

MASTER SERVICE PROVIDER AGREEMENT

AGREEMENT NUMBER: DRAFT

THIS MASTER SERVICE PROVIDER AGREEMENT dated [DATE], is entered into by and between AEROSTAR AIRPORT HOLDINGS, LLC, a limited liability company, duly organized and validly existing under the laws of the Commonwealth of Puerto Rico (hereinafter referred to as “Aerostar”), and [NAME OF ENTITY], a [TYPE OF ENTITY] organized under the laws of the State of [STATE] and duly authorized to do business in the Commonwealth of Puerto Rico (hereinafter referred to as the “Provider”). Aerostar and Provider are hereinafter collectively referred to as the “Parties” or individually, as applicable, as a “Party”.

RECITALS

WHEREAS, Aerostar has the need to contract the services described hereunder;

WHEREAS, Provider is a business that provides the services described hereunder;

WHEREAS, Aerostar wishes to enter into an agreement with Provider as independent contractor for the performance of services described hereunder.

NOW, THEREFORE, for and in consideration of the mutual covenants, representations, warranties, and agreements contained herein and other valuable consideration, the appearing Parties having successfully completed negotiations and agreed upon the terms and conditions of this Agreement hereby reduce said terms and conditions to writing, as follows:

TERMS AND CONDITIONS

ARTICLE 1 BASIC INFORMATION

1.1 **Definitions.** Following are some definitions of the terms used herein:

- (a) **ACDBE:** means the Airport Concession Disadvantage Business Enterprise as defined by 49 CFR Part 23.
- (b) **Aerostar:** means Aerostar Airport Holdings, LLC, and its successors and assigns, represented by its Chief Executive Officer, Mr. Jorge Hernández.
- (c) **Agreement:** means this Master Service Provider Agreement, including any SOW and/or PO (as defined hereunder and entered into pursuant to the terms and conditions described herein).
- (d) **Airport:** means the Luis Muñoz Marín International Airport, located in Carolina, Puerto Rico.

- (e) **Confidential Information:** shall have the meaning set forth in Section 7.8(6).
- (f) **DBE:** means Disadvantage Business Enterprise as defined by 49 CFR part 26.
- (g) **DOT:** means the United States Department of Transportation.
- (h) **Effective Date:** means [EFFECTIVE DATE].
- (i) **Expiration Date:** means [EXPIRATION DATE].
- (j) **FAA:** means the Federal Aviation Administration.
- (k) **ID Badge:** means the Airport identification badge issued by Aerostar's Airport Credentials Office.
- (l) **Indemnified Parties:** shall have the meaning set forth in Section 6.1(A).
- (m) **New Services:** shall have the meaning set forth in Section 2.2.
- (n) **Purchase Order or PO:** means a document generated and issued by Aerostar, that describes the Services (described below). Each PO, issued pursuant to this Agreement, shall be incorporated into and form part of this Agreement.
- (o) **PRPA:** means the Puerto Rico Ports Authority.
- (p) **Services:** means the services, functions, tasks, responsibilities and/or deliverables to be furnished by Provider to Aerostar, pursuant to this Agreement, which shall be described in a PO or in a SOW, as they may be modified, replaced or supplemented in accordance with this Agreement.
- (q) **Statement of Work or SOW:** means a document executed by and between the Parties from time to time, substantially similar to the form of Statement of Work established in Schedule A, that describes, in detail, the Services. SOWs issued in connection to this Agreement will only be valid once Aerostar issues a PO that will be accompanied by the executed SOW. Each SOW shall be incorporated into and form part of this Agreement.
- (r) **Term:** means [TERM].
- (s) **TSA:** means the Transportation Security Administration.

1.2 **Schedules.** The following schedules are attached and made part of this Agreement for all intents and purposes and are hereby incorporated by reference. The actions included in such schedules are agreements between Aerostar and Provider, respectively, to comply with such obligations established therein in the way and form so established.

Schedule A. Statement of Work Template
Schedule B. Supplementary Provisions

The Services provided by Provider under the Agreement may be part of a project undertaken by Aerostar that complies with the terms and conditions of the Airports Improvement Program (“AIP”) administered by the FAA. Provider must adhere to the contract provision included in Schedule B. In the event of a conflict among the terms and conditions between the Agreement and Schedule B, the latter (Schedule B) shall govern.

1.3 Rules of Construction. Wherever used in this Agreement.

The words “include” or “including” shall be construed as incorporating “but not limited to” or “without limitation”;

The phrase “at Provider’s expense” means at the sole and exclusive expense of Provider, who shall be responsible for all costs involved in, or associated with, the applicable matter;

The phrase “in Aerostar’s discretion” means in Aerostar’s sole and exclusive discretion and judgment;

Wherever this Agreement imposes any obligation upon Provider, or provides that Provider shall be responsible for any action or matter, this Agreement shall be construed to mean that Provider shall perform or undertake the matter at Provider’s sole cost and expense, unless expressly specified otherwise; and

Captions of this Agreement are solely for convenience of reference and shall not in any way limit or amplify the terms and provisions hereof. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires.

**ARTICLE 2
SERVICES**

2.1 Purchase Orders/Statements of Work. Provider shall provide the Services described in a PO issued by Aerostar or in a SOW executed by an authorized representative of the Parties, from time to time. When a SOW is executed by the Parties, the SOW will only be valid once Aerostar issues a PO that will be accompanied by the executed SOW. Each PO issued by Aerostar and/or SOW executed by the Parties shall be incorporated into and form a part of this Agreement and shall be governed by the provisions hereof and any additional provisions set forth in the applicable PO and/or SOW. Each PO and/or SOW shall set forth the applicable methodology, phases, deliverables, schedules, milestones, and timeframe for the rendering of the Services contemplated in said PO and/or SOW. All Services shall be subject to and governed by the terms and conditions of this Agreement and of the particular provisions of the applicable PO and/or SOW.

2.2 Additional Services. If any services, functions, tasks, or responsibilities not specifically described in this Agreement, PO and/or SOW are required for the proper performance and provision of the Services, they shall be deemed to be required by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Agreement, the applicable PO and/or SOW. In the event that Aerostar requests Provider to

perform functions that are materially different from, and in addition to the Services (“New Services”), the Parties’ obligations with respect to such functions shall be as follows:

- (1) To the extent that such additional functions require resources for which a pricing metric or charging methodology exists under this Agreement, the applicable PO and/or SOW, the additional functions shall be priced in accordance with such pricing metric or charging methodology, Aerostar shall pay the charges for such additional functions through such pricing metric or charging methodology, and such additional functions shall be considered “Services” (and not “New Services”) and shall be subject to the provisions of this Agreement, and the applicable PO and/or SOW.
- (2) To the extent that such additional functions require resources for which a pricing metric or charging methodology does not exist under the Agreement, the applicable PO and/or SOW, and Provider agrees to provide such additional functions, then, prior to performing such additional functions:
 - a. Provider shall quote to Aerostar a charge for such additional functions. Such quote shall be reduced, as applicable, to take into account resources and expenses of Provider for then-existing Services that would no longer be required if the additional functions would be performed by Provider.
 - b. Upon receipt of such quote, Aerostar may then elect to have Provider perform the additional functions, and the charges under this Agreement, the applicable PO and/or SOW shall be adjusted, if appropriate, to reflect such functions. If Aerostar so elects (as set forth in the preceding sentence), such services shall then be deemed “Services” and shall be subject to the provisions of this Agreement, and of each applicable SOW and/or PO.
- (3) Evolution, supplements, modifications, enhancements and replacements of the Services over time due to technological advancements and improvements in the methods of delivering Services, shall not be deemed to be functions materially different from and in addition to the Services.
- (4) The Parties agree that in the event that Aerostar acquires or merges with another entity, Aerostar may, at its option: (i) engage a third party to provide services similar to the Services to such other entity, or (ii) direct Provider to provide the Services to such entity.

2.3 Resources Generally. Except as otherwise expressly provided in this Agreement, in the applicable PO and/or SOW, Provider shall be responsible for providing the facilities, personnel, equipment hardware, software, and other resources necessary to provide the Services.

2.4 Use of Subcontractors and Other Support. Provider shall not delegate or subcontract, without Aerostar’s prior written approval, any of its obligations under this Agreement. In seeking Aerostar’s approval, Provider shall specify in writing to Aerostar: *a)* the specific components of the Services that Provider proposes to subcontract, *b)* the scope of the proposed subcontract, and *c)* the identity and qualifications of the proposed subcontractor. At Aerostar’s

request, Provider shall forward to Aerostar a description of the scope and material terms (other than financial) of the subcontract or proposed subcontract. Aerostar shall have the right to approve or disapprove of proposed subcontractors in its sole and entire discretion. Any delegation or subcontracting by Provider in violation of this section shall be null and void. Aerostar shall have the right to revoke its prior approval of a subcontractor and to request that a Provider's subcontractor be removed if: (i) the subcontractor's performance does not comply with the terms and conditions of this Agreement and of each applicable SOW and/or PO; (ii) there have been material misrepresentations by or concerning the subcontractor; and/or (iii) the subcontractor (x) becomes subject to an investigation related to any fraudulent and/or unlawful act allegedly committed by the subcontractor; and/or (y) any complaint, claim, indictment, accusation, and/or administrative proceeding is filed, issued and/or initiated against the subcontractor related to any fraudulent and/or unlawful act allegedly committed by the subcontractor; and/or (z) any judgment, verdict, ruling, order, and/or administrative decision is issued against the subcontractor related to any fraudulent and/or unlawful act committed by the subcontractor. Provider shall remain responsible for obligations, services and functions performed by subcontractors to the same extent as if such obligations, services and functions were performed by Provider and/or Provider's employees, and for purposes of this Agreement and of each applicable SOW and/or PO such work shall be deemed work performed by Provider. Provider shall be Aerostar's sole point of contact regarding the Services, including with respect to payment. Provider shall not disclose Confidential Information (as said term is defined hereunder) to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in a manner substantially equivalent to that required of Provider under this Agreement. To the extent subcontractors, agents, representatives and other entities perform, or otherwise provide support to Provider related to the Services, Provider shall cause such entities to comply with the applicable obligations and restrictions under this Agreement and of each applicable SOW and/or PO, including, but not limited to, compliance with the insurance requirements set forth Article 5.

2.5 Services fees.

(A) In consideration of the Services rendered pursuant to this Agreement, Aerostar agrees to pay Provider the fees set forth in each applicable PO and/or SOW. The fees set forth in each PO and/or SOW shall be the only compensation to which Provider shall be entitled for the performance of its obligations under this Agreement. Except as may be otherwise provided in this Agreement, PO and/or SOW. Periodic charges under this Agreement are to be computed on a calendar month basis and shall be prorated for any partial month.

(B) Aerostar may withhold payment of particular charges that Aerostar disputes in good faith. In the event that charges cover both disputed and undisputed items, Aerostar shall pay all undisputed items. With respect to particular charges that Aerostar disputes in good faith, (i) if Aerostar has already paid any disputed charge, Aerostar may set-off the disputed charge against other charges owed by Aerostar hereunder; and (ii) if Aerostar has not paid any disputed charge, Aerostar may withhold payment of such charge. Aerostar shall notify Provider in writing on or before the date that any amount is so withheld (whether in respect of dispute on a current invoice or as a set off) and describe, in reasonable detail, the reason for such withholding.

(C) All variable charges and credits shall be billed or credited, as the case may be, in arrears in the following month's invoice. Each invoice shall, for each charge broken out on the invoice, cite the specific section(s) of the Agreement, the applicable SOW and/or PO on which such charge is based. Provider shall include the calculations utilized to establish the charges. All charges shall be stated in United States dollars. Each invoice shall separately state the amounts of any taxes Provider is collecting from Aerostar, if any, and Provider shall remit such taxes to the appropriate authorities. Provider shall render a single consolidated invoice for each month's charges showing such details as reasonably specified by Aerostar. Related fees and charges shall be grouped together in a logical manner to facilitate review and verification by Aerostar. Invoices will be in a format and at a level of detail and with appropriate back-up documentation approved by Aerostar. The form of invoice shall be as approved by Aerostar.

In no event shall Provider invoice Aerostar for any Services more than sixty (60) days after the date such Services were performed; provided, however, that Aerostar shall not be responsible for such Provider charges if invoiced to Aerostar more than sixty (60) days after the date such Services were performed.

(D) Subject to the provisions of this Agreement and of each applicable PO and/or SOW, invoices provided and properly submitted to Aerostar pursuant to this Agreement shall be due and payable by Aerostar within sixty (60) days after receipt of such invoice by Aerostar. Any amount due under this Agreement for which a time for payment is not otherwise specified shall be due and payable within sixty (60) days after receipt of a proper invoice for such amount.

(E) Provider shall maintain complete and accurate records of and supporting documentation for the amounts billable to and payments made by Aerostar hereunder, to the extent required to comply with any audit requirements established herein and in accordance with generally accepted accounting principles applied on a consistent basis. Provider agrees to provide Aerostar with documentation and other information with respect to each invoice as may be reasonably requested by Aerostar to verify accuracy and compliance with the provisions of this Agreement.

(F) When Aerostar has prepaid for a service or function for which Provider is assuming, or shall become obligated to assume, financial responsibility under this Agreement, Provider shall refund to Aerostar, upon either Party identifying the prepayment, that portion of such prepayment which is attributable to instances in which Provider is obligated to pay for such service or function. The foregoing does not in any way compel Aerostar to prepay for any Services.

(G) If Provider should receive a refund, credit or other rebate for goods or services previously paid for by Aerostar, Provider shall promptly notify Aerostar of such refund, credit or rebate and shall promptly pay the full amount of such refund, credit or rebate, as the case may be, to Aerostar.

(H) At its option and in good faith, Aerostar may set off, as a credit against the monthly charges payable to Provider under this Agreement, any amounts to be paid, reimbursed, or otherwise owed or owing to Aerostar by Provider under this Agreement, and such other agreements as the Parties may mutually agree. In addition, Aerostar may set off any amounts owing to Aerostar, as identified in audits performed pursuant to this Agreement.

ARTICLE 3 TERM

- 3.1 **Term.** The Parties expressly agree that, subject to the instances of early termination provided herein, this Agreement shall be in full force and effect for the Term, beginning on the Effective Date and concluding on the Expiration Date.
- 3.2 **Option to extend the Term.** Notwithstanding the above, at Aerostar's sole discretion, the Agreement may be extended for one (1) additional term of one (1) year, under the same terms and conditions included in the original Agreement (the "Extension Term").

ARTICLE 4 TERMINATION

- 4.1 **Termination without cause.** This Agreement, any PO, SOW and/or any portion of this Agreement, PO and/or SOW may be terminated by Aerostar for convenience (i.e. for any or no cause), without further liability or obligation, by providing a thirty (30) days prior written notice to Provider, notifying its intent to terminate and the effective date of such termination. In such event, Provider shall have no further rights hereunder. In the event of a termination hereunder, Aerostar shall pay all outstanding invoices for all work or services authorized, and rendered and accepted, prior to termination of this Agreement, which are not in dispute and are liquid, due and payable under this Agreement.
- 4.2 **Termination for cause:** Aerostar may terminate this Agreement any PO, SOW, and/or any portion of this Agreement, PO and/or SOW for cause for:
1. A breach of any provision of this Agreement, any SOW and/or PO by Provider, that is not cured by Provider within five (5) calendar days of the date on which Aerostar provides written notice of such breach. Aerostar shall exercise its termination option by delivering to Provider a written notice of such termination identifying the scope of the termination and the termination date.
 2. Immediately, if Provider commits more than three (3) breaches of its duties or obligations under this Agreement, any SOW and/or PO, over a period of six (6) months, which breaches do not arise out of a single event or series of closely related events.
 3. Immediately, upon a change in control of Provider whereby a person obtains the legal, beneficial or equitable ownership of a majority or controlling interest in Provider (and/or its respective controlling affiliates, if any).
 4. If a petition in bankruptcy is filed by or against Provider, or Provider becomes insolvent or makes a general assignment for the benefit of creditors, Aerostar may terminate this Agreement immediately without notice and without further obligation.
 5. If all or any portion of Provider's licenses or permits to do business in Puerto Rico are revoked or suspended, or any of Provider's insurance policies, related to this Agreement, are canceled, reduced or otherwise invalidated, Provider shall promptly

notify Aerostar, and Aerostar may terminate this Agreement immediately without notice and without further obligation.

- 4.3 **Unsatisfactory Performance.** If Provider's performance is, in Aerostar's reasonable judgment, unsatisfactory, Aerostar shall make demand upon Provider to improve its performance. If Provider does not improve its performance within fifteen (15) days after such demand, then Aerostar shall be entitled to terminate this Agreement forthwith at any time thereafter with no further liability or obligation to Aerostar.

ARTICLE 5 INSURANCE

- 5.1 **Insurance.** During the Term of this Agreement, Provider shall obtain and maintain, in addition to any other insurance required by Aerostar from time to time, insurance policies that comply with the requirements established herein. The insurance policies shall be in a form acceptable to Aerostar and issued by a company authorized and licensed to do business in Puerto Rico, with a classification of A- or more by the firm of A.M. Best. Prior to the execution of this Agreement, Provider shall provide Aerostar with a certificate of insurance which includes all of the requirements and endorsements mentioned in this Article.
- 5.2 **Object of the Insurance.** The object of the insurance policies required herein is the payment for any certain civil liability by Provider (including any of its employees, representatives, agents and/or property), which could result from its direct or indirect operation and activities at or regarding the Airport and the damages that could be caused to (a) the Airport, its assets, facilities, installations, intellectual property, employees, members, officers, representatives and/or (b) third parties, including but not limited to their persons, employees, facilities and/or property.
- 5.3 **No representation as to adequacy.** The amounts listed in this Article indicate only the minimum amount of insurance required by Aerostar to provide the Services at the Airport. It is expressly understood that Aerostar does not represent that the types or minimum limits of the insurance, set forth herein are adequate to protect Provider's interest. Furthermore, Provider agrees that being insured does not release Provider of its obligation to pay damages caused and arising from its activities in the Airport, which might not be covered by the insurance, reason for which Provider must respond for such responsibility, being obliged to compensate the person receiving damages with its own resources.
- 5.4 **Required Insurance Limits of Provider.**

5.4.1 Commercial General Liability

| | |
|-------------|---|
| \$1,000,000 | General Aggregate |
| \$1,000,000 | Products-Completed Operations Aggregate |
| \$1,000,000 | Personal & Advertising Injury |
| \$1,000,000 | Each Occurrence |
| \$ 100,000 | Fire Damage |
| \$ 10,000 | Medical Expense (per person) |

Employers Liability (Stop Gap)

| | |
|-------------|----------------------------|
| \$1,000,000 | Each employee, by accident |
| \$1,000,000 | Each accident, by accident |
| \$1,000,000 | Each employee, by disease |
| \$1,000,000 | Each policy, by disease |

5.4.2 Automobile Liability

Provider shall carry \$1,000,000 limit per occurrence, any auto, Combined Single Limit for property and bodily injury, if Provider will be operating vehicles in the public area of the Airport; and \$5,000,000 limit per occurrence, any auto, Combined Single Limit, for property and bodily injury if Provider will be operating vehicles inside the secured area of the Airport. An umbrella may be utilized to reach the aforementioned limits.

5.4.3 Professional Liability

Provider shall maintain Professional Indemnity insurance in the amount of no less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

5.5 Endorsements. The Commercial General Liability Policy, Employers Liability Policy (Stop Gap), and Automobile Liability Policy shall include the following endorsements:

5.5.1 Additional Insured. The following entities shall be named as an Additional Insured:

AEROSTAR AIRPORT HOLDINGS, LLC
PO BOX 38085
SAN JUAN, PR 00937-1085

PUERTO RICO PORTS AUTHORITY
PO BOX 362829
SAN JUAN, PR 00936-2829

CITIBANK, NA as Collateral Agent
CITIBANK AGENCY & TRUST
388 GREENWICH STREET
NEW YORK, NY 10013

5.6 Waiver of Subrogation. Provider must include, in favor of the Additional Insured, the following endorsement:

“The insurer hereby waives its right of subrogation against AEROSTAR AIRPORT HOLDINGS, LLC, PUERTO RICO PORTS AUTHORITY AND CITIBANK, NA, and any affiliated, associated and/or subsidiary corporation or companies and/or any partners, officers, and/or individuals connected therewith. This insurance shall not be invalidated, should the insured warrant in writing prior to a loss, any or all rights of recovery against any party for loss occurring to the property described herein.”

5.7 **Hold Harmless.** Provider must include, in favor of the Additional Insured, the following endorsement:

“The Insured shall defend, indemnify and hold harmless AEROSTAR AIRPORT HOLDINGS, LLC, THE PUERTO RICO PORTS AUTHORITY and CITIBANK, NA, as well as their corresponding affiliates, members, officers, directors, managers, employees and agents, and their respective successors and assignees (collectively, the “Additional Insured”), from and against any and all causes of action, claims, demands, losses, liens, liabilities, suits, damages, fines, costs or expenses of any nature whatsoever (including, without limitation, attorney's fees, other costs of legal defense, claims for personal injury, death and damage to property, clean-up costs, commodity spills and damage to the environment) that the Additional Insured may incur, suffer or be required to pay arising from, in connection with, or relating to, directly or indirectly, to any acts or omissions by the Insured, its officers, members, shareholders, partners, affiliates, directors, employees, agents or contractors, related to the services provided by the Insured at the Luis Muñoz Marín International Airport or its business operations at the Luis Muñoz Marín International Airport and its insurers shall defend the Additional Insured from such claims, demands and/or suits and shall bear all the expenses for such defense contemplated within the coverages and limits provided by this policy.”

5.8 **Notice of Cancellation.** Provider must include, in favor of the Additional Insured, the following endorsement:

“The coverage of this policy cannot be amended with the purpose of reducing the protection below the limits herein specified or any other circumstance, nor can the same be canceled without the previous written notification to the Additional Insured within thirty (30) days in case of non-renewal of the policy.”

5.9 **Worker's Compensation Insurance.** Provider must have and maintain Worker's Compensation Insurance, in accordance with a policy issued by the State Insurance Fund.

5.10 **Puerto Rico Disability Benefits Insurance.** Provider shall carry Employee Disability Insurance in compliance with the Disability Benefits Act of 1968 (Law #139 of June 26, 1968, effective July 1, 1969) or any other plan authorized by that law.

5.11 **Unemployment Insurance, etc.** Provider shall pay all Commonwealth of Puerto Rico and federal taxes for unemployment insurance, or any other social security tax with respect to all employees engaged in the performance of this Agreement, and agrees to pay the same, and further agrees to meet all requirements that may be specified in regulations now or hereafter, promulgated from time to time.

5.12 **Insurance renewal.** Provider agrees that no more than thirty (30) days prior to the expiration date of any of the policies required in this Agreement, or any other policy that Provider has in force at the moment this Agreement is executed, a certificate of insurance or a certified copy of all of the policies required in this Agreement will be submitted to Aerostar.

5.13 **Failure to provide insurance policies.** If Provider fails to provide or maintain insurance policies and its endorsements as required herein, Aerostar may at its sole and absolute discretion:

- 5.13.1 Obtain such insurance and deduct and retain the amount of the premium for such insurance from any sums due under the Agreement;
- 5.13.2 Order Provider to stop any Service under this Agreement and/or withhold any payment(s) which become due to Provider hereunder until Provider demonstrates total compliance with the requirements hereof;
- 5.13.3 Immediately terminate this Agreement, or any SOW and/or PO, without any liability whatsoever.

Exercise of any of the above remedies, however, is an alternative to other remedies Aerostar may have under this Agreement, law or equity and is not an exclusive remedy for Provider's failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which Provider may be held responsible for payment of damages to persons or property resulting from Provider's performance of the Services covered under this Agreement.

ARTICLE 6 INDEMNITY

6.1 Indemnity.

(A) Provider shall defend, indemnify and hold harmless Aerostar, the PRPA and/or their respective affiliates, members, officers, directors, insurers, managers, employees and agents, and successors and assignees (collectively, the "Indemnified Parties"), from and against any and all causes of action, claims, demands, losses, liens, liabilities, suits, damages, fines, costs or expenses of any nature whatsoever (including, without limitation, attorney's fees, other costs of legal defense, claims for personal injury, death and damage to property) that the Indemnified Parties may incur, suffer or be required to pay arising from, in connection with, or relating to, directly or indirectly, (i) any acts or omissions by Provider, its officers, directors, employees, agents or contractors, (ii) non-fulfillment or breach by the Provider of any representations, warranties, covenants and/or any other obligations and/or dispositions contained in this Agreement, a SOW and/or a PO, (iii) Provider's business or activity, (iv) the infringement or alleged infringement of any rights of third parties, or (v) Provider's or its officers, directors, employees, agents or contractors' failure to comply with any law, rule or regulation. Provider will also hold harmless and indemnify Indemnified Parties for any claim for insurance premium or any claim by any employee of Provider for injuries sustained in the ordinary courses of business, including, but not limited to Provider's employees or those of its agents or sub-contractors.

(B) Provider, in addition to any other remedies afforded under the law and/or this Agreement, shall also be liable for Aerostar's reasonable expenses incurred in mitigation of damages plus Aerostar's administrative expenses incurred in connection with the processing of claims against Provider.

(C) The provisions of this Article 6 shall survive cancellation, termination, or expiration of this Agreement.

ARTICLE 7

PROVIDER OBLIGATIONS

7.1 Compliance with Laws, Rules and Regulations. Provider shall at all times and at its own cost and expense, observe and comply with, all applicable laws and regulations of the Commonwealth of Puerto Rico, all applicable federal laws and regulations, any applicable municipal ordinance, all laws and regulation of the FAA and/or the TSA, and any other applicable law or regulation, now existing or later in effect that are applicable to it or to the services included in this Agreement, including but not limited to, those laws expressly enumerated in this Article, and those that may in any manner apply with respect to the performance of Provider's obligations under this Agreement, including any administrative or judicial mandate, interpretation, rule, ordinance or code established by any agency of the Commonwealth of Puerto Rico or the Federal Government or its agencies in relation to the occupation and/or operation of the facilities under this Agreement and/or any applicable SOW and/or PO. Provider must comply with any and all of the regulations, standards, guidance and/or orders, among others, issued by Aerostar from time to time.

It is expressly acknowledged and agreed that the obligations of Provider to comply with the provisions of the present Article of the Agreement shall be subject to applicable law, for so long as such law remains in effect and only to the extent required thereunder as the same may be amended from time to time.

Provider shall notify Aerostar within seven (7) calendar days after receiving notice from any local or federal agency and/or governmental authority that Provider may have violated any of the above.

7.2 Non-Discrimination Laws.

1. It is an essential element of this Agreement that Provider shall comply with all applicable Commonwealth of Puerto Rico and Federal Laws regarding non-discrimination, including: (i) the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.* (1981); (ii) the Civil Rights Act of 1991, P.L. 102-166; (iii) Executive Order Number 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000(e) note, as amended by Executive Order Number 11375, 32 Fed. Reg. 14,303 (1967) and by Executive Order Number 12086, 43 Fed. Reg. 46,501 (1978); (iv) the Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); (v) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 (1967); (vi) the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); (vii) the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (1990); (viii) Act No. 100 of the Legislative Assembly of Puerto Rico, enacted on June 30, 1959, 29 P.R. Laws Ann. § 146 *et seq.*, as amended; (ix) Act No. 17 of the Legislative Assembly of Puerto Rico, enacted on April 22, 1988, 29 P.R. Laws Ann. § 155 *et seq.*, as amended; and (x) Act No. 69 of the Legislative Assembly of Puerto Rico, enacted on June 6, 1985, 29 P.R. Laws Ann. § 1321 *et seq.*, as amended.
2. Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. § 35.101 *et seq.*, Provider understands and agrees that it shall

not cause any individual with a disability to be excluded from participation in this Agreement; and/or from activities provided for under this Agreement on the basis of any disability. Provider agrees to comply with the “General Prohibitions Against Discrimination”, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to all benefits, services, programs, and activities provided by Aerostar through contracts with outside contractors. The Provider shall be responsible for and agrees to indemnify and hold harmless Aerostar from all losses, damages, expenses, claims, demands, suits, and actions brought, by any party, against Aerostar, as a result of the Provider’s failure to comply with the provisions of this Article of this Agreement. The foregoing obligation and indemnity will survive termination of this Agreement.

3. Provider shall be responsible for and agrees to indemnify and hold harmless Aerostar from all losses, damages, expenses, claims, demands, suits, and actions brought, by any party, against Aerostar, as a result of Provider’s failure to comply with the provisions of this Article of this Agreement. The foregoing obligation and indemnity will survive termination of this Agreement.

7.3 Commonwealth Non-Discrimination/Sexual Harassment Clause. Provider hereby guarantees that in providing the Services through the present Agreement, it will abide and comply with Act No. 100 of the Legislative Assembly of Puerto Rico, enacted on June 30, 1959, 29 P.R. Laws Ann. § 146 *et seq.*, as amended (Non-Discrimination Act), Act No. 17 of the Legislative Assembly of Puerto Rico, enacted on April 22, 1988, 29 P.R. Laws Ann. § 155 *et seq.*, as amended (Sexual Harassment Act), and Act No. 69 of the Legislative Assembly of Puerto Rico, enacted on June 6, 1985, 29 P.R. Laws Ann. § 1321 *et seq.*, as amended (Sexual Discrimination Act). To those effects, Provider specifically agrees and recognizes as follows:

1. In the hiring of any employees for the performance of work, or any other activity required under this Agreement or any subcontract, required by the same Provider and/or any subcontractor or person acting on behalf of Provider and/or a sub-contractor shall not discriminate by reason of gender, race, creed, color, age, marital status, sexual orientation and or gender identity against any person who is qualified and available to perform the work to which the employment relates.
2. Neither Provider nor any subcontractor and/or any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the performance of work or any other activity required from Provider under this Agreement on account of gender, race, creed, color, age, marital status, sexual orientation and/or gender identity.
3. Provider and all its subcontractors shall establish and maintain in full form and effect, during the duration of this Agreement a written sexual harassment policy and shall inform their employees of said policy. The written sexual harassment policy must contain a notice that sexual harassment will not be tolerated and inform the employees of the fact that those who practice or incur in sexual harassment will not be tolerated and will be subject to discipline.

4. Provider shall not discriminate by reason of gender, race, creed, color, age, marital status, sexual orientation and/ or gender identity against any contractor or supplier who is qualified to perform the work to which the contract relates.
5. Provider shall include the provisions of this Article in every subcontract so that such provisions will be binding upon each contractor.
6. In the event that Provider's default results from a violation of the terms and conditions of this Article, Aerostar may cancel or terminate this Agreement and Provider agrees to indemnify and hold harmless Aerostar from all losses, demands, suits and claims brought up by any party, against Aerostar, as a result of Provider's failure to comply with the provisions of this Section. The provisions of this subsection survive termination of the Agreement.

7.4 Tax Certificates and Compliance. Provider for itself or each of its equity participants (if Provider is a partnership under the New P.R. Revenue Code) represents that as of the Effective Date of this Agreement (i) neither it nor any of its Equity Participants has any outstanding debts for unemployment insurance, temporary disability (workmen's compensation), chauffeur's social security with the Department of Labor and Human Resources of the Commonwealth, income taxes with the Department of Treasury of the Commonwealth or real or personal property taxes with the Municipal Revenues Collection Center or (ii) it or its Equity Participants have a payment plan in place with respect to any outstanding debt for the foregoing items and have complied therewith.

1. Provider and its equity participants acknowledge and agree that they shall obtain and deliver to Aerostar, prior to the execution date of this Agreement, the following:
 - a. A certification of filing of income tax returns for the past five (5) years, issued by the Internal Revenue Division of the Department of Treasury of the Commonwealth or a certification by Provider and each of its Equity Participants (if Provider is a partnership under the New P.R. Revenue Code) that as of the Effective Date of this Agreement it does not have and has not had to submit income tax returns and pay taxes in the Commonwealth during the past five (5) years;
 - b. A "no taxes debt due" certificate, or payment plan and compliance therewith, issued by the Internal Revenue Division of the Department of Treasury of the Commonwealth;
 - c. A certificate of no debt, or payment plan and compliance therewith, with respect to real and personal property taxes issued by the Municipal Revenues Collection Center; and,
 - d. A certificate of no debt, or payment plan and compliance therewith, for unemployment insurance, temporary disability (workmen's compensation), and chauffeur's social security issued by the Department of Labor and Human Resources of the Commonwealth.

2. Provider must require from any contractor and/or sub-contractor, to comply with the dispositions of this Section.
3. Provider shall be responsible for obtaining and requiring from all contractors and/or sub-contractors, said certifications and notify Aerostar of the compliance with this Section. This obligation will continue throughout the duration of this Agreement.

7.5 **DBE.** It is the policy of Aerostar to ensure that DBEs, as defined in the United States Code of Federal Regulations Title 49-Transportation, Subtitle A, Part 26 (“Part 26”) have an equal opportunity to participate in contracts with Aerostar. Accordingly, Aerostar has established a DBE program, to ensure that no person or entity is excluded from participation in, deny any person or entity the benefits of, or otherwise discriminate against anyone in the connection with the performance of any agreement based on race, color, sex, or national origin.

Provider and its subcontractors shall not discriminate based on race, color, national origin, or sex in the performance of this Agreement. Provider shall carry out applicable requirements of Part 26 in the award and administration of DOT assisted contracts. Failure by Provider to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Aerostar deems appropriate.

Provider shall take all necessary and reasonable steps under Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

The Provider agrees to include the above statements in any subsequent contract covered by CFR part 26, that it enters and cause those businesses to similarly include the statements in further agreements.

Aerostar’s DBE program is incorporated by reference in this Agreement. Implementation and compliance with this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. PROVIDER ACKNOWLEDGES AND AGREES THAT FAILURE TO MEET AEROSTAR’S ESTABLISHED DBE PARTICIPATION GOAL FOR FEDERALLY FUNDED PROJECTS, OR FAILURE TO PROVIDE SUFFICIENT DOCUMENTARY EVIDENCE OF GOOD FAITH EFFORTS TO MEET THE DBE GOAL, WILL CONSTITUTE A DEFAULT OF THIS AGREEMENT AND MAY RESULT IN THE TERMINATION OF THE AGREEMENT OR OTHER SUCH REMEDY AS DEEMED APPROPRIATE BY AEROSTAR.

7.6 **Non-Collusion and Acceptance.** Provider attests, subject to the penalties for perjury, that no director, member, officer or employee of Provider, directly or indirectly, to the best of Provider’s knowledge, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement other than that which is expressly set forth in this Agreement.

7.7 **Local Goods and Services.** Pursuant to Article 10 of Act No. 14 of the Legislative Assembly of Puerto Rico, enacted on January 8, 2004, 3 P.R. Laws Ann. § 930 *et seq.*, Provider shall use, to the extent available and applicable to the Services provided hereunder, and to the extent permitted by applicable Law, goods extracted, produced, assembled, packaged, bottled or distributed in the Commonwealth of Puerto Rico by businesses operating in the

Commonwealth of Puerto Rico or distributed by agents established in the Commonwealth of Puerto Rico.

7.8 Integrity and Confidential Information.

1. Provider shall maintain the highest standards of integrity in the performance of this Agreement and any applicable SOW and/or PO, and shall take no action in violation of Commonwealth of Puerto Rico or Federal Laws and Regulations. Provider certifies that it does not represent particular interests in cases or matters that would imply a conflict of interest or public policy between Aerostar and the interests it represents.
2. Provider covenants and agrees to not disclose, divulge or use, for its own or a third party's benefit, any information, confidential or otherwise acquired, learned or otherwise developed during the course of the contractual arrangements with Aerostar, except if such disclosure is: (i) authorized in writing by Aerostar; ii) required by law; or iii) ordered by a competent court, or Puerto Rico or Federal governmental body or entity with jurisdiction in the course of a litigation or administrative proceeding relating to Aerostar; provided, however, that Provider shall give Aerostar prompt notice prior to such disclosure to allow Aerostar to undertake reasonable efforts to obtain a protective order or otherwise protect the confidentiality of such information.
3. Provider covenants and agrees that any Confidential Information disclosed or shared is under strict confidentiality. Provider shall use reasonable care, but in no event less care than a reasonable businessperson uses to safeguard and protect its own confidential information, to protect the Confidential Information. Except as otherwise specifically provided in this Agreement, Provider shall not: (i) disclose, in whole or in part, any Confidential Information received directly or indirectly from Aerostar; or (ii) sell, rent, lease, transfer, encumber, pledge, reproduce, publish, transmit, translate, modify, reverse engineer, compile, disassemble or otherwise use the Confidential Information in whole or in part.
4. Provider acknowledges and accepts that any unauthorized use or disclosure of Aerostar's Confidential Information is likely to cause injury not readily measurable in monetary damages and therefore irreparable to Aerostar. Therefore, Provider acknowledges and accepts that if Provider breaches any of its obligations with respect to confidentiality and unauthorized use of the Confidential Information hereunder, Aerostar shall be entitled, without waiving any other rights or remedies, to equitable relief to protect its interest therein, including but not limited to, injunctive relief without the necessity of posting bond, as well as money damages notwithstanding anything to the contrary contained herein.
5. Notwithstanding the Term of this Agreement, the obligations set forth in this section will: (i) apply to any Confidential Information disclosed to Provider before and/or after the execution of this Agreement, and (ii) be maintained until such time as said information shall become available to the general public without restriction, not as a result of any action or omission of Provider, its affiliates, officers, directors, shareholders, trustees, employees, contractors, subcontractors, and/or agents.

6. For the purpose of this Agreement “Confidential Information” means information designated as confidential or which ought to be considered as confidential from its nature or from the circumstances surrounding its disclosure. “Confidential Information” includes, without limiting the generality of the foregoing, the terms of this Agreement, and information: (i) relating to Aerostar’s business or operations, including but not limited to technical data, know-how, systems, corporate structuring, trade secrets, access passwords, policies, rules, manuals, list of suppliers, fees and clients; (ii) concerning persons or entities who obtain products or services from Aerostar; or (iii) marked or otherwise identified as confidential, restricted, secret or proprietary, including, without limiting the generality of the foregoing, information acquired by inspection or oral disclosure provided such information was identified as confidential at the time of disclosure or inspection.
7. Provider shall not, in connection with this Agreement or any other agreement with Aerostar, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion or violation of a known legal duty by any director, officer, member or employee of Aerostar.
8. Provider shall not, in connection with this Agreement or any other agreement with Aerostar, directly or indirectly, offer, give or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any director, officer, member or employee of Aerostar.
9. Provider shall not accept or agree to accept from, or give or agree to give to, any director, officer, member or employee of Aerostar, any gratuity from any person in connection with this Agreement that is intended by Provider thereof to be a material inducement to enter into this Agreement or any other agreement.
10. Provider, upon being informed that any violation of the provisions of this Agreement has occurred or may occur, shall immediately notify Aerostar in writing.
11. Provider, by execution of this Agreement and any request for compensation pursuant hereto, certifies and represents that it has not violated any of the provisions of this Agreement.
12. Provider certifies that neither public official nor employees of the PRPA nor a member of their family (whichever applicable), has direct or indirect interest in this Agreement, and any SOW and/or PO issued in connection therewith.
13. Provider certifies that it does not receive any payment nor compensation for services rendered under appointment to any other agency, organism, public corporation or municipal government of Puerto Rico or related public instrumentality.
14. In the event Provider defaults as a result from a violation of any of the provisions of this Section, Aerostar may terminate this Agreement and any other agreement with Provider and debar and suspend Provider from doing business with Aerostar. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all

or any other. These rights and remedies are in addition to those Aerostar may have under law, statute, regulation, or otherwise.

15. For purposes of this Section only, the words “consent” and “gratuity” shall have the following definitions:

“Consent” means written permission signed by a duly authorized officer or employee of Aerostar; provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal or contractual terms, Aerostar shall be deemed to have consented by virtue of execution of this Agreement; and,

“Gratuity” means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment or contracts of any kind.

- 7.9 **Commonwealth Tax Liabilities.** Provider shall inform Aerostar if, at any time during the Term, it becomes delinquent in the payment of taxes imposed by any Governmental Authority of the Commonwealth of Puerto Rico.
- 7.10 **Sub-Contracts.** To the extent permitted by applicable law and by this Agreement, Provider shall include the provisions of this Article in every subcontract and supply contract so that they shall be binding on each contractor.
- 7.11 **Governmental Contractor Code of Ethics.** Provider shall comply with the requirements of the Code of Ethics for Contractor, Suppliers and Solicitors of Economic Incentives from Executive Agencies of the Commonwealth of Puerto Rico pursuant to Title III of Act No. 2-2018.
- 7.12 **Practice of Engineering, Architecture and Other Professions in the Commonwealth of Puerto Rico.** To the extent that the performance of any of the Services described in a SOW and/or PO, involves the performance of architectural, engineering, land surveying, and landscape architecture services, governed by Act. No. 173 of August 12, 1988, P.R. Laws Ann. §711 *et. seq.*, as amended (“Act 173”), then (a) Provider shall comply (and shall require its subcontractors or agents, if any, to comply) with said Act 173, and (b) Provider shall monitor compliance by its subcontractors and agents with said Act. 173.
- 7.13 **Duty to Inform of Criminal Investigations.** Provider shall inform Aerostar if, at any time during the Term, it becomes subject to investigation in connection with criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property.
- 7.14 **Services.** Provider shall provide Aerostar with the Services described in each PO and/or SOW in a prompt and professional manner following the customary industry practices. In addition, Provider shall provide Aerostar those additional Services as may be included from time to time in a SOW and/or PO and subject to the rates and charges that have been mutually established by the Parties in the SOW and/or PO.

7.15 **Safety.** Provider shall adopt all necessary actions and safety measures that a reasonable and prudent person would take and as required by the Services to be provided. Provider shall also comply with all applicable OSHA regulations and guidelines when performing the Services required in each SOW and/or PO, all safety measures consistent with generally accepted industry standards.

7.16 **Prompt Service.** Provider shall promptly and efficiently perform safely and with reasonable dispatch and without delay, the Services entrusted to it hereunder at the request of Aerostar. Provider agrees to use its best efforts to expedite services when so requested by Aerostar.

7.17 **Equipment and personnel.**

1. **Lawful Operation:** Provider shall, at its cost and expense, in a proper and lawful manner and further agrees to maintain its equipment in good, safe and lawful operating condition at all times. Provider shall be responsible for all taxes, licenses, permits, tolls and fees necessary to provide the Services contemplated by this Agreement.
2. **Qualified Personnel:**
 - (a) Provider shall, at its cost and expense, employ to perform the Services agreed upon through this Agreement, fully qualified personnel, which shall procure and maintain such licenses and permits as are required by local, state, or federal authorities with respect to such Services and shall comply with the laws and regulations applicable thereto. Provider shall require that its personnel dispatched pursuant to this Agreement shall be well-groomed and courteous while performing the Services required by this Agreement at Aerostar's facilities.
 - (b) Provider shall provide, and shall cause its subcontractors to provide, all such training to the employees of Provider and its subcontractors as may be necessary for them to perform, on behalf of Provider, all of Provider's duties under this Agreement. The personnel that Provider employs as supervisors, quality monitors and internal training managers must attend the training meetings or programs which may be held periodically by Aerostar, following coordination among the parties at least five (5) days in advance.
 - (c) If Aerostar believes that the performance or conduct of any person employed or retained by Provider to perform Provider's obligations under this Agreement is unsatisfactory or is not in compliance with the provisions of this Agreement, then Aerostar shall so notify Provider and Provider shall promptly address the performance or conduct of such person, or, at Aerostar's request, immediately replace such person with another person acceptable to Aerostar.
 - (d) Provider and the Provider's personnel used to provide the agreed Services must maintain high levels of honesty and integrity in their relationships with the public and shall abstain from any action that may discredit, dishonor or harm in any matter the name of Aerostar.

3. **Operating Expenses:** Provider shall bear the cost and expense of all fuel, oil, tires, parts, road service, maintenance, repair, and any other cost or expense in connection with the use and operation, including but not limited to any machinery, tools and equipment which may be required to be used to render the Services agreed upon. Aerostar shall not be liable to Provider for any damage sustained by or to Provider's equipment or for loss by confiscation or seizure of Provider's equipment by any public authority.
4. **Exclusive Control:** Provider shall have sole and exclusive control over the manner in which Provider's employees and agents perform the Services detailed in a SOW and/or PO, and Provider shall utilize such individuals as it may deem necessary in connection therewith, it being understood and agreed that such individuals shall be subject to discharge, discipline, and control solely and exclusively by Provider.
5. **Equipment:** Provider agrees that all equipment, machinery and materials used to comply with this Agreement shall be in full compliance with any and all applicable laws, rules and regulation.
6. **Delay, Accidents:** Provider shall notify Aerostar immediately by telephone, fax or e-mail of any accidents, spills, theft, hijacking, or other events which impair the safe and prompt delivery of the Services.
7. **Security Measures:** Provider shall take all actions reasonably required by Aerostar and any laws and/or regulations of the Commonwealth of Puerto Rico or Federal Law to ensure the security and safety all personnel and public during performance of the Services provided. Nothing herein shall excuse Provider from complying with any security obligations imposed by law or regulation of any governing body.
8. **Record Retention:** Provider agrees to keep full, complete, and accurate records of all Services provided to Aerostar, which shall include the nature of the Services, their cost, identify who or whom provided the Services, and the date and hour in which the Services were provided. Provider may keep its records in electronic format.
9. **ID Badges:** All employees assigned by Provider to the Airport must have a valid ID Badge issued by Aerostar's Airport Credentials Office. Provider or Provider's employees will be responsible for any and all ID Badges fees. Nonetheless, Provider will ultimately be the sole responsible for any and all Airport ID Badges issued in connection to this Agreement and any and all fees associated to them.

In order for Aerostar to issue the ID Badges referred to herein, the Provider must deliver within five (5) business days following the execution of this Agreement, a list of the names and position of the personnel providing the Services. If the Provider needs to change or add personnel, it must notify Aerostar in writing within five (5) business days, so that Aerostar proceeds to issue the corresponding airport ID Badges. Aerostar will provide the airport ID Badges to the new personnel once the Provider returns the cards issued to the personnel which have ceased to provide the Services.

Provider must submit Aerostar's Airport Credentials Office, on a quarterly basis no later than the fifth (5th) business day of the corresponding month, an active ID Badges report for all ID Badges issued in connection to this Agreement. Copy of said report format will be provided at the Authorized Signature Training to be provided by Aerostar prior the issuance of the ID Badges. Upon failure to provide said report as required herein, Provider will be subject to i) a two hundred fifty dollars (\$250) late report fee for each month the report is not submitted to Aerostar (or such other amount as may be modified by Aerostar from time to time); and, ii) no additional ID Badges will be issued to Provider until the report is finally submitted and all late report fees have been fully paid. If Provider fails to timely submit its active ID Badge Report, it shall be sufficient grounds to terminate this Agreement at Aerostar's sole discretion. Provider will incur in a penalty fee of five hundred dollars (\$500) for each missing ID Badge not returned to Aerostar upon termination of the Agreement or the Services provided whichever is sooner (or such other amount as may be modified by Aerostar from time to time).

The Parties acknowledge and agree that Aerostar will hold Provider payment for the last invoice submitted in connection for the Services provided under this Agreement until all issued ID Badges have been returned to Aerostar.

ARTICLE 8 OWNERSHIP

8.1 Ownership.

- (A) "Work Product(s)" shall include, but is not limited to, all works (including, without limitation to, any work that may be the subject matter to copyright protection), reports, data, databases, formulas, models, designs, information, drawings, ideas, concepts, trade secrets, materials, inventions (including, but not limited to, any inventions that may be the subject matter of patent protection), processes, know-how, methods and any supporting documentation, in whatever form, produced, designed, conceived, invented, made, reduced to practice, developed, authored, and/or created by or for Provider (including its directors, officers, trustees, employees, subcontractors, affiliated entities and agents), either solely or jointly with others, as a part of, related to, and/or in connection with the Services, with the use of Aerostar's information, materials, or facilities of Aerostar, or pursuant to this Agreement and/or any applicable SOW and/or PO. For the avoidance of doubt notwithstanding the Term of this Agreement, the obligations, covenants and agreement set forth in this Article shall apply to any Work Product(s) that Provider produced, conceived, invented, made, reduced to practice, developed, authored, and/or created by or for Provider (including its directors, officers, trustees, employees, subcontractors, affiliated entities and agents), either solely or jointly with others, as a part of, related to, and/or in connection with the Services, and/or with the use of information, materials, and/or facilities of Aerostar, both before and after the execution of this Agreement.
- (B) It is understood that Provider may have occasion to develop, produce, conceive, make, invent, reduce to practice, and/or create Work Product(s) as a part of or in performing the Services. Provider acknowledges and agrees that any and all Work Product(s) are being developed produced, invented, conceived, made, reduced to practice, authored and/or

created for the sole and exclusive use of Aerostar. Provider accepts and agrees that Aerostar shall be deemed the sole and exclusive owner of all worldwide rights, title, and interests in and to the Work Product(s), including without limitation, all copyrights, patents, trademarks, trade names, trade secrets and any other proprietary rights over the Work Product(s). In this regard, for no additional consideration, Provider hereby agrees to and hereby does assign to Aerostar all worldwide rights, title, and interests in and to the Work Product(s), including without limitation, all copyrights, patents, trademarks, trade names, trade secrets and any other proprietary rights in and to the Work Product(s).

- (C) The Parties agree that any and all Work Product(s) shall be considered as Work Made for Hire (as that phrase is defined by the United States Copyright Act) and shall be owned by and for the express benefit of Aerostar. In the event that the Work Product(s) do not qualify as a Work Made for Hire, for no additional consideration, Provider agrees to and does hereby assign to Aerostar all of its rights, title and interest in the Work Product(s) including without limitation, worldwide copyrights, along with their respective renewal rights. Moreover, Provider accepts and acknowledges that the Work Product(s) are not protected by any “moral rights of authors”, and if they are, Provider hereby waives its authorship and/or its “moral rights of integrity” over the Work Product(s).
- (D) Both during the Term of this Agreement and thereafter, Provider shall fully cooperate with Aerostar in the protection and enforcement of any rights that may derive as a result of the Services and/or the Work Product(s) or any other service performed by Provider under the terms of this Agreement and/or any applicable SOW and/or PO. This includes, but is not limited to, acknowledging and delivering to Aerostar all documents or papers that may be necessary to enable Aerostar to publish, protect, register and/or obtain statutory protection throughout the world for the Work Product(s).
- (E) Subject to Aerostar’s prior written approval, Provider may use its own previously developed and/or licensed software, programs, ideas, concepts, materials, processes, methods, know-how and information (collectively “Provider’s Preexisting Work”) in performing the Services. Insofar as such Provider’s Preexisting Work was not first produced or created by or for Provider solely and exclusively related to the performance of the Services, but is necessary or useful for, or is used in connection with the Services and/or the Work Product(s), any and all right, title, and interest in such Provider’s Preexisting Work shall remain the sole and exclusive property of Provider or of its licensor. Notwithstanding, to the extent that any of Provider’s Preexisting Work was incorporated (partially or completely) in or is useful or necessary for the Work Product(s) and/or the Services, Provider grants to Aerostar (including its successors, assigns, officers, employees, and/or agents) a perpetual, irrevocable, fully paid-up, royalty free, non-transferable right and nonexclusive license to generally use, sublicense, make, sell, import, reproduce, copy, distribute, publish, exhibit, prepare derivative works, incorporate into collective works and/or compilations, display, and/or perform, in connection with the Work Product(s), in any manner now known or hereafter to become known, all or any portion, alteration or derivation of such Provider’s Preexisting Work.
- (F) Provider accepts and acknowledges that any and all rights (including, but not limited to, any and all copyrights, patents, trademarks, service marks, trade names, trade secrets and any other proprietary rights) over the Work Product(s) and/or Confidential Information (as said

term is defined hereunder), Aerostar's works, software, and/or over any derivate work or improvement thereof, shall remain at all times the sole and exclusive property of Aerostar. Provider acknowledges and agrees that, except as otherwise established in this Agreement and/or any applicable SOW and/or PO, no right, property, license, permit, or interest of any kind in or to the Work Product(s), Confidential Information, Aerostar's works, software, materials, trademarks, trade names, service marks, logos, designs, domain names, or other property is granted or is intended to be given or transferred to or acquired by the execution, performance or non-performance of this Agreement or any part hereof. Any unauthorized use of the Work Product(s), Confidential Information, Aerostar's works, software, materials, trademarks, trade names, service marks, logos, domain names, or other intellectual property by Provider shall constitute an infringement of the rights of Aerostar in and to its intellectual property rights and a breach of this Agreement.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

9.1 Provider's Representations.

- (A) Provider represents and warrants that: (i) Provider has thoroughly investigated and considered the Services to be performed; (ii) Provider has investigated the site of work and fully acquainted itself with the conditions there existing; (iii) Provider has carefully considered how the Services should be performed; (iv) Provider fully understands the facilities, difficulties and restrictions attending the performance of the Services under this Agreement; (v) the Services shall be performed in a good and workmanlike and cost-effective manner consistent with generally accepted industry standards and practices in accordance with this Agreement and that all Provider personnel shall possess the requisite expertise and ability to fully perform the Services; (vi) the Services and/or Work Product shall not infringe and/or misappropriate any patent, copyright, trademark, trade secret or any other third party proprietary right; and, (vii) the Services shall be performed in a timely manner as required under this Agreement.

Upon notice from Aerostar that the Services and/or Work Product fails to comply with the foregoing warranties, Provider shall at no cost to Aerostar cure any such reported problems or defects with the Services and/or Work Product, to the extent such problems or defects are capable of cure, within the corresponding curing period, following such notice from Aerostar, or an additional period of time as reasonably agreed to by the Parties. If Provider fails to timely cure such problems or defects or the problems or defects are not, in Aerostar's opinion, capable of cure, Aerostar may terminate this Agreement and, in addition to any other remedies, Provider shall, upon Aerostar's request, refund to Aerostar all fees paid for such Services and/or Work Product that fail to comply with the warranties set out herein. The warranties set out in this Article 9 shall remain in effect during the Term of this Agreement and shall survive termination of the Agreement.

- (B) Provider warrants and represents that it has the required corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Moreover, Provider warrants and represents that the execution, delivery and performance by Provider of this Agreement have been duly and validly authorized and no additional corporate or

shareholder authorization or consent is required in connection with the execution, delivery and performance by Provider of this Agreement.

- (C) Provider warrants and represents that it is a [TYPE OF ENTITY] duly authorized to perform the Services in the Commonwealth of Puerto Rico and that the execution, delivery and performance of this Agreement does not contravene, infringe, breach or violate any laws, regulations, contracts, proprietary rights or any other legal obligation of Provider. Provider warrants that it has sought and obtained all necessary consents, approvals and certificates required from any governmental authority with respect to the entering into or the performance of the Agreement and that no other consent, approval, certificate or withholding of objection is required from any governmental authority.
- (D) Provider warrants and represents that all products provided or delivered to Aerostar in connection with the Services rendered under this Agreement shall comply with all applicable federal, state and local laws and regulations, shall comply with the terms and conditions of this Agreement and with the specifications of this Agreement and any applicable SOW and/or PO.
- (E) Provider warrants that there are no actions, lawsuits, or proceedings, pending or threatened against it or any of its third-party contractors or subcontractors that will have a material adverse effect on Provider's ability to fulfill its obligations under this Agreement. Provider further warrants that it will notify Aerostar immediately if Provider becomes aware of any action, lawsuit, or proceeding, pending or threatened that will have a material adverse effect on Provider's ability to fulfill the obligations under the Agreement.
- (F) Provider represents and warrants that: (i) it has or will have full and sufficient right and authorization to assign or grant the rights over the Work Product(s) pursuant to this Agreement; (ii) it has or will have sufficient right and authorization to assign or grant the licenses granted over Provider's Preexisting Work; (iii) all Work Product(s) have not been and will not be published under circumstances that would cause a loss of copyrights, patent rights, or any other rights of Aerostar over the Work Product(s); and, (iv) all Work Products, and/or all Provider's Preexisting Work, do not and will not infringe any patents, copyrights, trademark, service mark, trade name, trade secrets or other intellectual property rights, privacy rights, right of publicity or any other rights of any person or entity, nor has any claim (whether or not embodied in an action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against Provider and/or its licensor or, insofar as Provider and/or its licensor are aware, against any other entity or person.
- (G) Provider warrants that the Services and Provider's, distribution, use and/or delivery of any products, documentation or other products provided in connection with the Agreement do not and shall not infringe any patent, trademark, copyright, or any other right of any third party.
- (H) Provider represents and warrants that Aerostar shall receive good and merchantable title to any and/or all products and Work Product(s) provided under this Agreement free and clear of claims, liens and/or encumbrances. Provider shall not create or permit the creation of any lien, encumbrance, or security interest in any products provided and/or delivered to Aerostar in connection with the Services rendered under this Agreement.

- (I) Provider represents and warrants that it shall perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other rights of any third party.
- (J) Provider further warrants that any information disclosed to Aerostar will not contain any trade secrets of any third party, unless disclosure is permitted by such third party.
- (K) Aerostar shall be under no obligation to make an independent investigation to determine whether the foregoing representations are true and correct; and any independent investigation by or for Aerostar, or its failure to investigate, shall not constitute a defense to Provider in any action based upon a breach of any of the previous representations.
- (L) Following completion of the Services and/or any portion of the Services, Aerostar can notify Provider in writing if the Services and/or any portion of the Services fail to comply with the warranties set forth in this Agreement. The notice from Aerostar shall specify in reasonable detail any alleged non-conformities or the basis for the rejection of any such Services as well as reasonable requirements for acceptance of the Services. Upon such notice, Provider shall, at no cost to Aerostar, promptly re-perform any such Services in accordance with this Agreement.
- (M) THE WARRANTIES SET FORTH IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE WARRANTIES SET FORTH IN THIS SECTION, DO NOT LIMIT, EXCLUDE AND/OR DISCLAIM ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH SHALL BE DEEMED TO HAVE BEEN INCLUDED AND MADE PART OF THIS AGREEMENT.

ARTICLE 10

NOTICES

- 10.1 **Notices.** Any notice or other communication shall be in writing and shall be deemed to have been duly given (a) on the date of delivery if delivered personally, (b) on the business day after dispatch if sent by documented overnight delivery service, (c) on the date of transmission if sent by facsimile transmission or electronic mail, provided that a confirmation copy thereof is sent no later than the next business day by a documented overnight delivery service or certified mail, postage prepaid, return receipt requested or (d) on the fifth (5th) day following deposit in the United States mail if sent by certified mail, postage prepaid, return receipt requested. Notices or other communications shall be directed to:

If to AEROSTAR:

AEROSTAR AIRPORT HOLDINGS, LLC
PO Box 38085
San Juan, PR 00937-1085
Attn: Chief Legal Officer

If to PROVIDER:

[PROVIDER]
[ADDRESS]
Attn: [NAME]

Each Party shall be responsible for notifying the other Party in the event of a change in address.

ARTICLE 11 AUDITS

- 11.1 **General.** Provider shall be responsible for developing processes and procedures that ensure that the Services are performed in accordance with the terms set forth in this Agreement. The Parties shall mutually agree on terms and conditions for conducting quality assurance reviews.
- 11.2 **Audits without notice.** Notwithstanding the foregoing, if Aerostar has reason to suspect any malfeasance or dishonest acts on the part of Provider, or other significant or non-routine problems, Aerostar shall be entitled to undertake an audit of Provider as Aerostar reasonably deems appropriate without the foregoing notice or other restrictions. If in any audit Aerostar determines that material operational problems or financial issues exist, Provider shall reimburse Aerostar for any costs incurred in such audit and Aerostar may conduct a follow-up audit when reasonably deemed appropriate by Aerostar.
- 11.3 **Provider's Response.** Provider shall provide responses with five (5) calendar days with regard to any conclusions and recommendations reported as part of an audit, indicating planned actions and proposed timeframes for each action.

ARTICLE 12 MISCELLANEOUS PROVISIONS

- 12.1 **Non-exclusive agreement.** It is understood and agreed between the Parties hereto that this is a non-exclusive Agreement. Aerostar shall have the right to engage non-affiliated service providers to provide the Services contemplated by this Agreement, any PO and/or SOW or to provide these Services directly and/or through its affiliates.
- 12.2 **Independent Contractor.** The relationship between Aerostar and Provider under this Agreement is one of independent contractor. Nothing in this Agreement shall be interpreted as the creation of an employer/employee, joint venture or principal/agent relationship between Aerostar and Provider. Provider shall furnish, employ and have exclusive control of all persons to be engaged in connection with the performance of the Services, and shall prescribe and control the means and methods of doing such Services. All persons employed by Provider in regard to the performance of any such Services shall be employees of Provider, as said term is commonly understood in opposition to independent contractor, and neither Provider nor any of such employees shall be deemed to be employees of Aerostar for any purpose whatsoever, Provider being and at all times acting as an independent contractor to Aerostar. Provider shall

be responsible for paying all salaries, bonuses, expenses and benefits to its employees, as well as for withholding and/or paying any and all taxes, Social Security, Unemployment Compensation, State Insurance Fund Premiums, Disability Insurance, Chauffeur's Social Security, overtime, holiday time wages, and/or any other taxes or contribution that may be required under the applicable laws and/or regulations. Provider will indemnify Aerostar for any claims brought by any individual, employee, government agency, or other party, against Aerostar arising out of any adjudicated failure of Provider to comply with this paragraph.

- 12.3 **Assignment (Non-assignability).** Provider shall not transfer nor assign any of its rights or obligations under this Agreement without the prior written consent of Aerostar. Any such transfer or assignment without Aerostar's written consent shall be void and of no force and effect; provided further that if any said transfer occurs without Aerostar's consent, Aerostar may terminate this Agreement immediately.
- 12.4 **Entire Agreement.** This Agreement (together with any exhibits, schedules, appendixes, POs and/or SOWs) contains all the terms and conditions of the contract between the Parties and supersedes any and all previous discussions, agreements, contracts and understandings, of every kind and nature between the Parties hereto. Each of the Parties represents and warrants that, in entering into this Agreement it is not relying on any promise, representation, warranty or agreement, oral or written, except those expressly set forth herein. Further, any prior agreement between the Parties, express or implied, is hereby revoked by mutual assent of each Party waiving any claims against the other Party. The terms of this Agreement may not be altered, waived, modified or discharged except by an express agreement in writing signed by duly authorized representatives of each of the Parties and referring specifically to this Agreement. All recitals, exhibits, schedules, appendixes, SOWs and/or POs are expressly incorporated and made a part of this Agreement and shall be taken into account in its interpretation.
- 12.5 **Governing Law; Choice of Forum.** Aerostar and Provider mutually acknowledge and agree that this Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Puerto Rico. Aerostar and Provider mutually consent and submit to the exclusive jurisdiction of the state courts located in the Commonwealth of Puerto Rico and any action or suit concerning this Agreement or related matters shall only be brought by Aerostar and Provider before State Court of the Commonwealth of Puerto Rico, excluding all other possible forums, specifically the United States District Court for the District of Puerto Rico.
- 12.6 **Disruption of Service; Injunctive Relief.** Provider acknowledges that any willful conduct on its part, its agents, employees or representatives that serves to disrupt Aerostar's business, including the operation in the Airport and/or services provided to passengers and airlines by Aerostar or by any provider of Aerostar constitutes a material breach of this Agreement and will result in its immediate termination. Consequently, Provider agrees not to engage in such activity. Furthermore, Provider acknowledges that any violation to this Article may cause Aerostar irreparable damages. Provider agrees that Aerostar may seek injunctive relief in case of disruption of its service or these of the Airport and it waives any objection to such relief and recognizes Aerostar entitlement to injunctive relief and an award on damages.
- 12.7 **Fully Negotiated Agreement.** Aerostar and Provider mutually acknowledge and agree that this Agreement was fully negotiated by the Parties in equal terms and conditions. The Parties had

ample opportunity to review the Agreement. Consequently, the terms of this Agreement will not be interpreted in favor of any one of the Parties.

- 12.8 **Force Majeure.** Neither Party hereto shall be liable to the other for default in the performance of any of the terms and provisions of this Agreement if caused by fire, war, terrorists, pandemic, act of God, governmental order or regulation, or other similar contingency beyond the reasonable control of the respective parties; provided, however, that nothing in this Section shall relieve Provider from its liability towards Aerostar for any loss, damage, or injury is caused by the negligence of Provider, shortage of parts or equipment, strikes or labor disputes of Provider's employees and not by an act of God, the authority of law, or the sole negligence of Aerostar.
- 12.9 **Taxes.** Provider (and/or its employees, officers, directors, agents or subcontractors) shall not be treated as an employee of Aerostar for purposes of federal, state or local taxes. Aerostar will not make any withholdings or employer contributions required by law, such as, Social Security, temporary non-occupational disability insurance or any other retention under the applicable governmental laws or regulations. Provider shall be responsible for making all payments of the employer and individual contributions required by law, both at federal level as well as local. Aerostar shall withhold those amounts required by the applicable laws and regulations, for payments made by Aerostar to Provider for the Services rendered and/or for any other related service. Aerostar shall withhold and deposit the same with the Secretary of the Treasury of Puerto Rico ("Treasury") on behalf of Provider. It shall be the responsibility of Provider to notify Aerostar if it has received any waiver related to the corresponding withholding of its taxes for services rendered and provide copy to Aerostar of said waiver. Aerostar will notify the Treasury of the payments made to Provider under this Agreement, and shall require Provider, as many times as it deems necessary, evidence of having made the payments of the employer and individual contributions required by law.
- 12.10 **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the Term hereof, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Moreover, in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable. Provide further, that if a government authority, local or federal, were to legally set higher rates, taxes and/or charges than those mutually agreed to by the parties as per the terms contained in this Agreement, SOW and/or PO hereto, then Aerostar at its sole discretion may terminate this Agreement as such date the higher rates, taxes and/or charges were imposed and Aerostar will only pay outstanding balance under the Agreement and only to the amount as may have been mutually agreed to by the parties under this Agreement.
- 12.11 **Counterparts.** The Parties agree that this Agreement may be executed in any number of counterparts, each of which when signed by the Parties shall constitute an original, but all of which taken together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of an electronic format

data file (such as a “.pdf”), said signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

- 12.12 **Subordination.** This Agreement will be subordinated to the provisions of the Lease Agreement between the PRPA and Aerostar, dated July 24, 2012, as amended, and to any existing or future agreement between Aerostar and the United States Government, associated with the operations, development or maintenance of the Airport, the execution of which may be required or can be required as prior condition to the disbursement of federal funds for the maintenance and/or development of the Airport.

ARTICLE 13 SUPPLEMENTARY PROVISIONS

- 13.1 **Supplementary Provisions.** (a) Provider agrees to comply with all the provisions, covenants and agreements included in Schedule B, subject to the limitations set forth Section 13.1(b). If Provider has any doubt regarding the applicability of the provisions included in Schedule B, Provider must refer to the applicability sections of the applicable federal contract provisions as established by various laws and regulations and consolidated in the FAA Contract Provision Guidelines, as amended from time to time (“Contract Provision Guidelines”). For the purpose of clarification, each SOW under this Agreement, shall be considered a separate Professional Service Agreement for the Purpose of the Contract Provision Guidelines.

(b) In accordance with the Contract Provision Guidelines, the application of some of the clauses and provisions included in Schedule B, shall be limited as follows:

- i. **Clause II “Notice to Requirement for Affirmative Action to Ensure Equal Employment Opportunity”** shall only apply if the Services, included in the applicable SOW, meet the definition of construction work (as defined by the U.S. Department of Labor (“DOL”)) and the Services, under the applicable SOW, exceeds \$10,000.
- ii. **Clause IV “Buy American Preferences”** shall only apply if any portion of the Services, as established in the applicable SOW, includes providing manufactured goods as a deliverable under the applicable SOW.
- iii. **Clause X “Contract Workhours and Safety Standards Act Requirements”** shall only apply if the Services, included in the applicable SOW, exceeds \$100,000 and requires the employment of laborers, mechanics, watchmen, and guards. This includes member of survey crews and exploratory drilling operations.
- iv. **Clause XI “Copeland ‘Anti-kickback’ Act”** shall only apply if the Services include in the applicable SOW, result in work that meet the definition of construction, alteration or repair as defined in 29 CFR Part 5 and it exceeds \$2,000.
- v. **Clause XII “Davis-Bacon Requirements”** shall apply if the Services included in the applicable SOW, result in work that meet the definition of construction, alteration or repair, as defined in 29 CFR Part 5 and it exceeds \$2,000.
- vi. **Clause XVIII “Equal Employment Opportunity Clause”** shall only apply when the Services included in the applicable SOW exceeds \$10,000.

- vii. **Clause XIX “Standard Federal Equal Employment Opportunity Construction Contract Specification”** shall only apply when the Services included in the applicable SOW exceeds \$10,000.
- viii. **Clause XXIV “Prohibition of Segregated Facilities”** shall only apply if the Services, included in the applicable SOW, qualify as construction work as defined by 41 CFR Part 60-1.
- ix. **Clause XXV “Procurement of Recovered Materials”** shall only apply if the Services, established in the applicable SOW, include the procurement of a product that exceeds \$10,000.
- x. **Clause XXVI “Rights to Invention”** shall only apply if the Services, established in the applicable SOW, include the performance of experimental, development or research work.
- xi. **Clause XXVII “Seismic Safety”** shall only apply if the Services, established under the applicable SOW, involve construction of new buildings or structural addition to existing building”.

[SIGNATURE PAGES FOLLOW]

Agreed and signed in _____, _____, as of the date first written above.

[PROVIDER]

By: _____

Name:

Title:

DRAFT

Agreed and signed in Carolina, Puerto Rico, as of the date first written above.

AEROSTAR AIRPORT HOLDINGS, LLC

By: _____
Name: Jorge Hernández
Title: Chief Executive Officer

DRAFT

For Internal Purposes Only

Reviewed by Legal: _____

SCHEDULE A SOW TEMPLATE

STATEMENT OF WORK NO. [#] TO MASTER SERVICE PROVIDER AGREEMENT AGREEMENT NUMBER: [Agreement No.]

This Statement of Work (“SOW”), dated [DATE], is subject to the terms and conditions of the Master Service Provider Agreement executed between AEROSTAR AIRPORT HOLDINGS, LLC (“AEROSTAR”) and [PROVIDER] (“Provider”) on [DATE], (the “Agreement”).

1. SERVICES:

a) Provider shall provide Aerostar with the following services (“Services”):

- [DESCRIPTION OF SERVICES]

b) The commencement date for the Services is [COMMENCEMENT DATE].

2. TERM:

This SOW shall, be in full force and effect for a period of [TERM], commencing on [COMMENCEMENT DATE] and culminating on [CULMINATION DATE] (“Term”).

Provider shall not commence any of the Services and/or portion of the Services without Aerostar’s written approval.

3. FEES:

Aerostar shall pay Provider fee of [FEE] for the Services performed under this SOW.

The fees established above include any and all costs and expenses relating to any material, equipment, machinery, and/or any other cost and expense for any products required to perform the Services, as well as any cost and expense in regards to the Services and/or any portion of the Services.

4. PROVIDER OBLIGATIONS:

[PROVIDER OBLIGATIONS]

5. SERVICE PROVIDER OBLIGATIONS:

At any time, Aerostar shall notify Provider in writing if the Services and/or any portion of the Services fail to comply with the warranties set forth in this Agreement. The notice from Aerostar shall specify in reasonable detail any alleged non-conformities or the basis for the rejection of any such Services as well as reasonable requirements for acceptance of the Services. Upon such notice, Provider shall, at no cost to Aerostar, promptly re-perform any such Services and/or any portion of the Services in accordance with this Agreement.

For the avoidance of doubt any and all terms, warranties, representation and/or covenants of the Agreement shall apply to the Services.

6. PAYMENT TERMS:

All fees due hereunder, except for fees that are subject to a good-faith dispute, shall be paid sixty (60) days following Aerostar's receipt of an invoice from Provider.

7. PROJECT MANAGER:

- a) Provider's Project Manager is:

Name:
Title:
Phone No.:
Fax No.:
E-mail:

- b) Aerostar's Project Manager is:

Name:
Title:
Phone No.:
Fax No.:
E-mail:

- c) Aerostar's Accounts Payable is:

Name:
Title:
Phone No.:
Fax No.:
E-mail:

8. INCORPORATION:

This SOW is hereby incorporated into and made a part of the Agreement. In the event of a conflict among the terms and conditions of this SOW and the Agreement, this SOW will govern. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

9. VALIDITY:

This SOW will be valid once Aerostar issues a Purchase Order ("PO").

[Signature Page Follows]

Agreed to and accepted by:

AEROSTAR AIRPORT HOLDINGS, LLC

[PROVIDER]

By:

By:

Name: Jorge Hernández

Name:

Title: Chief Executive Officer

Title:

DRAFT

SCHEDULE B SUPPLEMENTARY PROVISIONS

The Services provided by Provider under the Agreement may be part of a project undertaken by Aerostar Airport Holdings, LLC (“Aerostar”, “Sponsor” or “Owner”) that complies with the terms and conditions of the Airports Improvement Program (“AIP”) administered by the Federal Aviation Administration (“FAA”). For the AIP projects, the United States Government has agreed to reimburse Aerostar for some portion of the fees, contract sum or cost of the work. Such reimbursement is made from time to time, upon Aerostar’s request to the FAA.

Provider shall deliver to Aerostar all information, reports, documents and/or certifications requested by Aerostar for the satisfaction of any grant requirements for any Services performed under this Agreement. Provider shall comply with all applicable laws, regulations, executive orders, policies, guidelines and requirements for the AIP funded projects. Nothing herein shall be considered as making the FAA a party to the Agreement. Provider covenant and agrees to comply with all of the provisions included herein.

I. ACCESS TO RECORDS AND REPORTS

The Provider must maintain an acceptable cost accounting system. The Provider agrees to provide Aerostar, 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 Provider which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts and transcriptions. The Provider agrees to maintain all books, records and reports required under this Agreement for a period of not less than three years after final payment is made and all pending matters are closed.

II. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Provider’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 Provider’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: the goal shall be the requirements established for Puerto Rico in the applicable executive order under 41 CFR Part 60-4.

Goals for female participation in each trade: 6.9%

These goals are applicable to all of the Provider’s construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Provider 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

Provider also is subject to the goals for both its federally involved and non-federally involved construction.

The Provider'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 Agreement, and in each trade, and the Provider 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 Provider to Provider or from project to project for the sole purpose of meeting the Provider's goals shall be a violation of the Agreement, 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 Provider 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 Agreement 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. The "covered area" is the city of Carolina in the Commonwealth of Puerto Rico.

III. BREACH OF CONTRACT TERMS

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

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

The duties and obligations imposed by the Agreement, the applicable SOW or 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.

IV. BUY AMERICAN PREFERENCE

The Provider certifies that its bid/offer is in compliance with 49 USC § 50101, Bipartisan Infrastructure Law, Build America, Buy America (BABA) Act and other related Made in America Laws, 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.

If this clause is applicable to the type of Services rendered under the applicable SOW, then Provider must complete and submit the FAA Buy American Preference certification included herein as Appendix A prior to the execution of the applicable SOW. Aerostar will not execute any SOW, to which thus Buy American Preference provision applies, if the Provider does not include a completed certification of compliance with FAA's Buy American Preference and BABA.

If the Services include construction materials under the applicable SOW, then Provider will certify 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. Provider must complete and submit the FAA's Buy American Preference certification included herein as Appendix A prior to the execution of the applicable SOW.

V. GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, the Provider 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 binds the Provider and subcontractors from the bid solicitation period through the completion of the Agreement. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

VI. TITLE VI SOLICITATION NOTICE

Aerostar, 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, notifies and requires that Provider, and Provider agrees that, for all Services to be performed under this Agreement and/or the applicable SOW, it will affirmatively ensure that for all Services provided, disadvantaged business enterprises will be afforded full and fair opportunity to submit proposals for any sub-contract and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

VII. TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

Compliance with Nondiscrimination Requirements:

During the performance of this Agreement, the Provider, for itself, its assignees, and successors in interest (hereinafter referred to as the "Provider"), agrees as follows:

1. **Compliance with Regulations:** The Provider (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 Agreement.
2. **Nondiscrimination:** The Provider, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Provider will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement 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 Provider 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 Provider of the contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Provider 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 Provider 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 Provider's noncompliance with the non-discrimination provisions of this Agreement, 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 Provider under the Agreement and/or the applicable SOW until the Provider complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Provider 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 Provider 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 Provider becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Provider 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.

VIII. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this Agreement, the Provider, for itself, its assignees, and successors in interest (hereinafter referred to as the “Provider”) 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;
- 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 § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) 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, which 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. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

IX. CLEAN AIR AND WATER POLLUTION CONTROL

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

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

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

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or Aerostar 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 Provider 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 Provider 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.

XI. COPELAND “ANTI-KICKBACK” ACT

Provider 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. Provider 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 Provider and each Subcontractor must submit to Aerostar, 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.

XII. 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 Provider 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 Part 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 Provider 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 Provider 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, Employment Standards Administration, 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 Provider, 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 Provider does not make payments to a trustee or other third person, the Provider 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 Provider, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Provider 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 Aerostar 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 Provider under this Agreement 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 Provider 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 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 Provider 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 Provider 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 that show the costs anticipated or the actual costs incurred in providing such benefits. Providers 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 Provider 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 Provider 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 <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Providers 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 Provider will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Provider, 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 Provider 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 Provider 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 Provider 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 Provider or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Provider, 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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, 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 Bureau of Apprenticeship and Training 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 Provider'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 Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Provider 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 Provider 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 Provider shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.

6. Subcontracts.

The Provider 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 Agreement.

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 Agreement. 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 Provider (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 Agreement, the Provider certifies that neither it (nor he or she) nor any person or firm who has an interest in the Provider'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 Agreement 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.

XIII. CERTIFICATION OF PROVIDER REGARDING DEBARMENT

By executing this Agreement and each applicable SOW, the Provider certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction. Furthermore, Provider certifies that any lower tier

participant/subcontractor offering services in regards to this Agreement and any applicable SOW is not presently debarred or otherwise disqualified from participation in federally assisted projects resulting from this Agreement and applicable SOWs.

XIV. CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The Provider, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. 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 Provider 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.

XV. DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§ 26.13) –

The Provider or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Provider shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Provider to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Aerostar 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 Provider from future bidding as non-responsible.

Prompt Payment (§26.29) – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contractor receives from Aerostar. The prime contractor agrees further to return retainage payments to each subcontractor within fifteen (15) 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 Aerostar. This clause applies to both DBE and non-DBE subcontractors.

Termination of DBE Subcontracts (49 CFR § 26.53(f)) – The prime contractor must not terminate a DBE subcontractor listed by Provider to participate in this Agreement (or an approved substitute DBE firm) without prior written consent of Aerostar. 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 Aerostar. Unless Aerostar's 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.

Aerostar may provide such written consent only if Aerostar 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 Aerostar 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 Aerostar, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five (5) days to respond to the prime contractor's notice and advise Aerostar and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why Aerostar should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), Aerostar may provide a response period shorter than five days.

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

XVI. 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.

XVII. CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS

By executing this Agreement and each applicable SOW, the Provider certifies, to the greatest extent practicable, the Provider 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.

XVIII. ENERGY CONSERVATION REQUIREMENTS

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

XIX. EQUAL OPPORTUNITY CLAUSE

During the performance of this Agreement, the Provider agrees as follows:

- (1) The Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Provider 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 Provider 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 Provider 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 Provider 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 Provider'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 Provider 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 Provider 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 Provider'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 Provider 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 Provider 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 Provider 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 Provider may request the United States to enter into such litigation to protect the interests of the United States.

XX. 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 Provider, 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 Provider 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 shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Provider shall implement the specific affirmative action standards provided in paragraphs 7(a) through 7(p) 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 Provider should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Provider 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 Provider has a collective bargaining agreement to refer either minorities or women shall excuse the Provider's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Provider during the training period and the Provider shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Provider shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Provider's compliance with these specifications shall be based upon its effort

to achieve maximum results from its actions. The Provider 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 Provider's employees are assigned to work. The Provider, where possible, will assign two or more women to each construction project. The Provider shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Provider'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 Provider 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 Provider by the union or, if referred, not employed by the Provider, this shall be documented in the file with the reason therefore along with whatever additional actions the Provider may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Provider has a collective bargaining agreement has not referred to the Provider a minority person or female sent by the Provider, or when the Provider has other information that the union referral process has impeded the Provider'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 Provider's employment needs, especially those programs funded or approved by the Department of Labor. The Provider shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Provider's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Provider 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 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 Provider'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 Provider's EEO policy with other contractors and subcontractors with whom the Provider 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 Provider'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 Provider shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Provider'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 (7(a) through 7(p)). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Provider is a member and participant may be asserted as fulfilling any one or more of its obligations under 7(a) through 7(p) of these specifications provided that the Provider 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 Provider'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 Provider. The obligation to comply, however, is the Provider's and failure of such a group to fulfill an obligation shall not be a defense for the Provider's noncompliance.

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

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

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

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

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

XXI. FEDERAL FAIR LABOR STANDARDS ACT

The Provider shall comply with this provision and incorporate in all sub-tier agreements, SOWs and contracts by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

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

XXII. TRADE RESTRICTION CERTIFICATION

By executing this Agreement, the Provider certifies that with respect to this Agreement and each SOW, the Provider –

- 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 Section 1001.

The Provider must provide immediate written notice to Aerostar if the Provider learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Provider must require subcontractors provide immediate written notice to the Provider 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 a Provider 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 Provider 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 Provider 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 Provider 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 Provider or subcontractor knowingly rendered an erroneous

certification, the Federal Aviation Administration (FAA) may direct through Aerostar cancellation of the contract or subcontract for default at no cost to Aerostar or the FAA.

XXIII. CERTIFICATION REGARDING LOBBYING

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

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Provider, 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.

XXIV. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

The Provider shall comply with this provision and all subcontracts that result from this Agreement 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 (20 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.

XXV. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The Provider and subcontractor(s) 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)].

XXVI. PROHIBITION OF SEGREGATED FACILITIES

(a) The Provider 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 Provider agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this Agreement.

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

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

XXVII. PROCUREMENT OF RECOVERED MATERIALS

Provider 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 Provider 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.

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.

XXVIII. RIGHTS TO INVENTIONS

Agreements and/or SOWs that include the performance of experimental, developmental or research work, must provide for the rights of the Federal Government and Aerostar 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 Agreement incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Provider must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

XXIX. SEISMIC SAFETY

In the performance of design services, the Provider 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 Provider agrees to furnish Aerostar 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.

XXX. CERTIFICATION OF PROVIDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

Provider must complete the two (2) certification statements attached hereto as Appendix B, with the Execution of this Agreement and every applicable SOW.

XXXI. TERMINATION FOR CONVENIENCE

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

Upon termination of the Agreement, the Provider must deliver to Aerostar 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.

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

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

XXXII. TERMINATION FOR DEFAULT

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

The terminating party must provide the breaching party seven (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 Aerostar:** Aerostar may terminate this Agreement in whole or in part, for the failure of the Provider to:

1. Perform the services within the time specified in this Agreement or by Aerostar 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 Provider must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Provider must deliver to Aerostar 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.

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

Aerostar further agrees to hold Provider 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, Aerostar determines the Provider was not in default of the Agreement, the rights and obligations of the parties shall be the same as if Aerostar issued the termination for the convenience of Aerostar.

b) **Termination by Provider:** The Provider may terminate this Agreement in whole or in part, if Aerostar:

1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the Provider 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 Provider.

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

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

XXXIII. VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Provider 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.

ACKNOWLEDGE AND AGREED:

[LEGAL NAME OF ENTITY]

Provider

By: _____

Name:

Title: Manager

Appendix A

[CERTIFICATES OF FAA BUY AMERICAN COMPLIANCE]

Instructions: There are two types of FAA Buy American certifications. Aerostar must incorporate the appropriate “Certificate of Buy America Compliance” in the applicable SOW:

- Projects for a facility (buildings such as terminals, snow removal equipment (SRE) buildings, aircraft rescue and firefighting (ARFF) buildings, etc.) – Insert the Certificate of Compliance Based on **Total Facility**.
- Projects for non-facility development (non-building construction projects such as runway or roadway construction or equipment acquisition projects) – Insert the Certificate of Compliance Based on **Equipment and Materials Used on the Project**.

CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR TOTAL FACILITY

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:

- To provide to the Airport Sponsor or the FAA evidence that documents the source and origin of the iron, steel, and/or manufactured product.
 - To faithfully comply with providing U.S. domestic products.
 - To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
 - 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 either 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 Owner within 15 calendar days of the bid opening, 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”. 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.

Name

Signature

Company Name

Title

Date

DRAFT

Certificate of Buy American Compliance for Manufactured Products

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:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
 2. To faithfully comply with providing U.S. domestic product.
 3. To furnish U.S. domestic product for any waiver request that the FAA rejects
 4. 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 either 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:
1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.

3. To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
4. 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.

Name

Signature

Company Name

Title

Date

DRAFT

Appendix B

[CERTIFICATION OF PROVIDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS]

Instruction: Provider 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 Provider agrees that it will incorporate this provision for certification in all lower tier subcontracts.

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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.
- 1) 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 U.S.C. § 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.

Name

Signature

Company Name

Title

Date