

**CONTRACT BETWEEN THE
CITY OF LOS ANGELES AND _____
FOR _____**

THIS CONTRACT, made and entered into this ____ day of _____, 2016 ("Effective Date") at Los Angeles, California by and between the **CITY OF LOS ANGELES**, a municipal corporation and charter city (hereinafter referenced to as "City"), acting by order of and through its Board of Airport Commissioners (hereinafter referred to as "Board") of the Department of Airports (hereinafter referred to as "Department" or "LAWA"), and _____, a _____ corporation, with its principal place of business located in _____, _____ (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS,

WHEREAS,

WHEREAS,

NOW THEREFORE, that for and in consideration of the covenants and conditions hereinafter contained to be kept and performed by the respective parties, IT IS AGREED AS FOLLOWS:

Section 1.0 Definitions. It is understood that when the following words and phrases are used herein, each shall have the meaning set forth opposite the same:

BOARD: The Board of Airport Commissioners of the City of Los Angeles.

**DEPARTMENT,
LAWA, OR CITY:** The Department of Airports of the City of Los Angeles.

**CHIEF
EXECUTIVE
OFFICER:** Executive Director of the Department of Airports, or her/his authorized designee.

CONSULTANT: _____

PROJECT: _____

Section 2.0 Term of Contract.

2.1 The term of this Contract shall commence on the Effective Date and shall expire no later than ____ (__) year thereafter, unless earlier terminated pursuant to the terms of this Contract. Notwithstanding the foregoing, City shall have, at the sole discretion of the Executive Director, ____ (__) one-year options to extend the term of this Contract under the same terms and conditions. In order to be effective, City's exercise of such option(s) by the Executive Director shall be in writing.

Section 3.0 Services to be Performed/Provided by Consultant.

Section 4.0

Section 5.0

Section 6.0

Section 7.0 Payment of Consultant.

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7.4 Consultant shall submit separate monthly requests for payment for Services completed during the billing period. Each request for payment shall contain a cumulative total of all billings, and shall identify the billing applicable to each task of Consultant's Services, the identity of the persons who performed those tasks, the billing rates, the total number of hours worked, in the billing, monthly and the total number of hours authorized.

7.5 City shall not be required to make payments for work not yet performed, nor for work deemed unsatisfactory by City. The parties agree that the Executive Director shall make the final determination as to when Consultant's services, or any part thereof, have been satisfactorily performed or completed to justify release of any given payment to Consultant under this Contract.

7.6 City reserves the right to request the use of specific billing templates supplied by LAWA and any additional substantiation regarding any request for payment if the Executive Director considers such additional substantiation to be in the best interests of City. City will process each request for payment, following City's normal procedure, upon approval of the request for payment by Executive Director.

7.7 All invoices submitted pursuant to this Contract shall be certified by a duly authorized and knowledgeable officer of Consultant in a statement containing the following:

“I certify, under penalty of perjury, under the laws of the State of California, that to the best of my knowledge and belief, the above bill/invoice is just, true, and correct according to the terms of this Contract, and that payment therefore has not been received.”

7.8 Consultant shall perform a thorough Quality Assurance/Quality Control of each invoice prior to submitting the same to LAWA. Any errors discovered in the Consultants invoicing will be brought to the Consultant's attention during the review cycle and the Consultant will be given a short time frame to approximately 2-3 days to correct any issues or provide adequate level of support documentation in order to keep the invoice in process. Should the correction not be made in the time specified, the charges will be removed and the invoices

not paid. Should the charges be supported after the deadline they may be resubmitted in the next invoice for consideration; however, if deemed in error or unallowable a second time, the charges cannot be billed again.

7.9 Unless otherwise specifically directed by the Executive Director, Consultant shall submit all pertinent timesheets for itself, and for all subcontractors, that relate to each of its submitted invoices. Consultant shall also maintain, in a form subject to audit, and in accordance with generally accepted accounting principles, backup documentation to support all entries in each submitted billing statement. Such documentation shall be readily made available to the City, and to its duly authorized representatives, upon request by the Executive Director.

7.10 City, the Federal Aviation Administration (FAA), the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records, of Consultant, and/or of subcontractors, which are directly pertinent to this Consultant, for the purpose of making audits, examinations, excerpts and transcriptions. Consultant shall maintain "records", including, but not limited to, books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, sufficient to properly reflect all cost claimed to have been incurred under this Contract. Consultant shall make available to the City and to the Comptroller General, upon request and within a reasonable time, such records, materials and other evidence described herein for examination, audit or reproduction. Such records related to this Contract work shall be maintained and made available by Consultant for three (3) years after final payment on, final termination settlement of, or final dispute resolution of, this Contract, whichever is later. Consultant shall include, in any and all subcontractor agreements under this Contract a provision setting forth the record retention requirements specified in this paragraph.

7.11 Consultant shall comply with all applicable laws, rules, regulations, and shall hold all necessary consultations and conferences with personnel of any and all city, county, state, or federal agencies, as applicable, which may have jurisdiction over, or be concerned with, elements of the work to be performed by Consultant under this Contract.

7.12 LAWA shall, upon receipt and following approval of each payment request, remit to Consultant, at the address specified in this Contract, the appropriate amount.

7.12.1 Consultant, or subcontractor thereof, shall pay to any subcontractor, not later than seven (7) days after receipt of each payment from LAWA, the respective amounts allowed the Consultant on account of the work performed by the subcontractor, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a payment from the Consultant or subcontractor to a subcontractor, the Consultant or subcontractor may withhold no more than one hundred fifty percent (150%) of the disputed amount. Consultant shall include this provision in all subcontracts.

7.13 If a necessary change causes an increase in the scope of work or services to be performed or the Services to be supplied by Consultant pursuant to this Contract, then the parties hereto shall first agree upon additional compensation, if any, to be paid to Consultant therefore,

and this Contract shall be amended, in writing, prior to the performance by Consultant of said increased work or service.

Section 8.0 Insurance.

8.1 Consultant shall procure at its expense, and keep in effect at all times during the term of this Contract, the types and amounts of insurance specified on Insurance, Exhibit A, attached hereto and incorporated by reference herein. The specified insurance shall also, either by provisions in the policies, by LAWA's own endorsement form or by other endorsement attached to such policies, include and insure City, its Department of Airports, its Board and all of City's officers, employees, and agents, their successors and assigns, as additional insureds, against the areas of risk described in Exhibit A, hereof with respect to Consultant's acts or omissions in its operations, use, and occupancy of all Airports owned and/or operated by Department (hereinafter collectively referred to as "Airport") or other related functions performed by or on behalf of Consultant in, on or about Airport.

8.2 Each specified insurance policy (other than Workers' Compensation and Employers' Liability and fire and extended coverages) shall contain a Severability of Interest (Cross Liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability", and a Contractual Endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Contract with the City of Los Angeles".

8.3 All such insurance shall be primary and noncontributing with any other insurance held by the Department where liability arises out of or results from the acts or omissions of Consultant, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Consultant. Such policies may provide for reasonable deductibles and/or retentions acceptable to the Executive Director based upon the nature of Consultant's operations and the type of insurance involved.

8.4 City shall have no liability for any premiums charged for such coverage(s). The inclusion of City, its Department, Board and all of City's officers, employees, and agents, their successors and assigns, as insureds is not intended to, and shall not, make them, or any of them, a partner or joint venturer with Consultant in Consultant's operations at Airport. In the event Consultant fails to furnish City evidence of insurance and maintain the insurance as required, City, upon ten (10) days prior written notice to comply, may (but shall not be required to) procure such insurance at the cost and expense of Consultant, and Consultant agrees to promptly reimburse City for the cost thereof plus fifteen percent (15%) for administrative overhead. Payment shall be made within thirty (30) days of invoice date.

8.5 At least ten (10) days prior to the expiration date of the above policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with City. If such coverage is canceled or reduced, Consultant shall, within fifteen (15) days of such cancellation of coverage, file with City evidence that the required insurance has been reinstated or provided through another insurance company or companies.

8.6 Consultant shall provide proof of all specified insurance and related requirements to City either by production of the actual insurance policy(ies), by use of City's own endorsement form(s), by broker's letter acceptable to the Executive Director in both form and content in the case of foreign insurance syndicates, or by other written evidence of insurance acceptable to the Executive Director. The documents evidencing all specified coverage's shall be filed with City in duplicate and shall be procured and approved in strict accordance with the provisions in §§11.47 through 11.56 of City's Administrative Code prior to Consultant commencing work under this Contract. The documents shall contain the applicable policy number, the inclusive dates of policy coverage's, and the insurance carrier's name, shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, reduction in coverage, or nonrenewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) days prior to the effective date thereof. City reserves the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance.

8.7 City and Consultant agree that the insurance policy limits specified herein shall be reviewed for adequacy annually throughout the term of this Contract by the Executive Director who may, thereafter, require Consultant, on thirty (30) days prior, written notice, to adjust the amounts of insurance coverage to whatever reasonable amount said Executive Director deems to be adequate.

8.8 Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code §§ 1760 through 1780, and any other regulations and/or directives from the State Department of Insurance or other regulatory board or agency. Consultant agrees, except where exempted, to provide City proof of said insurance by and through a surplus line broker licensed by the State of California.

Section 9.0 City Held Harmless.

9.1 Except for the active negligence or willful misconduct of City, Consultant shall, to the fullest extent permitted by law, defend (with counsel satisfactory to City), indemnify and hold harmless City and any and all of its boards, commissioners, officers, directors, agents, employees, assigns and successors in interest (collectively "City Defendants") from and against any and all allegations, suits, claims, causes of action, liability, losses, damages, demands or expenses (including, but not limited to, attorney's fees and costs of litigation) (collectively "Claims"), prosecuted by anyone for (1) injury to, or death of, any person(s) (including Consultant and/or Consultant's agents or employees), (2) damage to, or destruction of, any property (including property of Consultant and/or Consultant's agents or employees), of any type or sort, which arises out of, relates to or is connected with this Contract or the act or omission of Consultant, whether or not contributed to by any act or omission of City.

9.2 In addition, Consultant agrees to protect, defend (with counsel satisfactory to City), indemnify, keep and hold harmless City Defendants, from and against any and all Claims arising out of any threatened, alleged or actual claim that any end product provided to the City by Consultant infringes any party's invention (patentable or not), patent, trademark, service marks, trade dress, copyright, trade secret, proprietary right, moral right, privacy, sui generis right, or other intellectual property rights, including ideas, concepts, themes, processes, methods,

algorithms, other proprietary information or intangible rights (hereinafter referred to collectively as "Intellectual Property Rights"). Consultant further agrees to, and shall, pay all damages, settlements, expenses and costs, including costs of investigation, court costs and attorney's fees, and all other costs and damages sustained or incurred by City arising out of, or relating to, the matters set forth above in this paragraph of the City's "Hold Harmless" agreement. Should Consultant reasonably believe that (1) any of the Work Products allegedly or actually infringes or is likely to infringe on any third party Intellectual Property Rights, or (2) any of the licenses procured on behalf of the City under this Contract is to expire, to be terminated or enjoined sooner than the term procured for, Consultant shall immediately notify City of such alleged, actual or potential infringement or license status. Upon City's request, Consultant shall, at Consultant's own expense:

- i) procure for the City the right or license to continue using the intellectual property at issue; or
- ii) replace the intellectual property at issue with a functionally equivalent, non-infringing product, if practicable.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the City or its agents/contractors, or diminish the intended benefits and use of the Work Products by the City or its agents/contractors under the specifications herein.

9.3 In Consultant's defense of the City Defendants under this Section, including but not limited to the negotiation, compromise, and settlement of any action, the City shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly §§271, 272 and 273 thereof.

9.4 The provisions under this Section shall survive the termination of this Contract. Rights and remedies available to the City hereinabove shall survive the termination of this Contract. Further, the rights and remedies are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City of Los Angeles.

Section 10.0 High Standards.

10.1 Consultant warrants that the services provided to City under this agreement will conform to high standards. In addition, persons performing services on LAWA premises shall appear and conduct themselves in a manner meeting or exceeding the LAXpert Service Standards.

Section 11.0 Key Personnel and LA WA Satisfaction with Employee Performance.

11.1 **Key Personnel.** The Consultant shall provide the persons listed below to perform the services listed below. The persons listed below are hereby designated as Key Persons under this Contract. The Consultant shall not remove or replace the Key Persons below, nor may his or her agreed-upon function or level of commitment be changed, without prior written consent of LAWA. Changes as to Key Persons shall only be made after request by Consultant to the Executive Director or designee for review and approval. If written request for such a change is

made, Consultant shall provide any documentation requested by the Executive Director for review. The granting of such request shall be at the Executive Director's sole discretion.

Section 12.0 Intellectual Property Ownership and Rights.

12.1. **Ownership.** All Work Products originated and prepared by Consultant (or its subcontractors, under this Contract) shall be and remain the property of the City for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract for LAWA including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property therein. To the extent applicable under the U.S. Copyright Act, all works created by Consultant under this Contract are work-made-for-hire created for the sole benefit and ownership of LAWA. Consultant hereby assigns, and agrees to assign to LAWA, all goodwill, copyrights and trademarks in all Work Products originated and prepared by Consultant under this Contract. Consultant further agrees to execute any documents necessary for LAWA to perfect, memorialize, or record LAWA's ownership of rights provided herein. This paragraph shall survive the expiration or termination of this Contract.

12.2. **Obligations on Sub-contractor.** Any sub-contract entered into by Consultant relating to this Contract, to the extent allowed hereunder, shall include a like provision (on City's ownership in Work Products) for work to be performed under this Contract to contractually bind or otherwise oblige its sub-contractors performing work under this Contract such that LAWA's ownership rights of all Work Products are preserved and protected as intended herein. Failure of Consultant to comply with this requirement or to obtain the compliance of its sub-contractors with such obligations shall subject Consultant to all remedies allowed under law and termination of this Contract.

12.3. **Use of Work Products by Third Parties.** Consultant shall not make available, provide or disclose any Work Product to any third party without prior written consent of LAWA.

12.4. **No Transfer of Pre-Existing Intellectual Property.** Nothing herein may be construed to transfer to LAWA any ownership, interest or right in any of the Consultant's intellectual property, trade secrets or know-how that is pre-existing before the commencement of this Contract, or that is derived independent of Consultant's performance of this Contract.

12.5. **Non-Infringement Warranty.** Consultant hereby represents and warrants that performance of all obligations under this Contract does not infringe in any way, directly or contributory, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, right of publicity and proprietary information. This section shall survive expiration or termination of this Contract.

12.6. **Indemnification of Third Party Intellectual Property Infringement Claims.** In addition to its obligations elsewhere in this Contract, Consultant will defend (with counsel satisfactory to City) at its sole expense and hold harmless in any infringement claim, demand, proceeding, suit or action ("Action" hereinafter), LAWA, its board, commissioners, officers, directors, agents, employees, or affiliates ("City Defendants") for any infringement or violation, actual or alleged, direct or contributory, intentional or otherwise, of any intellectual property rights, including patents, copyrights, trade secrets, trademarks, service marks, ideas, concepts, themes, methods, algorithms and other proprietary information or rights (collectively "Intellectual Property rights" hereinafter), (1) on or in any design, medium, matter, plant, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by the Consultant or subcontractors in performing the work under this Contract; or (2) as a result of the City's actual or intended use of any Work Product furnished by Consultant and/or Sub-Contractor under the Contract. Consultant also shall indemnify LAWA against any loss, cost, expense, liability, and damages awarded against LAWA or settlement as a consequence of such Action.

12.7. In Consultant's defense of the City Defendants, negotiation, compromise, and settlement of any such infringement Action, the City shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals there from, as required by the Los Angeles City Charter, particularly Article II, §§271, 272 and 273 thereof.

12.8. Where any Work Product furnished by Consultant is in a form of software or firmware ("Vehicle"), and if any part of the such Vehicle (a) becomes the subject of an Action, (b) is adjudicated as infringing a third party's Intellectual Property right, or (c) has its use enjoined or license terminated; Consultant shall, with the City's consent, do one of the following immediately. Consultant shall at its expense either:

- i) Procure for LAWA the right to continue using said part of the Vehicle; OR
- ii) Replace the Vehicle with a functionally equivalent, non-infringing product.

Exercise of any of the above-mentioned options shall not cause undue business interruption to LAWA or diminish the intended benefits and use of the Work Product by LAWA under the specifications herein.

12.9. Rights and remedies available to LAWA hereinabove shall survive the expiration or other termination of this Contract. Further, the rights and remedies are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City of Los Angeles. This Paragraph shall survive the expiration or other termination of this Contract.

12.10. **Consultant's Trade Secrets.** Trade Secrets, as used in this Contract, are defined in California Government Code §6254.7 and California Evidence Code §1061(a)(1) and may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. No

Work Products or deliverables created and delivered to City under this Contract may constitute Trade Secrets of Consultant.

12.11. Consultant hereby stipulates that LA WA is not nor expected to be in possession of any of Consultant's Trade Secrets. In the unlikely event that Consultant reveals any of its Trade Secrets (that is so marked conspicuously on every page) LAW A to further the intent and purpose of this Contract and so notifies LA WA in writing that it has revealed its Trade Secrets to City, then LAW A agrees to notify Consultant of any request made pursuant to the California Public Records Act, Cal. Gov. Code, §6250 et seq., ("CPRA") that includes Consultant's Trade Secrets. LAW A may disclose any of Consultant's Trade Secrets if Consultant does not object in writing to LAW A after five calendar days from the notice mailing date by the City to Consultant of the CPRA request if within that time Consultant has not obtained a court order blocking disclosure.

12.12. Unless expressly stated otherwise, for all pre-existing third-party and Consultant's intellectual property (if any), including software, required to operate or use any Work Product delivered by Consultant, Consultant hereby grants and will cause others to grant LAW A (including its agents and consultants) a royalty-paid, in-evocable license to use such pre-existing intellectual property internally by LAW A (including its agents and consultants) throughout the duration of this contract.

Section 13.0 Assignment or Transfer Prohibited.

13.1 Consultant shall not, in any manner, directly or indirectly, by operation of law or otherwise, hypothecate, assign, transfer, or encumber this Contract, or any portion thereof or any interest therein, in whole or in part, without the prior, written consent of the Executive Director.

13.2 For purposes of this Contract, the terms "transfer" and "assign" shall include, but not be limited to, the following: (i) if Consultant is a joint venture, a limited liability company, or a partnership, the transfer of fifty percent (50%) or more of the interest or membership in the joint venture, the limited liability company, or the partnership; (ii) if Consultant is a corporation, any cumulative or aggregate sale, transfer, assignment, or hypothecation of fifty percent (50%) or more of the voting shares of Consultant; (iii) the dissolution by any means of Consultant; and, (iv) a change in business or corporate structure. Any such transfer, assignment, mortgaging, pledging, or encumbering of Consultant without the written consent of the Executive Director is a violation of this Contract and shall be voidable at LA WA's option and shall confer no right, title, or interest in or to this Contract upon the assignee, mortgagee, pledgee, encumbrancer, or other lien holder, successor, or purchaser.

13.3 When proper consent has been given by the Executive Director, the provisions of this Contract shall be binding upon, and shall inure to the benefit of, the heir(s), successor(s), executor(s), administrator(s) and assign(s) of the parties hereto.

Section 14.0 Default and Right of Termination.

14.1 **The Executive Direction or his or her Designee.** LAW A may terminate this Contract for LAW A's convenience at any time by giving Consultant three (3) days written notice thereof. Upon receipt of said notice, Consultant shall immediately take action not to incur any

additional obligations, cost of expenses, except as may be reasonable necessary to terminate its actives.

14.2 **Termination for Breach.** If Consultant fails to perform any of the provisions of the Contract, the Executive Director or his or her designee may terminate this Contract by giving Consultant a Notice of Termination for Breach giving Consultant one (1) day written notice thereof.

14.3 All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become City property upon date of such termination. Consultant agrees to execute any documents necessary for the City to perfect, memorialize, or record City's ownership of rights provided herein. This section shall survive termination of this Contract.

Section 15.0 Independent Consultant.

15.1 It is the intention of the parties that Consultant is an independent contractor and not an employee, agent, joint venturer or partner of City. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between Consultant and City or between Consultant and any official, agent, or employee of City. Both parties acknowledge that the Consultant is not an employee of City.

15.2 Consultant shall retain the right to perform services for others during the term of this Contract unless specified to the contrary herein or prohibited by conflict of interest or ethics laws, regulations, or professional rules of conduct.

Section 16.0 Attorneys Fees.

16.1 In any action to enforce the terms of this Agreement, each party will be responsible for its own costs and attorney's fees.

Section 17.0 Disabled Access.

17.1 Consultant shall be solely responsible for fully complying with any and all applicable present and future rules, regulations, restrictions, ordinances, statutes, laws, and/or orders of any federal, state, and/or local governmental entity and/or court regarding disabled access including any services, programs, improvements or activities provided by Consultant related to its performance of services under this Contract. Consultant shall be solely responsible for any and all damages caused by, and/or penalties levied as the result of, Consultant's noncompliance. Further, Consultant agrees to cooperate fully with LAW A in its efforts to comply with the Americans With Disability Act of 1990 and any amendments thereto, or successor statutes.

Section 18.0 Confidentiality of Information.

All data, documents, records, materials, products, technology, computer programs, specifications, business plans, software, financial information, and other information disclosed or submitted orally, in writing or other means to consultant by LAW A, and other data, documents,

etc., to which the Consultant has access during the term of this Contract are confidential information ("Confidential Information"). Consultants agrees that both during and after the term of the Contract, LAWA's Confidential Information shall be considered and kept as private and privileged records of LAWA and, except as expressly required by law, will not be divulged, shared or disclosed to any person, firm, corporation or entity except on the prior written authorization of the LAWA Chief Executive Office.

18.2 If Consultant is presented with a subpoena or a request by an administrative agency regarding any Program Data which may be in Consultant's possession by reason of this Contract, Consultant must immediately give notice to the Executive Director and to the City Attorney for the City of Los Angeles, with the understanding that the City will have the opportunity to contest such process by any means available to it before any Program Data are submitted to any court, administrative agency, or other third party. Consultant, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

Section 19.0 Airport Security, Badging and Vehicles.

19.1 This Contract is expressly subject to 49 U.S.C. Chapter 44903, Security, the provisions of which, and all rules and regulations promulgated under it, are incorporated by reference. Consultant must comply, and must cause its subcontractors, guests, and invitees to comply with all such rules and regulations as they apply to them, as well as any other applicable rules and regulations governing the conduct and operation of the City's Airports which may be promulgated from time to time by the Executive Director/Board.

19.2 If, in the performance of this Contract, any employee of Consultant or any subcontractor has (i) unescorted access or regular escorted access to aircraft located on or at the City's Airport(s); (ii) unescorted access or regular escorted access to secured areas; or (iii) capability to allow others to have unescorted access to such aircraft or secured areas, then that employee is subject to such employment investigations (including the submission of fingerprints to the City to conduct criminal history record checks) as well as the FAA, the TSA, and other agencies that the City considers prudent.

19.3 All such individuals who pass the requisite employment investigation will be required to participate in a security awareness program and will be issued an identification badge that must be visibly displayed at all times while on the airfield or other secured areas of the Airport(s). They will further be required to report suspected security violations in accordance with rules and regulations promulgated by the Secretary of the United States Department of Transportation, by the Administrator of the FAA, the Under Secretary of the TSA and the Executive Director/Board.

19.4 Failure to comply with applicable rules and regulations may result in administrative actions or judicial prosecution. Consultant will be solely liable for any fines or penalties imposed for violation of rule(s) and regulation(s) by its employees and those of its subcontractors, guests, and invitees.

19.5 All badging request must be approved in writing by the Executive Director and or his/her authorized representative managing this contract.

Section 20.0 Nondiscrimination and Equal Employment Practices/Affirmative Action Program

20.1 Federal Non-Discrimination Provisions

20.1.1 The Consultant assures that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Consultant or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. This Provision binds Consultant from the bid solicitation period through the completion of the contract. All subcontracts awarded under or pursuant to this Contract shall contain this provision.¹

20.2 Municipal Non-Discrimination Provisions.

20.2.1 **Non-Discrimination in Use of Airport.** There shall be no discrimination against or segregation of any person, or group of persons, on account of race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition in the Contract, transfer, use, occupancy, tenure, or enjoyment of the Airport or any operations or activities conducted on the Airport.

20.2.2 **Non-Discrimination in Employment.** During the term of this Contract, Consultant agrees and obligates itself in the performance of this Contract not to discriminate against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition. Consultant shall take affirmative action to insure that applicants for employment are treated, during the term of this Contract, without regard to the aforementioned factors and shall comply with the affirmative action requirements of the Los Angeles Administrative Code, §10.8, et seq., or any successor ordinances or law concerned with discrimination.

20.2.3 **Equal Employment Practices.** Throughout the term of this Contract, Consultant agrees to comply with §10.8.3 of the Los Angeles Administrative Code ("Equal Employment Practices"), including any future amendments thereto, which is incorporated herein by this reference. By way of specification but not limitation, pursuant to §§10.8.3.E and 10.8.3.F of the

¹ Pursuant to Section 520 of the Airport and Airway Improvement Act of 1982, LAWA contractors must comply with general civil rights requirements prohibiting discrimination in employment practices.

Los Angeles Administrative Code, the failure of Consultant to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of this Contract. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to Consultant. Upon a finding duly made that Consultant has failed to comply with the Equal Employment Practices provisions of this Contract, this Contract may be forthwith terminated, canceled, or suspended.

20.2.4 Affirmative Action Program. Throughout the term of this Contract, Consultant agrees to comply with §10.8.4 of the Los Angeles Administrative Code ("Affirmative Action Program"), including any future amendments thereto, which is incorporated herein by this reference. By way of specification but not limitation, pursuant to §§ 10.8.4.E and 10.8.4.F of the Los Angeles Administrative Code, the failure of Consultant to comply with the Affirmative Action Program provisions of this Contract may be deemed to be a material breach of this Contract. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to Consultant. Upon a finding duly made that Consultant has failed to comply with the Affirmative Action Program provisions of this Contract, this Contract may be forthwith terminated, canceled, or suspended.

20.3 All subcontracts awarded under or pursuant to this Contract shall contain similar provisions, and Consultant shall require each of its subcontractors to complete a like certification and to submit to Consultant an Affirmative Action Plan acceptable to City.

Section 21.0 Compliance with Los Angeles City Charter §§470(c)(12) and 609(e).

Consultant, subcontractors, and their Principals are obligated to fully comply with City of Los Angeles Charter §§470(c)(12) and 609(e) and related ordinances regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the contract is valued at \$100,000 or more and requires approval of a City elected official. Gifts to elected officials and certain City officials are also limited. Additionally, Consultant is required to provide and update certain information to the City as specified by law. Any Consultant subject to Charter §470(c)(12) shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this contract:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions as provided in Charter §470(c)(12) and related ordinances, you are a subcontractor on City of Los Angeles Contract No. Pursuant to City Charter §470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for twelve (12) months after the City contract is signed. The Subcontractor is required to provide to Contractor names and addresses of the subcontractor's principals and contract information and shall update that information if it changes during the twelve (12) month time period. Subcontractor's information included must be provided to Contractor within five (5) business days. Failure to comply may result in termination of contract or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling (213) 978-1960.

Consultant, subcontractors, and their Principals shall comply with these requirements and limitations throughout the term of this Contract. Violation of this provision shall entitle the City to terminate this Contract and pursue any and all legal remedies that may be available.

Section 22.0 Municipal Lobbying Ordinance.

Consultant shall comply with the disclosure requirements, prohibitions and all of the terms and provisions of the City of Los Angeles Municipal Lobbying Ordinance, Los Angeles Municipal Code §48.01, et seq., throughout the term of this Contract.

Section 23.0 Living Wage and Service Contract Worker Retention Requirements.

23.1 Living Wage Ordinance

23.1.1 General Provisions: Living Wage Policy. This Contract is subject to the Living Wage Ordinance ("LWO") (§10.37, et seq., of the Los Angeles Administrative Code), which is incorporated herein by this reference. The LWO requires that, unless specific exemptions apply, any employees of service contractors who render services that involve an expenditure in excess of Twenty Five Thousand Dollar (\$25,000) and a contract term of at least three (3) months are covered by the LWO if any of the following applies: (1) at least some of the services are rendered by employees whose work site is on property owned by the City, (2) the services could feasibly be performed by City of Los Angeles employees if the awarding authority had the requisite financial and staffing resources, or (3) the designated administrative agency of the City of Los Angeles has determined in writing that coverage would further the proprietary interests of the City of Los Angeles. Employees covered by the LWO are required to be paid not less than a minimum initial wage rate, as adjusted each year. The LWO also requires that employees be provided with at least twelve (12) compensated days off per year for sick leave, vacation, or personal necessity at the employee's request, and at least ten (10) additional days per year of uncompensated time pursuant to §10.37.2(b). The LWO requires employers to inform employees making less than Twelve Dollars (\$12) per hour of their possible right to the federal Earned Income Tax Credit ("EITC") and to make available the forms required to secure advance EITC payments from the employer pursuant to §10.37.4. Consultant shall permit access to work sites for authorized City representatives to review the operation, payroll, and related documents, and to provide certified copies of the relevant records upon request by the City. Whether or not subject to the LWO, Consultant shall not retaliate against any employee claiming non-compliance with the provisions of the LWO, and, in addition, pursuant to §10.37.6(c), Consultant agrees to comply with federal law prohibiting retaliation for union organizing.

23.1.2 Living Wage Coverage Determination. An initial determination has been made that this is a service contract under the LWO, and that it is not exempt from coverage by the LWO. Determinations as to whether this Contract is a service contract covered by the LWO, or whether an employer or employee are exempt from coverage under the LWO are not final, but are subject to review and revision as additional facts are examined and/or other interpretations of the law are considered. In some circumstances, applications for exemption must be reviewed periodically. City shall notify Consultant in writing about any redetermination by City of coverage or exemption status. To the extent Consultant claims non-coverage or exemption from

the provisions of the LWO, the burden shall be on Consultant to prove such non-coverage or exemption.

23.1.3 Compliance; Termination Provisions and Other Remedies: Living Wage Policy. If Consultant is not initially exempt from the LWO, Consultant shall comply with all of the provisions of the LWO, including payment to employees at the minimum wage rates, effective on the Execution Date of this Contract. If Consultant is initially exempt from the LWO, but later no longer qualifies for any exemption, Consultant shall, at such time as Consultant is no longer exempt, comply with the provisions of the LWO and execute the then currently used Declaration of Compliance F01m, or such form as the LWO requires. Under the provisions of §10.37.6(c) of the Los Angeles Administrative Code, violation of the LWO shall constitute a material breach of this Contract and City shall be entitled to terminate this Contract and otherwise pursue legal remedies that may be available, including those set forth in the LWO, if City determines that Consultant violated the provisions of the LWO. The procedures and time periods provided in the LWO are in lieu of the procedures and time periods provided elsewhere in this Contract. Nothing in this Contract shall be construed to extend the time periods or limit the remedies provided in the LWO.

Section 24.0 Small Business Enterprise.

24.1 Consultant hereby agrees and obligates itself to utilize the services of the Small Business Enterprise (SBE) firms designated in its Proposal on the level designated in its Proposal (specifically, not less than ____ a Percent (____%) Small Business Enterprise (SBE) Subcontractor level of participation for the required Program designated Services).

224.2 Consultant hereby further agrees and obligates itself to strictly comply with all of the Rules and Regulations of CLAWA's Small Business Enterprise Pilot Program (Program).

24.3 Failure to comply with any of the Program's requirements shall subject the Consultant to the "Penalties" set forth in the Program's Rules.

24.4 Consultant shall submit, on a monthly basis, together with its invoice for payment the SBE Utilization Form listing the SBE Subcontractors utilized during the reporting period. Consultant shall cooperate with LAW A personnel in providing such information as shall be requested by LAW A in order to ensure compliance with the provisions of this section. LAW A will not process or pay Consultant's subsequent invoices if the SBE Utilization Forms are not timely submitted or if the Consultant fails to cooperate with LAW A personnel by promptly providing any and all information related to SBE participation requested by LAW A.

24.5 Failure to comply with any of the terms of this Section (or the terms of this Contract) shall constitute a material breach of contract.

Section 25.0 Child Support Orders.

This Contract is subject to §10.10, et seq, of the Los Angeles Administrative Code related to Child Support Assignment Orders, which is incorporated herein by this reference. Pursuant to this Section, Consultant (and any subcontractor of Consultant providing services to LAWA under this Contract) shall (1) fully comply with all State and Federal employment reporting

requirements for Consultant's or Consultant's subcontractor's employees applicable to Child Support Assignment Orders; (2) certify that the principal owner(s) of consultant and applicable subcontractors are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code §5230, et seq.; and (4) maintain such compliance throughout the term of this Contract. Pursuant to § 10.1 0(b) of the Los Angeles Administrative Code, failure of Consultant or an applicable subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Consultant or applicable subcontractors to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default of this Contract subjecting this Contract to termination where such failure shall continue for more than ninety (90) days after notice of such failure to Consultant by City (in lieu of any time for cure provided elsewhere in this Contract).

Section 26.0 Contractor Responsibility Program.

During the term of this Contract Consultant shall fully comply with Contractor Responsibility Program and the LAWA Contractor Responsibility Program Rules and Regulations, Exhibit B. Consultant previously submitted its Contractor Responsibility Program Pledge of Compliance and Response to the Questionnaire.

- (a) Consultant shall comply with all applicable Federal, state, and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees.
- (b) Consultant shall notify LAWA within thirty calendar days after receiving notification that any government agency has initiated an investigation that may result in a finding that the Consultant is not in compliance with paragraph (a) of this Section.
- (c) Consultant shall notify LAWA within thirty calendar days of all findings by a government agency or court of competent jurisdiction that Consultant has violated paragraph (a) of this Section.
- (d) Consultant shall ensure that its subcontractors complete a Pledge of Compliance attesting under penalty of perjury to compliance with paragraphs (b) and (c) of this Section.
- (e) Consultant shall ensure that their subcontractors comply with paragraphs (b) and (c) of this Section.

The CRP Rules and Regulations are available at <http://www.lawa.org>.

Section 27.0 Equal Benefits Ordinance.

27.1 Unless otherwise exempt, Consultant shall comply with the applicable provisions of the Equal Benefits Ordinance ("EBO"), §10.8.2.1 of the Los Angeles Administrative Code throughout the term of this Contract. Consultant shall not, in any of its operations within the City of Los Angeles or in other locations owned by the City of Los Angeles, including the Airport, discriminate in the provision of Non-ERISA Benefits (as defined below) between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration. As used above, the term "Non-ERISA Benefits" shall mean any and all benefits payable through benefit arrangements generally available to Consultant's employees which are neither "employee welfare benefit plans" nor "employee pension plans", as those terms are defined in §§3(1) and 3(2) of ERISA. Non-ERISA Benefits shall include, but not be limited to, all benefits offered currently or in the future, by Consultant to its employees, the spouses of its employees or the domestic partners of its employees, that are not defined as "employee welfare benefit plans" or "employee pension benefit plans", and, which include any bereavement leave, family and medical leave, and travel discounts provided by Consultant to its employees, their spouses and the domestic partners of employees.

27.2 Consultant agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the term of a Contract with the City of Los Angeles, the Consultant will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance at (213) 847-6480."

27.3 The failure of Consultant to comply with the EBO will be deemed to be a material breach of the Contract by City. If Consultant fails to comply with the EBO, the City may cancel or terminate the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach. Failure to comply with the EBO may be used as evidence against Consultant in actions taken pursuant to the provisions of Los Angeles Administrative Code §10.40, et seq., Contractor Responsibility Ordinance. If the City determines that Consultant has set up or used its contracting entity for the purpose of evading the intent of the EBO, the City may terminate the Contract.

Section 28.0 First Source Hiring Program for Airport Employers (LAX Only).

28.1 Consultant shall comply with all terms and conditions of the First Source Hiring Program (hereinafter referred to as "FSHP") throughout the term of this Contract. The rules, regulations, requirements, and penalties of the FSHP attached as Exhibit B and made a material term of this Agreement.

Section 29.0 Alternative Fuel Vehicle Requirement Program.

29.1 Consultant shall comply with the provisions of the alternative fuel vehicle requirement program (the "Alternative Fuel Vehicle Requirement Program"), if applicable, throughout the term of this Contract. The rules, regulations and requirements of the Alternative Fuel Vehicle Requirement Program are attached as Exhibit C and made a material term of this Contract.

Section 30.0 Business Tax Registration.

30.1 Consultant represents that it has registered its business with the City Clerk of City and has obtained, and presently holds, from that Office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's own Business Tax Ordinance, §21.00, et seq. of City's Municipal Code).

30.2 Consultant shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended during the term hereof.

Section 31.0 Environmentally Favorable Operations.

31.1 If applicable, Consultant acknowledges for itself and any sub-concessionaires that its operation of its activities under this Contract will be subject to all Department policies, guidelines and requirements regarding environmentally favorable construction use and/or operations practices (hereinafter collectively referred to as "LAWA Policies") as such LAW A Policies may be promulgated, revised and amended from time-to-time."

Section 32.0 Compliance with All Applicable Laws.

32.1 Consultant shall be solely responsible for fully complying with any and all applicable present and future rules, regulations, restrictions, ordinances, statutes, laws and orders of any federal, state, or local government authority.

32.2 Consultant shall be solely responsible for fully complying with any and all applicable present and future orders, directives, or conditions issued, given or imposed by the Executive Director which are now in force or which may be hereafter adopted by the Board of Airport Commissioners or the Executive Director with respect to the operation of Airport.

32.3 Consultant shall be solely responsible for any and all civil or criminal penalties assessed as a result of its failure to comply with any of these rules, regulations, restrictions, restrictions, ordinances, statutes, laws, orders, directives or conditions.

32.4 Consultant shall be solely responsible for insuring that the Services fully comply with any and all applicable present and future rules, regulations, restrictions, ordinances, statutes, laws or orders of any federal, state, or local government authority.

Section 33.0 Miscellaneous Provisions.

33.1 **Fair Meaning.** The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either LAWA or Consultant.

33.2 **Section Headings.** The Section headings appearing herein are for the convenience of LAWA and Consultant, and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Contract.

33.3 **Void Provisions.** If any provision of this Contract is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Contract, and all such other provisions shall remain in full force and effect.

33.4 **Two Constructions.** It is the intention of the parties hereto that if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

33.5 **Laws of California.** This Contract shall be construed and enforced in accordance with the laws of the State of California and venue shall lie in the appropriate California Superior Court located in Los Angeles County.

33.6 **Gender.** The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.

33.7 **Precedence.** In the event of any inconsistency between this Contract and Consultant's Proposal, the inconsistency shall be resolved by giving precedence to the provisions of this Contract.

33.8 **Amendments to Ordinances and Codes.** The obligation to comply with any Ordinances and Codes that have been incorporated into this Contract by reference shall extend to any amendments which may be made to those Ordinances and Codes during the term of this Contract.

33.9 **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or of any subsequent breach of the same term, covenant, or condition.

33.10 **Assignment of Anti-Trust Claims.** Consultant or agrees that, if requested, it will assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 commencing with § 16700) of the Business and Professions Code), arising from the provision and/or sale of good, materials, or services by the Consultant to the City pursuant to this Contract. Such assignment shall be made and become effective at the time the City tenders final payment to the bidder. If the City receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this .Government Code §§4550-4554, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the City any portion of the recovery, including treble damages, attributable to overcharges

that were paid by the assignor but were not paid by the City as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

33.11 **Time of Essence.** It is understood and agreed that time is of the essence with regard to Consultant's performance under this Contract.

33.12 **Entire Agreement.** This Contract contains the entire agreement between the parties hereto and supersedes any and all prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements or understandings, oral or written, between and among the parties relating to the subject matter contained in this Contract which are not fully set forth herein. This is an integrated Contract.

Section 34.0 Notices.

34.1 **Notice to City.** Written notices to City hereunder, with a copy to the City Attorney of the City of Los Angeles, shall be given by registered or certified mail, postage prepaid, and addressed to:

**Department of Airports
1 World Way
Post Office Box 92216
Los Angeles, CA 90009-2216**

**Office of City Attorney
1 World Way
Post Office Box 92216
Los Angeles, CA 90009-2216**

or to such other address as City may designate by written notice to Consultant.

34.2 **Notice to Consultant.** Written notices to Consultant hereunder, shall be given by registered or certified mail, postage prepaid, and addressed to:

or to such other address as Consultant may designate by written notice to City. Notice may, at LAWA's option, be given by e-mail to: _____.

34.3 The execution of any such notice by the Executive Director shall be as effective as to Consultant as if it were executed by the Board, or by Resolution or Order of said Board, and Consultant shall not question the authority of the Executive Director or the designee to execute any such notice.

34.4 All such notices, except as otherwise provided herein, may either be delivered personally to Executive Director with a copy to the Office of the City Attorney, Airport Division, in the one case, or to Consultant in the other case, may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid by certified or registered mail, return receipt requested, and shall be effective five (5) days after deposit in the mail. Notice to Consultant may also be given by email and/or fax. Email and/or faxes to Consultant shall be effective at the time of transmission. Notice may also be delivered by a nationally recognized

overnight commercial courier service that requires the recipient's signature for delivery, and shall be effective (1) business day after delivery by such courier.

IN WITNESS WHEREOF, City has caused this Contract to be executed on its behalf by the Executive Director and Consultant has caused the same to be executed by its duly authorized officers, all as of the day and year first hereinabove written.

APPROVED AS TO FORM:

CITY OF LOS ANGELES

Michael N. Feuer,
City Attorney

Date: _____

By _____

Justin Erbacci
Chief Executive Officer
Department of Airports

By: _____
Assistant/Deputy City Attorney

APPROVED:

By _____
Deputy Executive Director
Chief Financial Officer
Department of Airports

ATTEST: _____

By _____
Signature (Secretary)

By _____
Signature

Print Name

Print Name

Print Title