limits set forth herein: Commercial General Liability Insurance, including contractual liability, premises and operations, property damage, products/completed operations, independent contractor, and personal injury coverages, with a limit of not less than \$1,000,000 for each occurrence, combined single limit and \$2,000,000 general aggregate. Owner shall be responsible for insuring the physical assets comprising the Project by purchasing or otherwise acquiring and maintaining its own physical damage and property damage insurance as OWNER deems necessary or appropriate to protect OWNER against claims and damages.

## **Exhibit J**

### **FAA Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects**



# **Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects**

(Issued on January 20, 2023)

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## CURRENT CHANGES

Item	Change
All clauses	General updates to reflect statutory and regulatory changes, and some technical corrections and minor edits.
Addition of new provisions from 2 CFR § 200, Appendix II	<p>Added sections detailing new provisions required under 2 CFR § 200, Appendix II:</p> <ul style="list-style-type: none"> <li>Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR § 200, Appendix II (K); 2 CFR § 200.216) [Section A14]</li> <li>Domestic Preference for Procurements (2 CFR § 200, Appendix II (L); 2 CFR § 200.322) [Section A28]</li> </ul>
Updates to Section A4	Updated the requirements in the Buy America section to align with current FAA requirements.
Updates to Sections A5, A6, and A12	Updated the civil rights protected bases to align with, and explicitly list, the applicable legal authorities, including the Disability Act and Title VI of the Civil Rights Act of 1964.



# CONTRACT GUIDANCE

## 1. Purpose of this Document

- 1) The purpose of this document is to establish a convenient resource for Sponsors that consolidates federal contract provisions and clauses into one document that includes an applicability matrix. This document itself does not create, revise or delete requirements for participation in the Airport Improvement Program (AIP). The source of requirements addressed within this document are identified within the section for each individual clause.
- 2) **While this document is intended to assist Sponsors with their compliance efforts, it does not alter or modify the terms of any applicable statute or regulation, is not a substitute for reading the regulation and the applicability matrix, and each corresponding document section, nor does it constitute legal advice.**
- 3) Federal laws and regulations require that a Sponsor (a recipient of federal assistance) include specific clauses in certain contracts, solicitations, or specifications regardless of whether or not the project is federally funded.
- 4) For purposes of remaining compliant with its obligations, a Sponsor must incorporate applicable contract provisions in all its procurements and contract documents. Unless otherwise stated, these provisions flow down to subcontracts and sub-tier agreements.
- 5) Terminology:
  - a. The term **“Sponsor”** is used in this document to mean either an obligated Sponsor on a project that is not federally funded, or a Sponsor on an AIP funded project. A Sponsor is a “recipient” of federal assistance when receiving AIP or other FAA grant funds.
  - b. The term **“Owner”** of a public use airport is generally used in the solicitation or contract clauses because of its common use in public contracts. An Owner becomes an obligated Sponsor upon acceptance of the AIP grant assurances associated with current or prior AIP grant funded projects.
  - c. For purposes of determining requirements for contract provisions, the term **“contract”** includes professional services, and subcontracts and supplier contracts such as purchase orders.
  - d. The term **“contractor”** is understood to mean a contractor, subcontractor, or consultant; and means one who participates, through a contract or subcontract (at any tier).
  - e. The term **“bid”** is understood to mean a bid, an offer, or a proposal.
  - f. The term **“applicant”** is understood to mean the following in different contexts:
    - i. For the Equal Employment Opportunity (EEO) clause, the term **“applicant”** means an applicant for employment (whether or not the phrase, *for employment*, follows the word applicant or applicants).

- ii. For all other clauses, the term “**applicant**” means a bidder, offeror, or proposer for a contract.

## 2. Sponsor Actions

In general, Sponsor’s actions consistent with obligations:

- 1) Include in its procurements the provisions that are applicable to its project.
- 2) Not incorporate the entire contract provisions guidelines in its solicitation or contract documents, whether by reference or by inclusion in whole. Incorporation of this entire guidance document creates potential for ambiguous interpretation and may lead to improper application that unnecessarily increases price. A Sponsor that fails to properly incorporate applicable contract clauses may place themselves at risk for audit findings or denial of Federal funding.
- 3) Incorporate applicable contract provisions using mandatory language as required. The subheading entitled *Applicability* advises whether a particular clause or provision has mandatory language that a Sponsor must use.
  - (a) Mandatory Language – Whenever a clause or provision has mandatory text, the Sponsor must incorporate the text of the provision without change, except where specific adaptive input is necessary (e.g., such as the Sponsor’s name).
  - (b) No Mandatory Language – For provisions without mandatory language, this guidance provides model language acceptable to the FAA. Some Sponsors may have standard procurement language that is equivalent to those federal provisions. In these cases, Sponsors may use their existing standard procurement provision language provided the text meets the intent and purpose of the Federal law or regulation.
- 4) Require the contractor (including all subcontractors) to insert these contract provisions in each lower tier contract (e.g., subcontract or sub-agreement).
- 5) Require the contractor (including all subcontractors) to incorporate the requirements of these contract provisions by reference for work done under any purchase orders, rental agreements, and other agreements for supplies or services.
- 6) Require that the prime contractor be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor, or service provider.
- 7) Verify that any required local or State provision does not conflict with or alter a Federal law or regulation.

## 3. Typical Procurement Steps

The typical procurement steps in a project are:

- 1) Solicitation, Request for Bids, or Request for Proposals – This is also called the Advertisement or Notice to Bidders.
- 2) Bidding or Accepting Proposals – In this stage, the bidders receive a complete set of the procurement documents, also known as the project manual. The project manual will typically

include a copy of the solicitation, instructions-to-bidders, bid forms, certifications and representations, general provisions, contract conditions, copy of contract, project drawings, technical specifications, and related project documents.

- 3) Bid/Proposal Evaluation – Period when Sponsor tabulates, reviews, and evaluates all proposals for bid responsiveness and bidder responsibility.
- 4) Award – Point when the Sponsor formally awards the contract to the successful bidder.
- 5) Execution of Contract – Point at which the Sponsor formally enters into a legally binding agreement with bidder to perform services or provide goods.

#### **4. Applicability Matrix for Contract Provisions**

[Table 1](#) Matrix summarizes the applicability of contract provisions based upon the type of contract or agreement. The dollar threshold represents the value at which, when equal to or exceeded, the Sponsor must incorporate the provision in the contract or agreement.

Supplemental information addressing applicability and use for each provision is located in Appendix A. Appendix A and the Matrix include notes indicating when the Sponsor may incorporate references in the solicitation in lieu of including the entire text.

**Sponsors are responsible for reviewing both the Matrix and each corresponding section to determine applicability of specific contract provisions.**

#### **Meaning of cell values in table below:**

- Info – Sponsor has discretion on whether to include clause in its contracts.
- Limited – Provision with limited applicability depending on circumstances of the procurement.
- n/a – Provision that is not applicable for that procurement type.
- NIS – Provision that does not need to be included or referenced in the solicitation document
- REF – Provision to be incorporated into the solicitation by reference.
- REQD – Provision the Sponsor must incorporate into procurement documents.

**Table 1 – Applicability of Provisions**

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
<a href="#">Access to Records and Reports</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Affirmative Action Requirement</a>	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
<a href="#">Breach of Contract</a>	\$250,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Buy American Preferences</a>	\$ 0	REF	Limited	REQD	REQD	Limited	n/a
(1) <a href="#">Buy American Statement</a>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(2) <a href="#">Construction</a>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(3) <a href="#">Equipment/Building Projects</a>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
<a href="#">Civil Rights – General</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
<a href="#">Civil Rights - Title VI Assurances</a>	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) <a href="#">Notice - Solicitation</a>	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) <a href="#">Clause - Contracts</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) <a href="#">Clause – Transfer of U.S. Property</a>	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) <a href="#">Clause – Transfer of Real Property</a>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) <a href="#">Clause - Construct/Use/Access to Real Property</a>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) <a href="#">List – Pertinent Authorities</a>	\$0	NIS	REQD	REQD	REQD	REQD	REQD
<a href="#">Clean Air/Water Pollution Control</a>	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Contract Work Hours and Safety Standards</a>	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Copeland Anti-Kickback</a>	\$ 2,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Davis Bacon Requirements</a>	\$ 2,000	REF	Limited	REQD	Limited	Limited	n/a
<a href="#">Debarment and Suspension</a>	\$25,000	REF	REQD	REQD	REQD	Limited	n/a
<a href="#">Disadvantaged Business Enterprise</a>	\$ 250,000	REQD	REQD	REQD	REQD	REQD	n/a
<a href="#">Distracted Driving</a>	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Domestic Preferences for Procurements</a>	\$0	NIS	REQD	REQD	REQD	REQD	Info
<a href="#">Equal Employment Opportunity</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(1) <a href="#">EEO Contract Clause</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(2) <a href="#">EEO Specification</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Federal Fair Labor Standards Act</a>	\$ 0	REQD	REQD	REQD	REQD	REQD	Info
<a href="#">Foreign Trade Restriction</a>	\$ 0	REQD	REQD	REQD	REQD	REQD	n/a
<a href="#">Lobbying Federal Employees</a>	\$ 100,000	REF	REQD	REQD	REQD	REQD	n/a
<a href="#">Occupational Safety and Health Act</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
<a href="#">Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment</a>	\$0	NIS	REQD	REQD	REQD	REQD	Info
<a href="#">Prohibition of Segregated Facilities</a>	\$0	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Recovered Materials</a>	\$10,000	REF	Limited	REQD	REQD	Limited	n/a
<a href="#">Right to Inventions</a>	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
<a href="#">Seismic Safety</a>	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
<a href="#">Tax Delinquency and Felony Conviction</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Termination of Contract</a>	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Veteran's Preference</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a

**Airport Concessions Disadvantage Business Enterprise (ACDBE) Notes:**

1. Language relative to solicitation for ACDBEs does not need to be included in AIP funded solicitations, since in no case are concessions activities funded with federal funds.
2. Airport Sponsors must include the appropriate Civil Rights – Title VI language in their solicitation notices when they seek proposals for concessions.
3. For ACDBE agreements, use the column for *Non-AIP Contracts*.

## **APPENDIX A – CONTRACT PROVISIONS**

### **A1 ACCESS TO RECORDS AND REPORTS**

#### **A1.1 SOURCE**

2 CFR § 200.334

2 CFR § 200.337

FAA Order 5100.38

#### **A1.2 APPLICABILITY**

2 CFR § 200.334 requires a Sponsor to retain records pertinent to a Federal award for a period of three years from submission of final closure documents. 2 CFR § 200.337 establishes that Sponsors must provide Federal entities the right to access records pertinent to the Federal award. FAA policy extends these requirements to the Sponsor's contracts and subcontracts of AIP funded projects.

**Contract Types** – The Sponsor must include this provision in all contracts and subcontracts of AIP funded projects.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA with meeting the intent of this requirement. If the Sponsor prefers to use different language, the Sponsor's language must fully satisfy the requirements of 2 CFR §§ 200.334 and 200.337.

#### **A1.3 MODEL CONTRACT CLAUSE**

##### **ACCESS TO RECORDS AND REPORTS**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the 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. The Contractor 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.

## **A2 AFFIRMATIVE ACTION REQUIREMENT**

### **A2.1 SOURCE**

41 CFR Part 60-4

Executive Order 11246

### **A2.2 APPLICABILITY**

**Minority Participation.** Sponsors are required to set goals for minority participation in AIP funded projects exceeding \$10,000. The goals for minority participation derive from Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA) as established in Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table of all EAs and SMSAs and the associated minority participation goals.

To find the goals for minority participation, a Sponsor must either refer to the Federal Register Notice or to the Department of Labor online document, "[Participation Goals for Minorities and Females](#)". EAs and SMSAs span state boundaries. A Sponsor may have to refer to entries for adjacent states in order to locate the goal for the project location.

**Female Participation.** Executive Order 11246 has set a goal of 6.9% nationally for female participation for all construction projects. This value remains constant for all counties and states.

#### **Contract Types –**

*Construction* – The Sponsor must incorporate this notice in all solicitations for bids or requests for proposals for AIP funded construction work contracts and subcontracts that exceed \$10,000. Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.

*Equipment* – The Sponsor must incorporate this notice in any equipment project exceeding \$10,000 that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at a manufacturer's plant (e.g., firefighting and snow removal vehicles).

*Professional Services* – The Sponsor must incorporate this notice in any professional service agreement if the professional services agreement includes tasks that meet the definition of construction work [as defined by the U.S. Department of Labor (DOL)] and exceeds \$10,000. Examples include installation of monitoring systems (e.g., noise, environmental, etc.).

*Property/Land* – The Sponsor must incorporate this notice in any agreement associated with land acquisition if the agreement includes construction work (defined above) that exceeds \$10,000. Examples include demolition of structures or installation of boundary fencing.

**Use of Provision – MANDATORY TEXT.** The Sponsor must:

- (a) Incorporate the text of this provision in its solicitations without modification.
- (b) Incorporate the applicable minority participation goal and the covered area by geographic name.
- (c) Not simply insert a reference to the 1980 Federal Register Notice.

### **A2.3 MANDATORY SOLICITATION CLAUSE**

#### **NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

##### **Timetables**

Goals for minority participation for each trade: **[Sponsor must insert established goal]**

Goals for female participation in each trade: 6.9%

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

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

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



4. As used in this notice and in the contract resulting from this solicitation, the “covered area” is **[Sponsor must insert state, county, and city]**.

## **A3 BREACH OF CONTRACT TERMS**

### **A3.1 SOURCE**

2 CFR Part 200, Appendix II(A)

### **A3.2 APPLICABILITY**

This provision requires Sponsors to incorporate administrative, contractual or legal remedies in the event that a contractor violates or breaches contract terms. The Sponsor must also include appropriate sanctions and penalties.

**Contract Types** – This provision is required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II (A). This threshold is occasionally adjusted for inflation and is \$250,000.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA as meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 2 CFR Part 200. Select either "contractor" or "consultant" as applicable.

### **A3.3 MODEL CONTRACT CLAUSE**

#### **BREACH OF CONTRACT TERMS**

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

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

The duties and obligations imposed by the Contract Documents 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.

## **A4 BUY AMERICAN PREFERENCE**

### **A4.1 SOURCE**

Title 49 USC § 50101

Executive Order 14005, *Ensuring the Future is Made in All of America by All of America's Workers*

Bipartisan Infrastructure Law (Pub. L. No. 117-58), Build America, Buy America (BABA)

### **A4.2 APPLICABILITY**

The Buy American Preference incorporates statutory requirements and policies outlined in the in 49 USC § 50101, Executive Order 14005, and BABA.

Section 50101 of 49 USC requires that all steel and manufactured goods used on AIP projects be produced in the United States. This section also gives the FAA the ability to issue a waiver to a Sponsor to use non-domestic material on an AIP funded project subject to meeting certain conditions. A Sponsor may request that the FAA issue a waiver from the Buy American Preference requirements if the FAA finds that:

- 1) Applying the provision is not in the public interest.
- 2) The steel or manufactured goods are not available in sufficient quantity or quality in the United States.
- 3) The cost of components and subcomponents produced in the United States is more than 60 percent of the total components of a facility or equipment, and final assembly has taken place in the United States. Items that have an FAA standard specification item number (such as specific airport lighting equipment) are considered the equipment.
- 4) Applying this provision would increase the cost of the overall project by more than 25 percent.

Executive Order 14005 advances the Administration's priority to use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States. The Order directs, to the extent appropriate and consistent with applicable law, agencies shall partner with the Hollings Manufacturing Extension Partnership (MEP) to conduct supplier scouting in order to identify American companies that are able to produce goods, products, and materials in the United States that meet Federal procurement needs, prior to consideration of using non-domestic products.

The Bipartisan Infrastructure Law, Build America, Buy America (BABA) Act strengthens Made in America Laws and bolsters America's industrial base, protects national security, and supports high-paying jobs. Under BABA, iron, steel and certain construction materials are required to be 100% produced in the United States.

Under the Bipartisan Infrastructure Law (Pub. L. No. 117-58) BABA three waivers are available for iron and steel, manufactured products, and construction materials when a Federal agency finds that –

- 1) Applying the domestic content procurement preference would be inconsistent with the public interest (a "public interest waiver");

- 2) Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
- 3) The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”).

BABA defines construction materials, items that are or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber or drywall.

Items that consist of two or more of the aforementioned materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

The Buy America Preference requirements flow down from the Sponsor to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

**Note:** The Buy American Preference does not apply to temporary equipment a contractor uses as a tool of its trade and which does not remain as part of the project.

### **Required Documentation**

**The FAA Buy American Requests.** All applications (requests) for an FAA Buy American Preference Waiver includes, at minimum, a completed Content Percentage Worksheet and Final Assembly Questionnaire. Additional information may be requested from the applicant by the FAA. Airport Sponsors, consultants, construction contractors, or equipment manufacturers are responsible for completing and submitting waiver applications. The FAA is unable to make a determination on waiver requests with incomplete information. Sponsors must confirm with the bidder or offeror to assess the adequacy of the waiver request and associated information prior to forwarding a waiver request to the FAA for action. All FAA waivers forms are available from the FAA Buy American Requirements webpage.

**Proprietary Confidentiality.** Exemption 4 of the Freedom of Information Act protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential. Proprietary manufacturing and design information submitted to the Federal Aviation Administration for the purposes of receiving a Buy American Waiver shall not be disclosed outside the FAA. The FAA will provide a written notification to the Airport Sponsor, manufacturer(s), contractor(s) or supplier(s) when a waiver determination is complete.

**Timing of Waiver Requests.** Sponsors desiring a Type 2 waiver should submit their waiver request, with justification, *before* issuing a solicitation for bids or a request for proposal for a project.

The Sponsor must submit a Type 2, Type 3, or Type 4 waiver request *prior* to executing the contract. The FAA will generally not consider waiver requests after execution of the contract except where extraordinary and extenuating circumstances exist.

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### **Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects**

**The Buy American Notice of Determination (NOD) Process.** The FAA Reauthorization Act of 2018 requires that all approved waivers must be posted to the FAA’s website and remain posted for public comment for 10 days, before becoming effective. All FAA waivers must complete the NOD process. Sponsors are encouraged to wait until approved waivers become effective before executing AIP projects.

**Buy American Conformance Lists.** The FAA Office of Airports maintains listings of projects and products that have received a waiver from the Buy American Preference requirements for project specific and nationwide use. Each of these conformance lists is available online at [www.faa.gov/airports/aip/buy\\_american/](http://www.faa.gov/airports/aip/buy_american/). Products listed on the FAA Nationwide Buy American Conformance list do not require additional submittal of domestic content information. Nationwide waivers expire five years from the date issued, unless revoked earlier by the FAA.

**Facility Waiver Requests.** For construction of a facility, the Sponsor may submit the waiver request after bid opening, but prior to contract execution. Examples of facility construction include terminal buildings, terminal renovation, and snow removal equipment buildings.

#### **Contract Types –**

*Construction and Equipment* – The Sponsor must meet the Buy American Preference requirements of 49 USC § 50101 and BABA for all AIP funded projects that require materials that are or consists primarily of iron, steel or manufactured goods and construction materials.

*Professional Services* – Professional service agreements (PSAs) do not normally result in a deliverable that meets the definition of a manufactured product. However, the emergence of various project delivery methods has created situations where task deliverables under a PSA may include a manufactured product. If a PSA includes providing a manufactured good as a deliverable under the contract, the Sponsor must include the Buy American Preference provision in the agreement.

*Property* – Most land transactions do not involve acquiring a manufactured product. However, under certain circumstances, a property acquisition project could result in the installation of a manufactured product. For example, the installation of property fencing, gates, doors and locks, etc. represent manufactured products acquired under an AIP funded land project that must comply with Buy American Preferences.

**Use of Provisions** – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully comply with 49 USC § 50101 and BABA.

There are two types of FAA Buy American certifications. The Sponsor must incorporate the appropriate certifications of compliance with FAA Buy American Preference in the solicitation:

- **Construction Projects** involving the replacement, rehabilitation, reconstruction of airfield surfaces such as on runways, taxiways, taxilanes, aprons, roadways, parking lots, etc. – Insert the Certificate of compliance to FAA Buy American Preference based on Construction Projects.

- **Equipment and Buildings Projects** involving and including the acquisition of equipment such as snow removal equipment, navigational aids, wind cones, and the construction of buildings such as hangars, terminal development, lighting vaults, aircraft rescue & firefighting buildings, etc. - Insert the Certificate of Compliance with FAA Buy American Preference Based on Equipment/Building Projects.

#### **A4.3 MODEL SOLICITATION CLAUSES**

##### **A4.3.1 Certification of Compliance with FAA Buy American Preference Statement**

###### **FAA BUY AMERICAN PREFERENCE**

The Contractor certifies that its bid/offer is in compliance with 49 USC § 50101, BABA and other related Made in America Laws,<sup>1</sup> U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

The bidder or offeror must complete and submit the certification of compliance with FAA’s Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA’s Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

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<sup>1</sup> Per Executive Order 14005 “Made in America Laws” means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to “Buy America” or “Buy American,” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

#### **A4.3.2 Certification of Compliance with FAA Buy American Preference – Construction Projects**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101, BABA and other related Made in America Laws, U.S. statutes, guidance, and FAA policies, by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e., not both) by inserting a checkmark (✓) or the letter “X”.

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing iron, steel and manufactured products produced in the United States;
  - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
  - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- a) To provide to the Airport Sponsor or the FAA evidence that documents the source and origin of the iron, steel, and/or manufactured product.
  - b) To faithfully comply with providing U.S. domestic products.
  - c) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
  - d) Certify that all construction materials used in the project are manufactured in the U.S.
- ☐ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
  - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.

- d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
- e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### **Required Documentation**

**Type 2 Waiver (Nonavailability)** - The iron, steel, manufactured goods or construction materials or manufactured goods are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

**Type 3 Waiver** – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “facility/project.” The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- d) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver (Unreasonable Costs)** - Applying this provision for iron, steel, manufactured goods or construction materials would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) A completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bids and/or offers;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.



**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

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Date

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Signature

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Company Name

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Title

### **A4.3.3 Certification of Compliance with FAA Buy American Preference – Equipment/Building Projects**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101, and other Made in America Laws, U.S. statutes, guidance, and FAA policies by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing steel and manufactured products produced in the United States;
  - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
  - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- a) To provide to the Airport Sponsor or FAA evidence that documents the source and origin of the steel and manufactured product.
  - b) To faithfully comply with providing U.S. domestic product.
  - c) To furnish U.S. domestic product for any waiver request that the FAA rejects.
  - d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- ☐ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
  - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.

- d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### **Required Documentation**

**Type 2 Waiver (Nonavailability)** - The iron, steel, manufactured goods or construction materials are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

**Type 3 Waiver** – The cost of the item components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “item”. The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108 (products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- d) Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver (Unreasonable Costs)** - Applying this provision for iron, steel, manufactured goods or construction materials, would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bidders and/or offerors;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

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Date

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Signature

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Company Name

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Title

## A5 CIVIL RIGHTS - GENERAL

### A5.1 SOURCE

49 USC § 47123

### A5.2 APPLICABILITY

There are two separate civil rights provisions that apply to projects:

1. FAA General Civil Rights Provision and,
2. Title VI provisions, which are addressed in Appendix A6.

**Contract Types** – The General Civil Rights Provisions found in 49 USC § 47123, derived from the Airport and Airway Improvement Act of 1982, Section 520, apply to all Sponsor contracts *regardless* of funding source.

**Use of Provision – MANDATORY TEXT.** Each contract must include two civil rights provisions. The first general clause must be included in all contracts, lease agreements, or transfer agreements. An additional specific provision must be included; the applicable text is based on whether the contract is a general contract or whether the contract is a lease or transfer agreement. The Sponsor must incorporate the text of the appropriate general clause and specific clause without modification into the contract, lease, or transfer agreement.

The required clauses for each type of contract are summarized in the table below:

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Clause that is used for all contracts, lease agreements and transfer agreements	Every contract or agreement <b>regardless of funding source.</b>	0
Clause that is used for general contract agreements	This applies to all contracts that do not involve property agreements. It applies to all contracts not covered by A5.3.3 <b>regardless of funding source.</b>	0
Clause that is used for lease agreements and transfer agreements	This applies to all property agreements such as leases of concession space in a terminal and leases where a physical portion of the airport is transferred for use. It applies to all contracts not covered by A5.3.2 <b>regardless of funding source.</b>	0

## **A5.3 MANDATORY CONTRACT CLAUSES**

### **A5.3.1 General Clause that is used for Contracts, Lease Agreements, and Transfer Agreements**

#### **GENERAL CIVIL RIGHTS PROVISIONS**

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

### **A5.3.2 Specific Clause that is used for General Contract Agreements**

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

### **A5.3.3 Specific Clause that is used for Lease Agreements or Transfer Agreements**

If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor.

The above provision obligates the Contractor for the period during which the property is owned, used or possessed by the Contractor and the airport remains obligated to the Federal Aviation Administration.

## A6 CIVIL RIGHTS – TITLE VI ASSURANCE

### A6.1 SOURCE

49 USC § 47123

FAA Order 1400.11

### A6.2 APPLICABILITY

Title VI of the Civil Rights Act of 1964, as amended, (Title VI) prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance.

Sponsors must include appropriate clauses from the Standard DOT Title VI Assurances in all contracts and solicitations.

The text of each individual clause comes from the U.S. Department of Transportation [Order DOT 1050.2](#), Standard Title VI Assurances and Nondiscrimination Provisions, effective April 24, 2013. These assurances require that the Recipient (the Sponsor) insert the appropriate clauses in the form provided by the DOT. Where the clause refers to the applicable activity, project, or program, it means the AIP project.

The clauses are as follows:

#### A6.2.1 Applicability of Title VI Solicitation Notice

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Title VI Solicitation Notice – <ul style="list-style-type: none"><li>Assurance 2 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li><li>Assurance 30(d) of the Airport Sponsors Assurances</li></ul>	1) All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; and 2) All Sponsor proposals for negotiated agreements <b>regardless of funding source.</b>	0

<b>Contract Clause</b>	<b>The Sponsor must include the contract clause in:</b>	<b>Clause Text is Included in Paragraph</b>
<p>Title VI Clauses for Compliance with Nondiscrimination Requirements</p> <ul style="list-style-type: none"> <li>Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30(e)(1) of the Airport Sponsor Assurances</li> </ul>	<p>Every contract or agreement (unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities, which is a rare occurrence).</p> <p>It has been determined that service contracts with utility companies that are not already subject to substantively identical nondiscrimination requirements must include this clause.</p>	0
<p>Title VI Required Clause for Property Interests Transferred from the United States</p> <ul style="list-style-type: none"> <li>Assurance 4 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30e.3 of the Airport Sponsor Assurances</li> </ul>	<p>As a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Sponsor.</p> <p>This is a rare occurrence, and it will be the responsibility of the United States government to include the clause in the contract.</p>	0
<p>Title VI Required Clause for Transfer of Real Property Acquired or Improved Under the Activity, Facility or Program –</p> <ul style="list-style-type: none"> <li>Assurance 5 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30(e)(4)(a) of the Airport Sponsor Assurances</li> </ul>	<p>As a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for all transfers of real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases where a physical portion of the airport is transferred for use, for example a fuel farm, apron space, or a parking facility. It applies to agreements not covered by A6.4.4.</p>	0



Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
<p>Clause for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program</p> <ul style="list-style-type: none"> <li>Assurance 6 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30(e)(4)(b) of the Airport Sponsor Assurances</li> </ul>	<p>In any future (deeds, leases, licenses, permits, or similar instruments) entered into by the Sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases of concession space in a terminal not covered by A6.4.3.</p>	0
<p>Title VI List of Pertinent Nondiscrimination Acts and Authorities</p> <ul style="list-style-type: none"> <li>Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30(e)(2) of the Airport Sponsor Assurances</li> </ul>	<p>Insert this list in every contract or agreement, unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities, which is a rare occurrence.</p> <p><b>This list can only be omitted if the FAA has determined that the contractor or company is already subject to substantively identical nondiscrimination requirements.</b></p>	<p>0</p> <p><b>List must be included in all applicable contracts.</b></p>

### A6.3 MANDATORY SOLICITATION CLAUSE

**The Sponsor must include this clause in:**

- 1) All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; and
- 2) All Sponsor proposals for negotiated agreements **regardless of funding source.**

#### A6.3.1 Title VI Solicitation Notice

**Title VI Solicitation Notice:**

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

## **A6.4 MANDATORY CONTRACT CLAUSES**

### **A6.4.1 Title VI List of Pertinent Nondiscrimination Acts and Authorities**

Insert this list in every contract or agreement, unless the Sponsor has determined and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities. This list can be omitted if the FAA has determined that the contractor or company is already subject to nondiscrimination requirements, which is a rare occurrence.

#### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 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 USC § 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 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 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 (ensures nondiscrimination 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. 74087 (2005)];

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

#### **A6.4.2 Nondiscrimination Requirements/Title VI Clauses for Compliance**

The Sponsor must include this contract clause in:

- 1) Every contract or agreement (unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities); and
- 2) Service contracts with utility companies that are not already subject to substantively identical nondiscrimination requirements.
- 3) Other types of contracts with utility companies involving property covered by A6.4.2, A6.4.3, or A6.4.4.

#### **Compliance with Nondiscrimination Requirements:**

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

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any

information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **A6.4.3 Title VI Clauses for Deeds Transferring United States Property**

This is a rare occurrence, and it will be the responsibility of the United States government to include the clause in the contract. It will be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Sponsor.

#### **CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances:

**NOW, THEREFORE**, the Federal Aviation Administration as authorized by law and upon the condition that the (*Title of Sponsor*) will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program or other program for which land is transferred**), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC §§ 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Sponsor*) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (*Exhibit A attached hereto or other exhibit describing the transferred property*) and made a part hereof.

## (HABENDUM CLAUSE)

**TO HAVE AND TO HOLD** said lands and interests therein unto (*Title of Sponsor*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Sponsor*), its successors and assigns.

The (*Title of Sponsor*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the (*Title of Sponsor*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

### **A6.4.4 Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program**

This applies to agreements such as leases where a physical portion of the airport is transferred for use—for example a fuel farm, apron space, or a parking facility—and will be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for all transfers of real property acquired or improved under the Airport Improvement Program.

#### **CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances:

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
  1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee,

licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (*Title of Sponsor*) will have the right to enter or re-enter the lands and facilities thereon, and the above-described lands and facilities will there upon revert to and vest in and become the absolute property of the (*Title of Sponsor*) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

#### **A6.4.5 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program**

This applies to agreements such as leases of concession space in a terminal and any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under the Airport Improvement Program.

#### **CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, (*Title of Sponsor*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities

thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*

- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, (***Title of Sponsor***) will there upon revert to and vest in and become the absolute property of (***Title of Sponsor***) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## **A7 CLEAN AIR AND WATER POLLUTION CONTROL**

### **A7.1 SOURCE**

2 CFR Part 200, Appendix II(G)

42 USC § 7401, et seq

33 USC § 1251, et seq

### **A7.2 APPLICABILITY**

**Contract Types** – This provision is required for all contracts and lower tier contracts that exceed \$150,000.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of Appendix II to 2 CFR § 200.

### **A7.3 MODEL CONTRACT CLAUSE**

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

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Contractor 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.

Contractor must include this requirement in all subcontracts that exceed \$150,000.



## **A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

### **A8.1 SOURCE**

2 CFR Part 200, Appendix II(E)

2 CFR § 5.5(b)

40 USC § 3702

40 USC § 3704

### **A8.2 APPLICABILITY**

Contract Work Hours and Safety Standards Act Requirements (CWHSSA) (40 USC §§ 3702 & 3704) requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts not less than one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. CWHSSA prohibits unsanitary, hazardous, or dangerous working conditions on federally-assisted projects. The Wage and Hour Division (WHD) within the U.S. Department of Labor (DOL) enforces the compensation requirements of this Act, while DOL's Occupational Safety and Health Administration (OSHA) enforces the safety and health requirements.

#### **Contract Types –**

*Construction* – This provision applies to all contracts and lower tier contracts that exceed \$100,000, and employ laborers, mechanics, watchmen, and guards.

*Equipment* – This provision applies to any equipment project exceeding \$100,000 that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g., ARFF and SRE vehicles).

*Professional Services* – This provision applies to professional service agreements that exceed \$100,000 and employs laborers, mechanics, watchmen, and guards. This includes members of survey crews and exploratory drilling operations.

*Property* – While most land transactions do not involve employment of laborers, mechanics, watchmen, and guards, under certain circumstances, a property acquisition project could require such employment. Examples include the installation of property fencing or testing for environmental contamination

**Use of Provision – MANDATORY TEXT.** Sponsors must incorporate this text without modification.

## **A8.3 MANDATORY CONTRACT CLAUSE**

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

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

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

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

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

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

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

#### **4. Subcontractors.**

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

## **A9 COPELAND “ANTI-KICKBACK” ACT**

### **A9.1 SOURCE**

2 CFR Part 200, Appendix II(D)

29 CFR Parts 3 and 5

### **A9.2 APPLICABILITY and PURPOSE**

The Copeland (Anti-Kickback) Act (18 USC § 874 and 40 USC § 3145) makes it unlawful to induce by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.

#### **Contract Types –**

*Construction* – This provision applies to all construction contracts and subcontracts financed under the AIP that exceed \$2,000.

*Equipment* – This provision applies to all equipment installation projects (e.g., electrical vault improvements) financed under the AIP that exceed \$2,000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g., SRE and ARFF vehicles).

*Professional Services* –The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) include tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate the Copeland Anti-kickback provision.

*Property* –Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the Copeland Anti-Kickback provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The Sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 29 CFR Part 5.

### **A9.3 MODEL CONTRACT CLAUSE**

#### **COPELAND “ANTI-KICKBACK” ACT**

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

## **A10 DAVIS-BACON REQUIREMENTS**

### **A10.1 SOURCE**

2 CFR Part 200, Appendix II(D)

29 CFR Part 5

49 USC § 47112(b)

40 USC §§ 3141-3144, 3146, and 3147

### **A10.2 APPLICABILITY**

The Davis-Bacon Act (40 USC §§ 3141-3144, 3146, and 3147) ensures that laborers and mechanics employed under the contract receive pay no less than the locally prevailing wages and fringe benefits as determined by the Department of Labor.

#### **Contract Types –**

*Construction* – Incorporate into all construction contracts and subcontracts that exceed \$2,000 and include funding from the AIP.

*Equipment* – This provision applies to all equipment installation projects (e.g., electrical vault improvements) financed under the AIP that exceed \$ 2,000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g., SRE and ARFF vehicles)

*Professional Services* – The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) includes tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate this clause.

*Property* – Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The Sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

*Fencing Projects* – Fencing projects that exceed \$2,000 must include this provision.

**Use of Provision – MANDATORY TEXT.** 29 CFR part 5 establishes specific language a Sponsor must use. The Sponsor may not make any modification to the standard language. A/E firms that employ laborers and mechanics on a task that meets the definition of construction, alteration, or repair are acting as a contractor. The Sponsor may not substitute the term “Contractor” for “Consultant” in such instances.

## **A10.3 MANDATORY CONTRACT CLAUSE**

### **DAVIS-BACON REQUIREMENTS**

#### **1. Minimum Wages.**

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor,

Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding. The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### 3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types

described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) That each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;



(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

#### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman’s hourly rate) specified in the Contractor’s or subcontractor’s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits,

apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### 5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### 6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR §§ 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR § 5.5.

#### 7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR § 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC § 1001.

## **A11 DEBARMENT AND SUSPENSION**

### **A11.1 SOURCE**

2 CFR Part 180 (Subpart B)

2 CFR Part 200, Appendix II(H)

2 CFR Part 1200

DOT Order 4200.5

Executive Orders 12549 and 12689

### **A11.2 APPLICABILITY**

The Sponsor must verify that the firm or individual that it is entering into a contract with is not presently suspended, excluded, or debarred by any Federal department or agency from participating in federally-assisted projects. The Sponsor accomplishes this by:

- 1) Checking the System for Award Management (SAM.gov) to verify that the firm or individual is not listed in SAM.gov as being suspended, debarred, or excluded;
- 2) Collecting a certification from the firm or individual that it is not suspended, debarred, or excluded; and
- 3) Incorporating a clause in the contract that requires lower tier contracts to verify that no suspended, debarred, or excluded firm or individual is included in the project.

**Contract Types** – This requirement applies to *covered transactions*, which are defined in 2 CFR part 180 (Subpart B). AIP funded contracts are non-procurement transactions, as defined by 2 CFR § 180.970. Covered transactions include any AIP-funded contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000. This includes contracts associated with land acquisition projects.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 2 CFR part 180. For professional service agreements, Sponsor may substitute "bidder/offeror" with "consultant."

### **A11.3 MODEL BID/PROPOSAL CERTIFICATION CLAUSES**

#### **A11.3.1 Bidder or Offeror Certification**

##### **CERTIFICATION OF OFFEROR/BIDDER REGARDING DEBARMENT**

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

### **A11.3.2 Lower Tier Contract Certification**

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

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must confirm 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 successful bidder will accomplish this by:

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

If the Federal Aviation Administration 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.

## **A12 DISADVANTAGED BUSINESS ENTERPRISE**

### **A12.1 SOURCE**

49 CFR Part 26

### **A12.2 APPLICABILITY**

A Sponsor that anticipates awarding \$250,000 or more in AIP funded prime contracts in a federal fiscal year must have an approved Disadvantaged Business Enterprise (DBE) program on file with the FAA Office of Civil Rights (49 CFR § 26.21). The approved DBE program will identify a 3-year overall program goal that the Sponsor bases on the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on the project (49 CFR § 26.45).

**Contract Types** – Sponsors with a DBE program on file with the FAA must include the following provisions, if applicable:

- 1) Clause in all solicitations for proposals for which a contract goal has been established,
- 2) Clause in each prime contract, and
- 3) Clause in solicitations that are obtaining DBE participation through race/gender neutral means.

#### **Use of Provision –**

1. *Solicitations with a DBE Contract Goal* – No mandatory language provided. 49 CFR §26.53 requires a Sponsor's solicitation to address what a contractor must submit on proposed DBE participation. The language of 0 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor's revised language must fully satisfy these requirements. The Sponsor may require the contractor's submittal on proposed DBE participation either at bid opening as a matter of responsiveness or within five days of bid opening as a matter of responsibility.
2. *Solicitations Relying on Race/Gender Neutral Means* – No mandatory language provided. The language of 0 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor's revised language must fully satisfy requirements for a Sponsor that is not applying a project specific contract goal but is covered by a DBE program on file with the FAA.
3. *Assurance for Contracts Covered by DBE Program* – **MANDATORY TEXT PROVIDED.** Sponsors must incorporate this language if they have a DBE program on file with the FAA. This includes projects where DBE participation is obtained through race/gender neutral means (i.e., no DBE contract goal). Section 26.13 of 49 CFR establishes mandatory language for contractor assurance. The Sponsor must not modify the language. Part 26 of 49 CFR requires Sponsors ensure this clause also flows down into subcontracts (i.e., must be included verbatim in subcontracts).

4. *Prompt Payment for Contracts Covered by DBE Program* – No mandatory language provided. Section 26.29 of 49 CFR requires Sponsors to include a contract clause requiring prompt payment to subcontractors no later than thirty (30) days after the prime contractor receives payment from the Sponsor. The requirement applies to all subcontractors, not just DBEs. The prompt payment language of A12.3.3 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, such as a specific clause identified in the Sponsor's approved DBE program plan, the Sponsor's revised language must fully satisfy these requirements.
5. *Termination of DBE Subcontractors on Contracts with a DBE Contract Goal* - No mandatory language provided. Section 26.53 of 49 CFR prohibits unauthorized removal or replacement of DBE firms listed in response to a solicitation that had a DBE contract goal and sets forth the specific enforcement mechanism recipients must include in prime contracts. The language of A12.3.3 is acceptable to the FAA in meeting the intent of this requirement.
6. Sponsors that are not required to have a DBE program on file with the FAA are not required to include DBE provisions and clauses.

### **A12.3 REQUIRED PROVISIONS**

#### **A12.3.1 Solicitation Language (Solicitations that include a Contract Goal)**

**Bid Information Submitted as a matter of responsiveness:**

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR § 26.53.

As a condition of responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

**Bid Information submitted as a matter of responsibility:**

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR § 26.53.

As a condition of responsibility, every Bidder or Offeror must submit the following information on the forms provided herein within five days after bid opening.

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal;
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

**A12.3.2 Solicitation Language (Race/Gender Neutral Means)**

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the [Insert Name of Owner] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

**A12.3.3 Prime Contracts (Contracts Covered by a DBE Program)**

**Contract Assurance (49 CFR § 26.13; mandatory text provided) –**

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.



**Prompt Payment (49 CFR § 26.29; acceptable/sample text provided) –**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [specify number of days, not to exceed 30] days from the receipt of each payment the prime contractor receives from [Name of recipient]. The prime contractor agrees further to return retainage payments to each subcontractor within [specify number of days, not to exceed 30] 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 [Name of Recipient]. This clause applies to both DBE and non-DBE subcontractors.

**Termination of DBE Subcontracts (49 CFR § 26.53(f); acceptable/sample text provided) –**

The prime contractor must not terminate a DBE subcontractor listed in response to [include Solicitation paragraph number where paragraph 12.3.1, Solicitation Language appears] (or an approved substitute DBE firm) without prior written consent of [Name of Recipient]. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent [Name of Recipient]. Unless [Name of Recipient] consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

[Name of Recipient] may provide such written consent only if [Name of Recipient] agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

Before transmitting to [Name of Recipient] its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to [Name of Recipient], of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise [Name of Recipient] and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why [Name of Recipient] should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), [Name of Recipient] may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

## **A13 DISTRACTED DRIVING**

### **A13.1 SOURCE**

Executive Order 13513

DOT Order 3902.10

### **A13.2 APPLICABILITY**

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 subgrant.

**Contract Types** – Sponsors must insert this provision in all AIP funded contracts that exceed the micro-purchase threshold of 2 CFR § 200.320 (currently set at \$10,000).

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully satisfy these requirements.

### **A13.3 MODEL CONTRACT CLAUSE**

#### **TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging While Driving”, (12/30/2009), the Federal Aviation Administration 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 subgrant.

In support of this initiative, the Owner encourages the 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. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

## **A14 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

### **A14.1 SOURCE**

2 CFR § 200, Appendix II(K)

2 CFR § 200.216

### **A14.2 APPLICABILITY**

Sponsors and subgrant recipients are prohibited from using AIP grant funds to:

- a) Procure or obtain,
- b) Extend or renew a contract to procure or obtain, or
- c) Enter into a contract to procure or obtain certain covered telecommunications equipment.

These restrictions apply to telecommunication equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system. Covered telecommunications equipment is equipment produced or provided by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of either).

**Contract Types** – The Sponsor must include this provision in all AIP funded contracts and lower-tier contracts.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully satisfy these requirements. Sponsor may substitute “Contractor and subcontractor” with “Consultant and sub-consultant” for professional service agreements.

### **A14.3 MODEL CERTIFICATION CLAUSE**

#### **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

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

## **A15 DRUG FREE WORKPLACE REQUIREMENTS**

### **A15.1 SOURCE**

2. 49 CFR Part 32
3. Drug-Free Workplace Act of 1988 (41 USC § 8101-8106, as amended)

### **A15.2 APPLICABILITY**

The Drug-Free Workplace Act of 1988 requires some Federal contractors and *all* Federal grantees to agree that they will provide drug-free workplaces as a condition of receiving a contract or grant from a Federal agency. The Act does ***not*** apply to contractors, subcontractors, or subgrantees, although the Federal grantees workplace may be where the contractors, subcontractors, or subgrantees are working.

**Contract Types** – This provision applies to all AIP funded projects, but not to the contracts between the grantee (the Sponsor) and a contractor, subcontractors, suppliers, or subgrantees.

**Use of Provision** – No mandatory or recommended text provided because the requirements do not extend beyond the Sponsor level.

### **A15.3 CONTRACT CLAUSE**

None.

## **A16 EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

### **A16.1 SOURCE**

2 CFR Part 200, Appendix II(C)

41 CFR § 60-1.4

41 CFR § 60-4.3

Executive Order 11246

### **A16.2 APPLICABILITY**

The purpose of this provision is to provide equal opportunity for all persons, without regard to race, color, religion, sex, or national origin who are employed or seeking employment with contractors performing under a federally-assisted construction contract. There are two provisions — a construction clause and a specification clause.

The equal opportunity contract clause must be included in any contract or subcontract when the amount exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract or subcontract must include the clause for the remainder of the year, regardless of the amount or the contract.

#### **Contract Types –**

*Construction* – The Sponsor must incorporate contract and specification language in all construction contracts and subcontracts as required above.

*Equipment* – The Sponsor must incorporate contract and specification language into all equipment contracts as required above that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g., ARFF and SRE vehicles).

*Professional Services* – The Sponsor must include contract and specification language into all professional service agreements as required above.

*Property* – The Sponsor must include contract and specification language into all land acquisition projects that include work that qualifies as construction work as defined by 41 CFR part 60 as required above. An example is installation of boundary fencing.

**Use of Provision – MANDATORY TEXT.** 41 CFR § 60-1.4 provides the mandatory ***contract*** language. 41 CFR § 60-4.3 provides the mandatory ***specification*** language. The Sponsor must incorporate these clauses without modification.

## **A16.3 MANDATORY CONTRACT CLAUSE**

### **A16.3.1 EEO Contract Clause**

#### **EQUAL OPPORTUNITY CLAUSE**

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

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in

whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **A16.3.2 EEO Specification**

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

1. As used in these specifications:

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

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

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

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

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

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

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

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.



- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other

training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

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

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

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

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

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

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

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

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

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

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

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

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

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

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

## **A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

### **A17.1 SOURCE**

29 USC § 201, et seq

2 CFR § 200.430

### **A17.2 APPLICABILITY**

The U.S. Department of Labor (DOL) Wage and Hour Division administers the Fair Labor Standards Act (FLSA). This act prescribes federal standards for basic minimum wage, overtime pay, record keeping, and child labor standards.

**Contract Types** – Per the Department of Labor, all employees of certain enterprises having workers engaged in interstate commerce; producing goods for interstate commerce; or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by the FLSA.

All consultants, sub-consultants, contractors, and subcontractors employed under this federally assisted project must comply with the FLSA.

*Professional Services* – 29 CFR § 213 exempts employees in a bona fide executive, administrative or professional capacity. Because professional firms employ individuals that are not covered by this exemption, the Sponsor's agreement with a professional services firm must include the FLSA provision.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 29 USC § 201, et seq. The Sponsor must select *contractor* or *consultant*, as appropriate for the contract.

### **A17.3 MODEL SOLICITATION CLAUSE**

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

The [*Contractor* | *Consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*Contractor* | *Consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

## **A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

### **A18.1 SOURCE**

31 USC § 1352 – Byrd Anti-Lobbying Amendment

2 CFR Part 200, Appendix II(I)

49 CFR Part 20, Appendix A

### **A18.2 APPLICABILITY**

Consultants and contractors that apply or bid for an award of \$100,000 or more must certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or another award covered by 31 USC § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

**Contract Types** – The Sponsor must incorporate this provision into all contracts exceeding \$100,000.

**Use of Provision – MANDATORY TEXT.** Appendix A to 49 CFR Part 20 prescribes language the Sponsor must use. The Sponsor must incorporate this provision without modification.

### **A18.3 MANDATORY CERTIFICATION CLAUSE**

#### **CERTIFICATION REGARDING LOBBYING**

The Bidder or Offeror certifies by signing and submitting this bid or 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 Bidder or Offeror, 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, subgrants, and contracts under

grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

## **A19 PROHIBITION OF SEGREGATED FACILITIES**

### **A19.1 SOURCE**

2 CFR Part 200, Appendix II(C)

41 CFR Part 60-1

### **A19.2 APPLICABILITY**

The contractor must comply with the requirements of the EEO clause by ensuring that facilities they provide for employees are free of segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. This clause must be included in all contracts that include the equal opportunity clause, regardless of the amount of the contract.

**Contract Types** – AIP Sponsors must incorporate the Prohibition of Segregated Facilities clause (41 CFR § 60-1.8) in any contract containing the Equal Employment Opportunity clause of 41 CFR § 60-1.4. This obligation flows down to subcontract and sub-tier purchase orders containing the Equal Employment Opportunity clause.

*Construction* – Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

*Equipment* – On site installation of equipment such as airfield lighting control equipment meets the definition of construction and thus this provision would apply. This provision does not apply to equipment projects involving manufacture of the item at a vendor's manufacturing plant. An example would be the manufacture of a SRE or ARFF vehicle.

*Professional Services* – Professional services that include tasks that qualify as construction work as defined by 41 CFR part 60-1. Examples include the installation of noise monitoring equipment.

*Property/Land* – Land acquisition contracts that include tasks that qualify as construction work as defined by 41 CFR part 60-1. Examples include demolition of structures or installation of boundary fencing.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 41 CFR Part 60-1.

### **A19.3 MODEL CONTRACT CLAUSE**

#### **PROHIBITION OF SEGREGATED FACILITIES**

(a) The Contractor 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 Employment Opportunity clause in this contract.

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

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



## **A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

### **A20.1 SOURCE**

29 CFR Part 1910

### **A20.2 APPLICABILITY**

**Contract Types** – All contracts and subcontracts must comply with the Occupational Safety and Health Act of 1970 (OSH). The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) oversees the workplace health and safety standards wage provisions from OSH.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 29 CFR Part 1910.

### **A20.3 MODEL CONTRACT CLAUSE**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

## **A21 PROCUREMENT OF RECOVERED MATERIALS**

### **A21.1 SOURCE**

2 CFR § 200.323

2 CFR Part 200, Appendix II(J)

40 CFR Part 247

42 USC § 6901, et seq (Resource Conservation and Recovery Act (RCRA))

### **A21.2 APPLICABILITY**

Sponsors of AIP funded development and equipment projects must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 emphasizes maximizing energy and resource recovery through use of affirmative procurement actions for recovered materials identified in the Environmental Protection Agency (EPA) guidelines codified at 40 CFR part 247. When acquiring items designated in the guidelines, the Sponsor must procure items that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

**Contract Types** – This provision applies to any contracts that include procurement of products designated in subpart B of 40 CFR part 247 where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000.

*Construction and Equipment* – Include this provision in all construction and equipment projects.

*Professional Services and Property* – Include this provision if the agreement includes procurement of a product that exceeds \$10,000.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 2 CFR Part 200.

### **A21.3 MODEL CONTRACT CLAUSE**

#### **PROCUREMENT OF RECOVERED MATERIALS**

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year;  
or
- 2) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products).

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

## **A22 RIGHT TO INVENTIONS**

### **A22.1 SOURCE**

2 CFR Part 200, Appendix II(F)

37 CFR Part 401

### **A22.2 APPLICABILITY**

**Contract Types** – This provision applies to all contracts and subcontracts with small business firms or nonprofit organizations that include performance of *experimental, developmental, or research work*. This clause is not applicable to construction, equipment, or professional service contracts unless the contract includes *experimental, developmental, or research work*.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR Part 200, Appendix II.

### **A22.3 MODEL CONTRACT CLAUSE**

#### **RIGHTS TO INVENTIONS**

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR § 401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

## **A23 SEISMIC SAFETY**

### **A23.1 SOURCE**

49 CFR Part 41

### **A23.2 APPLICABILITY**

**Contract Types** – This provision applies to construction of new buildings and additions to existing buildings financed in whole or in part through the Airport Improvement Program.

*Professional Services*– Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

*Construction* – Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

*Equipment* – Sponsor must include the construction provision if the project involves construction or structural addition to a building such as an electrical vault project to accommodate or install equipment.

*Land* – This provision will not typically apply to a property/land project.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 49 CFR part 41.

### **A23.3 MODEL CONTRACT CLAUSE**

#### **A23.3.1 Professional Service Agreements for Design**

##### **SEISMIC SAFETY**

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that 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 Consultant 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.

#### **A23.3.2 Construction Contracts**

##### **SEISMIC SAFETY**

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction

Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

## **A24 TAX DELINQUENCY AND FELONY CONVICTIONS**

### **A24.1 SOURCE**

4. Section 8113 of the Consolidated Appropriations Act, 2022 (Public Law 117-103) and similar provisions in subsequent appropriations acts.
5. DOT Order 4200.6 – Appropriations Act Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

### **A24.2 APPLICABILITY**

The Sponsor must ensure that no funding goes to any contractor who:

- Has been convicted of a Federal felony within the last 24 months; or
- Has any outstanding tax liability for which all judicial and administrative remedies have lapsed or been exhausted.

**Contract Types** – This provision applies to all contracts funded in whole or part with AIP.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of DOT Order 4200.6.

### **A24.3 MODEL CERTIFICATION CLAUSE**

#### **CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

#### **Certifications**

- 1) The applicant represents that it is ( ☐ ) is not ( ☐ ) a corporation that has 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.
- 2) 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.

#### **Note**

If an applicant responds in the affirmative to either of the above representations, 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. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, 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.

### **Term Definitions**

**Felony conviction:** Felony conviction means a conviction within the preceding twenty four (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 USC § 3559.

**Tax Delinquency:** 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.



## **A25 TERMINATION OF CONTRACT**

### **A25.1 SOURCE**

2 CFR Part 200, Appendix II(B)

FAA Advisory Circular 150/5370-10, Section 80-09

### **A25.2 APPLICABILITY**

**Contract Types** – All contracts and subcontracts in excess of \$10,000 must address *termination for cause* and *termination for convenience* by the Sponsor. The provision must address the manner (i.e., notice, opportunity to cure, and effective date) by which the Sponsor’s contract will be affected and the basis for settlement (e.g., incurred expenses, completed work, profit, etc.).

#### **Use of Provision –**

*Termination for Convenience* – No mandatory text provided. The Sponsor must include a clause for termination for convenience. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR § 200.

*Termination for Cause* – No mandatory text provided. The Sponsor must include a clause for termination for cause (includes default). The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR Part 200, Appendix II.

*Equipment, Professional Services, and Property* – No mandatory text provided. The Sponsor may use their established clause language provided that it adequately addresses the intent of 2 CFR Part 200 Appendix II(B), which addresses termination for cause and for convenience.

### **A25.3 MODEL CONTRACT CLAUSES**

#### **A25.3.1 Termination for Convenience**

##### **TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)**

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.

4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

1. Completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
2. Documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
3. Reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
4. Reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

#### **TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)**

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

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

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

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

#### **A25.3.2 Termination for Default**

##### **TERMINATION FOR CAUSE (CONSTRUCTION)**

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes standard language for conditions, rights, and remedies associated with Owner termination of this contract for cause due to default of the Contractor.

### **TERMINATION FOR CAUSE (EQUIPMENT)**

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract for cause if the Contractor:

1. Fails to begin the Work under the Contract within the time specified in the Notice- to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.

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

- a) **Termination by Owner:** The Owner may terminate this Agreement for cause in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Owner approved extension;
  2. Make adequate progress so as to endanger satisfactory performance of the Project; or
  3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

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

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

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

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

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

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

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

## **A26 TRADE RESTRICTION CERTIFICATION**

### **A26.1 SOURCE**

49 USC § 50104

49 CFR Part 30

### **A26.2 APPLICABILITY**

Unless waived by the Secretary of Transportation, Sponsors may not use AIP funds on a product or service from a foreign country included in the current list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR).

**Contract Types** – The trade restriction certification and clause apply to all AIP funded projects.

**Use of Provision – MANDATORY TEXT.** 49 CFR Part 30 prescribes the language for this model clause. The Sponsor must include this certification language in all contracts and subcontracts without modification.

### **A26.3 MANDATORY SOLICITATION CLAUSE**

#### **TRADE RESTRICTION CERTIFICATION**

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

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

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 USC § 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the 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 CFR § 30.17, no contract shall be awarded to an Offeror or subcontractor:

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

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

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror 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 the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

## **A27 VETERAN'S PREFERENCE**

### **A27.1 SOURCE**

49 USC § 47112(c)

### **A27.2 APPLICABILITY**

**Contract Types** – This provision applies to all AIP funded projects that involve labor to carry out the project. This preference, which excludes executive, administrative, and supervisory positions, applies to covered veterans [as defined under § 47112(c)] only when they are readily available and qualified to accomplish the work required by the project.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 49 USC § 47112.

### **A27.3 MODEL CONTRACT CLAUSE**

#### **VETERAN'S PREFERENCE**

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC § 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.

## **A28 DOMESTIC PREFERENCES FOR PROCUREMENTS**

### **A28.1 SOURCE**

2 CFR § 200.322

2 CFR Part 200, Appendix II(L)

### **A28.2 APPLICABILITY**

To the greatest extent “practicable,” Sponsors must provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the U.S., including, but not limited to iron, aluminum, steel, cement, or other manufactured products.

**Contract Types** – Must be included in all subawards, including all contracts and purchase orders for work or products under the grant.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR § 200.322.

### **A28.3 MODEL CERTIFICATION CLAUSE**

#### **CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS**

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