



Indianapolis Airport Authority

REQUEST FOR PROPOSALS

Solicitation for:

Solar Photovoltaic Generating System (Solar Farm)

Issued:
May 11, 2011

Proposals Due:
June 16, 2011
at 2:00 pm Eastern Standard Time

**Indianapolis Airport Authority
Request for Proposals
Solar Photovoltaic Generating System
(Solar Farm)**

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REQUEST FOR PROPOSALS
Solar Photovoltaic Generating System
(Solar Farm)

SECTION ONE
GENERAL INFORMATION

1.1 INTRODUCTION

This is a Request for Proposals ("RFP") issued by the Indianapolis Airport Authority ("Airport"). The Airport requires the services of a professional, qualified solar farm developer (each, a "Respondent", and collectively, the "Respondents").

The Airport will consider Proposals (hereinafter defined) from national, regional, and local solar farm development entities/teams with the funding, knowledge, and experience to develop a 10 mega watt ("MW") solar farm at the location specified by the Airport, the general area of which is more particularly shown on the site plan attached to this RFP. It is the intent of the Airport to solicit responses to this RFP in accordance with the terms, conditions and other specifications contained in this RFP.

1.2 DEFINITIONS

Following are explanations of terms and abbreviations appearing throughout this RFP. Other special terms may be used in this RFP, but they are more localized and defined where they appear, rather than in the following list:

Project:	Solar Photovoltaic Generating System (Solar Farm)
Proposal:	An offer as defined in Indiana Code §5-22-2-17.
Respondent:	An offeror as defined in Indiana Code §5-22-2-18.

1.3 PURPOSE OF THE RFP

The purpose of this RFP is to invite potential Respondents to submit Proposals for the financing, design, engineering, construction, operation and maintenance of a proposed 10 MW solar farm and to conduct related services as requested pursuant to this RFP. Notwithstanding anything in this RFP to the contrary, it is the Airport's desire for the solar farm to be 10 MW in size; however, Respondents may propose a smaller size or several different sizes up to 10 MW, especially if same will make the Project more viable by lowering the interconnectivity costs.

1.4 SCOPE OF THE RFP

This document contains the following information that may be useful to person or entity wishing to submit a Proposal:

Section One – A general description of the many factors affecting the RFP and Proposal process.

Section Two – The specific information covering RFP and Proposal procedures.

Section Three – A description of the services to be provided by any successful Respondent.

Section Four – A description of the required format and subject content of any acceptable Proposals offered in response to this RFP.

Section Five – A general discussion of the method that will be used by the Airport's evaluation team in selecting the successful Respondent with whom to enter into lease negotiations.

Attachments – Details supporting this basic RFP document.

1.5 PROPOSAL DUE DATE AND TIME

All Proposals must be received at the address below no later than 2:00 p.m. Eastern Standard Time on Thursday, June 16, 2011 (the "Proposal Due Date and Time"). All Proposals and questions must be addressed to:

RFP – Solar Photovoltaic Generating System (Solar Farm)
Annette Cousert, Procurement Department
Indianapolis Airport Authority
Program Office
2349 Aviation Drive Indianapolis, Indiana 46241

All Proposals must be submitted in a sealed envelope clearly marked with "RFP-Solar Photovoltaic Generating System (Solar Farm)" and the Proposal Due Date and Time. All submittals shall include one complete, original Proposal marked "ORIGINAL", twelve (12) complete copies of the original Proposal, one (1) electronic copy on CD or DVD, and other related documentation required by this RFP. Any Proposal received after the Proposal Due Date and Time will not be opened, and will be returned to the Respondent upon request. All rejected Proposals not claimed within thirty (30) days of the date of rejection will be destroyed.

1.6 MODIFICATION OR WITHDRAWAL OF OFFERS

Proposals in response to this RFP may be modified or withdrawn in writing or by fax notice to the Procurement Department, if such writing or notice is received prior to the Proposal Due Date and Time. The Respondent's authorized representative may also withdraw the Proposal in person, provided that his or her identity is made known and he or she signs a receipt for the Proposal. Proposals may not be withdrawn after the Proposal Due Date and Time has passed.

1.7 CONTRACT OBLIGATIONS

Although the Airport anticipates that any Respondent submitting a Proposal will provide the major portion of the services as requested, subcontracting by the Respondent is acceptable in performing the requirements of this RFP. Respondents are encouraged to team with local qualified firms in their Proposal. However, Respondent must obtain the approval of the Airport before subcontracting any portion of the Project's requirements. Respondent is responsible for the performance of any obligations that may result from this RFP and shall not be relieved by the non-performance of any subcontractor. Each Respondent's Proposal must identify all subcontractors, if any, and outline the contractual relationship between the Respondent and each subcontractor. Either a copy of the executed subcontract or a letter of agreement over the official signature of the entities involved must accompany each Proposal. This RFP is subject to the Airport's Business Diversity Program; the requirements thereof are explained elsewhere in this RFP.

Any subcontracts entered into by the Respondent must be in compliance with all State of Indiana statutes and be subject to the provisions thereof. For each portion of the proposed services to be provided by a subcontractor, the technical proposal must include the identification of the functions to be provided by the subcontractor and the subcontractor's related qualifications and experience.

The combined qualifications and experience of the Respondent and any or all subcontractors will be considered in the Airport's evaluation. The Respondent must furnish information to the Airport as to the amount of the subcontract(s), the qualifications of the subcontractor(s), and any other data that may be required by the Airport. All subcontracts held by the Respondent must be made available upon request for inspection and examination by appropriate Airport officials, and such relationships must meet with the approval of the Airport.

1.8 CONFIDENTIAL INFORMATION

Respondents are advised that materials contained in Proposals are subject to the Indiana Public Records Act, IC §5-14-3, *et seq.* (the “IPRA”), and, after the contract/lease award, may be viewed and copied by any member of the public, including news organizations and competitors. Respondents claiming a statutory exception to the IPRA must place all confidential documents (including the requisite number of copies) in a sealed envelope clearly marked “Confidential”, and must indicate in the transmittal letter and on the outside of that envelope that confidential materials are included. The Respondent must also specify which statutory exception provision it believes is applicable. The Airport reserves the right to make determinations of confidentiality. If the Airport does not agree that the information designated is confidential under one of the disclosure exceptions to the IPRA, it may either reject the Proposal or discuss its interpretation of the IPRA with the Respondent. If agreement can be reached on same, the Proposal will be considered. If agreement cannot be reached, the Airport will remove the Proposal from consideration for award and return the Proposal to the Respondent. The Airport will not consider pricing, rentals, or investment costs to be confidential information.

1.9 CONTRACT DOCUMENTS

Any or all portions of this RFP, and normally any or all portions of the Respondent’s Proposal, will be incorporated by reference as part of any final land lease, contract or other agreement between the parties (hereinafter referred to individually and collectively as “Land Lease”), as determined by the Airport. Proprietary or confidential material submitted properly (see Section 1.8) will not be disclosed.

1.10 PROPOSAL LIFE

All Proposals made in response to this RFP must remain open and in effect for a period of not less than 180 days after the Proposal Due Date and Time. Any Proposal accepted by the Airport for the purpose of contract and/or lease negotiations shall remain valid until otherwise specified by the Airport.

1.11 SUPPLIER DIVERSITY PROGRAM

There is a reasonable expectation by the Airport with respect to minority and women-owned business enterprise participation in this Project, including, but not limited to, planning, design, construction, oversight, and/or financing. Therefore, a goal of 20% MBE and/or 20% WBE (or a combination thereof for an aggregate of 20%) supplier diversity participation has been established. Respondents seeking assistance in achieving this goal should start by visiting the Airport’s website at www.indianapolisairport.com. Once on the website, select “Employment & Business” and go to the “Supplier Diversity Program” section to find entities certified as Minority/Women & Disadvantaged Business Enterprises. Only those certified entities as identified on the State of Indiana or City of Indianapolis certification lists will be eligible for calculation of contract participation percentage. All Respondents should make documented good faith efforts to meet this goal. Compliance with this goal will be considered a demonstration of the Respondent’s responsiveness and responsibility. For questions, please contact Corey Wilson with the Airport’s Supplier Diversity Department at 317.487.5374 or via e-mail at cwilson@indianapolisairport.com.

By submission of a Proposal, the Respondent thereby acknowledges and agrees to be bound by the requirements of the Airport’s Supplier Diversity Program.

1.12 DISCUSSION FORMAT

The Airport reserves the right to conduct discussions, either oral or written, with the Respondents determined by the Airport to be reasonably viable to being selected for award. If discussions are held, the Airport may request best and final offers.

The request for best and final offers may include:

- Notice that discussions are concluded.
- Notice that this is the opportunity to submit written best and final offers.
- Notice of the date and time for submission of the best and final offer.
- Notice that if any modification is submitted, it must be received by the date and time specified or it will not be considered.
- Notice of any changes in the Airport's requirements.

Notwithstanding anything in this RFP to the contrary, the Airport reserves the right to reject any and all Proposals received, or to award, without discussions or clarifications, a Land Lease on the basis of initial Proposals received. Therefore, each Proposal should contain the Respondent's best terms. The Airport reserves the right to reopen discussions after receipt of best and final offers, if it is clearly in the Airport's best interests to do so and the Airport's Executive Director/CEO, or his/her designee, makes a written determination of that fact. If discussions are reopened, the Airport may issue an additional request for best and final offers from all Respondents determined by the Airport to be reasonably viable to being selected for award.

Following evaluation of the best and final offers, the Airport may select for negotiations the offers that are most advantageous to the Airport, considering all facets and evaluation factors in this RFP, including, but not limited to, price, rentals, and experience.

The Airport also reserves the right to conduct clarifications to resolve minor issues. If only clarifications are sought, best and final offers may not be requested. The Airport retains sole authority to determine whether contact with Respondents is for clarification or discussion.

1.13 TIMELINE

The following timeline is intended to illustrate the anticipated timeline for this RFP:

<u>ACTIVITY</u>	<u>COMPLETION DATE [UPDATE]</u>
RFP issued/available	May 11, 2011
Pre-proposal conference	May 25, 2011, 2 p.m. (Eastern Standard Time) at the Board Room Level 4 Room 11T.413A located in Main Terminal building 7800 Col. H. Weir Cook Memorial Drive Indianapolis IN 46241
Written questions due	May 31, 2011, 2 p.m. (Eastern Standard Time)
Written responses to questions available on Indianapolis Airport website	June 7, 2011
Proposals due	June 16, 2011, at 2 p.m. (Eastern Standard Time) Indianapolis Airport Authority Program Office 2349 Aviation Drive Indianapolis, IN 46241

1.14 RFP REVISIONS & ADDENDA

If it becomes necessary to revise or supplement any part of this RFP or if any additional data is necessary for an exact interpretation of provisions of this RFP prior to the Proposal Due Date and Time, a supplement will be issued by the Airport. If such addenda issuance is necessary, the Airport reserves the right to extend the Proposal Due Date and Time to accommodate such interpretations or additional data requirements.

END OF SECTION ONE

SECTION TWO

PROPOSAL PROCEDURES

2.1 PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference and an MBE/WBE networking session will be held:

May 25, 2011, at 2 p.m. Eastern Standard Time
Indianapolis International Airport
Board Room Level 4 Room 11T.413A
Located in Main Terminal building
Indianapolis Airport
7800 Col. H. Weir Cook Memorial Drive
Indianapolis, IN 46241

Respondents are strongly encouraged to attend this Pre-Proposal Conference.

2.2 INQUIRIES ABOUT THE RFP

All inquiries and requests for information affecting this RFP must be submitted in writing to:

RFP – Solar Photovoltaic Generating System (Solar Farm)
Doreen Cherry, Procurement Manager
Indianapolis Airport Authority, Program Office
2349 Aviation Drive
Indianapolis, IN 46241
E-mail: solarfarmRFP@indianapolisairport.com

no later than 2:00 p.m. Eastern Standard Time on May 31, 2011. The Airport reserves the right to determine whether any questions should be answered. If responses are provided, the responses will be written. Copies of Airport's written responses will be issued via Addendum and available on the Airport's website and/or distributed to all prospective Respondents who are known to have received a copy of the original RFP. No negotiations, decisions or actions shall be initiated by any Respondent as a result of any verbal discussion with any consultant of the Airport or with any Airport employee.

Inquiries are not to be directed to any consultant or staff member of the Airport. Such action may disqualify Respondent from further consideration for a contract and/or lease as a result of this RFP. The use of e-mail to solarfarmRFP@indianapolisairport.com or faxing to 317.487.5201 for submitting questions is encouraged. Any Addendum issued by the Airport will be available at www.indianapolisairport.com.

2.3 PROPOSAL SUBMISSION

One original, twelve (12) copies, and one electronic copy on CD or DVD of the Proposal for the Solar Photovoltaic Generating System (Solar Farm) must be received by the Airport's office on or before the Proposed Due Date and Time. Each copy of the Proposal must follow the format indicated in Section Four of this RFP. Unnecessarily elaborate brochures or other presentations, beyond that sufficient to present a complete and effective Proposal, are not desired.

2.4 LAND LEASE NEGOTIATIONS

After selection of the successful Respondent by the Airport's evaluation team, negotiations will commence with respect to a final Land Lease. If at any time the negotiation activities are judged to be ineffective by the Airport's Chief Financial Officer and General Counsel, or their designee, the Airport will cease all negotiations with that Respondent and may begin negotiations with the

next highest ranked Respondent. This process may continue until either Respondent and Airport execute a final Land Lease, or the Airport determines that no acceptable alternative Proposal exists.

END OF SECTION TWO

SECTION THREE SPECIFICATIONS

3.1 DESCRIPTION OF INDIANAPOLIS AIRPORT AUTHORITY

Indianapolis International Airport (IND): With over 10,000 acres under Airport ownership, Indianapolis International currently occupies approximately 7,700 acres, or about 12 square miles. Air operations are conducted on two parallel runways plus one “crosswind” runway. The Airport is served by 9 major and several national and regional passenger air carrier airlines. The terminal occupies 750,000 square feet, consisting of two (2) air service concourses (40 gates, total), ticketing halls and baggage recovery areas, as well as office space, retail concession and common areas.

At 1.2 million square feet and a cost of \$1.1 billion, the Terminal Development represents the largest development initiative in the history of the City of Indianapolis. Strategically located between the two parallel runways, a “midfield” position for the terminal greatly improves aircraft taxi time and travel. This state-of-the-art structure replaced the existing terminal and houses forty (40) passenger flight gates (38 domestic and 2 international) in two (2) concourses. A “best use” study has recently been completed for IND and is available at www.landinsight.org.

Additionally, the Airport’s complex consists of Foreign Trade Zone operations, the US Postal Service Eagle Network Hub, Airport Fire Department facilities, Federal Aviation Administration Air Traffic Control Tower, parking structures and out-lots, tenant occupied structures, aircraft parking aprons, maintenance and equipment facilities, commercial, corporate and private hangars, rental car accommodations and several support facilities necessary for the operation of the Airport.

Located in southwest Marion County and only eight (8) miles from downtown Indianapolis, the Airport serves the Indianapolis-Carmel “Metropolitan Statistical Area” (which consists of Marion and all or portions of nine surrounding counties), and effectively, the entire State of Indiana. The I-C MSA has experienced over twice the population growth rate as has the State, and, with particular significant growth in the surrounding counties, this trend is expected to continue. Indianapolis International Airport is considered a mid-size air traffic hub by the FAA.

The Indianapolis Airport Authority does not receive any local tax dollars. Operations are funded through revenues, categorized as either “airline” or “non-airline.” In addition to passenger air operations, IND is a significant cargo and air freight handle, (8th nationally), home to the second largest Federal Express hub in the world. Non-airline revenue consists of income from parking, space rentals, land leases, fuel sales, and retail and concessions. Capital improvement projects are funded by cash generated from operating activities, local bond issues, as well as state and federal grants.

2010 Statistics:

- The number of enplaned passengers for fiscal year 2010: 3,770,383
- Aircraft operations: 166,358
- Total cargo moved (in tons): 1,044,812
- Landed weights (in tons): 2,224,018 in passenger aircraft; 2,369.007 in freight aircraft

There are an estimated 10,288 people working at the Airport. Approximately 530 are employed by the Indianapolis Airport Authority and are responsible for the administration, operation, and maintenance of the Airport.

Calendar year 2010 marked the eleventh year in a row that the Airport completed its “Part 139” inspection by the FAA with “no discrepancies” in operating a safe airport. As part of the FAA’s Great Lakes Region, which includes eight states and 71 airports, IND continues to have the most consecutive perfect inspections of any airport in the region.

Additional information, financial and statistical data can be found at our website: www.indianapolisairport.com. The 2009 CAFR (Comprehensive Annual Financial Report) can be found at <http://www.indianapolisairport.com/admin/uploads/456/12.31.09CAFR.FY09.pdf>.

3.2 SCOPE, QUALIFICATIONS, STANDARDS AND ADDITIONAL REQUIREMENTS

SCOPE

The Airport is seeking an entity, or a team of entities, to provide a cost effective solar photovoltaic electric generating system commonly known as a solar farm. The Airport desires such a proposer to finance, design, construct, own, operate and maintain a 10 MW solar farm to be located on the Airport's property and to enter into a power purchase or similar agreement for a period of time negotiated with an appropriate utility company, such as, by way of example and not of limitation, Indianapolis Power & Light ("IPL").

The scope of services provided shall also include, but not be limited to, securing all permits and approvals from any and all applicable governmental and regulatory entities, all labor, applicable taxes, services, and equipment necessary to produce a fully operational solar PV system.

The Airport intends to enter into a Land Lease with the successful Respondent it has selected for negotiations. Please note that Respondents are encouraged to creatively propose and suggest additional Airport revenue streams in connection with this Project other than just rental under a Land Lease.

Because no public funds or Airport monies are anticipated to be involved in this Project, it's not considered to be a "Public Work Project", as defined under Indiana law, at this time.

QUALIFICATIONS

Each Respondent must:

1. Provide evidence of all the previous experience the Respondent has with solar farm project funding, engineering, construction, completion, and operation especially for solar farm projects of 5 MW or greater. Proposals from entities/teams with past experience in larger solar farm applications on the order of 5 MW or greater will be given preference.
2. Provide evidence of its ability to immediately fund or finance (whether through equity, credit or otherwise) the complete scope of this Project, including, but not limited to, the design, engineering, construction and operation thereof. Please provide details as to the material terms and conditions of your financing of any previous solar farm projects.

It is anticipated that the successful Respondent shall meet the following additional qualifications: The successful Respondent shall be required to post a performance bond in the amount allowed under Indiana Code in conjunction with the projected construction costs associated with this Project.

STANDARDS TO BE FOLLOWED

Each Respondent is responsible for design and installation compliance with all local, state and federal laws and regulations (including all FAA required pre-approvals). This Project is contingent upon the Airport obtaining any and all required FAA approvals to develop the applicable site for the proposed use as described in this RFP. The successful Respondent should also make a commitment in its Proposal to reimburse the Airport for any and all costs incurred by the Airport in pursuing and/or securing any and all necessary FAA approvals in connection with this Project.

Respondent shall propose to install PV panels, inverters and other components that meet all applicable federal, state, and local building standards. Solar panel maximum degradation will not exceed 20% over 20 years. Fixed base units will be required. Solar tracking arrays will not be allowed. Panel technology is not restricted, other than degradation rate.

Respondent shall propose to supply all equipment, materials, and labor necessary to install the support structures and solar PV systems and integrate them with other power sources.

Respondent shall propose to build the support structure as follows:

- a) Build such that the structure complies with the prevailing Indiana Building Standards Code and wind uplift requirements per the American Society of Civil Engineers Standard for Minimum Design Loads for Buildings and Other Structures and any applicable FAA requirements.
- b) Build in compliance with Occupational Health and Safety Administration (OSHA) and Indiana OSHA directives.

The Respondent shall propose to supply and install all equipment required to interconnect the solar PV systems to the applicable utility distribution system. The Respondent shall fulfill all application, study, and testing procedures to complete the interconnection process. Any and all costs associated with utility interconnection shall be borne by the Respondent.

ADDITIONAL REQUIREMENTS AND EXPECTATIONS OF THE SUCCESSFUL RESPONDENT

The successful Respondent (which means the Respondent awarded the Project and entering into a Land Lease and/or other contractual arrangements with the Airport) shall secure from applicable governmental entities having jurisdiction and any applicable utility company, all of the required rights, permits, approvals, and interconnection agreements, at no cost to the Airport. The Airport, in its sole judgment and discretion, may elect to become a signatory on applications, permits, and utility agreements. The successful Respondent shall complete and submit, in a timely manner, all the documentation required to qualify for available rebates and incentives.

The successful Respondent shall make exploratory excavations at the planned site for foundation analysis, and confirm the soil conditions prior to preparing the final foundation submittal. The successful Respondent shall remove and dispose of foundation excavation spoils. The successful Respondent shall evaluate the site for grading and for appropriate drainage, and address any specific requirements associated with any wetlands or related issues.

The successful Respondent shall provide the Airport with submittals of the structural plans and specifications in sufficient detail for review. The Airport will review for:

- Compatibility with planned uses of proposed site;
- Safety of all employees during and after construction;
- Certifications on the strength calculations;
- Potential conflicts with existing equipment (particularly buried equipment);
- Maintenance;
- Aesthetics;
- Drainage and erosion control; and
- Environmental compliance.

During the start-up, the Airport, and/or its independent engineer, shall be allowed to observe and verify system performance. Required commissioning and acceptance test services include:

- Starting up the solar PV systems until they achieve the performance requirements;
 - Conducting the performance testing over a consecutive twenty-four (24) hour period;
- and

- Conducting the successful delivery of power within thirty (30) days following completion of the system.

The successful Respondent shall provide two (2) sets of operation, maintenance, and parts manuals for the installed solar PV system. The manual shall cover all components, options, and accessories used. It shall include maintenance, trouble-shooting, and safety precautions specific to the supplied equipment. The successful Respondent shall also provide one set of as-built drawings in AutoCAD 2006 or newer. These requirements shall be delivered upon activation of the site-specific system.

The successful Respondent shall keep the solar farm in good condition and operation at all times during the term of the Land Lease.

PROPOSAL FEE

Each Respondent shall submit a cashier's check from a reputable bank at the time of Proposal submission in the amount of Twenty Thousand and No/100 Dollars (\$20,000), made payable to the "Indianapolis Airport Authority", and which will be held by the Airport as a refundable proposal fee; and it is understood and agreed that no interest will accrue thereon at any time (the "Proposal Fee"). The Proposal Fee will be returned by the Airport to Respondents within ten (10) days after the Airport and the successful Respondent execute a final Land Lease as provided under this RFP. With respect to the successful Respondent, its Proposal Fee may be retained by the Airport and applied against any sums due and owing under the Land Lease.

GENERAL INFORMATION

The Airport anticipates that a single Land Lease will be awarded under this RFP for the Solar Photovoltaic Generating System (Solar Farm) and related services. Respondents are expected to use their own initiative in formulating their Proposal to this RFP.

The proposed solar farm site is currently zoned for aviation use and is currently non-taxable; however, the proposed future development thereof may affect this property's tax status. Each Respondent is responsible for making its own analysis and determination in this regard.

The Airport encourages Respondents, in their respective Proposals, to be as creative and generous as possible regarding fees, rentals and other benefits to the Airport, as the financial aspects of this proposed Project will be a consideration in determining whether a Land Lease will be awarded based on the Proposals submitted in response to this RFP.

3.3 INTENTIONALLY OMITTED

3.4 CONFERENCES AND COMMUNICATION

Following the award of a final Land Lease, regular progress meetings between the Airport's Solar Farm Project Management Team and the successful Respondent will be scheduled and occur.

3.5 CONSULTING SERVICES

From time to time, the Airport may require consulting assistance from the successful Respondent regarding the Project and related activities.

3.6 LENGTH OF LAND LEASE

The Airport desires to have a land lease with a total term or length of thirty (30) years or less, inclusive of any option periods. However, in addition to submitting a financial proposal based on the foregoing proposed 30-year maximum term, the Airport encourages each Respondent to be creative and to propose other periods for the Land Lease if it so desires; each Respondent may

submit multiple suggestions or proposals in this regard with various or differing rental structures and the justifications there for. Notwithstanding, any lease extensions will be subject to satisfactory performance by the Respondent. Additional considerations might include, but not be limited to, Consumer Price Index ("CPI") rate increases and graduated energy generation per KWH fee structures.

3.7 PRICING AND REVENUE

The Airport requires that the pricing and revenue associated with this RFP be a firm price, in the appropriate format as discussed in Section 4.6, that must remain open and in effect for a period of not less than 180 days from the Proposal Due Date and Time.

3.8 MINORITY OWNED AND WOMEN OWNED BUSINESS

Proposals must contain a thorough explanation with respect to the efforts that will be used to employ minority owned and women owned businesses in the performance and fulfillment of the Project. Please see Section 1.11, Section 4.3.12, and Section 4.5, for more information.

END OF SECTION THREE

SECTION FOUR PROPOSAL PREPARATION INSTRUCTIONS

4.1 GENERAL

To facilitate the timely evaluation of Proposals, a standard format for Proposal submission has been developed and is documented in this Section Four. All Respondents are required to format their Proposals in a manner consistent with the guidelines described below:

- Each item must be addressed in the Respondent's Proposal, or the Proposal may be rejected.
- The transmittal letter should be in the form of a letter. The business and technical proposals must be organized under the specific section titles as listed below.
- The Proposal must be no longer than 30 pages of 10 pt. type with margins at minimum of 1".
- The Airport may, at its option, allow all Respondents a five-calendar-day period to correct errors or omissions to their Proposals. Should this necessity arise, the Airport will contact each Respondent affected. Each Respondent must submit written corrections to the Proposal within five calendar days of notification. The intent of this option is to allow Proposals with only minor errors or omissions to be corrected. Major errors or omissions, such as the failure to include prices or pricing information (e.g., rentals), will not be considered by the Airport as a minor error or omission and may result in disqualification of the Proposal from further evaluation.

4.2 TRANSMITTAL LETTER

The transmittal letter must address the following topics, except those specifically identified as "optional."

4.2.1 Summary of Ability and Desire to Perform the Project

The transmittal letter must briefly summarize the Respondent's ability to supply the requested services that meet the application requirements defined in Section Three of this RFP and perform the Project. The letter must also contain a statement indicating the Respondent's willingness to provide the requested services subject to the terms and conditions set forth in this RFP including, but not limited to, the proposed Land Lease. The letter must include a statement that the proposal fee has been submitted with the proposal.

4.2.2 Summary of Ability to Meet the Required Qualifications and Standards

The transmittal letter must state that the Respondent meets the required qualifications and standards to be followed that are listed in this RFP. Any exceptions must be noted and an explanation provided if applicable.

4.2.3 Summary of Milestones

Information contained in the technical proposal regarding dates of milestone events must be summarized. Each Respondent will specifically describe the expected implementation procedures the Respondent proposes to use. In order to show feasibility, a timetable setting forth appropriate milestones should be included in Respondent's Proposal, with sufficient detail explaining how Respondent will meet those milestones.

4.2.4 Proposal Life

A statement must be included that indicates the length of time during which the Airport may rely on all Proposal commitments. The Airport requires that this period of time not be less than 180 days from the Proposal Due Date and Time. Any Proposal accepted by the Airport for the purpose of negotiations of a final Land Lease must remain in effect at least through the end of the negotiation period.

4.2.5 Signature of Authorized Representative

A person duly and properly authorized and empowered to commit the Respondent to its Proposal, including, but not limited to, any representations contained therein, must sign the transmittal letter. Such person's authority to so act must be consistent with the information contained in Section 4.3.11 of this RFP.

4.2.6 Other Information

This item is optional. Any other information the Respondent may wish to briefly summarize will be acceptable.

4.3 BUSINESS PROPOSAL

The business proposal section must address all of the following topics, except those specifically identified as "optional."

4.3.1 General

This optional section may be used to introduce or summarize any information that the Respondent deems relevant or important to the Airport's successful acquisition of the Project and services requested in this RFP.

4.3.2 Respondent's Legal Structure

The legal form of the Respondent's business organization (e.g., corporation, limited liability company, partnership, etc.), the state in which it was formed or incorporated, the types of business ventures in which said entity is involved, and a chart of the entity, are to be included in this section. If the entity includes more than one product division, the division responsible for the provision of the requested services in the United States must be described in more detail than other components of the entity. If the Respondent is a team of multiple entities, the teaming arrangement must be fully and completely described in this section.

4.3.3 Respondent's Capabilities

Describe the Respondent's experience and capabilities in providing similar work in scope of services, size and complexity in government, aviation and single roles. Indicate if the Respondent has ever failed to complete any work or project awarded to it. If so, please indicate and describe the date, where and why. Provide an affirmative statement or proof that the Respondent does not have a record of substandard work. In addition, disclose all enforcement actions by professional licensing boards, courts and other bodies, along with other matters which may reflect upon the Respondent's professional and/or other qualifications. Describe any pending litigation against the Respondent and any other factors that could affect the Respondent's ability to perform and complete the Project.

4.3.4 Facilities and Resources

The Respondent should include information with regard to its resources that it deems advantageous to the successful provision of the requested services and the Project. This might include management capabilities and experience, technical resources, and operational resources not directly assigned to this Project, but available if needed. The Airport prefers that the personnel assigned to this Project, including staff and/or subcontractors, have at least five (5) years of experience in commercial solar farm developments larger than 5 MW related to the energy industry.

4.3.5 Land Lease

A sample land lease is attached to this RFP, and the Respondent shall advise the Airport of any issues or concerns with this lease.

4.3.6 Pricing and Revenue

The Airport requires the pricing associated with this RFP be a firm fixed price (total project costs, including construction, and rental revenue) and must remain open and in effect for a period of not less than 180 days from the Proposal Due Date and Time and for any extensions agreed to in the course of lease negotiations.

4.3.7 References

The Respondent should include a list of at least three (3) clients or entities for whom it has provided projects or services that are the same or similar to those described in this RFP. The more similar they are to those requested in this RFP, the greater weight will be attached to the references in the Airport's evaluation process. Listed clients or entities may be contacted to determine the quality of work performed and personnel assigned to the Project. The results of the references may be provided to the Airport's evaluation team and used in the scoring of the Proposals.

Respondent should include the following information for each reference:

- a) Name of the entity;
- b) Initial dates that service started;
- c) Date of the most recent engagement;
- d) List of services performed;
- e) Responsible official or contact person; and
- f) Address, telephone number and email address.

4.3.8 Registration to do Business

Each Respondent proposing to provide the services required by this RFP is required to be registered to do business in the State of Indiana by the Indiana Secretary of State's Office. The website address containing the necessary forms can be found at <http://www.state.in.us/icpr/webfile/formsdiv/38784.pdf>. The telephone number of the Indiana Secretary of State's Office is 317.232.6578. Respondent must be properly registered prior to any lease negotiations with the Airport. The Respondent must indicate the current status of its registration, if applicable, in this section of its Proposal.

4.3.9 Independence

Respondent should provide an affirmative statement that it is independent of the Airport.

The Respondent should list and describe its proposed subcontractors' professional relationships involving the Airport or any of its agencies or component units for the

past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing under this RFP or the Land Lease.

4.3.10 Warranties

Each Respondent shall provide affirmative statements of the following representations and warranties:

- a) The Respondent represents and warrants that it is willing and able to comply with the State of Indiana's laws with respect to foreign (non-State of Indiana) entities (where necessary);
- b) The Respondent represents and warrants that it will not delegate, assign, transfer or subcontract, in whole or in part, any of its rights and/or responsibilities for the Project or under any Land Lease, in any respect, without the Airport's express prior written consent;
- c) The Respondent represents and warrants that all of the information set forth and provided by it in connection with its Proposal and this RFP is true, accurate and complete.

4.3.11 Authorizing Document

The Respondent's personnel signing the transmittal letter for its Proposal must be legally and properly authorized and empowered by the Respondent to commit said entity contractually. This section shall contain appropriate proof of such authority. A copy of the entity's governing documents (i.e., corporate bylaws, articles of incorporation, or a corporate resolution adopted by the board of directors) establishing this authority will fulfill this requirement.

4.3.12 Subcontractors

The Respondent must list each subcontractor proposed to be used in providing the required services for the Project. The subcontractor's responsibilities under the Proposal, the subcontractor's form of entity, and an indication from the subcontractor of a willingness to carry out these responsibilities are to be included for each subcontractor. This assurance in no way relieves the Respondent of any responsibilities in responding to this RFP or in completing the commitments documented in its Proposal. The Respondent must indicate which, if any, subcontractor is certified as a Minority-Owned or Women-Owned Business Enterprise by the State of Indiana or City of Indianapolis. See Section 1.11, Section 4.5.

4.3.13 Respondent's Land Lease Requirements

This section is optional. If the Respondent wishes to include any language or information other than that mentioned in the business proposal, it should be included in this section. For each lease clause included in this section, the Respondent should indicate whether that clause is required by the Respondent in any final Land Lease resulting from this RFP and why it is required (if the required clause is unacceptable to the Airport, the Respondent's Proposal may be considered unacceptable) or indicate that the clause is desired (but not required) by the Respondent in any final Land Lease resulting from this RFP.

4.3.14 Financial Information

The Respondent's audited financial information, including its income statement and a balance sheet, for each of the three most recently completed fiscal years (e.g., 2008, 2009, and 2010). If Respondent includes more than one product division, separate

financial statements must be provided for the division responsible for the development and marketing of the requested products and services.

4.3.15 Legal and Litigation

Include a complete list of any and all legal and/or administrative proceedings (civil or criminal actions or administrative proceedings) within the last three (3) calendar years in which the Respondent is or was a party, as well as a brief summary of any outcomes in connection therewith.

4.4 **TECHNICAL PROPOSAL**

The technical proposal must be divided into sections as described below. Every point made in each section must be addressed in the order given with the question first stated followed by the Respondent's response. The same outline numbers must be used in the Proposal. RFP language should not be repeated within the response. Where appropriate, supporting documentation may be referenced by a page and a paragraph number. However, when this is done, the body of the technical proposal must contain a meaningful summary of the referenced material. The reference document must be included as an appendix to the technical proposal, with referenced sections clearly marked; this appendix will not be considered as part of the Proposal's total page length limit. If there are multiple references or multiple documents, these must be listed and organized for ease of use by the Airport.

4.4.1 Overview of the Proposed Method for Provision of the Requested Services & Project

This overview must consist of a concise summary of the requested services proposed by the Respondent in response to this RFP. By reading the overview, the Airport must be able to gain a comfortable grasp at a general level of the services to be provided and the methods proposed by the Respondent to provide them. A detailed explanation should be included to understand how the services comply with the technical documents of this RFP.

4.4.2 Project Approach

The description must indicate, at least generally, the methodology that Respondent will follow to fulfill the requirements of the scope; as much explanation as reasonably necessary must be included. The Airport intends that each Respondent provide a detailed and comprehensive description of all services that the Respondent will provide if it enters into a Land Lease pursuant to this RFP.

Each Respondent is required to provide the following information of its approach:

- a) Proposed segmentation of the project; and
- b) Estimate of the extent, level of involvement and timing of work to be performed by the Airport's personnel during the project.

4.4.3 Personnel Description

Each Respondent should provide a detailed description of the principal supervisory and management staff, including partners, managers, other supervisors and specialists, who will be responsible for the implementation of the Project. Description must include all relevant information regarding qualifications, training, continuing education, certifications, etc. The Proposal should indicate the number of hours that each assigned staff is anticipated to spend on the engagement. A Project organizational chart should be included in this section.

Project partners, managers, other supervisory staff and specialists may be changed if those personnel leave employment with the Respondent, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the Airport's express prior written permission. However, in either case, the Airport retains the right to approve or reject replacements. Other personnel may be changed at the Respondent's discretion, provided that replacements have substantially the same or better qualifications or experience.

This section should also indicate how the quality of the Respondent's staff will be assured and maintained over the entire length of the Project.

4.4.4 Identification of Anticipated Potential Problems

The Proposal should identify and describe any anticipated potential problems, the Respondent's approach to solving these problems, and any special assistance that may be requested from the Airport.

4.4.5 General Section

Generally describe how Respondent will meet or exceed each of the minimum and preferred qualifications, standards to be followed and additional requirements in the "Purpose" and "Scope" sections of this RFP. Provide a brief description explaining why the Airport should choose your Proposal. Describe unique features or qualifications that Respondent can offer the Airport.

4.4.6 Design, Engineering and Permitting

The Respondent shall design/engineer ground-based, fixed panel solar PV systems to maximize the solar energy resources at the Airport's proposed site, taking into consideration the facility's electrical demand and load patterns, proposed installation site, available solar resources, applicable zoning, ordinances, installation cost, contingent FAA and other approvals, no detrimental or prohibited aviation navigation or glare issues, and other relevant factors.

The Respondent shall provide conceptual design documents that provide the following information:

- System description;
- Equipment details & description;
- Layout of installation;
- Layout of equipment;
- Selection of key equipment;
- Specifications for equipment procurement and installation including mandatory non-glare panels;
- All engineering associated with structural and mounting details;
- Performance of equipment components, subsystems;
- Integration of solar PV system with other power sources;
- Electrical grid interconnection requirements;
- Controls, monitors, and instrumentation;
- Web-based performance monitoring system; and
- Foundation of PV support system.

The Respondent shall submit conceptual design documents to the Airport for review. The plans shall also be submitted in an electronic format using AutoCAD 2006 or newer. Specifications shall be submitted in MS Word format.

The Respondent shall identify an appropriate location boundary and layout for the solar PV inverter equipment and its related components and environmental control systems that will meet the following criteria:

- Ease of maintenance and monitoring;
- Efficient operation;
- Low operating losses;
- Secured location and hardware; and
- Compatibility with existing facilities.

4.4.7 Monitoring & Public Outreach

Monitoring of system performance and providing public education and outreach are critical elements of this RFP. The Respondent shall propose a turnkey data acquisition and display system that allows the Airport to monitor, analyze and display historical and live, solar electricity generation data. The regularly collected data should reflect, but not be limited, to the following:

- System performance and availability;
- Average and accumulated output;
- Capacity factor; and
- Degradation.

The data acquisition system shall be designed for turnkey, remote operation. Data shall be transmitted via Internet or telephone from each site to a server managed by the Respondent. Data storage, management and display will be the responsibility of the Respondent.

4.4.8 Warranties/Guarantees

The Respondent shall provide the following minimum warranties/guarantees:

- Any warranty required to qualify a system for available rebates or incentives;
- 10 year complete system warranty;
- 20 year PV panel warranty, with a maximum of 20% degradation; and
- 10 year complete operational power capacity warranty.

4.4.9 Respondent Questionnaire

This section requires information about each Respondent that will assist the Airport in evaluating capabilities. Please provide responses in the order listed below:

1. Please provide a brief description and history of your entity (or team), including the ownership structure thereof.
2. Has your entity's name (or any team member's name) changed in the last 5 years? If so, please reference the former name(s) of your entity or team member's entity.
3. Is your entity (or team member's entity), or, if applicable, its parent entity, currently involved in any bankruptcy, dissolution or similar proceedings?
4. Please list and provide a brief description of all legal, litigation and administrative matters filed by or against your entity (and against any team member's entity), and, if applicable, its parent entity, since January 1, 2006.
5. Please indicate whether, at the end of the Land Lease, if your entity would remove the solar farm or permit ownership thereof to transfer to the Airport.

6. Describe any web-based transaction and reporting capabilities that your entity (or any team member's entity) would offer the Airport.
8. Please provide a brief analysis of current trends in the solar industry. Describe factors that may impact supply, demand, and/or pricing over the next 5 years.
9. Indicate the number of entities in the United States and/or internationally that your company services or serviced as a third party solar developer.
10. Provide any other relevant information about your entity (or your team, if appropriate) that demonstrates its capability (or team's) to perform the services requested under this RFP.

4.5 SUPPLIER DIVERSITY PROGRAM

Reference Section 1.11 for the applicable participation goal. Information shall be submitted on each M/WBE firm in the Respondent's Proposal. M/WBE information must include evidence of appropriate certification by the City of Indianapolis or the State of Indiana.

4.6 PRICING AND REVENUE PROPOSAL

The Respondent's Proposal will disclose all estimated costs associated with the development and completion of this Project; the proposed ownership structure thereof; and proposed revenue to the Airport associated with this Project. Failure to comply fully with the requirements of this Section 4.6 will be cause for the Airport to reject, as non-compliant, said Proposal from any further consideration.

END OF SECTION FOUR

SECTION FIVE

PROPOSAL EVALUATION

5.1 PROPOSAL EVALUATION PROCEDURE AND CRITERIA

The Airport will appoint a Proposal Evaluation Team to evaluate the Proposals, and the evaluation process will use the following evaluation criteria and scoring in connection therewith:

- Transmittal Letter and Proposal Format (5 possible points)
- Business Proposal, excluding Revenue Structure and Financial Strength (25 possible points)
- Technical Proposal (20 possible points)
- Proposed Revenue Structure (25 possible points)
- Financial Strength (15 possible points)
- Supplier Diversity Participation (10 possible points)

The procedures for evaluating the Proposals against the evaluation criteria may be summarized as follows:

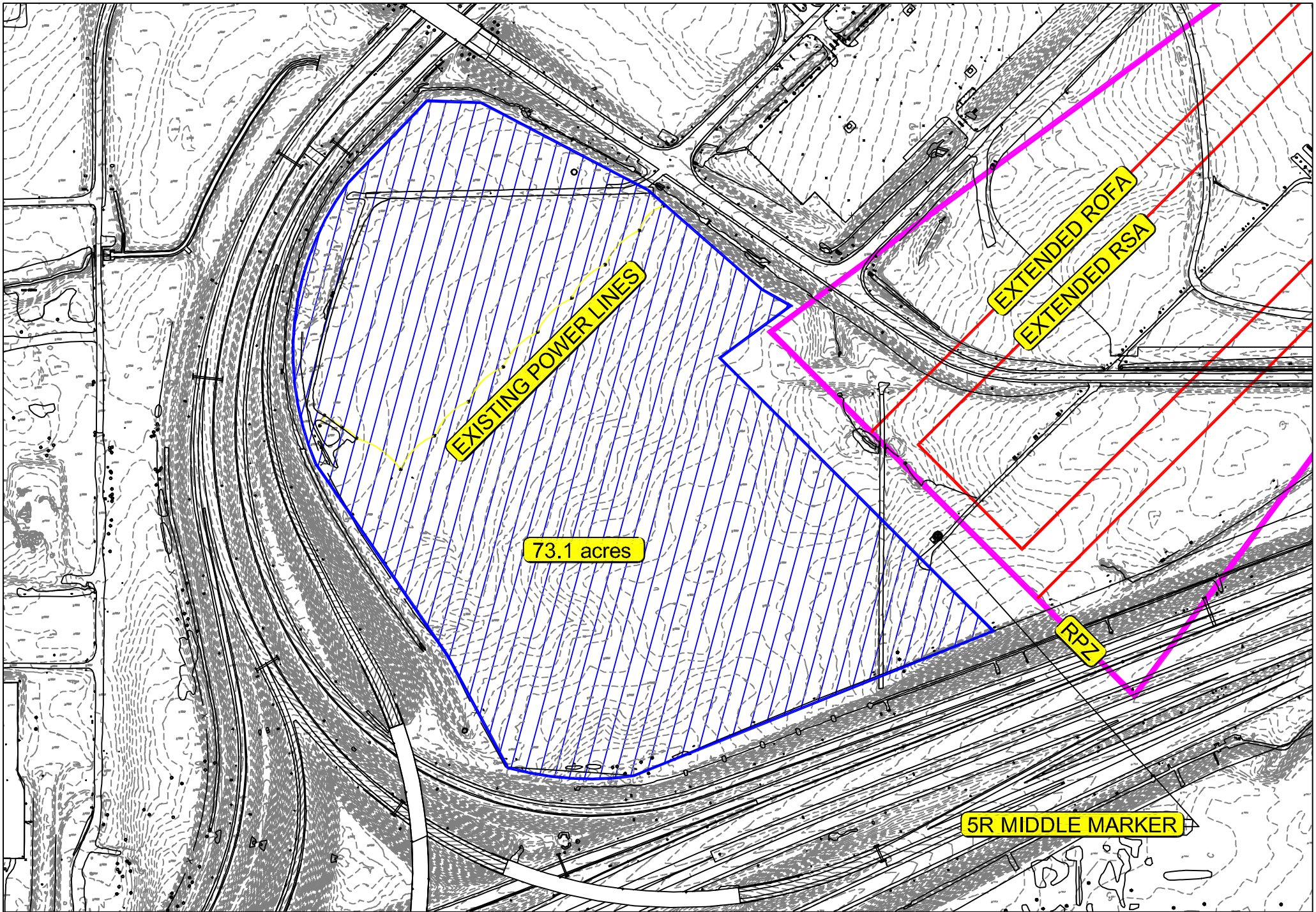
5.1.1 Each Proposal will be evaluated for mandatory criteria, including minimum qualifications and standards. Proposals that are incomplete or otherwise do not conform to the submission requirements may be eliminated from consideration.

5.1.2 Each Proposal will also be evaluated on the business approach, technical and the other criteria. The basis of revenue generation will be of importance in the evaluation of Proposals.

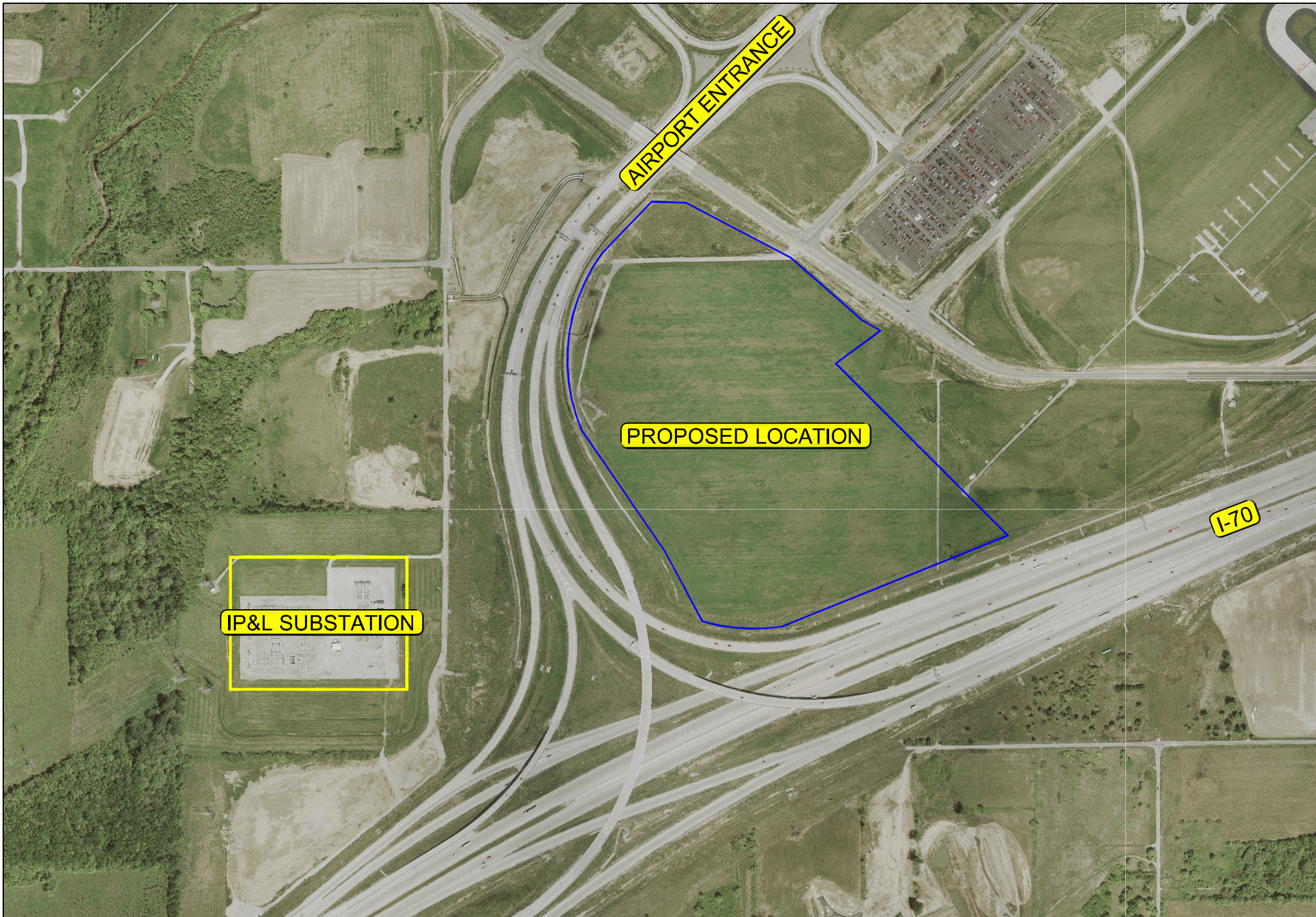
5.1.3 Based on the results of this evaluation, the qualifying Proposal determined to be the most advantageous to the Airport for the Project (taking into account all of the evaluation factors) may be selected by the Airport for further action, such as lease negotiations. If, however, the Airport decides that no Proposal is sufficiently advantageous to the Airport, the Airport may take whatever further action it deems necessary or appropriate to fulfill its needs, including, but not limited to, termination of the RFP process. If, for any reason, a Proposal is selected and it is not possible to consummate a Land Lease with the Respondent, then Airport may begin lease preparation and negotiations with the next qualified Respondent or determine that no such alternate and acceptable Proposal exists.

END OF SECTION FIVE

END OF REQUEST FOR PROPOSAL



INDIANAPOLIS INTERNATIONAL AIRPORT
SOLAR FARM RFP
SITE EXHIBIT



INDIANAPOLIS INTERNATIONAL AIRPORT
SOLAR FARM RFP
LOCATION EXHIBIT



Indianapolis Airport Authority

SAMPLE LAND LEASE AGREEMENT

WITH

_____, 2011

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Land Lease Agreement**

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**LAND LEASE AGREEMENT
WITH**

THIS LAND LEASE AGREEMENT (the "Lease") is made and entered into on this ____ day of _____, 2011, by and between the Indianapolis Airport Authority, a municipal corporation, existing under and by virtue of the laws of the State of Indiana ("AUTHORITY"), and _____, a _____ corporation authorized to do business in the State of Indiana ("LESSEE"),

W I T N E S S E T H:

WHEREAS, AUTHORITY owns and operates the Indianapolis International Airport (the "Airport"), located in Marion County, State of Indiana;

WHEREAS, LESSEE is a _____ primarily engaged in the business of _____;

WHEREAS, AUTHORITY has right, title and interest in and to the real property on the Airport, together with the facilities, easements, rights, licenses, and privileges hereinafter granted, and AUTHORITY has the full power and authority to enter into this Lease in respect thereof; and

WHEREAS, LESSEE desires to lease certain property from the AUTHORITY as hereinafter described, and to construct and operate a 10 MW solar photovoltaic generating system (solar farm) thereon, upon the terms and conditions hereinafter stated;

NOW, THEREFORE, in consideration of the premises, the mutual covenants and obligations herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AUTHORITY hereby lets and demises to LESSEE,

and LESSEE hereby takes from AUTHORITY, the following described Leased Premises, and all described rights incidental thereto, subject at all times to the following:

ARTICLE I – LEASED PREMISES

A. DESCRIPTION OF LEASED PREMISES

The term “Leased Premises”, as used in this Lease, shall include that certain real estate located at Indianapolis International Airport, Marion County, Indiana, as more particularly described on “Exhibit A”, dated _____, 2011, attached hereto and made a part hereof, along with any improvements, including the right of ingress thereto and egress therefrom.

B. EXPANSION AREA – OPTION

LESSEE shall not have an expansion area under this Lease.

ARTICLE II – OBJECTIVES AND PURPOSES OF LEASE

A. USE OF LEASED PREMISES

LESSEE shall use the Leased Premises for the construction, maintenance and operation of a 10 MW solar photovoltaic generating system (solar farm) owned or operated by LESSEE, and for any other necessary and incidental purposes related directly thereto, and for no other purpose.

B. PROHIBITED USES

LESSEE shall not block any roadway, street, taxiway or access point, and shall not park or place any vehicles or equipment upon the Leased Premises in such a location as to interfere with the Airport’s operations. No service equipment may be stored on the Leased Premises without AUTHORITY’s prior written consent.

LESSEE covenants that it shall not use, or permit the Leased Premises to be used, for any other purpose without the AUTHORITY's prior written approval.

LESSEE shall not permit the loading, unloading or storage of any hazardous animate or inanimate materials or objects in violation of any applicable law or regulation. LESSEE shall not store or transport Class 1, Division 1.1 Explosives as defined in 49 CFR Part 173.50 (as the same may amended, superseded or replaced from time to time). LESSEE'S handling of any hazardous substances shall be in accordance with 49 CFR, Parts 100-199, dated December 31, 1976, as same may be amended, superseded or replaced from time to time. In no event shall LESSEE handle any materials that would adversely affect the insurance coverage(s) of the Leased Premises provided by AUTHORITY, if any.

ARTICLE III – LESSEE'S CONSTRUCTION REQUIREMENTS

A. REQUIREMENT FOR IMPROVEMENTS ON LEASED PREMISES

LESSEE shall, at its sole expense, construct on the Leased Premises, as provided in Paragraphs D and H of this Article, such buildings, structures, roadways, extension of utility lines or services, additions and improvements as necessary or appropriate for the purposes set forth in Article II.A; provided, however, that no building, structure, roadway, utility lines or services, addition or improvement of any nature shall be made or installed by LESSEE without AUTHORITY's prior written consent, as herein provided.

B. CONSTRUCTION DATES

Construction of improvements shall begin not later than _____, 2011, and shall be completed no later than _____, 20___. In the event LESSEE

shall fail to begin construction by _____, 2011, AUTHORITY shall have the right to terminate this Lease pursuant to the provisions of Article XI herein.

C. APPROVAL OF PLANS

LESSEE covenants and agrees that prior to the preparation of detailed construction plans, specifications and architectural renderings of any such building, structure, roadway, addition or improvement, it shall first obtain an "Airport Work Permit" by submitting plans showing the general site plan, design and character of improvements and their location(s), relative to the Leased Premises including location of utilities and roadways to AUTHORITY's Executive Director for approval. LESSEE's plans and specifications shall meet AUTHORITY's design standards for the type of development proposed. LESSEE covenants and agrees that prior to the installation or construction of any such building, roadway, structure, addition or improvement on the Leased Premises, it shall first submit to the AUTHORITY for approval, final detailed construction plans, specifications and architectural renderings prepared by registered and qualified architects and engineers, and that all construction will be in accordance with such plans and specifications and AUTHORITY's Land Use Development Criteria or Development Guidelines for Airports.

D. EXTENSION OF UTILITIES OR SPECIAL FACILITIES

LESSEE shall extend and construct, at its sole expense, all necessary utility lines or services within and extending to the Leased Premises required for LESSEE to operate the solar farm described in Article II.A.

LESSEE shall construct, at its sole expense, all necessary roadways within and extending to the Leased Premises required for LESSEE to connect the premises to the nearest existing roadway system.

E. INTENTIONALLY OMITTED.

F. ALTERATIONS OR REPAIRS TO PREMISES

LESSEE shall not construct, install, remove and/or modify any of the buildings, structures, roadways, utilities, additions or improvements on the Leased Premises without AUTHORITY's prior written approval. LESSEE shall submit for approval by AUTHORITY, its plans and specifications for any proposed project, as well as complying with such other conditions considered by AUTHORITY to be necessary.

G. LIEN INDEMNIFICATION

In the event any person or entity shall attempt to assert a Mechanic's Lien against the Leased Premises, LESSEE shall hold AUTHORITY harmless from such claim, including the cost of defense, and shall indemnify AUTHORITY, and provide to AUTHORITY a release of Mechanic's Lien.

H. COST OF CONSTRUCTION AND ALTERATIONS

Within thirty (30) days after completion of the construction or alterations, LESSEE shall present to AUTHORITY, for examination and approval, a sworn statement of the "Construction and/or Alteration Costs".

"Construction and/or Alteration Costs", for the purpose of this Article, are hereby defined as all money paid by LESSEE for actual demolition, construction, alteration, including architectural and engineering costs plus pertinent fees in connection therewith.

The cost of the required initial improvements constructed and equipment installed, in accordance with Article III.A, shall not be less than \$_____, and shall be substantiated by LESSEE as provided hereinabove.

In the event that LESSEE makes further improvements or alterations on the Leased Premises, the use thereof shall be enjoyed by LESSEE during the term hereof without the additional rental therefor.

Notwithstanding anything herein to the contrary, ownership of any and all improvements, alterations and additions to the Leased Premises shall be in _____.

I. AS-BUILT DRAWINGS

Within thirty (30) days following completion of the initial construction and any subsequent additions, alterations or improvements, LESSEE shall present to AUTHORITY a complete set of reproducible (mylar) "record" drawings, including all amendments and changes issued during construction, and including, but not limited to, specifications and shop drawings. In addition, the "as-built" drawings must be submitted on a computer diskette in the latest AutoCAD release.

J. MORTGAGE OF LEASEHOLD INTEREST

LESSEE shall have the right to place a First Mortgage Lien upon its leasehold interest in an amount not to exceed eighty percent (80%) of the cost of capital improvements thereon, the terms and conditions of such mortgage loan shall be subject to the approval of AUTHORITY. Lender's duties and rights are as follows:

1. The lender shall have the right, in case of default, to assume the rights and obligations of LESSEE herein, with the further right to assign LESSEE's

interest to a third party; subject, however, to AUTHORITY's approval. Lender's obligations under this Lease, as substituted LESSEE, shall cease upon assignment to a third party and approval by AUTHORITY.

2. As a condition precedent to the exercise of the right granted to Lender by this Paragraph, Lender shall notify AUTHORITY of all action taken by it in the event payments on such loans shall become delinquent. Lender shall also notify AUTHORITY, in writing, of any change in the identity or address of the Lender.
3. All notices required by Article XI to be given by AUTHORITY to LESSEE shall also be given to Lender at the same time and in the same manner. Upon receipt of such notice, Lender shall have the same rights as LESSEE to correct any default.

K. OWNERSHIP OF IMPROVEMENTS

Upon completion of construction, any building, fixture, structure, addition or improvement (excluding personal property as defined in Article XII.C) on the Leased Premises shall immediately become the property of AUTHORITY, as owner, subject only to the right of LESSEE to use during the term of this Lease and shall remain the property of AUTHORITY thereafter with the sole right, title and interest thereto.

ARTICLE IV – TERM

A. PRIMARY

The term of this Lease is _____ (____) years, commencing upon occupancy or _____, 2011, whichever comes first, and terminating on _____,

20____ (“Primary Term”). Prior to the beginning of said term, LESSEE shall have the right to occupy the Leased Premises for the purpose of construction, subject to the provisions of Articles III, IX, and XV.

B. RENEWAL

LESSEE shall have an option to extend this Lease for additional term(s) of _____ years, upon the rental terms outlined in Article V.B, and expiring on _____, 20____, and by mailing or delivering to AUTHORITY written notice of such intention not later than six (6) months prior to the date of expiration of the Primary Term and the first renewal term, as applicable.

C. HOLDING OVER

In the event LESSEE shall continue to occupy the Leased Premises beyond the Primary Term or any renewal thereof without AUTHORITY’s written approval thereof, such holding over shall not constitute a renewal or extension of this Lease, but shall create a tenancy from month-to-month which may be terminated at any time by AUTHORITY or LESSEE by giving thirty (30) days written notice to the other party. Any such month-to-month tenancy shall be subject to the same terms, covenants and conditions as provided in this Lease, except for any increase in monthly rental as provided below.

During such “holding over” period, AUTHORITY shall have the right to increase the monthly rental, as specified in Article V.A, by twenty-five percent (25%), effective the first month following the expiration of the Primary Term or any renewal expiration thereof and continuing until such time that this Lease is terminated by either party as provided herein.

LESSEE further agrees that upon the expiration of the Primary Term or any renewal thereof or sooner cancellation of this Lease, the Leased Premises will be delivered to AUTHORITY in good condition, reasonable wear and tear, and casualty not caused by LESSEE's negligence and matters for which AUTHORITY is responsible excepted. Reasonable wear and tear shall be determined at the sole discretion of AUTHORITY upon inspection of the Leased Premises from time to time.

ARTICLE V – RENTALS, FEES AND RECORDS

During the term hereof, LESSEE shall pay to AUTHORITY rentals for the Leased Premises according to the following schedule:

A. LEASED PREMISES

- Construction commencement thru the date LESSEE occupies the Leased Premises or _____, 20____, whichever comes first.
- Total annual rent –
- Monthly rent –

B. EXPANSION AREA

There is no expansion rental under this Lease.

C. FIELD USE CHARGES

LESSEE does not lease, and is prohibited from using, any aircraft parking apron or taxiway. Nothing in this Section, however, shall prohibit LESSEE from the joint use with others at the Airport of exterior roadways serving the Leased Premises in accordance with the Airport's rules, regulations and/or restrictions.

D. TIME AND PLACE OF PAYMENTS

The foregoing fixed rentals shall be payable in equal monthly installments, in advance, on or before the first business day of each calendar month of the term, at the office of the AUTHORITY's Executive Director, Indianapolis Airport Authority, P.O. Box 66755, Indianapolis, IN 46266.

E. DELINQUENT RENTALS

There shall be added to any and all sums due AUTHORITY and unpaid, as may be established by AUTHORITY, an interest charge of the principal sum for each full calendar month of delinquency computed as simple interest. The interest amount charged shall be established by AUTHORITY as set forth in AUTHORITY'S Rates and Charges Ordinance or as such ordinance may hereafter be amended. No interest shall be charged upon that portion of any debt which, in good faith, is in dispute. No interest shall be charged upon any account until payment is thirty (30) days overdue, but such interest when assessed thereafter, shall be computed from the due date until the delinquent payment, together with accrued interest, is paid in full. The interest rate, established by Ordinance by the AUTHORITY's Board, may change from time to time.

ARTICLE VI – OBLIGATIONS OF LESSEE

A. NET LEASE

The use and occupancy of the Leased Premises by LESSEE will be without cost or expense to AUTHORITY. It shall be the sole responsibility and obligation of LESSEE to maintain, repair and operate the entirety of the Leased Premises (including all improvements and facilities constructed thereon) for the entire term of this Lease, and at LESSEE's sole cost and expense.

B. MAINTENANCE AND OPERATION

LESSEE shall maintain the Leased Premises at all times in a safe, neat and attractive condition, and shall not permit the accumulation of any trash, paper, or debris thereon. LESSEE shall repair any and all damages to the Leased Premises caused by its employees, patrons, or its operation thereon, and shall maintain and repair all equipment thereon, including any buildings and improvements, and shall repaint any building(s), as necessary.

LESSEE shall be responsible for, and perform, all maintenance for the solar farm and any building(s), including, but not limited to:

1. Janitorial services, providing janitorial supplies, window washing, rubbish, and trash removal.
2. Supply and replacement of light bulbs in and on any building(s), obstruction lights and replacement of all glass in any building(s), including plate glass.
3. Cleaning of stoppages in plumbing fixtures, drain lines and septic system to the first manhole outside the Leased Premises.
4. Replacement of floor covering(s).
5. Maintenance of all building and overhead doors and door operating systems, including weather stripping and glass replacement.
6. Building interior and exterior maintenance, including painting, repairing and replacement.
7. Repair or replacement of equipment and utilities, to include electrical, mechanical and plumbing in all buildings, including, but not limited to, air conditioning and heating equipment. All repairs to electrical and mechanical equipment are to be made by licensed personnel. Other repairs to be made by craftsmen skilled in work done and performing such work regularly as a trade.

8. LESSEE shall be responsible for all snow removal on the Leased Premises and shall do so in a manner which does not interfere with AUTHORITY's Airport operations or damage to property.
9. LESSEE shall perform all maintenance on LESSEE-constructed structures, pavements, improvements and equipment; and utilities to the point where connected to the main source of supply or the first manhole outside of the Leased Premises, or to any applicable utility corridor.
10. LESSEE shall advise AUTHORITY, and obtain AUTHORITY's consent in writing, before making changes involving structural changes to building or premises or improvements, modifications or additions to plumbing, electrical or other utilities. To prevent the voiding of roof bond(s) and to maintain correct records by AUTHORITY, any penetration of the roof shall be considered a structural change.
11. LESSEE is responsible for maintaining electrical loads within the designed capacity of the system. Prior to any change desired by LESSEE in the electrical loading, which would exceed capacity, written consent shall be obtained from the AUTHORITY's Executive Director.
12. LESSEE shall maintain and relamp all lights in and on any building(s).
13. LESSEE shall provide and maintain hand fire extinguishers for the interior of any building(s), shop parking and storage areas in accordance with applicable safety codes.
14. LESSEE shall maintain and replace all landscaping and grounds as originally approved and installed, and will not allow the removal of trees without permission of AUTHORITY.

AUTHORITY, at its discretion, shall be the sole judge of the quality of maintenance; and LESSEE, upon notice by AUTHORITY to LESSEE, shall be required to perform whatever maintenance AUTHORITY deems necessary. If said maintenance is not undertaken by LESSEE within thirty (30) days after receipt of written notice, AUTHORITY shall have the right to enter upon the Leased Premises and perform the necessary maintenance, the cost of which shall be borne by LESSEE.

No waste shall be committed, or damage done, to the property of AUTHORITY.

C. UTILITIES

LESSEE shall assume and pay for all costs or charges for utilities services furnished to LESSEE during the term hereof; provided, however, that LESSEE shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; and LESSEE shall pay for any and all service charges incurred therefor.

D. TRASH, GARBAGE, ETC.

LESSEE shall pick up, and provide for, a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of any and all trash, garbage and other refuse caused as a result of the operation of its business on the Leased Premises. LESSEE shall provide and use suitable covered metal receptacles for all such garbage, trash and other refuse.

Piling of boxes, cartons, barrels, pallets, debris, or similar items in an unattractive or unsafe manner, on or about the Leased Premises, shall not be permitted.

E. SIGNS

LESSEE shall not erect, maintain or display upon the Leased Premises any billboards, advertising or other signs of any kind without the AUTHORITY's prior written approval.

F. NON-DISCRIMINATION

LESSEE, for itself, its personal representatives, successors-in-interest, and assigns, as part of the consideration hereof, does hereby covenant and agree: (1) that no person, on the grounds of race, color, disability or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereof, no person, on the grounds of race, color, disability or national origin, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that LESSEE shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended, to the extent that said requirements are applicable, as a matter of law, to LESSEE.

With respect to the Leased Premises, LESSEE agrees to furnish services on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that LESSEE may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

G. CIVIL RIGHTS

LESSEE assures that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds of

race, creed, color, national origin, sex, age or disability, be excluded from participating in any activity conducted with, or benefiting from, federal assistance. This provision obligates LESSEE or its transferee for the period during which federal assistance is extended to the airport program, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract.

H. AFFIRMATIVE ACTION

With respect to the Leased Premises, LESSEE assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin, disability or sex, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E; that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by that Subpart; and that it will require that its covered suborganizations provide assurance to the LESSEE that they similarly will undertake affirmative action programs, and that they will require assurances from their

suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect, to the extent that said requirements are applicable, as a matter of law, to LESSEE.

I. OBSERVANCE OF STATUTES

The granting of this Lease, and its acceptance by LESSEE, is conditioned upon the right to use the Airport's facilities in common with others authorized to do so; provided, however, that LESSEE shall observe and comply with any and all requirements of the constituted public authorities and with all Federal, State or Local statutes, ordinances, regulations and standards applicable to LESSEE for its use of the Leased Premises, including, but not limited to, rules and regulations promulgated from time to time by the AUTHORITY's Executive Director for the administration of the Airport.

J. ENVIRONMENTAL STATUTES

LESSEE covenants and agrees to comply with all applicable environmental laws, and to provide to AUTHORITY, immediately upon receipt, copies of any correspondence, Notice, Pleading, Citation, Indictment, Complaint, Order, Decree or other document from any source asserting or alleging a circumstance or condition which requires, or may require, a clean-up, removal, remedial action, or other response by or on the part of LESSEE or which seek criminal or punitive penalties from LESSEE for an alleged violation of environmental laws. LESSEE further agrees to advise the AUTHORITY, in writing, as soon as LESSEE becomes aware of any condition or circumstance which may result in a potential violation of any environmental laws and/or contamination caused by LESSEE on AUTHORITY's land. LESSEE agrees, at the request of AUTHORITY, to permit an

environmental audit solely for the benefit of AUTHORITY, to be conducted by AUTHORITY or an independent agent selected by AUTHORITY. LESSEE agrees to bear the expense of said audit only in the event of contamination or other violation discovered pursuant to said audit. This provision shall not relieve LESSEE from conducting its own environmental audits or taking any other steps necessary to comply with environmental laws.

If, in the reasonable opinion of AUTHORITY, there exists any uncorrected violation by LESSEE of an environmental law or any condition which requires, or may require, a clean-up, removal or other remedial action by LESSEE, and such clean-up, removal or other remedial action is not initiated within thirty (30) days from the date of written notice from AUTHORITY to LESSEE, and completed within such time period as specified in any remediation action plan approved by AUTHORITY or as required by the Indiana Department of Environmental Management or the Environmental Protection Agency, the same shall, at the option of AUTHORITY, constitute an event of default under this Lease.

For purposes of this Article, the term "environmental law" shall mean all Federal, State and Local laws, including statutes, regulations, ordinances, codes, rules, policies, guidance, permits issued to the AUTHORITY, and other governmental restrictions, requirements and best management practices relating to the environment or hazardous substance, including, but not limited to, the Indiana Environmental Management Act, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Responsibility,

Cleanup and Liability Act of 1980 as amended by the Super Fund Amendments and Re-authorization Act of 1986, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, and regulations of any State Department of Natural Resources or State Environmental Protection Agency, requirements of the AUTHORITY'S Environmental Management System or other Environmental Plans now or anytime hereafter in effect.

LESSEE agrees fully to indemnify, defend and hold harmless AUTHORITY, its officers, directors, agents, and employees ("Indemnified Party" or "Indemnified Parties") from and against any and all claims, actions, damages, liabilities, fines, fees, judgments, penalties, losses, costs and expenses, and all expenses incidental to the investigation and defense thereof, including reasonable litigation expenses and attorney's fees, based on or arising out of damages or injuries to persons or property, resulting from LESSEE, its agents or employees, violation of any environmental laws with respect to LESSEE's use and occupancy of any Leased Premises, and any contamination caused by the LESSEE on the AUTHORITY's land. These indemnification and hold harmless obligations shall survive any termination or expiration of this Lease.

The Indemnified Party or Parties shall give to LESSEE prompt and reasonable notice of any such claim or action, and LESSEE shall have the right to investigate, compromise, and defend the same.

K. HAZARD LIGHTS

LESSEE shall, at its expense, provide and maintain hazard lights on any structure erected by LESSEE on the Leased Premises, if required by AUTHORITY or Federal

Aviation Administration regulations. Any hazard lights so required shall comply with the specifications and standards established for such installations by the FAA.

ARTICLE VII – OBLIGATIONS OF AUTHORITY

A. OPERATION AS A PUBLIC AIRPORT

AUTHORITY covenants and agrees that at all times it will operate and maintain its Airport facilities, as defined hereinabove, as a public Airport consistent with and pursuant to the Sponsor's Assurances given by AUTHORITY to the United States Government under the Federal Airport Act.

B. INGRESS AND EGRESS

Upon paying the rental(s) hereunder and performing the covenants of this Lease, LESSEE shall have the right of ingress to and egress from the Leased Premises for the LESSEE, its officers, employees, agents, servants, customers, vendors, suppliers, patrons, and invitees over the roadway(s) provided by AUTHORITY serving the Leased Premises. AUTHORITY's roadway(s) shall be used jointly with other tenants on the Airport, and LESSEE shall not interfere with the rights or privileges of other persons or entities using said facilities, and shall be subject to such weight and type use restrictions, as AUTHORITY deems necessary.

C. CONSTRUCTION BY AUTHORITY

There are no facilities or improvements to be constructed by AUTHORITY under this Lease. All construction will be made by LESSEE as provided in Article III.

ARTICLE VIII – AUTHORITY'S RESERVATIONS

A. IMPROVEMENT, RELOCATION OR REMOVAL OF STRUCTURES

AUTHORITY, at its sole discretion, reserves the right to further develop or improve the aircraft operating area and other portions of the Airport, including the right to remove or relocate any structure on the Airport, as it sees fit, and to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions or interference, together with the right to prevent LESSEE from erecting or permitting to be erected, any buildings or other structures on the Airport which, in the AUTHORITY's opinion, would limit the usefulness of the Airport or constitute a hazard to aircraft.

In the event that AUTHORITY requires the Leased Premises for expansion, improvements or development of the Airport, AUTHORITY reserves the right, on six (6) months prior notice, to relocate or replace LESSEE's improvements in substantially similar form at another generally comparable location on the Airport.

B. INSPECTION OF LEASED PREMISES

AUTHORITY, through its duly authorized agent, shall have at any reasonable time, the full and unrestricted right to enter the Leased Premises for the purpose of periodic inspection for fire protection, maintenance and to investigate compliance with the terms of this Lease.

C. SUBORDINATION TO U.S. GOVERNMENT

This Lease shall be subordinate to the provisions of any existing or future agreement(s) between AUTHORITY and the United States, relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or

reimbursement to AUTHORITY for Federal funds for the development of the Airport.

D. WAR OR NATIONAL EMERGENCY

During the time of war or national emergency, AUTHORITY shall have the right to lease the Airport (or any part thereof) to the United States Government for military use, and, if any such lease is executed, the provisions of this Lease insofar as they are inconsistent with the lease to the Government shall be suspended, and in that event, a just and proportionate part of the rent hereunder shall be abated.

ARTICLE IX – INDEMNIFICATION AND INSURANCE

A. INDEMNIFICATION

LESSEE agrees to indemnify, defend and hold the AUTHORITY, its officers, directors, agents, servants and employees, harmless from and against any and all liabilities, losses, suits, claims, judgments, fines, penalties, demands or expenses, including all reasonable costs for investigation and defense thereof (including, but not limited to, attorney's fees, court costs and expert fees), claimed by anyone by reason of injury or damage to persons or property sustained in or about the Airport (including the Leased Premises), as a proximate result of the acts or omissions of LESSEE, its agents, servants or employees, or arising out of the operations of LESSEE upon or about the Airport, excepting such liability as may result from the sole gross negligence of AUTHORITY, its officers, directors, agents, servants or employees; provided, however, that upon the filing of any claim with AUTHORITY for damages arising out of incidents for which LESSEE herein agrees to hold AUTHORITY harmless, then and in that event, AUTHORITY shall notify LESSEE

of such claim and LESSEE shall have the right to settle, compromise or defend the same. LESSEE shall further use legal counsel reasonably acceptable to AUTHORITY in carrying out LESSEE's obligations hereunder. Any final judgment rendered against AUTHORITY for any cause for which LESSEE is liable hereunder shall be conclusive against LESSEE as to liability and amount, where the time for appeal therefrom has expired. These indemnification and hold harmless obligations set forth herein shall survive any expiration or early termination of this Lease.

B. LIABILITY INSURANCE

LESSEE shall, at its expense, procure, maintain and keep in force, at all times during the Primary Term and any extension of this Lease, from a financially sound and reputable entity reasonably acceptable to AUTHORITY, commercial general liability insurance with respect to the Leased Premises, insuring LESSEE as the named insured and the Indemnified Party (including, without limitation, the members, officers and employees thereof), and such other persons as the AUTHORITY shall require, as additional insureds, against liability for bodily injury, personal injury, automobile liability, and property damage. Without limiting its liability, LESSEE agrees to carry and keep in force insurance with single limit liability for bodily injury, personal injury, automobile liability, or death and property damage in a sum not less than Five Million Dollars (\$5,000,000.00). LESSEE shall, upon execution of this Lease and at least thirty (30) days prior to the expiration of any such policy, furnish the insureds with a certificate of insurance (per Acord Form 27 or its equivalent) as evidence of coverage for a period of at least one (1) year. This insurance shall not be cancelled, terminated or materially

modified or amended, except after thirty (30) days prior written notice thereof to the additional insureds.

C. WORKERS' COMPENSATION INSURANCE

LESSEE shall, at its sole expense, procure and keep in force at all times during the Primary Term and any extension of this Lease, with a financially sound and reputable company reasonably acceptable to AUTHORITY, a policy of workers' compensation insurance on the employees of LESSEE in the required statutory amounts. LESSEE shall, upon execution of this Lease and at least thirty (30) days before the expiration of any such policy, furnish AUTHORITY with a certificate of insurance as evidence of such coverage. This policy shall not be cancelled, terminated, or materially modified or amended, except upon thirty (30) days prior written notice thereof to AUTHORITY.

D. DUPLICATE COPIES OF CERTIFICATES OF INSURANCE

LESSEE shall, at LESSEE's sole cost and expense, furnish to AUTHORITY from time to time, upon AUTHORITY's request, duplicate copies of any and all Certificates of Insurance that LESSEE is required to maintain pursuant to the preceding provisions. If required by AUTHORITY, those duplicate Certificates of Insurance shall be certified to AUTHORITY by LESSEE or by its insurance carrier(s) as being true, complete and correct photocopies of those policies.

E. FIRE AND EXTENDED COVERAGE INSURANCE

LESSEE shall, at its expense, procure and keep in force at all times during the Primary Term and any extensions of this Lease, with a company suitable to AUTHORITY, insurance on the improvements on the Leased Premises against loss

and damage by fire, aircraft and extended coverage perils. Such policy shall be on an All Risk, Agreed Amount and Replacement Cost basis, with satisfactory evidence of such coverage furnished to AUTHORITY.

F. APPLICATION OF INSURANCE PROCEEDS

If the fixed improvements placed upon the Leased Premises shall be totally destroyed or extensively damaged and LESSEE shall elect not to restore the same to their previous condition, the proceeds of insurance payable by reason of such loss shall be apportioned between AUTHORITY and LESSEE, with AUTHORITY receiving the same proportion of such proceeds as the then expired portion of the term of this Lease bears to the full term of this Lease, including any renewal term(s), and LESSEE receiving the balance. This Lease shall then be cancelled. If the damage results from an insurable cause and LESSEE shall elect to restore the same with reasonable promptness, it shall be entitled to receive and apply the entire proceeds of any insurance covering such loss to said restoration, in which event this Lease shall continue in full force and effect.

G. PERFORMANCE BONDS

LESSEE shall deliver to AUTHORITY a performance bond in the amount of \$_____ within thirty (30) days after the execution date first above mentioned. Said bond shall be conditioned on the faithful performance of all terms, conditions and covenants of this Lease, shall be renewable annually, and shall be kept in full force and effect for the entire term of this Lease.

At LESSEE's option, a check in the amount of \$_____ may be deposited with AUTHORITY in lieu of said Performance Bond.

In lieu of said performance bond or rental deposit, LESSEE may deposit with AUTHORITY's Treasurer, bonds of the United States of America or such other securities or bank certificate(s) of deposit as are acceptable to AUTHORITY in the name of AUTHORITY or assigned to AUTHORITY. LESSEE may have the right to reserve to itself interest payable on said U.S. Bonds or such other securities.

In addition, before commencing construction of the improvements and/or facilities under this Lease, or at any time that LESSEE undertakes the construction of any additional improvements or facilities, LESSEE shall, at its own cost and expense, cause to be made, executed and delivered to AUTHORITY, separate bonds, as follows:

1. Prior to the date of commencement of construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded. Said bond shall be drawn in a form and from such company as approved by AUTHORITY; shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee AUTHORITY against any losses and liability, damages, expenses, claims and judgments caused by, or resulting from, any failure of LESSEE to perform completely, the work described herein provided.
2. Prior to the date of commencement of construction, a payment bond with LESSEE's contractor or contractors as principal, in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies and equipment used in the performance of said construction contract.

ARTICLE X – TERMINATION OF LEASE BY LESSEE

A. TERMINATION

This Lease shall terminate at the end of the Primary Term or any renewal thereof, and LESSEE shall have no further right or interest in any of the ground improvements hereby demised, except as provided in Article IV.C.

B. TERMINATION BY LESSEE

LESSEE may terminate this Lease and its obligations hereunder at any time that LESSEE is not in default in the payment of rentals to AUTHORITY hereunder by giving AUTHORITY at least sixty (60) days prior written notice thereof to be served as hereinafter provided, and by surrender of the Leased Premises, upon or after the happening of any one of the following events:

1. The issuance by any court of competent jurisdiction of an injunction in any preventing or restraining the use of the Airport, so as to substantially affect LESSEE's use of its solar farm at the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days; provided, however, that such injunction is not due to LESSEE's operations at the Airport.
2. The default by AUTHORITY in the performance of any covenant or agreement herein required to be performed by AUTHORITY, and the failure of AUTHORITY to undertake and be continuing to remedy such default for a period of ninety (90) days after receipt from LESSEE of written notice of termination, as above provided, shall be of any force or effect if AUTHORITY shall have remedied the default prior to receipt of LESSEE's notice of termination.
3. The assumption by the United States Government or any authorized agency thereof of the operation, control, or use of the Airport and facilities, or any substantial part or parts thereof, in a manner as substantially to restrict LESSEE for a period of at least ninety (90) days from full use of its Leased Premises, and in that event, a just and proportionate part of the rent hereunder shall be abated.

ARTICLE XI – TERMINATION OF LEASE BY AUTHORITY

A. TERMINATION BY AUTHORITY

AUTHORITY, in addition to any other rights to which it may be entitled by law, may declare this Lease terminated in its entirety, subject to and in the manner provided in Section B hereof, upon or after the happening of any one or more of the following events, and may exercise all rights of entry and re-entry upon the Leased Premises:

1. The failure to pay all installments of rent then due (with interest) within thirty (30) days after receipt by LESSEE of written notice to pay such rent.
2. The filing by LESSEE of a voluntary petition in bankruptcy or the making of any assignment of all or any part of LESSEE's assets for benefit of creditors.
3. The adjudication of LESSEE as a bankrupt pursuant to any involuntary bankruptcy proceedings.
4. The taking of jurisdiction by a court of competent jurisdiction of LESSEE or its assets pursuant to proceedings brought under the provisions of any Federal reorganization act.
5. The appointment of a receiver or a trustee of LESSEE's assets by a court of competent jurisdiction or a voluntary agreement with LESSEE's creditors.
6. The breach by LESSEE of any of the covenants or agreements herein contained, and the failure of LESSEE to remedy such breach.
7. The abandonment of the Leased Premises.
8. The failure to replace any improvements which have been destroyed by fire, explosion, wind, etc., within six (6) months from the date of such destruction.

B. WAIVER OF STATUTORY NOTICE TO QUIT

In the event that AUTHORITY exercises its option to cancel this Lease upon the occurrence of any or all of the events set forth in this Article, a notice of cancellation shall be sufficient to cancel this Lease; and, upon such cancellation, LESSEE hereby agrees that it will forthwith surrender up possession of the Leased

Premises to the AUTHORITY. In this connection, LESSEE hereby expressly waives the receipt of any notice to quit or notice of termination, which would otherwise be given by AUTHORITY.

C. POSSESSION BY AUTHORITY

In any of the aforesaid events, AUTHORITY may take immediate possession of the Leased Premises and remove LESSEE's effects, forcibly if necessary, without being deemed guilty of trespassing. Upon said default, all rights of LESSEE shall be forfeited; provided, however, AUTHORITY shall have and reserve all of its available remedies at law as a result of said breach of this Lease.

Failure of AUTHORITY to declare this Lease terminated upon default of LESSEE for any of the reasons set out shall not operate to bar, destroy or waive the right of AUTHORITY to cancel this Lease by reason of any subsequent violation of the terms hereof.

D. SUSPENSION OF LEASE

During the time of war or national emergency, AUTHORITY shall have the right to lease the landing area (or any part thereof) to the United States Government for military use. If any such lease is executed, any provisions of this instrument which are inconsistent with the provisions of the lease to the Government shall be suspended, provided that the term of this Lease shall be extended by the amount of the period of suspension.

E. DESTRUCTION OF PREMISES – TERMINATION

In the event of damage to, or destruction or loss of, the building or improvements by an insured or uninsured risk, LESSEE shall promptly repair, restore and rebuild

said building or improvements as nearly as possible to the condition they were in immediately prior to any such damage or destruction.

If the building or improvements shall be damaged in such manner as to render them unusable, in whole or in part, the rental provided to be paid under this Lease shall be abated or reduced proportionately during the period from the date of such damage or destruction until the work of repairing, restoring or reconstructing said building or improvements is completed.

ARTICLE XII – RIGHTS UPON TERMINATION

A. FIXED IMPROVEMENTS

It is the intent of this Lease that the real estate, leasehold improvements (e.g., solar farm), and any alterations thereto shall be and remain the property of AUTHORITY during the entire term of this Lease and thereafter. If LESSEE fails to repair, at its own expense, any and all damage to the Leased Premises within thirty (30) days after termination, AUTHORITY shall have the right to repair any such damage, at LESSEE's sole expense.

B. INTENTIONALLY OMITTED

C. PERSONAL PROPERTY

Upon termination of this Lease, LESSEE shall remove all of its personal property which is not affixed to the Leased Premises within thirty (30) days after said termination. If LESSEE fails to remove said personal property, said property may thereafter be removed by AUTHORITY, at LESSEE's sole expense.

ARTICLE XIII – ASSIGNMENT AND SUBLETTING

A. SUCCESSORS AND ASSIGNMENT

LESSEE shall not assign this Lease (or any part thereof) in any manner whatsoever, or assign any of the privileges recited herein, without the AUTHORITY's prior written consent, and AUTHORITY hereby reserves the right, as a condition of assignment approval, to increase the rental specified in this Lease. In the event of such assignment, LESSEE shall remain liable to AUTHORITY for the remainder of the term of this Lease to pay to AUTHORITY any portion of the rental(s) and fees provided for herein upon failure of the assignee to pay the same when due. Said assignees shall not assign said Lease except with the prior written approval of the AUTHORITY and the LESSEE herein, and any assignment by LESSEE shall contain a clause to this effect.

B. SUBLETTING

LESSEE shall not rent or sublease all or any part of the Leased Premises or the improvements located thereon, without the AUTHORITY's prior written consent, and AUTHORITY reserves the right, as a condition of sublease approval, to increase the ground rental specified in this Lease.

ARTICLE XIV – QUIET ENJOYMENT

AUTHORITY covenants that LESSEE, upon payment of the rentals reserved herein and the performance of each and every one of the covenants, agreements and conditions on the part of LESSEE to be observed and performed, shall and may, peaceably and quietly, have, hold and enjoy the Leased Premises for the term aforesaid, free from molestation, eviction or disturbance (except as allowed or permitted by this Lease).

ARTICLE XV – GENERAL PROVISION

A. NON-INTERFERENCE WITH OPERATION OF AIRPORT

LESSEE, by accepting this Lease, expressly agrees for itself, its successors and assigns, that it will not make use of the Leased Premises in any manner which might interfere with the landing or taking off of aircraft at the Airport, or otherwise constitute a hazard. In the event the aforesaid covenant is breached, AUTHORITY reserves the right to enter upon the Leased Premises and cause the abatement of such interference, at LESSEE's sole expense.

B. ATTORNEY'S FEES

In any action brought by AUTHORITY for the enforcement of the obligations of LESSEE, AUTHORITY shall be entitled to recover interest and its attorney's fees.

C. TAXES

LESSEE shall pay any and all taxes levied upon the Leased Premises.

D. LICENSE FEES AND PERMITS

LESSEE shall obtain and pay for all licenses, permits, fees or other authorization or charges as required under Federal, State or local laws, rules and regulations insofar as they are necessary to comply with the requirements of this Lease and the privileges extended hereunder.

E. INTENTIONALLY OMITTED

F. PARAGRAPH HEADINGS

The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Lease.

G. INTERPRETATIONS

This Lease shall be interpreted in accordance with the laws of the State of Indiana.

H. NOTICES

Whenever any notice or payment is required by this Lease to be made, given or transmitted to the parties hereto, such notice or payment shall be in writing and enclosed in an envelope with sufficient postage attached to insure delivery and deposited in the United States Mail, addressed to:

AUTHORITY

Notices: Executive Director
 Indianapolis Airport Authority
 7800 Col. H. Weir Cook Memorial Dr., Suite 100
 Indianapolis, IN 46241

Payments: Indianapolis Airport Authority
 P.O. Box 66755
 Indianapolis, IN 46266

LESSEE

or such other place as a party hereto may, by written directive to the other party, designate in the manner herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date first above mentioned.

INDIANAPOLIS AIRPORT AUTHORITY

By: _____

Name Printed: _____

Title: _____

Date: _____

Approved as to Form and Legality:

By: _____
Joseph R. Heerens, General Counsel

(LESSEE's NAME)

By: _____

Printed: _____

Title: _____

Attachments:

Exhibits:

METROPOLITAN NASHVILLE AIRPORT AUTHORITY



REQUEST FOR PROPOSALS

FOR

IMPLEMENTATION OF WATER SOURCE GEOTHERMAL SYSTEM (QUARRY PROJECT)

PROJECT NO. 1509

AT

NASHVILLE INTERNATIONAL AIRPORT (BNA)

NASHVILLE, TENNESSEE

December 22, 2014

Development & Engineering
Metropolitan Nashville Airport Authority
One Terminal Drive, Suite 501
Nashville, Tennessee 37214-4114

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IMPLEMENTATION OF WATER SOURCE GEOTHERMAL SYSTEM
REQUEST FOR PROPOSAL**

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IMPLEMENTATION OF WATER SOURCE GEOTHERMAL SYSTEM REQUEST FOR PROPOSAL

PROJECT DEFINITION

INTRODUCTION

The Metropolitan Nashville Airport Authority's (MNA) mission is to give Middle Tennessee its heartbeat and foster its competitive advantage as the region's premier hub for transportation and related businesses. MNA strives to plan, develop, manage, and operate safe, efficient, and attractive aviation facilities, and to provide superior services for resident and economic interests in Middle Tennessee.

The Metropolitan Nashville Airport Authority (MNA), hereinafter referred to as the Owner, will be accepting statements of qualifications and price proposals from Design/Build firm(s), hereinafter referred to as D/B, to (1) complete the design from the existing 30% design package, and (2) construct the approved design of a water source geothermal system and pump station at the Nashville International Airport in Nashville, TN. The Owner intends to award this Contract utilizing a combination of qualifications-based selection and price-based selection. The first step shall consist of the submittal of a statement of qualifications (SOQ), as set forth in this RFP, which will be evaluated in accordance with the criteria set forth in Appendix "B", Technical Proposal and Evaluation Criteria, of this RFP. Additionally the firms will also be evaluated on their Price Proposal. Based on these evaluations, the Owner will determine the final selection and begin contract negotiations. As part of the evaluations, MNA reserves the right to conduct interviews with the highest ranking firms.

The Owner intends to secure a contract for the D/B. The D/B shall provide engineering, modeling, surveying, consulting, scheduling, value engineering and estimating/cost control services during the design phase of the Project. The D/B shall be the general contractor during construction, holding the trade contracts, overseeing DBE utilization and providing the management, inspection and quality control during the construction phase. The D/B shall competitively procure and contract with the trade contractors and assume the responsibility and the risk of construction delivery within the specified cost and schedule terms for the scope(s) of work for the projects identified in the RFP.

BACKGROUND

The Metropolitan Airport Authority (MNA) is committed to being a sustainable organization and strives to implement projects that are sustainable and financially sound. In 2009, a Comprehensive Energy Study was conducted of all MNA operated facilities and identified the beneficial use of the stormwater detention basin, formerly the Hoover Quarry. In 2012, a preliminary engineering evaluation for the implementation of a large scale geothermal system that would utilize the stormwater detention basin was conducted. This report is attached as Exhibit F. On June 6, 2014, MNA submitted an Environmental Assessment to FAA in accordance with the National Environmental Policy Act (NEPA). On September 4, 2014, FAA MEM-ADO concluded that the project is categorically excluded from further environmental analysis.

PROJECT DESCRIPTION

The Implementation of a Water Source Geothermal System project at the Nashville International Airport involves the design and implementation of a geothermal system consisting of closed-loop, variable flow piping between the water source and the existing

Terminal mechanical plant using a heat exchanger submerged in the stormwater detention basin. This work is expected to take 365 days and the estimated program value (design, program management, coordination with all stakeholders, and construction) of this project is estimated to be approximately \$8 to 9 million.

General System Scope Requirements:

1. Design and install closed loop, water based, lake plate geothermal system per the recommendations in the Preliminary Engineering Report dated December 2013, Exhibit "I."
2. Design and install a heat pump to reduce natural gas consumption associated with boiler operation. Heat pump shall be included in the Proposal as Additive Alternate 1.
3. Design and install 4" HDPE irrigation/non-potable water supply line and connection to existing irrigation system adjacent to Terminal Building in the Domestic Water Pump Room.
4. D/B shall be responsible for energy savings as specified below. Once selected, D/B shall prepare a Measurement and Verification Plan (M&V Plan) which will be included with the Contract by Amendment. A sample M&V plan is provided in Exhibit K.
 - a. Minimum Annual Energy Savings Required = 3,029,983 KWh
 - b. Minimum Annual Water Savings Required = 30,000,000 Gallons
 - c. Minimum Annual Air Emissions Reduction Required = 67.112 tons NO_x and 1.805 tons VOC. If Additive Alternate 1 to design and install a heat pump is awarded, the minimum annual air emissions reduction is required. Energy usage for the heat pump that will offset energy savings realized by the geothermal cooling system should be identified separately in the Proposal.
5. Design shall consider pipe routing across Runway 2R-20L, Taxiway Hotel, future Donelson Pike location, existing Donelson Pike location and Airport Service Road, utilizing methods at the contractor's discretion including, but not limited to, open cutting, directional drilling, bore & jack and tunneling. Surface-mounted pipe will only be considered permissible at terminations.
6. Two 16" diameter influent and effluent pipes are required and shall be High Density Polyethylene (HDPE).
7. A carrier pipe under the runway and taxiway safety areas is required. Design and install an additional spare 8" pipe along the full pipe route, to be cut and capped on either side of Donelson Pike.
8. Security Badging will be required for portions of the work at the Terminal and in the Airfield Operations Area (AOA). Reference Section S for details.
9. D/B Team must include a certified International Ground Source Heat Pump Association (IGSHPA) installer with 5 years' experience on projects of similar size and design type.
10. D/B to provide training and availability of personnel for support during the one-year warranty period for system operation consisting of 80 hours on site training and unlimited phone and email correspondence.
11. D/B shall provide site-specific safety and phasing plans.

The scope of the project is being divided into four areas each with their own specific requirements:

Area 1: Quarry

1. D/B shall provide solution and implementation for access, inspection and maintenance of submersible lake plate system, including but not limited to watercraft, launch ramp, access road and storage of watercraft.
2. D/B to provide split faced block structure for housing water source heat pumps. At a minimum, structure shall be large enough to house pumps and appurtenances, plus storage for necessary spare parts/equipment. The structure shall be large enough to allow for a minimum of 5 feet access for maintenance staff around all key equipment, and the structure shall have an overhead roll-up door to allow installation and removal of all major equipment.
3. D/B to provide manifold and vault with the lake plate system with valves that allow various circuits to be flushed without complete system shutdown.
4. Provide Nashville Electric Service (NES) power to the system.

Area 2: AOA

1. Runway 2R-20L and Taxiway Hotel shall be open cut and reconstructed within a 60 calendar day window. Liquidated damages are set for \$5,000 per day for activities within the Runway and Taxiway Safety Area.
2. All design and construction must be in accordance with applicable FAA Advisory Circulars.
3. D/B shall provide safety and phasing plan for activities within the Airfield Operations Area (AOA). FAA must review and approve the safety and phasing plan prior to beginning airfield construction.

Area 3: Donelson Pike/Airport Service Road

1. D/B shall provide safety maintenance of traffic plan for vehicular traffic. Owner will provide required landside general and safety notes.
2. All design and construction must be in accordance with applicable TDOT specifications.

Area 4: Terminal Building

1. D/B shall upgrade of Chiller 1 to handle chilling capacity of 1200 tons. Chiller 1's current chilling capacity is 1000 tons.
2. Geothermal system shall be connected to all three existing chillers with ability to supply water and maximize control. Connection location shall be at the existing Cooling Towers adjacent to the Terminal Building.
3. D/B shall reprogram chillers for demand flow management.
4. D/B to provide valve system to existing chilled water system for redundancy.
5. D/B to provide piping and programming to bypass chillers and economize operations.
6. D/B shall install geothermal monitoring system for measurement and verification of requirements set forth above. Geothermal monitoring system shall interface with existing Siemens building automation system.

SCOPE OF SERVICES

1. Design Phase Services
 - a. The development of the Contract Documents.

- b. All permit and design issues must be resolved and changes incorporated into the contract documents prior to submitting to the MNAA and FAA for final approval.
- c. D/B will prepare an initial schedule with associated costs for the D/B team, and others during the design and construction process. D/B team will update the schedule at each submittal point and recommend corrective actions to meet scheduled completion dates.
- d. Prepare construction documents based on the design criteria as outlined in this document and the Preliminary Engineering Report. The project must comply with all applicable Federal, State, or local guidelines.
- e. Construction documents shall include all disciplines: site/civil, architectural, structural, electrical, mechanical,, maintenance of traffic, telecommunications, etc. The drawings and specifications will be reviewed at 50% and 100% completion by MNAA and other project stakeholders. Drawings are to be submitted in PDF format. Portions of the project may be constructed prior to full design completion of the entire project.
- f. Provide physical surveying services as required for the preparation and development of programming and construction documents. ASCII survey point data to be provided.
- g. D/B will prepare an initial Construction Cost Estimate for MNAA approval and update the Cost Estimate at each stage of design.
- h. All electronic files of drawings will be in MicroStation V8i or AutoCad (Version 2010 or later) format and Adobe PDF format.
- i. The drawings shall include defining the contractor work areas and material delivery routes that will maintain vehicular flow and continued operation of the facility.
- j. The D/B shall conduct bi-weekly design meetings with the MNAA project stakeholders (e.g. MNAA, FAA, etc.) and provide meeting minutes within 3 days of the meeting.

2. Construction Phase Services

- a. D/B will participate in pre-construction conference.
- b. Construct work as designed.
- c. Schedule and coordinate construction with MNAA.
- d. Schedule and attend construction meetings and make visits to the project site during construction to report on the progress and quality of the work.
- e. Provide, review, and recommend approval of shop drawings, samples, and other submissions as required by the contract documents.
- f. Prepare and submit revisions to the contract documents in connection with change orders, requests for pricing, and supplemental information requests.
- g. Provide reproducible record drawings following completion of the project in an ESRI ArcGIS 9.1 compatible and MicroStation XM compatible format.
- h. The D/B shall conduct weekly construction meetings with the MNAA project stakeholders (e.g. MNAA, FAA, etc.) and provide meeting minutes.

PRE-PROPOSAL CONFERENCE

A Pre-proposal Conference will be held at 1:00 p.m. (local time) on January 6, 2015 in the Nashville International Airport, Board Room, 4th Floor, Terminal Building, Nashville, Tennessee. Attendance at this conference is **MANDATORY**. At this time, prospective Respondents will be given the opportunity to tour the project sites in the Terminal Building. Dates and times for additional tours of the other major Project site locations will be announced at the Pre-Proposal Conference. Proposers shall submit in writing any questions that they may have about the Project.

The MNAA will accept any questions about the Project from prospective Respondents in writing until February 20, 2015. After this date, no questions will be answered. Questions must be faxed to Nena Bowling, Specifications Writer, at (615) 275-2349 or emailed to her at Nena_Bowling@nashintl.com. All questions must be submitted on or in the same format as the Proposal Question Form that is included in Appendix "E". The MNAA will not be liable for oral responses to oral questions of prospective Respondents, and prospective Respondents who rely on such oral response will do so at their own risk.

POINT OF CONTACT

During this solicitation process all communications shall be directed to Nena Bowling, Specifications Writer, via e-mail at nena_bowling@nashintl.com or by fax to (615) 275-2349. No phone calls will be accepted.

MINIMUM WAGE SCALE & REQUIREMENTS

Pursuant to Section 15(b) of the Federal Airport Act (Public Law 377, 70th Congress, 2nd Session) and the regulations of the Administrator of the Federal Aviation Administration, a schedule of minimum hourly wage rates has been determined by the U.S. Secretary of Labor to be the prevailing rate of wages for the crafts to be employed on this construction work at the Nashville International Airport, Nashville, Tennessee.

ASSISTANCE TO RESPONDENTS WITH A DISABILITY

Respondents with a disability may receive accommodation regarding the means of communicating their response to this RFP and participating in this procurement process. Respondents with a disability may contact Nena Bowling, Specifications Writer, at (615) 275-2347, One Terminal Drive, Suite 501, Nashville, TN 37214-4114, nena_bowling@nashintl.com, within five days of the date on which the RFP was first issued to request reasonable accommodation.

BUY AMERICAN PREFERENCES

1. The Aviation Safety and Capacity Expansion Act of 1990 provides that preference be given to steel and manufactured products produced in the United States when funds are expended pursuant to a grant issued under the Airport Improvement Program. The following terms apply:
 - a. Steel and manufactured products. As used in this clause, steel and manufactured products include (1) steel produced in the United States or (2) a manufactured product produced in the United States, if the cost of its components mined, produced or manufactured in the United States exceeds 60 percent of the cost of all of its components and final assembly has taken place in the United States. Components of foreign origin of the same class or kind as the products referred to in subparagraphs 2. (a) or (b) shall be treated as domestic.
 - b. Components. As used in this clause, components mean those articles, materials, and supplies incorporated directly into steel and manufactured products.
 - c. Cost of Components. This means the costs for production of the components, exclusive of final assembly labor costs.

2. The successful Respondent will be required to assure that only domestic steel and manufactured products will be used by the contractor, subcontractors, materialmen and suppliers in the performance of this contract, except those:
 - a. that the US Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
 - b. that the US Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, that domestic preference would be inconsistent with the public interest; or
 - c. that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

BUY AMERICAN CERTIFICATE

By submitting a proposal under this solicitation, except for those items listed by the offeror below or on a separate and clearly identified attachment to this Proposal, the offeror certifies that steel and each manufactured product, are produced in the United States (as defined in the clause Buy American - Steel and Manufactured Products for Construction Contracts) and that components of unknown origin are considered to have been produced or manufactured outside the United States.

Offerors may obtain from the owner a listing of articles, materials and supplies excepted from this provision.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

Owner has established a Contract goal of a minimum of ONE AND SEVEN TENTHS PERCENT (1.70%) to be performed by a certified Disadvantaged Business Enterprise (DBE). The DBE participation percentages submitted will be a material representation upon which Owner is relying in making an evaluation for award of this Contract. Proposers are advised that meeting or exceeding DBE subcontract goals or making an acceptable good faith effort to meet such goals are conditions of being awarded this Contract. For information on eligible DBE firms, Proposers may contact the Director, Business Diversity Development, (615) 275-1468, or visit <http://www.tdot.state.tn.us/dbedirectinternet/> for a complete and current listing of certified DBE firms.

DBE PARTICIPATION

It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Parts 23 and 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Contract. Consequently, the DBE requirements of 49 CFR Parts 23 and 26 apply to this Contract. The Authority shall not discriminate on the basis of race, color, national origin, handicap, sex or creed in the award and performance of the Contract, or in the administration of its Disadvantaged Business Enterprise Program ("DBE Program") or the requirements of 49 CFR Part 26, which is incorporated herein by reference. The Authority shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of Department of Transportation (DOT) assisted contracts, the Authority's DBE Program, as required by 49 CFR Part 26 and as approved by DOT. Implementation of this DBE Program is a legal obligation and failure to carry out its terms shall be treated as a violation of any Contract executed with the

Authority. Upon notification to the Authority of its failure to carry out its approved DBE Program, the DOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer this matter for enforcement under 18 U.S.C. 1001 and/or Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

DBE GOOD FAITH EFFORTS

The nine (9) steps listed below are suggested guidelines the Authority shall use in determining if the Respondent has made a good faith effort to obtain DBE participation. The Respondent may also submit to the Authority other information on efforts it took to obtain DBE participation. The Respondent shall provide a Good Faith Effort Statement of Non-Participation on the DBE Participation Report with the solicitation response if it cannot obtain the stated percentage goal using the suggested guidelines. Disadvantaged Business Enterprises (DBEs) qualify for participation in federally funded projects.

- Whether the Respondent attended any pre-solicitation or pre-bid/proposal meetings that were scheduled by the Authority to inform DBEs of contracting and subcontracting opportunities;
- Whether the Respondent advertised in general circulation, trade associations, and minority focused media concerning the subcontracting opportunities;
- Whether the Respondent provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;
- Whether the Respondent followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
- Whether the Respondent selected portions of work to be performed by DBEs in order to increase the likelihood of the DBE participation (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
- Whether the Respondent provided interested DBE(s) with adequate information about the plans, specifications and requirements of the contract;
- Whether the Respondent negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
- Whether the Respondent made efforts to assist interested DBEs in obtaining lines of credit, or insurance required by the Authority; and
- Whether the Respondent effectively used the services of available minority community organizations; minority contractors' groups; local and state and Federal Minority Business Assistance Offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

1. Prior to an Award of the Contract, the apparent successful Respondent and its Subcontractors may be required to attend a pre-award conference to formulate an affirmative action program for equal employment opportunity.
2. The proposed Contract is under and subject to Executive Order 11246, as amended, and the requirements of 41 C.F.R. Part 60-1 (the "Equal Opportunity Clause") and to other applicable equal employment opportunity laws and regulations.
3. Each Respondent must supply all the information required by the RFP Package and other Contract Documents.

- a. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunities (Executive Order 11246, as amended).
 - i. Each prospective Respondent is advised to review the provisions of the Equal Opportunity Clause and the requirements of 41 C.F.R. Chapter 60.
 - ii. Certification of Non-Segregated Facilities.
 - 1. Notice to Prospective Federally Assisted Construction Contractors
 - 2. A Certification of Non-segregated Facilities shall be submitted prior to the award of a federally-assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.
- 4. (2) Respondents receiving federally-assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.
 - a. Notice to Prospective Subcontractors of Requirement for Certification of Non-Segregated Facilities.
- 5. A Certification of Non-segregated Facilities shall be submitted prior to the award of a subcontract exceeding \$10,000, which is not exempt from the provisions of the Equal Opportunity Clause.
- 6. Respondents receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

INCORPORATION OF REGULATIONS

The Contract will incorporate by reference or set forth at length, at the option of MNAA, any and all statutes, rules, regulations, assurances, and other provisions, the incorporation of which may now or hereinafter be required by the Federal Aviation Administration or any other governmental agency, or the incorporation of which may be a prerequisite to, or condition of, MNAA's receiving any federal or state grant or loan or governmental assistance in connection with the Metropolitan Nashville Airport.

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 - GENERAL CIVIL RIGHTS PROVISIONS

The Respondent assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed,

color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the Sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the Sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the Proposal solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

CHOICE OF LAW/FORUM

This RFP has been made and entered into in the State of Tennessee and the laws of said state shall govern the validity and interpretation of this RFP and the performance hereunder. The parties agree that only a state or federal court of law sitting in Nashville, Tennessee shall hear matters arising from this RFP; for such matters, the non-prevailing party shall pay the prevailing party's reasonable attorney's fees and all other expenses reasonable related to litigation.

INSURANCE

(a) Commercial General Liability Insurance

1. The Company shall obtain and maintain continuously in effect at all times during the term of this Contract, at its sole cost and expense, commercial general liability insurance coverage (the "CGL Coverage"), with coverage limits of not less than \$5,000,000 per occurrence and \$5,000,000 in aggregate, that insures against claims, damages, losses and liabilities arising from bodily injury, death and/or property damage. The aggregate deductible amount under the insurance policy or policies providing the CGL Coverage shall not exceed \$250,000 per occurrence. Each insurance policy providing the CGL Coverage shall name the Authority and its commissioners, officers and employees as additional insureds thereunder and shall provide that such insurance policy will be considered primary insurance as to any other valid and collectible insurance or self-insured retention the Authority may possess or retain. Any insurance coverages maintained by the Authority shall be considered excess insurance only.
2. Each insurance company issuing an insurance policy providing the CGL Coverage shall be (A) admitted to do business in the State of Tennessee and rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

(b) Automobile Liability Insurance

1. The Company shall obtain and maintain continuously in effect at all times during the term of this Contract, at its sole cost and expense, automobile liability insurance coverage (the "Auto Coverage"), with a coverage limit of not less than

\$1,000,000 per occurrence, that insures against claims, damages, losses and liabilities arising from automobile related bodily injury, death and/or property damage. The aggregate deductible amount under the insurance policy or policies providing the Auto Coverage shall not exceed \$250,000 per occurrence. Each insurance policy providing the Auto Coverage shall name the Authority and its commissioners, officers and employees as additional insureds thereunder and shall provide that such insurance policy will be considered primary insurance as to any other valid and collectible insurance or self-insured retention the Authority may possess or retain. Any insurance coverages maintained by the Authority shall be considered excess insurance only.

2. Each insurance company issuing an insurance policy providing the Auto Coverage shall be (A) admitted to do business in the State of Tennessee and rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

(c) Worker's Compensation Insurance

1. The Company shall obtain and maintain continuously in effect at all times during the term of this Contract, at its sole cost and expense, worker's compensation insurance coverage (the "WC Coverage") in accordance with statutory requirements and providing employer's liability coverage with limits of not less than \$100,000 for bodily injury by accident, \$100,000 for bodily injury by disease, and \$500,000 policy limit for disease.
2. Each insurance company issuing an insurance policy providing the WC Coverage shall be (A) admitted to do business in the State of Tennessee and rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

(d) Professional Liability Insurance

1. The Company shall obtain and maintain continuously in effect at all times during the term of this Contract, at its sole cost and expense, professional liability insurance coverage (the "PL Coverage"), with coverage limits of not less than Two Million and No/100 Dollars (\$2,000,000) per occurrence and Two Million and No/100 Dollars (\$2,000,000) in aggregate, that insures against claims, damages, losses and liabilities arising from any errors, omissions or negligent acts of the Company in the performance of professional services under this Contract. The aggregate deductible amount under the insurance policy or policies providing the PL Coverage shall not exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) per occurrence. The Company also shall maintain the PL Coverage for a period of three (3) years after all services and work required under the terms of this Contract have been completed by the Company or after the Company has been terminated by the Authority, whichever shall last occur.

2. Each insurance company issuing an insurance policy providing the PL Coverage shall be (A) rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

(e) General Insurance Requirements

1. For purposes of this Contract, the CGL Coverage, the Auto Coverage, and the Worker's Compensation Coverage are collectively referred to as the "Insurance Coverages". The Contractor agrees that each insurance policy providing any of the Insurance Coverages (A) shall not be altered, modified, cancelled or replaced without thirty (30) days prior written notice from the Contractor to the Authority, (B) shall provide for a waiver of subrogation by the issuing insurance company as to claims against the Authority and its commissioners, officers and employees, (C) shall provide that any "other insurance" clause in such insurance policy shall exclude any policies of insurance maintained by the Authority and that such insurance policy shall not be brought into contribution with any insurance maintained by the Authority, and (D) shall have a term of not less than one year.
2. The Authority shall have the right to change the terms of the Insurance Coverages if such changes are recommended or imposed by the Authority's insurers, so long as the Authority agrees to reimburse the Contractor for any increases in insurance premium costs resulting solely from any such change. The Contractor shall provide, prior to the commencement of the Contractor's performance under this Contract, one or more certificates of insurance which shall indicate that the Contractor maintains the Insurance Coverages and that the insurance policy or policies referenced or described in each such certificate of insurance comply with the requirements of this Contract. Each such certificate of insurance shall provide that the insurance company issuing the insurance policy or policies referenced or described therein shall give to the Authority written notice of the cancellation or non-renewal of each such insurance policy not less than thirty (30) days prior to the effective date of such cancellation or the expiration date of such insurance policy, as applicable. Upon receipt of a written request from the Authority, the Contractor also agrees to provide to the Authority duplicate originals of any or all of the insurance policies providing the Insurance Coverages. The certificate(s) of insurance provided by the Company to evidence the WC Coverage shall specifically certify that the insurance policy or policies which provide the WC Coverage cover the Contractor's activities in the State of Tennessee.
3. If the Company shall at any time fail to obtain or maintain any of the Insurance Coverages, the Authority may take, but shall not be obligated to take, all actions necessary to effect or maintain such Insurance Coverages, and all monies expended by it for that purpose shall be reimbursed to the Authority by the Contractor upon demand therefor or set-off by the Authority against funds of the Contractor held by the Authority or funds due to the Contractor. The Contractor hereby grants, approves of and consents to such right of set-off for the Authority. If any of the Insurance Coverages cannot be obtained for any reason, the Authority may require the Contractor to cease any and all work under this Contract until all Insurance Coverage are obtained. If any of the Insurance

Coverages is not obtained within a period of time to be determined solely by the Authority, the Authority may terminate this Contract.

4. It is expressly understood and agreed that the minimum limits set forth in the Insurance Coverages shall not limit the liability of the Contractor for its acts or omissions as provided in this Contract.
5. The term "Rating Service" shall mean A.M. Best Company, or, if A.M. Best Company no longer exists or discontinues its rating of insurance companies, such alternative rating service for insurance companies as determined in the sole discretion of the Chief Financial Officer of the Authority. The term "Minimum Rating" shall mean a rating (if A.M. Best Company is the Rating Service) of A- (Financial Size: X) based upon the criteria for financial strength and financial size ratings utilized by A.M. Best Company on the date of this Contract, or such equivalent rating (if A.M. Best Company is not the Rating Service or if A.M. Best Company subsequently revises its criteria for financial strength and financial size ratings) as determined in the sole discretion of the Chief Financial Officer of the Authority.

SAMPLE INSURANCE CERTIFICATE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE CERTIFICATE HOLDER AND THE PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the terms and conditions of the policy, certain policies may require an endorsement to this certificate holder in lieu of such endorsement(s).

NAIC # required for all Insurer(s)

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No. Ext.):	FAX (A/C, No.):
INSURED	E-MAIL:	
	ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:		
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY					EACH OCCURRENCE \$
	COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea. occurrence) \$
	CLAIMS-MADE OCCUR					MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
						GENERAL AGGREGATE \$
						PRODUCTS - COMPOD AGG \$
	GEN'L AGGREGATE LIMIT APPLIES PER:					
	POLICY PROJECT LOC					
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea. accident) \$
	ANY AUTO					BODILY INJURY (Per person) \$
	ALL OWNED AUTOS					BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS					PROPERTY DAMAGE (Per accident) \$
	HIRED AUTOS					
	UMBRELLA LIAB					EACH OCCURRENCE \$
	EXCESS LIAB					AGGREGATE \$
	OCUR CLAIMS-MADE					
	DED RETENTION \$					
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					WC STATUTORY LIMITS OTHER \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/EMERGENCY	Y/N	N/A			EL. EACH ACCIDENT \$
						EL. DISEASE - EA EMPLOYEE \$
						EL. DISEASE - POLICY LIMIT \$

Reference MNAA Project Name and Number here

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

All insured's activities for the Metropolitan Nashville Airport Authority and subsidiaries, including MNAA Properties Corporation and Project: (insert project name and project number here)

Metropolitan Nashville Airport Authority, its Board of Commissioners, its Officers and its employees are additional insureds on General Liability coverage as required by written Contract between them and the insured for the Project referenced above. Coverage is primary.

CERTIFICATE HOLDER

CANCELLATION

Metropolitan Nashville Airport Authority
Attn: Purchasing Department
One Terminal Drive, Suite 501
Nashville, TN 37214

SHOULD ANY OF THE EXPIRATION ACCORDANCE WITH

AUTHORIZED REPRESENTATIVE

This statement is REQUIRED on all Insurance Certificates

Certificate Holder

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Registered marks of ACORD

ACORD 25 (2010/05)

INDEMNIFICATION AND HOLD HARMLESS

(a) Indemnified Parties

For purposes of this Contract, the term "Indemnified Parties" shall mean the Authority and its commissioners, officers, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, successors and assigns.

(b) Indemnification

1. The Company agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys' fees, court costs and litigation expenses) claimed or incurred by reason of any bodily injury, death and/or property damage arising from any negligent or intentional act or omission of the Contractor or any of the Contractor's officers, contractors, subcontractors, agents, representatives or employees.
2. The Company agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys' fees, court costs and litigation expenses) arising from the ownership or use of the Construction Documents, including, without limitation, claims of infringement of property rights by a third party.
3. The Company agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys' fees, court costs and litigation expenses) arising from any negligent or intentional act or omission of the Contractor or any of the Contractor's officers, contractors, subcontractors, agents, representatives or employees with respect to (A) any investigation, monitoring, clean-up, containment, removal, storage or restoration work performed by the Authority or a third party with respect to the use or placement of Hazardous Materials (of whatever kind or nature, known or unknown) on the Airport premises or any other areas; (B) any actual, threatened or alleged contamination by Hazardous Materials on the Airport premises or other areas; (C) the disposal, release or threatened release of Hazardous Materials on the Airport premises or other areas that is on, from or affects the soil, air, water, vegetation, buildings, personal property, persons or otherwise; (D) any bodily injury, death or property damage with respect to the use or placement of Hazardous Materials on the Airport premises or other areas; or (E) any violation of any applicable Environmental Laws.

Trade Restriction Clause

The Company, by submission of an offer and/or execution of a contract, certifies that it:

- (a) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (U STR);
- (b) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- (c) has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through Owner cancellation of the contract at no cost to the Government.

Further, the Company agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The Company shall provide immediate written notice to Owner if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through Owner cancellation of the contract or subcontract for default at no cost to the Government.

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.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

INSTRUCTIONS TO RESPONDENTS

REQUEST FOR PROPOSALS

The Metropolitan Nashville Airport Authority (MNA) is requesting statements of qualifications from with experience in design/build projects for geothermal systems for the **"Implementation of Water Source Geothermal System"** project at the Nashville International Airport, Nashville, Tennessee. The project may require, without limitations, firms to perform preliminary design, topographical survey or 3D scan survey, and any other type of special service required to complete the design and construction of the project.

PRE-PROPOSAL CONFERENCE

A Pre-proposal Conference will be held at 1:00p.m. (local time) on January 6, 2015 in the Nashville International Airport, Board Room, 4th Floor, Terminal Building, Nashville, Tennessee. Attendance at this conference is **MANDATORY**. At this time, prospective Respondents will be given the opportunity to tour project sites in the Terminal Building. Dates and times for additional tours of the other major Project site locations will be announced at the Pre-Proposal Conference. Prospective Respondents shall submit in writing any questions that they may have about the Project. The answers to such questions will be provided in writing by addendum no later than February 20, 2015.

PROPOSAL FORM AND SUBMISSION

ELECTRONIC PROPOSALS, submitted through www.aerobidz.aero, for furnishing all materials, labor, tools and appurtenances for completion of the design and the construction of the **IMPLEMENTATION OF WATER SOURCE GEOTHERMAL SYSTEM** and other incidental items shall be received by the Metropolitan Nashville Airport Authority, (MNA) Nashville, Tennessee, in the Board Room, 4th Floor, Terminal Building, Nashville International Airport, until and not later than **2:00 p.m. (local time) on March 6, 2015**.

All electronic proposers will be required to be pre-registered with Aerobidz prior to proposal. Registration is free and proposers shall contact Nena Bowling, Specifications Writer, fax number (615) 275-2349 or email aerobidzregistration@nashintl.com to initiate registration. A list of electronic submission files and naming convention for each are listed below. The electronic proposer must scan all required proposal documents, including the Prime/Subcontractor License Information (Appendix G), and upload to the Aerobidz website. Electronic proposals are to be submitted as instructed on the website. All electronic proposal questions shall be directed to Nena Bowling, Specifications Writer, fax number (615) 275-2349 or email aerobidzregistration@nashintl.com or her designee.

Proposers wishing to submit a non-electronic proposal may do so only after receiving written authorization from MNA. Written authorization to submit a non-electronic proposal may be requested by emailing nena_bowling@nashintl.com at least five (5) days prior to the date proposals are due. Proposers submitting a non-electronic proposal must submit a copy of the written authorization with their proposal package.

The following representations and certifications shall be completed, signed and returned with the Proposal submission:

- 1) PDF File 1 – Prime/Subcontractor License Information (Appendix G)
- 2) PDF File 2 – Technical Proposal
- 3) PDF File 3 – Price Proposal Form (Appendix H)
- 4) PDF File 4 – Alternate Proposals (Appendix M)

Files are to be named 1509<Company Name><File #>.pdf

The Authority requires the successful Proposer to guarantee his/her proposal for 30 days from date of the RFP deadline.

The **outside of the envelope** (Appendix G) of each Proposal MUST be the PDF File 1 of the proposal and must be marked to show the following: Proposer's name, address, date and time the Proposal is due, and Project Title. In addition, Prime/Subcontractor License Information must be completed and placed on the outside of the envelope. The Authority assumes no responsibility for Proposals not properly addressed or identified.

TECHNICAL PROPOSAL

Appendix "B", Technical Proposal and Evaluation Criteria details specific requirements for making a Technical Proposal in response to this RFQ. This guide includes mandatory and general requirements as well as technical queries requiring a written response.

Each Respondent must use Appendix "B" to organize, reference, and draft the Technical Proposal. Each Respondent should duplicate the Technical Proposal and Evaluation Criteria and use it as a table of contents covering the Technical Proposal (adding proposal page numbers as appropriate).

A proposal must be submitted in PDF format standard 8 ½" x 11" sheet size (although interior sheets containing charts, spreadsheets, and oversize exhibits are permissible). All proposal sheets must be numbered.

All information included in the Technical Proposal should be relevant to a specific requirement detailed in Appendix "B", Technical Proposal and Evaluation Criteria. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will in no way contribute to the evaluation process.

The Owner may determine a proposal to be non-responsive and reject it if the Technical Proposal document fails to appropriately address/meet all of the requirements detailed in Appendix "B", Technical Proposal and Evaluation Criteria.

PROPOSAL EVALUATION CATEGORIES AND MAXIMUM POINTS

The owner will consider qualifications, experience and technical approach in the evaluation of proposals. The maximum points that shall be awarded for each of these categories are detailed below.

CATEGORY	MAXIMUM POINTS POSSIBLE
Qualifications and Experience (Section B)	50
Technical Approach (Section C or Section D)	50
Guaranteed Maximum Price	50

EVALUATION PROCESS

The proposal evaluation process is designed to award the contract to the Respondent with the best combination of attributes based upon the evaluation criteria.

Each Technical Proposal will be reviewed to determine compliance with mandatory requirements. If it is determined that a proposal may have failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the proposal and document its determination of whether: (1) the proposal meets requirements for further evaluation; (2) the Owner will request clarifications or corrections; or, (3) the Owner will determine the proposal non-responsive to the RFP and reject it.

A Proposal Evaluation Team, made up of three or more employees of the MNAA, will evaluate each Technical Proposal that appears responsive to the RFP.

Each Proposal Evaluation Team member will independently, evaluate each proposal against the evaluation criteria in this RFP, rather than against other proposals, and will score each in accordance with Appendix "B", Technical Proposal and Evaluation Criteria.

The Owner reserves the right, at its sole discretion, to request Respondent clarification of a Technical Proposal or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion shall be limited to specific sections of the proposal identified by the Owner. The subject Respondent shall put any resulting clarification in writing as may be required by the Owner.

The Owner reserves the right to receive an oral presentation from firms scoring high on the Technical Proposal. Oral presentations and the number of firms interviewed are at the sole discretion of the Owner.

CONTRACT AWARD PROCESS

The Proposal Evaluation Team will consider the proposal evaluation results and all pertinent information available and make a recommendation of contract award to the MNAA Board of Commissioners. The Owner reserves the right to make an award recommendation without further discussion of any proposal.

After selection of a D/B team, MNAA will forward the contract to the firm for execution. Once MNAA has received the signed contract back from the D/B team the project will be taken to the MNAA Board of Commissioners for approval. After the approval of the MNAA Board of Commissioners, the Owner will fully execute the contract and issue a Notice to Proceed, as outlined in Appendix "A", RFP Schedule of Events. The D/B signature on the contract shall not create right, interests, or claims of entitlement in either the Respondent with apparent best-evaluated proposal or any other Respondent.

The Respondent with the apparent best-evaluated proposal must agree to sign a contract with the Owner which is provided as a part of this Request for Proposals. The contract attached hereto contains all provisions required by the Federal Aviation Administration Airport Improvement Program and Metropolitan Nashville Airport Authority, including, but not limited to, Buy American Preference, Veterans Preference, Title VI requirements, and Airport and Airway Improvement Act of 1982 requirements.

The Respondent with the apparent best-evaluated proposal must sign and return the contract drawn by the Owner pursuant to this RFP no later than the Contract Execution date detailed in Appendix "A", RFP Schedule of Events. If the Respondent fails to provide the signed contract by the deadline, the Owner may determine that the Respondent is non-responsive to the terms of the RFP and reject the proposal.

APPENDIX "A"
RFP SCHEDULE OF EVENTS

Owner Issues RFP	December 22, 2014
Pre-Proposal Conference	January 6, 2015
Written Questions Deadline	February 20, 2015
Final Addendum Issued	February 25, 2015
Proposal Deadline	March 6, 2015
Interviews	March 24, 2015
Selection	March 25, 2015
MNAA Board Approval	April 22, 2015
Contract Execution	May 2015

APPENDIX "B"
TECHNICAL PROPOSAL AND EVALUATION CRITERIA

SECTION A – MANDATORY REQUIREMENTS

The Respondent must address all Mandatory Requirements & Information items and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Owner will review all general mandatory requirements & information items, including, but not limited to the following:

- Proposal received on or before the Proposal Deadline.
- Respondent did not submit multiple proposals in a different form.

Technical Proposal does not contain any restrictions of the rights of the Owner or other qualification of the proposal.

- A1. Provide a copy of State of Tennessee Contractors License, a copy of State of Tennessee Architectural/Engineering License, signed Non-Collusion Affidavit (Appendix "C") and Affidavit of Debarment (Appendix "D").
- A2. Exceptions to the draft contract included in the RFP must be noted in Respondent's proposal. Exceptions taken after the award may result in the withdrawal of the intent to award. Any listing of exceptions by a Respondent in their proposal in no way obligates Owner to change the contract's general terms and conditions, the requirements of the RFP, or the insurance requirements of this solicitation. If exceptions are taken, evaluation scores will reflect Owner's assessment of the impact for these considerations; those exceptions may result in the rejection the proposal as non-responsive, if, in the sole evaluation of Owner, the requested changes are unacceptable.
- A3. Provide a statement on the Respondent's experience at providing D/B services (design and construction phase services). A Respondent, to be considered, must have a minimum of five (5) years of experience as a D/B in providing the services outlined in the Scope of Services Section. If a Respondent is a joint venture firm, at least one joints venture party must have a minimum of five (5) years of said experience and other joint venture party or parties must have a minimum of three (3) years of said experience. If a joint venture, provide a history of this joint venture relationship.
- A4. For the last three (3) years, provide the following ratios for the Respondent, calculated according to the generally accepted account principles: 1) Quick Ratio and 2) Debt/Worth. The Owner may request CPA audited or reviewed financial statements prepared in accordance with generally accepted accounting principles from the apparent best-evaluated Respondent prior to the final award of the contract. If the requested documents do not support the financial stability of the Respondent the Owner reserves the right to reject the proposal.
- A5. Provide a statement of whether the Respondent or any individual who shall perform work under the contract has a possible conflict of interest and, if so, the nature of that conflict.

- A6. Describe the Respondent's form of business (i.e., individual, sole proprietor, corporation, non-profit corporation, partnership, limited-liability company) and detail the name, mailing address, telephone number, and e-mail address of the person the Owner should contact regarding the proposal.
- A7. Provide a statement of whether there have been any mergers, acquisitions, or sales of the Respondent company within the last five (5) years, and if so, an explanation providing relevant details.
- A8. Provide a statement of whether the Respondent or any of the Respondent's employees, have been convicted of, pled guilty to, or pled nolo contendere to any felony, and if so, an explanation providing relevant details.
- A9. Describe the Respondent organization's number of employees, type of client base, and location of offices.
- A10. Provide annual dollar workload volume inclusive of number of projects on a per year basis for the last five (5) years and indicate what percentage of such work are D/B services.

SECTION B – QUALIFICATIONS & EXPERIENCE

The Respondent must address all Qualifications and Experience section items and provide, in sequence, the information and documentation as required (referenced with the associated item references).

- B1. Provide a brief, descriptive statement indicating the Respondent's credentials to deliver the services sought under this RFP.
- B2. Provide the following:
 - a. Provide an organizational chart for the team proposed for this project. Identify which firm each of key personnel work for.
 - b. Resumes of key personnel who shall be assigned by the Respondent to perform duties or services under the Contract. The resumes shall detail each individual's title, education, current position with the Respondent, employment history, and experience highlighting projects of similar scope and complexity that are under construction or have been substantially completed or completed. Personnel shall include, but not limited to, the project manager (for design and construction, if different), field superintendent(s) and other key personnel who may be required. A project executive (by whatever name called) must also be named in key personnel but not be exclusively assigned to this Project.
 - c. A reference (owner representative) from each of the last three projects that the project executive, project manager and the superintendent were assigned. Provide a contact name, address, telephone number, e-mail address, and project name and location for each reference. The Owner reserves the right to contact references given, as well as any other source available.
 - d. The amount of time (in percentage or hours of positions) that each key personnel will be committed to this Project during both the design and construction phases and who will be responsible for the following services and overall project management:

- i. Design: Geothermal system, airfield pavement, MPE design, programming, architectural design, constructability review, interdisciplinary coordination, cost model/estimates, schedule, and value analysis.
 - ii. Construction: Construction phase management, procurement, coordination of trade contractors, vendors, suppliers, safety, quality control/inspections, shop drawing process/review, change order process/review, claims resolution, schedule control, and payment process/approval.
- B3. Provide a statement of how the Respondent intends to address all major design disciplines (civil, architectural, structural, mechanical, geothermal, and electrical) for design phase services.
- B4. Provide a statement of how the Respondent intends to meet time and budget requirements.
- B5. Provide a description of the Respondents company specific safety program and how long it has been in-place.
- B6. Provide the following:
 - a. A statement on the Respondent's approach to "Partnering" in regards to the D/B environment. Explain the process for this activity during the design and construction phases which shall include as a minimum of a facilitated partnering session during each phase. All cost related to this process will be the responsibility of the D/B.
 - b. A list of the top seven (7) current projects on which your firm is committed, the dollar volume and time frame for each, and what services are being provided (i.e., D/B, CM at Risk, GC, designs, etc.), as well as the total dollar value each firm currently has committed.
 - c. A list of the geothermal projects (preferably open water source) of \$5M or greater on which your firm has worked on or currently working on within the past 5 years, the dollar volume and time frame for each and what services were provided (i.e., D/B, CM at Risk, GC, designs, geothermal, etc.)
 - d. A list of all contracts with the MNAA, current and all those completed within the previous five (5) year period.
 - e. Documentation of Respondent commitment to diversity as represented by its business strategy, business relationships, and workforce – this documentation should detail:
 - i. A description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, persons with a disability and small business enterprises.
 - ii. The level of participation by disadvantaged business enterprises (DBE) in a contract awarded to the Respondent pursuant to this RFP.

SECTION C – TECHNICAL APPROACH

The Respondent must address all Technical Approach section items and provide, in sequence, the information and documentation as required (referenced with the associated item references).

- C1. Provide a brief, descriptive statement indicating the Respondent's approach to delivering the services sought under the RFP for design phase and construction phase services for this Project.
- C2. Provide a brief descriptive summary as to the Respondent's approach to the following items:
 - a. Geothermal Design: Describe the approach to ensure that the design meets the minimum performance standards as defined in the RFP.
 - b. Airfield Pavement Construction: Describe the approach to ensure that all work within the Airport Operations Area (AOA) is complete within the specified 60 day timeframe and in compliance with FAA standards.
 - c. Value Analysis: Describe the process by which your firm performs value analysis so as to achieve an appropriate balance between costs and function. Provide a sample value analysis report from one (1) of the projects listed in B.2 above.
 - d. Constructability Items: Identify three (3) constructability items in regard to the projects highlights in B.2.a above and provide a brief description of your firm's approach to these items.
 - e. Cost Model/Estimates: Provide the cost model format used on one of the projects listed in B.2 above and describe the timing of updates during design, and summarize how the final construction cost related to this cost model.
 - f. Project Tracking/Reporting: Describe your firm's approach and procedures for project tracking and reporting, including scheduling, and accounting. Name the software used. Provide an example of a progress report.
 - g. Request for Information, Request for Qualifications, change orders, and shop drawings: Describe your firm's approach to handling, tracking and reporting these documents to ensure accuracy and timeliness.
 - h. Quality Control: Describe how your firm(s) implements quality control throughout design and construction.

SECTION D: TECHNICAL APPROACH (ALTERNATE PROPOSAL)

Proposers may submit unlimited alternate proposals for this Project. Alternate proposals must, at a minimum, meet the following criteria. Provide a brief descriptive summary as to the Respondent's alternate approach to the following items. Items f, g, and h will be evaluated as part of the alternate proposal unless otherwise specified.

- D1. Geothermal Design: Define performance standards the system will meet in regards to energy and water savings and air emissions reduction.
- D2. Airfield Pavement Construction: Describe the approach to ensure that all work within the Airport Operations Area (AOA) is complete within the specified 60 day timeframe and in compliance with FAA standards.
- D3. Value Analysis: Describe the process by which your firm performs value analysis so as to achieve an appropriate balance between costs and function. Provide a sample value analysis report from one (1) of the projects listed in B.2 above.

- D4. Constructability Items: Identify three (3) constructability items in regard to the projects highlights in B.2.a above and provide a brief description of your firm's approach to these items.
- D5. Cost Model/Estimates: Provide the cost model format used on one of the projects listed in B.2 above and describe the timing of updates during design, and summarize how the final construction cost related to this cost model.

APPENDIX "C"

NON-COLLUSION AFFIDAVIT

STATE OF _____

COUNTY OF _____

_____ of _____
of lawful age, being first duly sworn on oath says, that (s) he is the agent authorized by the Respondent to submit the attached Response to RFP ("Response").

Affiant further says that the Response filed herewith is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such Response is genuine and not collusive or sham; that said Respondent has not, directly or indirectly, induced or solicited any other Respondent to put in a false or sham Response, and has not, directly or indirectly, colluded, conspired, connived or agreed with any Respondent or anyone else to put in a sham Response, or that anyone else shall refrain from providing a Response, that said Respondent has not in any manner, directly or indirectly sought by agreement, communication or conference with anyone to fix the negotiated price of said Respondent or of any other Respondent, or to fix any overhead, profit or cost element of such negotiated price or that of any other Respondent, or to secure any advantage against the Airport Authority or anyone interested in the proposed contract.

Affiant further states that (s) he understands that any unauthorized contract between the Respondent, its agents, employees or others on the Respondents' behalf, either directly or indirectly, and the Authority's Board, President, Staff, Consultants, Legal Counsel or Architect may cause the Authority to reject a company's Response; that the Respondent has not been a party to any collusion with any of the Authority's Board Members, President, Staff, Consultants, Legal Counsel or Architect as to quantity, quality, or price in the prospective contract; that there has been and shall be no discussions between the parties stated heretofore concerning the exchange of money or other things of value for special consideration.

Affiant further says that all statements contained herein and contained in the Response are true.

Further affiant saith not.

Firm Name: _____ By: _____

Title: _____

APPENDIX "D"

AFFIDAVIT ON DEBARMENT

I hereby certify that as of _____
(Response Opening Date)

_____ will not be debarred from participation in
(Respondent's Name)

any contract let or funded, wholly or in part, by the Federal Highway Administration, the Federal Aviation Administration, the Tennessee Department of Transportation or the Metropolitan Nashville Airport Authority.

I certify by submission of this Response to RFP ("Response") or acceptance of this Contract, that neither I nor my principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. I further agree by submitting this Response that I will include this clause without modification in all lower tier transactions, solicitations, Proposals, contracts and subcontracts. If I or any lower tier participant is unable to certify to this statement, I shall attach an explanation to this Response.

I acknowledge that this Response shall be rejected or if already accepted, that a Contract based on the Response shall be terminated if the information which I hereby certify is incorrect.

(Name)

(Title)

Subscribed and sworn to before me on this _____ day of _____, 2015 by
_____.

Notary Public

My Commission Expires: _____

APPENDIX "E"

STATE OF TENNESSEE DRUG-FREE WORKPLACE AFFIDAVIT

Each Proposer must complete the following Affidavit:

STATE OF TENNESSEE DRUG-FREE WORKPLACE AFFIDAVIT COUNTY

OF _____ NOW COMES AFFIANT, who being duly sworn,
deposes and says:

He/She is the principal officer for _____;

1. That the Proposer has submitted a Proposal to Metropolitan Nashville Airport Authority for the OUTBOUND BAGGAGE LOAD BALANCING.

2. That the proposing entity employs no less than five employees;

3. That Affiant certifies that the Proposer has in effect, at the time of submission of its Proposal to perform the construction referred to above, a drug-free workplace program that complies with § 50-9-113, *Tennessee Code Annotated* ;

4. That this affidavit is made on personal knowledge.

Further Affiant saith not.

Proposer

Subscribed and sworn to before me this _____day of _____, 2015.

Notary Public

My commission expires:_____

APPENDIX "F"
PROPOSAL QUESTIONS
FOR
IMPLEMENTATION OF WATER SOURCE GEOTHERMAL SYSTEM

DATE OF REQUEST: _____

Nena Bowling, Specifications Writer
Fax Number (615) 275-2349
Email: Nena_Bowling@nashintl.com

QUESTION(S): _____

COMPANY: _____

PERSON REQUESTING: _____

TELEPHONE NUMBER: _____

EMAIL ADDRESS: _____

FAX NUMBER: _____

**ALL QUESTIONS MUST BE SUBMITTED AND RECEIVED BY MNAA NO LATER THAN
FEBRUARY 20, 2015 TO BE CONSIDERED FOR RESPONSE. RESPONSES TO
QUESTIONS WILL BE BY ADDENDA.**

APPENDIX G
PRIME / SUBCONTRACTORS LICENSE INFORMATION

TO: Nena Bowling, Specifications Writer, One Terminal Drive, Suite 501
Nashville, TN 37214

PROJECT: IMPLEMENTATION OF WATER SOURCE GEOTHERMAL SYSTEM, CIP 1509.

PROJECT LOCATION: Nashville International Airport, Nashville, TN 37217

PROPOSAL: 2:00 p.m. (local time), March 6, 2015

PRIME CONTRACTOR:

Contractors Name: _____

Contractor Email: _____

Contractor Address: _____

Tennessee Contractor License Number: _____

Tennessee Contractor License Expiration Date: _____

Tennessee Contractor License Classification: _____

—

SUBCONTRACTOR:

Subcontractors Name: _____

Subcontractor Address: _____

Tennessee Subcontractor License Number: _____

Tennessee Subcontractor License Expiration Date: _____

Tennessee Subcontractor License Classification: _____

**FOR ELECTRONIC SUBMISSIONS, THIS WILL SERVE AS THE PROPOSAL ENVELOPE.
IF APPROVED FOR A NON-ELECTRONIC SUBMISSION, THIS FORM TO BE INCLUDED
ON OUTSIDE OF SEALED PROPOSAL ENVELOPE**

APPENDIX "H"

BASE PRICE PROPOSAL FORM

METROPOLITAN NASHVILLE AIRPORT AUTHORITY
NASHVILLE, TENNESSEE

IMPLEMENTATION OF WATER SOURCE GEOTHERMAL SYSTEM

MNAA PROJECT NO. 1509

1. PROPOSER'S DECLARATIONS. The undersigned, in submitting its Price Proposal on the Project, declares and affirms the following:

- (a) The only persons having an interest in this Price Proposal, as principals, are those named in this Proposal.
- (b) Proposer has carefully examined the site of the Project and has read and understood the RFP.
- (c) Proposer can and will carry out and complete this Project pursuant to all of the requirements of the RFP.
- (d) If MNAA accepts this Proposal, Proposer will furnish all required bonds, insurance certificates and other documents within FIVE (5) Calendar Days after the date of the Notice of Award.
- (e) If MNAA accepts this Proposal, Proposer will enter into a contract within FIVE (5) Calendar Days after the date of the Notice of Award.
- (f) If MNAA accepts this Proposal, Proposer will complete all Work described in the RFP within **THREE HUNDRED SIXTY-FIVE (365) Calendar Days and all work in the AOA within 60 Calendar Days of which are included in the 365 Calendar Days** and the days shall begin the date the Notice to Proceed is given.
- (g) The Contract Price proposed in this Proposal includes the furnishing of all Labor, Materials, Tools and Equipment and performing all of the Work involved in the various portions of the Project as specified in the RFP, or as directed by the MNAA or its authorized agents, and upon the terms and conditions and in the manner set forth in the RFP, under penalty of the Bond attached to this Proposal, and to the full satisfaction and acceptance of MNAA. Proposer agrees that the amount of the Proposal will be guaranteed until the award of Proposal, up to 90 days.
- (h) Proposer nor any of its officers, partners, agents, representatives, employees or parties in interest, has in any way, directly or indirectly, entered into any combination, collusion, undertaking, conspiracy, or agreement with any other Proposer or Proposers to maintain the prices of the Work, or any compact to prevent any other Proposer or Proposers from proposing on the Contract or Work, nor has Proposer paid or agreed to pay directly or indirectly any person, firm, corporation or other Proposer any money or valuable consideration for

attempting to fix the prices in the Proposal or the Proposal of any Proposer, and further states that no such money or other reward will ever be paid for this purpose.

BASE PROPOSAL. The undersigned Proposer, having inspected the areas involved and being familiar with all conditions likely to be encountered affecting the cost and scheduling of the Work, and having examined the RFP, hereby proposes to furnish all Design, Labor, Materials, Tools, Equipment and Services required to perform all Work in strict accordance with the RFP as prepared by MNAA for design and build services for the **IMPLEMENTATION OF WATER SOURCE GEOTHERMAL SYSTEM** within **THREE HUNDRED SIXTY-FIVE (365)** Calendar Days which will begin to run the date the Notice to Proceed is given, for the Guaranteed Maximum Price of:

_____ Dollars (\$_____).

ADD ALTERNATE 1. The undersigned Proposal, having inspected the areas involved and being familiar with all conditions likely to be encountered affecting the cost and scheduling of the Work, and having examined the RFP, hereby proposes to furnish all Design, Labor, Materials, Tools, Equipment and Services required to perform all Work in strict accordance with the RFP as prepared by MNAA for design and build services for **ADD ALTERNATE 1 – HEAT PUMP** with **NO ADDITIONAL CONTRACT TIME**, for the Guaranteed Maximum Price of:

_____ Dollars (\$_____).

Proposer agrees that MNAA will not be responsible for any errors or omissions on the part of Proposer in making up its Proposal.

2. BID SURETY. Enclosed with this Proposal is an irrevocable Bank Letter of Credit, Bid Bond or Certified or Cashiers Check in the amount of _____ Dollars (\$_____), being ten percent (10%) of the proposed Contract Price stated above, which is to be forfeited if, in the event this Proposal is accepted, the undersigned Proposer shall fail to execute the Contract and furnish satisfactory evidence of insurance and Performance and Payment Bonds under the Conditions and within the time specified hereinafter, otherwise the sum will be returned to Proposer.

3. PROPOSAL CONDITIONS. Proposer understands, agrees and warrants the following:

- (a) MNAA reserves the right to waive irregularities, technicalities and informalities, and the right to reject any and all Proposals, and to negotiate with the apparent responsive and responsible low Proposer if necessary.
- (b) Proposer will begin operations within FIVE (5) days after the Notice to Proceed, and the Work shall be completed within THREE HUNDRED SIXTY FIVE (365) Calendar Days and the days shall begin the date after the Notice to Proceed is given.

- (c) If Proposer fails to complete the Work within the Contract Time, it will be assessed Liquidated Damages as set forth in Subsection 80.5 of the General Conditions. Proposer agrees that MNAA may deduct the Liquidated Damages from retained funds and/or Contract balances, if available, by unilateral Change Order.
- (d) Proposer has carefully examined the RFP, including but not limited to the Request for Proposals and all associated appendices. Proposer has also considered all conditions and circumstances relating to the Bid. Proposer is responsible for making technical inquiries and failure to make such inquiries or examinations shall not relieve Proposer of its obligations and responsibilities under the RFP.

4. ADD/DEDUCT ALTERNATES This section specifies administrative and procedural requirements for Add/Deduct Alternates.

- (a) Definition: An Add/Deduct Alternate is an amount proposed by Proposers and stated on the Proposal Form for certain construction activities defined in the Proposal Schedule that may be added or deducted to the Base Proposal amount if MNAA decides to accept a corresponding change in either the amount of construction to be completed, or in the products, materials, equipment, systems or installation methods described in RFP.
- (b) Coordination: The Proposer shall coordinate related Work and modify or adjust adjacent Work as necessary to ensure that Work affected by each accepted Alternate is complete and fully integrated in to the project.
- (c) Notification: Following the award of the Contract, MNAA shall prepare and distribute to each party involved, notification of the status of each Add/Deduct Alternate. The notification shall indicate whether Add/Deduct Alternates have been accepted, rejected or deferred for consideration at a later date.
- (d) Specifications: Any accepted Add/Deduct Alternate shall be constructed in accordance with the applicable technical specifications referenced in the Proposal Schedule and contained herein

5. JURISDICTION Any legal action, suit or proceeding under, relating to or arising out of or in connection with this Proposal may be brought exclusively in the United States District Court for the Middle District of Tennessee or in the state courts of Davidson County, State of Tennessee, and by execution and delivery of this Proposal, Proposer irrevocably accepts, consents and submits to the jurisdiction of the aforesaid courts *in personam*, generally and unconditionally, with respect to any such action, suit or proceeding involving Proposer. Proposer further irrevocably consents and agrees to the service of any and all legal process, summons, notices and documents out of any of the aforesaid courts in any such action, suit or proceeding by mailing copies thereof by registered or certified mail, postage prepaid, to Proposer at the address set forth in this Proposal. In addition, Proposer irrevocably and unconditionally waives any objection which Proposer may now or hereafter have to the laying of venue of any of the aforesaid claims, suits or proceedings brought in any of the aforesaid courts, and further irrevocably and unconditionally waives and agrees not to plead or claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. In any such legal suit brought by the Proposer, the Court shall have the power to award to the prevailing party its reasonable attorneys' fees, expenses and costs.

6. WAIVER. Proposer waives any right it may have to protest the selection of the lowest responsive and responsible Proposal by MNAA. Proposer further waives any cause of action it may have against MNAA and the Engineer relating to the selection of the lowest responsive and responsible Proposal. This waiver is effective notwithstanding the fact that the Authority may have in place certain Proposal protest procedures, which may be applicable in other situations.

7. HEALTH AND SAFETY STANDARDS IN CONSTRUCTION CONTRACTS. Proposer understands that it will be a condition of this Contract, and shall be made a condition of each Subcontract entered into pursuant to this Contract, that the Successful Proposer/Contractor and any Subcontractor shall not require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsatisfactory, hazardous, or dangerous to his health or safety, as determined under Construction Safety and Health Standards Title 29, CFR, Part 1518, 36 FR 7340, promulgated by the U.S. Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act, 82 Stat. 96.

8. CERTIFICATION OF NONSEGREGATED FACILITIES AS REQUIRED BY 41 CFR 60-1.8. These requirements are applicable to (1) contracts, (2) subcontracts, and (3) agreements with applicants who are themselves performing federally assisted construction contracts exceeding \$10,000, which are not exempt from the provisions of the Equal Opportunity Clause.

By the submission of this Proposal, Proposer, offerer, applicant, or subcontractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. Proposer, offerer, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, rest rooms or wash rooms, restaurants or other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or other entertainment areas, transportation and housing facilities provided for the employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom, or otherwise. Proposer further agrees that, (except where he/she has obtained identical certification from proposed subcontractors for specific time periods) Proposer will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, that it will retain such certifications in Proposer's files; and that Proposer will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications of specific time periods).

9. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

THE FOLLOWING LIST OF DISADVANTAGED BUSINESS ENTERPRISE FIRMS IS TO BE COMPLETED AND SUBMITTED AT THE TIME THIS PROPOSAL IS DUE, IN ACCORDANCE WITH PROVISIONS OF THE GENERAL CONDITIONS.

The undersigned hereby attests that _____ percent (_____%) of the Proposal Price of the Project shall be awarded to and performed by certified Disadvantaged Business Enterprises, _____ percent (_____%) of which are minority owned DBE's and _____ percent (_____%) of which are female owned DBE's as follows:

LIST OF DBE SUBCONTRACTORS

DBE Subcontractor Names & Addresses	Certifying Agency	Subcontract Work Item	Dollar Value Subcontract Work

Total Dollar Value of Subcontract Work

Total Dollar Value of Base Proposal

Percent of Total

_____ %

10. LIST OF PROPOSED SUBCONTRACTORS.

The following list of proposed subcontractors is to be completely executed and submitted at the time the Proposal is due for all subcontractors proposed to perform 5% or more of the total contract price.

All subcontractors are subject to the approval of the Authority.

Subcontractor Firm Name	Percent Of Total Contract	Description Of Work To Be Sublet

11. PROPOSAL ADDENDA. Proposer hereby acknowledges receipt of, and is familiar with the contents of, the following Addenda:

Addendum No. _____ Dated _____ No. of Pages _____

Addendum No. _____ Dated _____ No. of Pages _____

Addendum No. _____ Dated _____ No. of Pages _____

Addendum No. _____ Dated _____ No. of Pages _____

12. NO SOLICITATION FEE. No person or selling agency has been employed or retained to solicit or secure the Contract for a fee, except bona fide employees of Proposer or bona fide commercial or selling agency maintained by Proposer for the purpose of securing business.

13. NO UNDISCLOSED RECOMMENDATIONS. Proposer has neither recommended nor suggested to MNAA, or any of its members, officers, or employees, any of the terms or provisions set forth in the Contract Documents, except at a meeting open to all interested Proposers, of which proper notice was given.

14. NO RELATIONSHIP TO MNAA. No officer or stockholder of Proposer is a member of the MNAA or its staff, or related to any members of the MNAA or its staff except as noted herein below:

15. NO BENEFIT TO PUBLIC OFFICIALS. No member of or delegate to Congress or state or local public official shall be admitted to any share or part of the Contract or to any benefit that may arise from it; provided, however, this provision shall not be construed to extend to the Contract if made with a corporation for its general benefit.

16. BREACH. For breach or violation of any of the covenants expressed in the Proposal Form, MNAA shall have the right to declare Proposer not eligible for Award of the Contract, if such breach or violation becomes known prior to Award or, if such breach or violation becomes known after Award, to void the Contract without liability; or in its discretion to deduct from the Contract Price, or otherwise recover, the full amounts paid in violation of these covenants, or the value of participation in violation of these covenants.

Any violation or breach of terms of this contract on the part of the contractor or their subcontractors may result in the suspension or termination of this contract or such other

action that may be necessary to enforce the rights of the parties to this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

PROPOSER: _____
(Company Name)

BY: _____

TITLE: _____

ATTEST:

ADDRESS OF PROPOSER:

PHONE NUMBER: _____

FAX NUMBER: _____

APPENDIX "I"

ALTERNATE TECHNICAL APPROACH NO. []

PRICE PROPOSAL FORM

METROPOLITAN NASHVILLE AIRPORT AUTHORITY
NASHVILLE, TENNESSEE

IMPLEMENTATION OF WATER SOURCE GEOTHERMAL SYSTEM

MNAA PROJECT NO. 1509

2. PROPOSER'S DECLARATIONS. The undersigned, in submitting its Price Proposal on the Project, declares and affirms the following:

(a) The only persons having an interest in this Price Proposal, as principals, are those named in this Proposal.

(b) Proposer has carefully examined the site of the Project and has read and understood the RFP.

(c) Proposer can and will carry out and complete this Project pursuant to all of the requirements of the RFP.

(d) If MNAA accepts this Proposal, Proposer will furnish all required bonds, insurance certificates and other documents within FIVE (5) Calendar Days after the date of the Notice of Award.

(e) If MNAA accepts this Proposal, Proposer will enter into a contract within FIVE (5) Calendar Days after the date of the Notice of Award.

(f) If MNAA accepts this Proposal, Proposer will complete all Work described in the RFP within **THREE HUNDRED SIXTY-FIVE (365) Calendar Days and all work in the AOA within 60 Calendar Days of which are included in the 365 Calendar Days** and the days shall begin the date the Notice to Proceed is given.

(g) The Contract Price proposed in this Proposal includes the furnishing of all Labor, Materials, Tools and Equipment and performing all of the Work involved in the various portions of the Project as specified in the RFP, or as directed by the MNAA or its authorized agents, and upon the terms and conditions and in the manner set forth in the RFP, under penalty of the Bond attached to this Proposal, and to the full satisfaction and acceptance of MNAA. Proposer agrees that the amount of the Proposal will be guaranteed until the award of Proposal, up to 90 days.

(h) Proposer nor any of its officers, partners, agents, representatives, employees or parties in interest, has in any way, directly or indirectly, entered into any combination, collusion, undertaking, conspiracy, or agreement with any other Proposer or Proposers to maintain the prices of the Work, or any compact to prevent any other Proposer or Proposers from proposing on the Contract or Work, nor has Proposer paid or agreed to pay directly or indirectly any person, firm, corporation or other Proposer any money or valuable consideration for attempting to fix the prices in the Proposal or the Proposal of any

Proposer, and further states that no such money or other reward will ever be paid for this purpose.

ALTERNATE TECHNICAL APPROACH NO. [1] PROPOSAL. The undersigned Proposer, having inspected the areas involved and being familiar with all conditions likely to be encountered affecting the cost and scheduling of the Work, and having examined the RFP, hereby proposes to furnish all Design, Labor, Materials, Tools, Equipment and Services required to perform all Work in strict accordance with the RFP as prepared by MNAA for design and build services for the **IMPLEMENTATION OF WATER SOURCE GEOTHERMAL SYSTEM** within **THREE HUNDRED SIXTY-FIVE (365)** Calendar Days which will begin to run the date the Notice to Proceed is given, for the Guaranteed Maximum Price of:

_____ Dollars (\$_____).

Proposer agrees that MNAA will not be responsible for any errors or omissions on the part of Proposer in making up its Proposal.

PROPOSAL CONDITIONS. Proposer understands, agrees and warrants the following:

(i) MNAA reserves the right to waive irregularities, technicalities and informalities, and the right to reject any and all Proposals, and to negotiate with the apparent responsive and responsible low Proposer if necessary.

(j) Proposer will begin operations within FIVE (5) days after the Notice to Proceed, and the Work shall be completed within THREE HUNDRED SIXTY FIVE (365) Calendar Days and the days shall begin the date after the Notice to Proceed is given.

(k) If Proposer fails to complete the Work within the Contract Time, it will be assessed Liquidated Damages as set forth in Subsection 80.5 of the General Conditions. Proposer agrees that MNAA may deduct the Liquidated Damages from retained funds and/or Contract balances, if available, by unilateral Change Order.

(l) Proposer has carefully examined the RFP, including but not limited to the Request for Proposals and all associated appendices. Proposer has also considered all conditions and circumstances relating to the Bid. Proposer is responsible for making technical inquiries and failure to make such inquiries or examinations shall not relieve Proposer of its obligations and responsibilities under the RFP.

17.ADD/DEDUCT ALTERNATES This section specifies administrative and procedural requirements for Add/Deduct Alternates.

(a) Definition: An Add/Deduct Alternate is an amount proposed by Proposers and stated on the Proposal Form for certain construction activities defined in the Proposal Schedule that may be added or deducted to the Base Proposal amount if MNAA decides to accept a corresponding change in either the amount of construction to be completed, or in the products, materials, equipment, systems or installation methods described in RFP.

(b) Coordination: The Proposer shall coordinate related Work and modify or adjust adjacent Work as necessary to ensure that Work affected by each accepted Alternate is complete and fully integrated in to the project.

(c) Notification: Following the award of the Contract, MNAA shall prepare and distribute to each party involved, notification of the status of each Add/Deduct Alternate. The notification shall indicate whether Add/Deduct Alternates have been accepted, rejected or deferred for consideration at a later date.

(d) Specifications: Any accepted Add/Deduct Alternate shall be constructed in accordance with the applicable technical specifications referenced in the Proposal Schedule and contained herein

18. JURISDICTION. Any legal action, suit or proceeding under, relating to or arising out of or in connection with this Proposal may be brought exclusively in the United States District Court for the Middle District of Tennessee or in the state courts of Davidson County, State of Tennessee, and by execution and delivery of this Proposal, Proposer irrevocably accepts, consents and submits to the jurisdiction of the aforesaid courts *in personam*, generally and unconditionally, with respect to any such action, suit or proceeding involving Proposer. Proposer further irrevocably consents and agrees to the service of any and all legal process, summons, notices and documents out of any of the aforesaid courts in any such action, suit or proceeding by mailing copies thereof by registered or certified mail, postage prepaid, to Proposer at the address set forth in this Proposal. In addition, Proposer irrevocably and unconditionally waives any objection which Proposer may now or hereafter have to the laying of venue of any of the aforesaid claims, suits or proceedings brought in any of the aforesaid courts, and further irrevocably and unconditionally waives and agrees not to plead or claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. In any such legal suit brought by the Proposer, the Court shall have the power to award to the prevailing party its reasonable attorneys' fees, expenses and costs.

19. WAIVER. Proposer waives any right it may have to protest the selection of the lowest responsive and responsible Proposal by MNAA. Proposer further waives any cause of action it may have against MNAA and the Engineer relating to the selection of the lowest responsive and responsible Proposal. This waiver is effective notwithstanding the fact that the Authority may have in place certain Proposal protest procedures, which may be applicable in other situations.

20. HEALTH AND SAFETY STANDARDS IN CONSTRUCTION CONTRACTS. Proposer understands that it will be a condition of this Contract, and shall be made a condition of each Subcontract entered into pursuant to this Contract, that the Successful Proposer/Contractor and any Subcontractor shall not require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsatisfactory, hazardous, or dangerous to his health or safety, as determined under Construction Safety and Health Standards Title 29, CFR, Part 1518, 36 FR 7340, promulgated by the U.S. Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act, 82 Stat. 96.

21. CERTIFICATION OF NONSEGREGATED FACILITIES AS REQUIRED BY 41 CFR 60-1.8. These requirements are applicable to (1) contracts, (2) subcontracts, and (3) agreements with applicants who are themselves performing federally assisted construction contracts exceeding \$10,000, which are not exempt from the provisions of the Equal Opportunity Clause.

By the submission of this Proposal, Proposer, offerer, applicant, or subcontractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that he/she does not permit his/her employees to perform their

services at any location, under his/her control, where segregated facilities are maintained. Proposer, offerer, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, rest rooms or wash rooms, restaurants or other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or other entertainment areas, transportation and housing facilities provided for the employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom, or otherwise. Proposer further agrees that, (except where he/she has obtained identical certification from proposed subcontractors for specific time periods) Proposer will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, that it will retain such certifications in Proposer's files; and that Proposer will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications of specific time periods).

22.DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

THE FOLLOWING LIST OF DISADVANTAGED BUSINESS ENTERPRISE FIRMS IS TO BE COMPLETED AND SUBMITTED AT THE TIME THIS PROPOSAL IS DUE, IN ACCORDANCE WITH PROVISIONS OF THE GENERAL CONDITIONS.

The undersigned hereby attests that _____ percent (_____%) of the Proposal Price of the Project shall be awarded to and performed by certified Disadvantaged Business Enterprises, _____ percent (_____%) of which are minority owned DBE's and _____ percent (_____%) of which are female owned DBE's as follows:

LIST OF DBE SUBCONTRACTORS

DBE Subcontractor Names & Addresses	Certifying Agency	Subcontract Work Item	Dollar Value Subcontract Work

Total Dollar Value of Subcontract Work

Total Dollar Value of Base Proposal

Percent of Total

_____ %

23. LIST OF PROPOSED SUBCONTRACTORS.

The following list of proposed subcontractors is to be completely executed and submitted at the time the Proposal is due for all subcontractors proposed to perform 5% or more of the total contract price.

All subcontractors are subject to the approval of the Authority.

Subcontractor Firm Name	Percent Of Total Contract	Description Of Work To Be Sublet

24.NO SOLICITATION FEE. No person or selling agency has been employed or retained to solicit or secure the Contract for a fee, except bona fide employees of Proposer or bona fide commercial or selling agency maintained by Proposer for the purpose of securing business.

25.NO UNDISCLOSED RECOMMENDATIONS. Proposer has neither recommended nor suggested to MNAA, or any of its members, officers, or employees, any of the terms or provisions set forth in the Contract Documents, except at a meeting open to all interested Proposers, of which proper notice was given.

26.NO BENEFIT TO PUBLIC OFFICIALS. No member of or delegate to Congress or state or local public official shall be admitted to any share or part of the Contract or to any benefit that may arise from it; provided, however, this provision shall not be construed to extend to the Contract if made with a corporation for its general benefit.

27.BREACH. For breach or violation of any of the covenants expressed in the Proposal Form, MNAA shall have the right to declare Proposer not eligible for Award of the Contract, if such breach or violation becomes known prior to Award or, if such breach or violation becomes known after Award, to void the Contract without liability; or in its discretion to deduct from the Contract Price, or otherwise recover, the full amounts paid in violation of these covenants, or the value of participation in violation of these covenants.

Any violation or breach of terms of this contract on the part of the contractor or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties to this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

PROPOSER: _____
(Company Name)

BY: _____

TITLE: _____

ATTEST:

ADDRESS OF PROPOSER:

PHONE NUMBER: _____

FAX NUMBER: _____

APPENDIX J
DESIGN-BUILD CONTRACT

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the _____ day of _____ in the year of 2015.

BETWEEN the Owner:

*Metropolitan Nashville Airport Authority
One Terminal Dr, Suite 501
Nashville, TN 37214*

and the Design-Builder:

*<Insert DB Contractor Name>
<Insert Address>
<City, State, Zip>*

For the following Project:

*CIP 1509 Implementation of Water Source Geothermal System
Nashville International Airport*

The Owner and Design-Builder agree as follows:

TABLE OF ARTICLES

- | | |
|----------|--|
| 1 | THE DESIGN-BUILD DOCUMENTS |
| 2 | WORK OF THIS AGREEMENT |
| 3 | DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION |
| 4 | CONTRACT SUM |
| 5 | PAYMENTS |
| 6 | DISPUTE RESOLUTION |
| 7 | MISCELLANEOUS PROVISIONS |
| 8 | ENUMERATION OF THE DESIGN-BUILD DOCUMENTS |

TABLE OF EXHIBITS

- | | |
|-----------|--|
| A | TERMS AND CONDITIONS |
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| F. | DBE SUBCONTRACTOR PARTICIPATION |
| G. | FIXED HOURLY RATES |
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ARTICLE 1 THE DESIGN-BUILD DOCUMENT

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits and/or Attachments; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be identified in a Notice to Proceed issued by the Owner in accordance with Section 80-02 of the Specifications, General Provisions.

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents in Section 80-07 of the Specifications, General Provisions.

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than 365 calendar days from the date of commencement.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be the Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

§ 4.2 STIPULATED SUM - Not used

§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE – Not used

§ 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 Not used

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed _____ DOLLARS (\$_____), subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design—Build Documents and are hereby accepted by the Owner: none

§ 4.4.3.3 Unit Prices - Not Used

§ 4.4.3.4 Owner's Allowance – Not Used.

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:

- All applicable Federal, State, or local guidelines.
- Request for Proposal with All Attachments, Exhibits, and Addenda, issued December 2014
- Design-Build Team's response to Request for Proposal.

§ 4.5 CHANGES IN THE WORK

§4.5.1 Adjustments of the Cost of Work on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided in Section 90 of Specifications, General Provisions.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. The Design-Builder must submit a written narrative with each application for payment. See Exhibit A, Article 9 for additional information for application for payment.

§ 5.1.3 Provided an Application for Payment is received by the Owner not later than the first (1st) day of a month, the Owner shall make payment to the GC/CM not later than the thirtieth (30th) day of the current month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

§ 5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 Not Used

§ 5.1.6 The Design-Builder's Applications for Payment shall be accurate and complete. Processing and payment by the Owner shall not be interpreted to mean that the Owner has made a detailed explanation, audit or arithmetic verification of the documentation, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site. See Section 90-07 of Specifications, General Provisions.

§ 5.2 PROGRESS PAYMENTS – STIPULATED SUM – “Section not used”

§ 5.3 PROGRESS PAYMENTS – COST OF THE WORK PLUS A FEE – “Section not used”

§ 5.4 PROGRESS PAYMENTS – COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payments where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the

Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work, in the schedule of values. Completed Work within approved and executed change orders may be included for payment as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;

- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee
- .4 Subtract retainage of five percent (5%.)
- .5 Subtract the aggregate of previous payments made by the Owner;

§ 5.4.3 Except with the Owner's prior approval, payments for the Work shall be subject to retainage of not less than five percent (5%.) The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments.

§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment. See Section 90-09 of Specifications, General Provision for additional information.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 The parties agree to endeavor, in good faith and in recognition of the costs and expenses associated with legal proceedings, to resolve and settle among themselves any disputes or controversies pertaining to the Contract. However, if settlement or resolution cannot be reached, the parties agree to the following dispute resolution procedures:

§ 6.2 Mediation: If during the course of this Contract the parties are unable to resolve any dispute or controversy arising out of or relating to the Contract, such claims shall first be subject to non-binding mediation as a condition precedent to the initiation of any legal action (either court action or arbitration). The mediation, unless the parties mutually agree otherwise in writing, shall be in accordance with the Construction Industry Rules of the American Arbitration Association. Demand for mediation shall be made in writing. The parties agree to share in the mediator's fee and any filing fees. Any mediation will be held in Nashville, Tennessee. Agreements reached in mediation shall be as enforceable as settlement agreements. Each party agrees to bear its own attorneys' fees associated with the mediation.

§ 6.3 ARBITRATION

§ 6.3.1 Arbitration and Litigation: If the mediation described in Section (a) is unsuccessful, then, in the Authority's sole discretion, any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be resolved by either binding arbitration or litigation (filed in the state or local courts of Nashville, Tennessee). The Authority will notify the Engineer in writing of its election of arbitration or litigation within 20 days after the date of the unsuccessful mediation, and Engineer agrees not to commence any legal action against the Authority until such election is made and communicated. If the Authority elects binding arbitration, it shall be administered, unless the parties mutually agree otherwise in writing, in accordance with the most recent Construction Industry Rules of the American Arbitration Association. Whether arbitration or litigation is elected by the Authority, any hearing shall be held in

Nashville, Tennessee, and the Court or Arbitrator(s) shall have the power to award to the prevailing party its reasonable attorneys' fees, expenses and costs.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the State of Tennessee and are listed in Exhibit D.

§ 7.2 not used

§ 7.3 not used

§ 7.4 not used

§ 7.4.1 The Owner's Designated Representative shall be authorized to act on the Owner's behalf with respect to the Project. The Owner's Designated Representative shall be the MNAA Vice President - Development & Engineering and Chief Engineer.

§ 7.5 The Design-Builder's Designated Representative is:
(Insert name, address and other information.)

§ 7.5.1 the Design-Builder's Designated Representative shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 The Design-Builder's Team, as identified in Exhibit D, Staffing Organization Chart, shall not be changed without approval from the Owner. Design-Builder's Team may revise its Staffing Organization Chart only with the prior written approval of the Owner. Any revision must be requested within ten days after Design-Build Team receives a written Notice to Proceed. Any revised Staffing Organization Chart shall include the following information for each professional-level employee proposed for assignment on the Project:

1. Name of employee;
2. Description of Project task(s);
3. Applicable registration;
4. Principal office of employment;
5. Summary of relevant experience; and
6. Date and expected duration of assignment

The Owner may require removal from the Project of any employee of Design-Build Team providing services under this Contract. During the term of this Contract, Design-Build Team must obtain, maintain and pay for all licenses, permits, and certificates, including all professional licenses required by any statute, ordinance, rule or regulation. Design-Build Team shall immediately notify the Owner of any suspension, revocation, or other negative action involving its license or the license of any person who has acted or is acting on behalf of the Design-Build Team on the Project.

§ 7.7 Other provisions:

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, Project Criteria, except for Modifications issued after execution of this Agreement, are enumerated as follows:

1. All applicable Federal, State, or local guidelines.

2. Request for Proposal with All Attachments, Exhibits, and Addenda, issued December 2014.
3. Design-Build Team's response to Request for Proposal.

§ 8.1.5 not used

§ 8.1.6 The Addenda, if any, are as follows:

§ 8.1.7 Exhibit A, Terms and Conditions.

§ 8.1.8 Exhibit B, Determination of the Cost of the Work.

§ 8.1.9 Exhibit C, Disadvantaged Business Enterprise

§ 8.1.10 Exhibit D, Staffing/Organization Chart

§ 8.1.11 Exhibit E, Affidavits and Bonds

§ 8.1.12 Exhibit F, DBE Subcontractor Participation

§ 8.1.13 Exhibit G, Fixed Hourly Rates

§ 8.1.14 Exhibit H, DBE Participation Reports

IN WITNESS WHEREOF, the Owner and Design-Builder have executed this Contract as of the date first written above. The Owner and Design-Builder have signed this Contract in multiple copies, each of which is an original.

<Insert Design-Builder>, "Design-Builder"

ATTEST/SEAL:

By: _____

By: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

METROPOLITAN NASHVILLE AIRPORT AUTHORITY "Owner"

APPROVED:

ATTEST/SEAL:

Julie H. Mosley, P.E.
MNAA Board Chair

Robert J. Walker
MNAA Board Secretary

**APPROVED AS TO FORM
& LEGALITY:**

Robert R. Wigington
President & CEO

Robert C. Watson
Senior Vice President & Chief
Legal Officer

RECOMMENDED:

SUFFICIENCY OF FUNDS:

Robert L. Ramsey, P.E., A.A.E.
Vice President – Development & Chief Engineer

Stan R. Van Ostran, JD, CPA, A.A.E.
Vice President & Chief Financial Officer

EXHIBIT A

Terms and Conditions

for the following PROJECT:

*CIP 1509 Implementation of Water Source Geothermal System
Nashville International Airport*

THE OWNER:

*Metropolitan Nashville Airport Authority
One Terminal Dr, Suite 501
Nashville, TN 37214*

THE DESIGN BUILDER:

*<Insert DB Contractor Name>
<Insert Address>
<City, State, Zip>*

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A.14	TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT

ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1. AASHTO

The American Association of State Highway and Transportation Officials, the successor association to AASHO.

§ A.1.1.2. ACCESS ROAD

The right-of-way, the roadway and all improvements constructed thereon connecting the airport to a public highway.

§ A.1.1.3. ADVERTISEMENT

A public announcement, as required by local law, inviting bids for work to be performed and materials to be furnished.

§ A.1.1.4. AIP

The Airport Improvement Program, a grant-in-aid program, administered by the Federal Aviation Administration.

§ A.1.1.5. AIR OPERATIONS AREA

For the purpose of the contract and these specifications, the term air operations area shall mean any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operation area shall include such paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiway, or apron.

§ A.1.1.6. AIRPORT

Airport means an area of land or water which is used or intended to be used for the landing and takeoff of aircraft, and includes its buildings and facilities, if any, and any and all property and improvements owned, leased or controlled by Owner which shall mean the Metropolitan Nashville Airport Authority, Nashville, Tennessee.

§ A.1.1.7. ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.8. ASTM

The American Society for Testing and Materials.

§ A.1.1.9. AWARD

The acceptance, by Owner, of the successful bidder's bid.

§ A.1.1.10. BANK LETTER OF CREDIT

The irrevocable letter of credit issued by a commercial bank acceptable to Owner, in a form acceptable to Owner in its sole discretion and drawable at a financial institution located in Nashville, Tennessee, and having an expiration date not prior to 90 days following the bid opening date. Bidder is encouraged to use a Disadvantaged Financial Institution with respect to its Letter of Credit.

§ A.1.1.11. BID GUARANTY

The security furnished with a bid to guarantee that the bidder will enter into a contract if his/her bid is

accepted by Owner.

§ A.1.1.12. BIDDER

Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a bid for the work contemplated.

§ A.1.1.13. BUILDING AREA

An area on the airport to be used, considered, or intended to be used for airport buildings or other airport facilities or rights-of-way together with all airport buildings and facilities located thereon.

§ A.1.1.14. CALENDAR DAY

Every day shown on the calendar.

§ A.1.1.15. CHANGE ORDER

A written order to the Contractor covering changes in the plans, specifications, or bid quantities and establishing the basis of payment and contract time adjustment, if any, for the work affected by such changes. The work, covered by a change order, shall be within the scope of the contract.

§ A.1.1.16. CONTRACT

The written agreement covering the work to be performed. The awarded contract shall include, but is not limited to the items enumerated in Article 8, Enumeration of Design Build Documents.

§ A.1.1.17. CONTRACT ITEM (PAY ITEM)

A specific unit of work for which a price is provided in the contract.

§ A.1.1.18. CONTRACT TIME

The number of calendar days or working days allowed for completion of the contract, including authorized time extensions. If a calendar date of completion is stated, in lieu of a number of calendar or working days, the contract shall be completed by that date. Time limits as stated in the contract are critical and of the essence in the contract.

§ A.1.1.19. CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work.

§ A.1.1.20. THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.21. DRAINAGE SYSTEM

The system of pipes, ditches, and structures by which surface or subsurface waters are collected and conducted from the airport area.

§ A.1.1.22. ENGINEER

The individual, partnership, firm, or corporation duly authorized by the Owner to be responsible for engineering inspection of the contract work and acting directly or through an authorized representative.

§ A.1.1.23. EQUIPMENT

All machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the work.

§ A.1.1.24. EXTRA WORK

An item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, but which is found by the Engineer to be necessary to complete the work within the intended scope of the contract as previously modified.

§ A.1.1.25. FAA

The Federal Aviation Administration of the U.S. Department of Transportation. When used to designate a person, FAA shall mean the Administrator or his/her duly authorized representative.

§ A.1.1.26. FEDERAL SPECIFICATIONS

The Federal Specifications and Standards, Commercial Item Descriptions, and supplements, amendments, and indices thereto are prepared and issued by the General Services Administration of the Federal Government.

§ A.1.1.27. FINAL ACCEPTANCE

Final Acceptance shall occur in accordance with the contract and shall occur only when all of the work has been fully and finally performed as required by the contract, and has been inspected and so certified by the Engineer.

§ A.1.1.28. FORCE ACCOUNT

Force account construction work is construction that is accomplished through the use of material, equipment, labor, and supervision provided by the Owner or by another public agency pursuant to an agreement with the Owner.

§ A.1.1.29. INSPECTOR

An authorized representative of Owner assigned to make all necessary inspections and/or tests of the work performed or being performed, or of the materials furnished or being furnished by the Design-Builder. An inspector is not authorized to make changes in the contract.

§ A.1.1.30. INTENTION OF TERMS

Whenever, in these specifications or on the plans, the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the Engineer is intended; and similarly, the words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Engineer and/or Owner.

Any reference to a specific requirement of a numbered paragraph of the contract specifications or a cited standard shall be interpreted to include all general requirements of the entire section, specification item, or cited standard that may be pertinent to such specific reference.

Words in the singular or plural, masculine or feminine, present, past, or future tense shall be read as to conform or to give effective meaning to the spirit or intent of the contract.

§ A.1.1.31. LABORATORY

The official testing laboratories of Owner or such other laboratories as may be designated by the Engineer.

§ A.1.1.32. LIQUIDATED DAMAGES

Liquidated damages will be assessed in an amount set forth in the Specifications Section 80-08 of the General Provisions.

§ A.1.1.33. MAJOR AND MINOR CONTRACT ITEMS

A major contract item shall be any item that is listed in the bid contract item, the total cost of which is equal to or greater than 20 percent of the total amount of the award contract. All other items shall be considered minor contract items.

§ A.1.1.34. MATERIALS

Any substance or supplies specified for use in the construction of the contract work.

§ A.1.1.35. NOTICE TO PROCEED

A written notice to the Design-Builder to begin the actual contract work. The Notice to Proceed shall state the date on which the contract time begins.

§ A.1.1.36. NOTICE OF AWARD

Written notice to the successful bidder that his/her bid has been accepted by Owner, subject to all of the terms and conditions and limitations of the contract.

§ A.1.1.37. OWNER

The owner is the Metropolitan Nashville Airport Authority, which is also referred to as "MNA" or "Authority." For AIP contracts, the term "sponsor" shall have the same meaning as the term "Owner." Where the term "Owner" is capitalized in this document, it shall mean airport owner or sponsor only.

§ A.1.1.38. OR EQUAL

Whenever the words "or equal" appear in the contract, they shall be interpreted to mean an item of material or equipment equal in quality to that named in the contract and which is suited to the same use, and capable of performing the same function with at least equivalent efficiency, as that named. Inclusion of "or equal" material or equipment in the contractor's bid shall not obligate Owner to accept such material or equipment if, in the engineer's sole opinion, it does not meet or exceed the requirements of the contract and purposes of the specifications. It is not required that the engineer prove that the alternate proposed by the contractor as being equal does not meet the specifications, but the burden of the proof of equal quality or service shall be the responsibility of the contractor. Any dispute as to equality shall be determined solely by the engineer whose decision in such matters shall be final.

§ A.1.1.39. PAVEMENT

The combined surface course, base course, and subbase course, if any, considered as a single unit.

§ A.1.1.40. PAYMENT BOND

The approved form of security furnished by the Design-Builder and his/her surety as a guaranty that he will pay in full, subject to the terms of the contract, all bills and accounts for materials, supplies, rentals furnished and labor used in the construction of the work, including Tennessee Unemployment Insurance contributions.

§ A.1.1.41. PERFORMANCE BOND

The approved form of security furnished by the Design-Builder and his/her surety as a guaranty that the Design-Builder will complete the work in accordance with the terms of the contract.

§ A.1.1.42. PLANS

The official drawings or exact reproductions approved by engineer, which show the location, character, dimensions and details of the airport and the work to be done and which are to be considered as a part of the contract, supplementary to the specifications.

§ A.1.1.43. PROGRESS SCHEDULE

The progress schedule shall relate to the entire project or as may be required by the contract. It shall be the document that describes the starting, interfacing, and completion of the various stages of construction and the starting and completion dates of each trade or subcontractor performing work on the contract.

The progress schedule will be in the form required by the contract. Before beginning work, the contractor shall provide the progress schedule to the engineer and it will be a contract document. The engineer may require the contractor to provide a revised or updated progress schedule during the course of the project.

§ A.1.1.44. THE PROJECT

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

§ A.1.1.45. PROJECT CRITERIA

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.46. RUNWAY

The area on the airport prepared for the landing and takeoff of aircraft.

§ A.1.1.47. SAMPLES

The physical examples or specimens which illustrate materials, equipment or workmanship or provide specimens or establish standards by which the work will be judged.

§ A.1.1.48. SECURED AREAS

The contractor may be assigned certain secured areas or given access to security or restricted areas, and which areas would otherwise not be accessible to the contractor or the subcontractor or their employees.

§ A.1.1.49. SHOP DRAWINGS

The drawings, diagrams, schedules or other data specially prepared for the work by the contractor or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work.

§ A.1.1.50. SPECIFICATIONS

A part of the contract containing the written directions and requirements for completing the contract work. Standards for specifying materials or testing which are cited and incorporated in the contract specifications by reference shall have the same force and effect as if included in the contract physically.

§ A.1.1.51. STRUCTURES

Airport facilities such as apron/ramp areas; bridges; culverts; catch basins, inlets, retaining walls, cribbing; storm and sanitary sewer lines; water lines; underdrains; electrical ducts, manholes, handholes, lighting fixtures and bases; transformers; flexible and rigid pavements; navigational aids; buildings; vaults; and, other manmade features of the airport that may be encountered in the work and not otherwise classified herein.

§ A.1.1.52. SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Design-Builder to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.53. SUBGRADE

The soil that forms the pavement foundation.

§ A.1.1.54. SUBSTANTIAL COMPLETION

Substantial completion shall be certified by the engineer to have occurred when the work is sufficiently complete and has been approved by the Owner, so that Owner may occupy and enjoy the beneficial use of the work or a designated portion thereof.

§ A.1.1.55. SUPERINTENDENT

The Design-Builder's executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the Engineer, and who shall supervise and direct the construction.

§ A.1.1.56. SUPPLEMENTAL AGREEMENT

A written agreement between the Design-Builder and the Owner covering (1) work that would increase or decrease the total amount of the awarded contract, or any major contract item, by more than 25 percent, such increased or decreased work being within the scope of the originally awarded contract; or (2) work that is not within the scope of the originally awarded contract.

§ A.1.1.57. SURETY

The corporation, partnership, or individual, other than the Design-Builder, executing payment or performance bonds that are furnished to Owner by the Design-Builder. Surety must be authorized to do business in Tennessee

§ A.1.1.58. TAXIWAY

For the purpose of this document, the term taxiway means the portion of the air operations area of an airport that has been designated by competent airport authority for movement of aircraft to and from the airport's runways or aircraft parking areas.

§ A.1.1.59. UNIT PRICE

The price specified by the successful bidder (contractor) in the Bid Schedule of the Bid Form for which each work item will be performed or each material item will be furnished in order to complete the project in accordance with the contract.

§ A.1.1.60. THE WORK

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

§ A.1.1.61. WORKING DAY

A working day shall be any day including holidays, Saturdays, and Sundays on which the normal working forces of the Design-Builder may proceed with regular work for at least 4 hours toward completion of the contract. Design-Builder

§ A.1.1.62. WRITTEN NOTICE

All notices required by the contract shall be in writing and shall be sufficient and shall be deemed delivered, if hand delivered, or sent by certified mail, postage prepaid, by one party to the other, at such receiving party's principal place of business or the last business address known to the party giving notice.

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Design-Builder or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

§ A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined or (2) the titles of numbered articles and identified references to sections in the document.

§ A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, thoroughly reviewed the Design Build Documents, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 Design-Builder acknowledges and agrees that all ideas and concepts first conceived, created and developed by Design-Builder for the Authority shall, upon payment to the Design-Builder of all amounts due hereunder, be the sole and exclusive property of the Authority and shall be in the name of the Authority, including but not limited to all intellectual property, e.g., copyrights, trademarks, service marks. Design-Builder further acknowledges and agrees that the expression of said ideas and concepts shall be “works made for hire” as that term is used in the copyright laws of the United States, as set forth in 17 Section 101, et.seq. Notwithstanding the foregoing, Design-Builder agrees that to the extent, if any, that Design-Builder may be deemed an “author” of any material expressing said concepts and ideas, Design-Builder hereby grants, assigns and transfers to the Authority exclusively, perpetually and throughout the world all right, title and interest in and to said material and intellectual property, including but not limited to ownership of the Construction Documents. Design-Builder shall take any actions the Authority may request to confirm the Authority’s ownership of such intellectual property. It is understood that any reuse of documents or other data, in whole or in part, for work not covered by this Agreement without the written consent of the Design-Builder, will relieve the Design-Builder and their sub-consultants of all liability pertaining to such reuse.

The Design-Builder shall include the provision contained in the above paragraph in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Design-Builder shall take such action with respect to any subcontract or procurement as the Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Design-Builder becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Design-Builder may request the Authority to enter into such litigation to protect the interests of the Authority and, in addition, the Design-Builder may request the United States to enter into such litigation to protect the interests of the United States.

§ A.1.6.2 Submission or distribution of the Design-Builder’s Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

§ A.1.7 EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to 41 CFR Part 60.1.4(b), the applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of the contract, the respondent agrees as follows:

.1 The Respondent will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, handicap, or creed. The Respondent 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, national origin, handicap, or creed. 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 apprenticeships. The Respondent 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 Respondent will, in all solicitations or advertisements for employees placed by or on behalf of the Respondent, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, national origin, handicap, or creed.

.3 The Respondent will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor unions or workers' representatives of the Respondent's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

.4 The Respondent 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.

.5 The Respondent 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 administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

.6 In the event of the Respondent's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Respondent may be declared ineligible for further Government contracts or federally assisted construction 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.

.7 The Respondent will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 Respondent will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Respondent becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Respondent may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE A.2 OWNER

§ A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The term "Engineer" means the Owner or the Owner's authorized (or designated) representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the

Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.3 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, license and inspections. The Design-Builder (not the Owner) shall be required to pay the fees for such permits, licenses and inspections.

§ A.2.2.5 Not used.

§ A.2.2.6 Not used.

§ A.2.2.7 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2 The Design-Builder shall ensure that design documents, construction documents, or other submittals required by the Design-Build Documents are in conformance with the Design-Build Documents.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1.

§ A.2.3.4 The Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner, or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to

create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques,, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Design-Builders, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design Builder, the Architect, Design-Builders, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 Not used.

§ A.2.3.9 The Owner shall conduct inspections at the Design-Builder's request to determine the date or dates or Substantial Completion and the date of final completion.

§ A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER

§ A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions. The Owner understands and agrees that the services performed by the Design-Builder's design professionals and consultants are undertaken and performed in the interest of both the Owner and the Design-Builder.

§ A.3.2.2 The agreements between the Design-Builder and design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's request.

§ A.3.2.3 The Design-Builder shall be responsible for acts, errors and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect Engineer and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials, and other information provided by the Owner, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered. Field investigations should be done: (1) as a formal review before the start of design and comments should be provided to the Owner. and (2) a review of existing conditions and field measurements before the start of construction (after which Owner is not responsible for measurements and existing conditions). After the formal pre-design review by the Design-Builder, the Design-Builder assumes all responsibility for the accuracy of the drawings. Discrepancies in field measurements after Design-Builder completes their design is not a basis for a contract adjustment.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Owner's approval of the Design-Builder's design does not relieve the Design-Builder of responsibility to meet the intent of the Owner's Design Documents, other professional design responsibilities, obligation to meet codes and safety requirements, etc. It is the Design-Builder's responsibility to provide a complete and fully functioning system, and any deficiencies in the system are the Design-Builder's responsibility to correct.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner weekly to review progress of the design and construction documents and provide meeting minutes of that meeting.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner, fourteen days prior to the Notice to Proceed of that construction phase, certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work; or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals; to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Design-Builder provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Design-Builder, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents. Work phasing and detail must be coordinated with the Owner and Work shall provide for continuance of all operations impacted by such Work.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, system commissioning and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ A.3.4.2 when a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Design-Builder shall manage all employees and subcontractors to ensure security policies and procedures in place by the Nashville Airport Authority are adhered to.

§ A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage. It is understood that the Work includes re-use of certain equipment and facilities of the Owner and the Design-Builder assumes no liability, under this Section or otherwise, for repair or replacement of any such equipment and facilities which are non-operational or substandard. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished by Design-Builder.

§ A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, license and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the GMP all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts.
- .2 Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the GMP but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the GMP shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances and (2) changes in Design-Builder's costs.

§ A.3.8.3 Materials and equipment under an allowance shall be implemented in sufficient time to avoid delay in the Work.

§ A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, within 14 calendar days after execution of the Design-Build Contract, shall prepare and submit for the Owner's information and approval, the Design-Builder's schedule for the Work. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, shall be revised monthly, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals, inclusive of all required submissions, required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record clarifications, change orders and field changes and directives and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar

required submittals. These shall be available for Owner's review at any time during the project duration and be delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE

§ A.3.12.1 the Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment. Coordination shall occur with the Owner prior to initiating each phase of work. Work shall be implemented to allow all aviation operations to occur in an efficient manner.

§ A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its part fit together properly. Cutting, fitting, and patching shall be done professionally and finishes for patching shall provide a complete aesthetic look.

§ A.3.13.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ A.3.17 INDEMNIFICATION AND HOLD HARMLESS

§ A.3.17.1 INDEMNIFIED PARTIES

For purposes of this Contract, the term "Indemnified Parties" shall mean the Authority and its commissioners, officers, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, successors and assigns.

§ A.3.17.2 INDEMNIFICATION

§ A.3.17.2.1. The Design-Builder agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys' fees, court costs and litigation expenses) claimed or incurred by reason of any bodily injury, death and/or property damage arising from any negligent or intentional act or omission of the Design-Builder or any of the Design-Builder's officers, contractors, subcontractors, agents, representatives or employees.

§ A.3.17.2.2. The Design-Builder agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys' fees, court costs and litigation expenses) arising from the ownership or use of the Construction Documents, including, without limitation, claims of infringement of property rights by a third party.

§ A.3.17.2.3. The Design-Builder agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys' fees, court costs and litigation expenses) arising from any negligent or intentional act or omission of the Design-Builder or any of the Design-Builder's officers, contractors, subcontractors, agents, representatives or employees with respect to (A) any investigation, monitoring, clean-up, containment, removal, storage or restoration work performed by the Authority or a third party with respect to the use or placement of Hazardous Materials (of

whatever kind or nature, known or unknown) on the Airport premises or any other areas; (B) any actual, threatened or alleged contamination by Hazardous Materials on the Airport premises or other areas; (C) the disposal, release or threatened release of Hazardous Materials on the Airport premises or other areas that is on, from or affects the soil, air, water, vegetation, buildings, personal property, persons or otherwise; (D) any bodily injury, death or property damage with respect to the use or placement of Hazardous Materials on the Airport premises or other areas; or (E) any violation of any applicable Environmental Laws.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Time Limits on Claims. Claims by Design-Builder must be initiated within 10 calendar days after occurrence of the event giving rise to such Claim or within 10 calendar days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. Claims for Concealed or Unknown Conditions: If conditions are encountered at the site which were not accessible during the pre-design and pre-construction inspections are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents taking into account that unless otherwise stipulated in Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 10 calendar days after first observance of the conditions. The Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, will consider an equitable adjustment in the GMP or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the Design-Builder, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 10 calendar days after the Owner has given notice of the decision. If the conditions encountered are materially different, the GMP and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the GMP or Contract Time, the adjustment shall be subject to further proceedings pursuant to Section A.4.2.

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make Claim for an increase in the GMP, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) failure of payment by the Owner, Claim shall be filed in accordance with this Agreement.

§ A.4.1.7 Not used.

§ A.4.1.8 Not used.

§ A.4.1.9 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order of Construction or

Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices may be equitably adjusted.

§ A.4.1.10 Claims for consequential Damage. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directing from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If after the enactment of the contract a revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in GMP or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the GMP or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 CLAIMS FOR ADJUSTMENT AND DISPUTES If for any reason the Design-Builder deems that additional compensation is due him for work or materials not clearly provided for in the contract he shall notify the Engineer in writing of his/her intention to claim such additional compensation before he begins the work on which he bases the claim. If such notification is not given or the Engineer is not afforded proper opportunity by the Design-Builder for keeping strict account of actual cost as required, then the Design-Builder hereby agrees to waive any claim for such additional compensation. Such notice by the Design-Builder and the fact that the Engineer has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Design-Builder shall, within 10 calendar days, submit his/her written claim to the Engineer who will present it to Owner for consideration in accordance with local laws or ordinances within thirty (30) days of its receipt. If the Design-Builder does not provide the requisite written notice prior to performing the work, the contractor hereby acknowledges and agrees that it has waived any claim for additional compensation.

Nothing in this subsection shall be construed as a waiver of the Design-Builder's right to dispute final payment based on differences in measurements or computations.

§ A.4.3 MEDIATION

The parties agree to endeavor, in good faith and in recognition of the costs and expenses associated with legal proceedings, to resolve and settle among themselves any disputes or controversies pertaining to the Contract. However, if settlement or resolution cannot be reached, the parties agree to the following dispute resolution procedures:

§ A.4.3.1 MEDIATION

Mediation: If during the course of this Contract the parties are unable to resolve any dispute or controversy arising out of or relating to the Contract, such claims shall first be subject to non-binding mediation as a condition precedent to the initiation of any legal action (either court action or arbitration). The mediation, unless the parties mutually agree otherwise in writing, shall be in accordance with the Construction Industry Rules of the American Arbitration Association. Demand for mediation shall be made

in writing. The parties agree to share in the mediator's fee and any filing fees. Any mediation will be held in Nashville, Tennessee. Agreements reached in mediation shall be as enforceable as settlement agreements. Each party agrees to bear its own attorneys' fees associated with the mediation.

§ A.4.4 ARBITRATION

Arbitration and Litigation: If the mediation described in Section A.4.3.1 is unsuccessful, then, in the Authority's sole discretion, any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be resolved by either binding arbitration or litigation (filed in the state or local courts of Nashville, Tennessee). The Authority will notify the Engineer in writing of its election of arbitration or litigation within 20 days after the date of the unsuccessful mediation, and Engineer agrees not to commence any legal action against the Authority until such election is made and communicated. If the Authority elects binding arbitration, it shall be administered, unless the parties mutually agree otherwise in writing, in accordance with the most recent Construction Industry Rules of the American Arbitration Association. Whether arbitration or litigation is elected by the Authority, any hearing shall be held in Nashville, Tennessee, and the Court or Arbitrator(s) shall have the power to award to the prevailing party its reasonable attorneys' fees, expenses and costs.

ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 Not used.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected unless approved in writing by Owner.

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Assignment of a portion of the Work may only occur after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the Design-Builder in writing; and assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related or adjacent to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

§ A.6.1.2 The term “separate contractor” shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedules deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 COOPERATION BETWEEN CONTRACTORS Owner reserves the right to contract for and perform other or additional work on or near the work covered by this contract.

§ A.6.2.2 When separate contracts are let within the limits of any one project, each Design-Builder shall conduct his/her work so as not to interfere with or hinder the progress of completion of the work being performed by other Design-Builders. Contractors working on the same project shall cooperate with each other as directed.

§ A.6.2.3 Each Design-Builder involved shall assume all liability, financial or otherwise, in connection with his/her contract and shall protect and save harmless Owner from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by him because of the presence and operations of other Contractors working within the limits of the same project.

§ A.6.2.4 The Design-Builder shall arrange his/her work and shall place and dispose of the materials being used so as not to interfere with the operations of the other Contractors within the limits of the same project. He shall join his/her work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Builder Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the GMP; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 Not used.

§ A.7.2.3 Methods used in determining adjustments to the GMP may include those listed in Section A.7.3.3.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§ A.7.3.1 A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the GMP or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the GMP and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive may be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the GMP, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
- .2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change on the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the GMP or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in GMP and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the GMP, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the GMP, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

- .1 additional costs of professional services;
- .2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section A.7.3.6.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the GMP shall be actual net cost plus any allowance for overhead and profit.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the GMP on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the GMP and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the GMP or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§ A.8.1 DEFINITIONS

§ A.8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Contracts for Substantial Completion of the Work.

§ A.8.1.2 The date of commencement of the Work shall be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically designed.

§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The GMP is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, where the GMP is based upon a Cost of the Work plus Design-Builder's Fee with a Guaranteed Maximum Price, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, once approved by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the GMP. The schedule of values is due to the owner within 15 days of executing the Agreement. The Design-Builder shall also submit for the Owner's review and approval, a project financial projection, which estimates dollars to be spent over the duration of the project.

§ A.9.2.2 Primavera Project Planner (P5) software or other secure web based project specific scheduling and contract management software as approved in advance in writing by the Owner, shall be used by the Design-Builder in producing and maintaining the project schedule, requests for information, submittal logs and approval status.

§ A.9.2.3 On monthly intervals, a project meeting shall be held to review the schedule. The Design-Builder shall update the schedule prior to the project meeting to reflect current progress. The schedule review will at a minimum include:

- a. activities started and/or completed;
- b. remaining durations for underway activities;
- c. critical activities;
- d. impacts resulting from change;
- e. delays.

§ A.9.2.4 A written narrative report shall accompany each schedule update and review. The report shall include:

- a. a description of the amount of progress during the reporting period and tasks completed;
- b. problems encountered;
- c. schedule and current and anticipated delay factors and an estimate on impact on performance of other activities and completion dates;
- d. budget and actual costs spent to date;

- e. explanation of revisions made to the schedule and schedule variance. Where schedule variance exceeds 10%, analysis data proposed corrective measures shall be included;
- f. corrective action taken or proposed;
- g. anticipated tasks over next 90 day period

§ A.9.2.5 The schedule shall be cost loaded to integrate with the approved schedule of values. Design-Builder shall produce a realistic monthly forecast of anticipated dollar expenditures based on the schedule and associated cost items.

§ A.9.3 APPLICATION FOR PAYMENT

§ A.9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Design-Builders and material suppliers, and reflecting retainage specified in the Design-Build Documents. With the exception of Changes of Work identified in Article A.7 the Design-Builder's may not invoice the Owner for costs that exceed the GMP, unless the change in work have been fully approved.

§ A.9.3.1.1 Such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payments for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties.

§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments may be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work will pass to the Owner no later than the time of payment. This does not constitute the Owner's acceptance of such Work. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 Not used.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;

- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 The Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Design-Builder shall have no obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the GMP, payments received by the Design-Builder for Work by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons beyond the Design-Builder's contractual requirements and other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3, then the Design-Builder may, after 30 days written notice to the Owner and after representatives of the Owner and Design Builder meet to discuss potential solutions and resolutions to

the problem, stop the Work until sufficient payment has been received by the Design Builder. Should Work be stopped by the Design Builder for legitimate reasons, the Contract Time may be extended and costs associated with the shutdown, delay and start-up may be discussed.

§ A.9.8 SUBSTANTIAL COMPLETION The Owner's designated representative will conduct an inspection or inspections as may be required upon written request from the Design-Builder, to determine the date(s) of Substantial Completion certification to Owner, the Design-Builder, and the Surety. The certification shall be in writing. The Engineer shall issue the certification within seven (7) days of the inspection. If the Engineer refuses to so certify the Substantial Completion, the Engineer shall at the same time period advise the contractor, in writing, as to the precise reasons for the refusal to certify. The inspection for the determination of the Substantial Completion of all or portions of the work may be made at the date of the written request of the contractor or at the option of the Engineer. In the event the Engineer certifies the Substantial Completion of the project or a portion thereof, such certification shall not relieve the contractor of his/her obligations to complete all of the work in accordance with the contract. Additionally, such certification shall not constitute acceptance or waiving of Owner's right to require a final inspection of all work. In any event, Owner shall have no obligation to release any retainage withheld until final payment is made in accordance with the contract and final acceptance by Owner.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 ACCEPTANCE AND FINAL PAYMENT

When the contract work has been accepted in accordance with the requirements of the subsection titled FINAL ACCEPTANCE of Specifications Section 50, the Engineer will prepare the final estimate of the items of work actually performed. The Design-Builder shall approve the Engineer's final estimate or advise the Engineer of his/her objections to the final estimate which are based on disputes in measurements or computations of the final quantities to be paid under the contract as amended by change order or supplemental agreement. The Design-Builder and the Engineer shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within 30 calendar days of the Design-Builder's receipt of the Engineer's final estimate. If, after such 30-day period, a dispute still exists, the Design-Builder may approve the Engineer's estimate under protest of the quantities in dispute, and such disputed quantities shall be considered by Owner as a claim in accordance with the subsection titled CLAIMS FOR ADJUSTMENT AND DISPUTES of Specifications Section 50. Warranties shall begin to run upon Final Acceptance by Owner.

§ A.9.10.2 FINAL DRAWINGS, WAIVERS, AND WARRANTIES

Prior to the submission of the final payment, the Engineer shall receive from the contractor the final as-built drawings, final lien waivers, final payroll certifications and all warranties, punch list corrections, guaranties, and similar documents. Failure to deliver said documents to the Engineer shall be grounds for the Engineer to withhold the final payment, until such documents are delivered. As set in the Subsection entitled FINAL ACCEPTANCE in this Section, all warranties shall begin to run from Final Acceptance. All job records furnished by the Design-Builder as above specified shall become the property of Owner.

§ A.9.10.3 FINAL PAYMENT

Upon the engineer's final inspection of the project and confirmation that all work has been found acceptable in accordance with the contract documents, contractor shall make application for final payment. Final payment shall be due within thirty (30) Calendar Days of said application, subject to the provisions herein contained. Neither the final payment nor the retainage shall be paid until the Design-Builder submits an affidavit, in a form approved by Owner, to accompany the final payment application, affirming that there are no outstanding liens on the Project and all labor and Materials have been paid for, supported by such additional affidavits or evidence of payment as Owner may reasonably require. Owner may, at its option, withhold final payment, and/or the release of all or part of the retainage, until the Design-Builder has provided Owner with a complete and unconditional release of all claims for the payment of labor, equipment or material furnished to the Project, or receipts which evidence full payment of such claims, and Design-Builder shall also furnish Owner an affidavit that to the Design-Builder's best knowledge, information and belief, said releases or payments include all labor, equipment and materials for which a lien could be filed. Notwithstanding the foregoing, the Design-Builder and Surety shall continue to be liable for any such claims or liens, including, but not limited to, all guarantees and warranties, which may be asserted or which may be unsatisfied after all payments are made by Owner to the Design-Builder.

The making of the final payment by Owner shall constitute a waiver of all claims by Owner, other than claims arising from faulty Work which appear or become known to Owner after such final payment, and unsettled or unasserted claims against Owner or the Project. Likewise, acceptance of final payment by the Design-Builder and any Subcontractors shall constitute a waiver of all claims by the Design-Builder and any Subcontractors against Owner, and the Contractor and all subcontractors each hereby agree to indemnify and hold Owner harmless from and against any such unsettled or unasserted claim.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract. A project specific safety plan shall be developed by the Design-Builder and submitted to the Owner for review. This document shall be thorough and complete prior to initiating the Work and shall be updated as required as Work progresses.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- .4 Owner operations and employees.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. Such activity will require the approval of the Owner.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Section A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be safety, the prevention of accidents, and quality control. Such individual shall be on site full time and be dedicated to these causes only.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If Design-Builder encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ A.10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not it has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the GMP shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ A.10.3.3 The Owner shall not be responsible under this Section A.10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ A.10.3.4 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under the Contract Documents, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ A.10.4 EMERGENCIES

§ A.10.4.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.7 and Article A.7.

ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 COMMERCIAL GENERAL LIABILITY INSURANCE

§ A.11.1.1 The Design-Builder shall obtain and maintain continuously in effect at all times during the term of this Contract, as part of the GMP, commercial general liability insurance coverage (the "CGL Coverage"), with coverage limits of not less than \$5,000,000 per occurrence and \$5,000,000 in aggregate, that insures against claims, damages, losses and liabilities arising from bodily injury, death and/or property damage. The aggregate deductible amount under the insurance policy or policies providing the CGL Coverage shall not exceed \$250,000 per occurrence. Each insurance policy providing the CGL Coverage shall name the Authority and its commissioners, officers and employees as additional insureds thereunder and shall provide that such insurance policy will be considered primary insurance as to any other valid and collectible insurance or self-insured retention the Authority may possess or retain. Any insurance coverages maintained by the Authority shall be considered excess insurance only.

§ A.11.1.2 Each insurance company issuing an insurance policy providing the CGL Coverage shall be (A) admitted to do business in the State of Tennessee and rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

§ A.11.2 AUTOMOBILE LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall obtain and maintain continuously in effect at all times during the term of this Contract, at its sole cost and expense, automobile liability insurance coverage (the "Auto Coverage"), with a coverage limit of not less than \$1,000,000 per occurrence, that insures against claims, damages, losses and liabilities arising from automobile related bodily injury, death and/or property damage. The aggregate deductible amount under the insurance policy or policies providing the Auto Coverage shall not exceed \$250,000 per occurrence. Each insurance policy providing the Auto Coverage shall name the Authority and its commissioners, officers and employees as additional insureds thereunder and shall provide that such insurance policy will be considered primary insurance as to any other valid and collectible insurance or self-insured retention the Authority may possess or retain. Any insurance coverages maintained by the Authority shall be considered excess insurance only.

§ A.11.2.2 Each insurance company issuing an insurance policy providing the Auto Coverage shall be (A) admitted to do business in the State of Tennessee and rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined

herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

§ A.11.3 WORKER'S COMPENSATION INSURANCE

§ A.11.3.1 The Design-Builder shall obtain and maintain continuously in effect at all times during the term of this Contract, at its sole cost and expense, worker's compensation insurance coverage (the "WC Coverage") in accordance with statutory requirements and providing employer's liability coverage with limits of not less than \$100,000 for bodily injury by accident, \$100,000 for bodily injury by disease, and \$500,000 policy limit for disease.

§ A.11.3.2 Each insurance company issuing an insurance policy providing the WC Coverage shall be (A) admitted to do business in the State of Tennessee and rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

§ A.11.4 GENERAL INSURANCE REQUIREMENTS

§ A.11.4.1 For purposes of this Contract, the CGL Coverage, the Auto Coverage, and the Worker's Compensation Coverage are collectively referred to as the "Insurance Coverages". The Contractor agrees that each insurance policy providing any of the Insurance Coverages (A) shall not be altered, modified, cancelled or replaced without thirty (30) days prior written notice from the Contractor to the Authority, (B) shall provide for a waiver of subrogation by the issuing insurance company as to claims against the Authority and its commissioners, officers and employees, (C) shall provide that any "other insurance" clause in such insurance policy shall exclude any policies of insurance maintained by the Authority and that such insurance policy shall not be brought into contribution with any insurance maintained by the Authority, and (D) shall have a term of not less than one year.

§ A.11.4.2 The Authority shall have the right to change the terms of the Insurance Coverages if such changes are recommended or imposed by the Authority's insurers, so long as the Authority agrees to reimburse the Contractor for any increases in insurance premium costs resulting solely from any such change. The Contractor shall provide, prior to the commencement of the Contractor's performance under this Contract, one or more certificates of insurance which shall indicate that the Contractor maintains the Insurance Coverages and that the insurance policy or policies referenced or described in each such certificate of insurance comply with the requirements of this Contract. Each such certificate of insurance shall provide that the insurance company issuing the insurance policy or policies referenced or described therein shall give to the Authority written notice of the cancellation or non-renewal of each such insurance policy not less than thirty (30) days prior to the effective date of such cancellation or the expiration date of such insurance policy, as applicable. Upon receipt of a written request from the Authority, the Contractor also agrees to provide to the Authority duplicate originals of any or all of the insurance policies providing the Insurance Coverages. The certificate(s) of insurance provided by the Company to evidence the WC Coverage shall specifically certify that the insurance policy or policies which provide the WC Coverage cover the Contractor's activities in the State of Tennessee.

§ A.11.4.3 If the Company shall at any time fail to obtain or maintain any of the Insurance Coverages, the Authority may take, but shall not be obligated to take, all actions necessary to effect or maintain such Insurance Coverages, and all monies expended by it for that purpose shall be reimbursed to the Authority by the Contractor upon demand therefor or set-off by the Authority against funds of the Contractor held by the Authority or funds due to the Contractor. The Contractor hereby grants, approves of and consents to such right of set-off for the Authority. If any of the Insurance Coverages cannot be obtained for any reason, the Authority may require the Contractor to cease any and all work under this Contract until all Insurance Coverage are obtained. If any of the Insurance Coverages is not obtained within a period of time to be determined solely by the Authority, the Authority may terminate this Contract.

§ A.11.4.4 It is expressly understood and agreed that the minimum limits set forth in the Insurance Coverages shall not limit the liability of the Contractor for its acts or omissions as provided in this Contract.

§ A.11.4.5 The term "Rating Service" shall mean A.M. Best Company, or, if A.M. Best Company no longer exists or discontinues its rating of insurance companies, such alternative rating service for insurance companies as determined in the sole discretion of the Chief Financial Officer of the Authority. The term "Minimum Rating" shall mean a rating (if A.M. Best Company is the Rating Service) of A- (Financial Size: X) based upon the criteria for financial strength and financial size ratings utilized by A.M. Best Company on the date of this Contract, or such equivalent rating (if A.M. Best Company is not the Rating Service or if A.M. Best Company subsequently revises its criteria for financial strength and financial size ratings) as determined in the sole discretion of the Chief Financial Officer of the Authority.

§ A.11.5 PROFESSIONAL LIABILITY INSURANCE

§ A.11.5.1 The Design-Builder shall obtain and maintain continuously in effect at all times during the term of this Contract, at its sole cost and expense, professional liability insurance coverage (the "PL Coverage"), with coverage limits of not less than Two Million and No/100 Dollars (\$2,000,000) per occurrence and Two Million and No/100 Dollars (\$2,000,000) in aggregate, that insures against claims, damages, losses and liabilities arising from any errors, omissions or negligent acts of the Company in the performance of professional services under this Contract. The aggregate deductible amount under the insurance policy or policies providing the PL Coverage shall not exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) per occurrence. The Company also shall maintain the PL Coverage for a period of three (3) years after all services and work required under the terms of this Contract have been completed by the Company or after the Company has been terminated by the Authority, whichever shall last occur.

§ A.11.5.2 Each insurance company issuing an insurance policy providing the PL Coverage shall be (A) rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

§ A.11.6 PROPERTY INSURANCE

§ A.11.6.1 BUILDERS RISK INSURANCE Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial GMP, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Article A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph to be covered, whichever is later. This insurance shall include interests of the Owner, the Design-Builder, subcontractors and sub-subcontractors in the Project.

§ A.11.6.1.a. If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Design-Builder in writing prior to commencement of the Work. The Design-Builder may then effect insurance which will protect the interests of the Design-Builder, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Design-Builder in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ A.11.6.1.b. If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles. In the event of loss or damage to the Project not covered by the Builders Risk policy, the cost of the repair or replacement of such loss or damage shall be the responsibility of the Owner. A deductible of \$10,000 for each claim will be assessed by the Owner to the party responsible for the claim. In event of disagreement over responsibility, responsibility will be determined by the Owner.

§ A.11.6.1.c. This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ A.11.6.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Design-Builder, Subcontractors and Sub-subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ A.11.6.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

§ A.11.6.4 If the Design-Builder requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Design-Builder by appropriate Change Order.

§ A.11.6.5 If during the Project construction period the Owner insures (or self insures) properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 8.6.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ A.11.6.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Paragraph 8.6. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Design-Builder.

§ A.11.6.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 11.4 or other property insurance applicable to the Work or property adjoining or adjacent to the site, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have, a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.7 PERFORMANCE BOND AND PAYMENT BOND

The Design-Builder who is awarded the Contract must provide Performance and Payment Bonds equal to One Hundred Percent (100%) of the Contract amount. All bonds must be completed on the forms provided with the Contract Documents.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligations to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the GMP will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Contract shall be governed by the laws of the State of Tennessee. All rights and remedies available to the Owner under this Contract shall be cumulative and in addition to all other rights and remedies granted to the Owner at law or in equity.

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Neither party to the Design-Build Contract shall assign to the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Written reports generated from tests and inspections are required and shall be submitted to the Owner.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section a.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing,

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 As between the Owner and Design-Builder:

- .1 **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any all events not later than such date of Substantial Completion.
- .2 **Between Substantial Completion and Final Application for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
- .3 **After Final Application for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

§ A.13.7 BAN ON TEXTING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Drive, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, MNAA is

required to include the following in all contracts and subcontracts utilizing federal grant funds and all contractors and subcontractors are encouraged to:

- (a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal Government, including work relating to a grant or subgrant.
- (b) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - 1. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - 2. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a subcontractor, sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 *If for reasons beyond the Design-Builder's contractual requirements and other than those enumerated in Section A.9.5.1, the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents.*

§ A.14.1.2 If one of the reasons described in Section 14.1.1 exists, the Design-Builder may, upon fourteen (14) days' written notice to the Owner, terminate the Contract and Design-Builder's sole and only compensation shall be for the Cost of the Work pursuant to the Contract provided the Owner is in possession of such work at the time of termination, plus any earned Design-Builder's fee.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2. 1. The Owner may terminate the Contract if the Design-Builder:

- a. repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- b. fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Design-Builder and the subcontractors.
- c. Disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- d. Otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ A.14.2. 2. When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- a. Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- b. Accept assignment of subcontracts pursuant to Section A.5.5.1; and
- c. Finish the work by whatever reasonable method the Owner may deem expedient.

§ A.14.2.3. When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.3 If the cost of finishing the Work exceeds the GMP as established at the time of termination, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Owner by Design-Builder.

§ A.14.3.1 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1.1. The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such a period of time as the Owner may determine.

§ A.14.3.1.2. The GMP and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1.1. No adjustment shall be made to the extent:

- a. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- b. that an equitable adjustment is made or denied under another provision of the Contract.

§ A.14.4. TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ A.14.4.2. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

- a. cease operations as directed by the Owner in the notice
- b. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- c. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ A.14.4.3. In case of such termination for the Owner's convenience, the Design-Builder sole and only compensation shall be for the Cost of the Work pursuant to the Contract provided the Owner is in possession of such work at the time of termination, plus any earned Design-Builder's fee.

EXHIBIT B

DETERMINATION OF THE COST OF THE WORK

for the following PROJECT:

*CIP 1509 Implementation of Water Source Geothermal System
Nashville International Airport*

THE OWNER:

*Metropolitan Nashville Airport Authority
One Terminal Dr, Suite 501
Nashville, TN 37214*

THE DESIGN BUILDER:

*<Insert DB Contractor Name>
<Insert Address>
<City, State, Zip>*

TABLE OF ARTICLES

B.1 CONTROL ESTIMATE

B.2 COSTS TO BE REIMBURSED

B.3 COSTS NOT TO BE REIMBURSED

B.4 DISCOUNTS, REBATES AND REFUNDS

**B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS
HIRED BY THE DESIGN BUILDER**

B.6 ACCOUNTING RECORDS

ARTICLE B.1 CONTROL ESTIMATE

§ B.1.1 The Design-Builder shall develop and implement a detailed system of cost control that will provide the Owner with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Design-Builder's first Application for Payment and shall be revised monthly or at other intervals as mutually agreed.

ARTICLE B.2 COSTS TO BE REIMBURSED

§ B.2.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article B-2. With the exception of Changes of Work identified in Article A.7 the Design-Builder's may not invoice the Owner for costs that exceed the GMP, unless the change in work have been fully approved.

§ B.2.2 LABOR COSTS

§ B.2.2.1 Fixed hourly rates as set forth in Exhibit G of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's approval, at off-site locations.

§ B.2.2.2 Fixed hourly rates as set forth in Exhibit G of the Design-Builder's supervisory and administrative personnel when stationed at the site with the Owner's approval.

§ B.2.2.3 Fixed hourly rates as set forth in Exhibit G of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. This provision includes the Design-Builder's Operations Vice President, Senior Project Executive, and estimating, accounting, building systems, and safety departments, but not the executive officers of the Design-Builder.

§ B.2.2.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, are included in the fixed hourly rates under Sections B.2.2.1 through B.2.2.3.

§ B.2.3 CONTRACT COSTS

§ B.2.3.1 Payments made by the Design-Builder to Contractors in accordance with the requirements of their contracts.

§ B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ B.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ B.2.4.2 Costs of materials described in the preceding Section B.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ B.2.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value.

§ B.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ B.2.5.3 Costs or removal of debris from the site.

§ B.2.5.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office. All costs and expenditures necessary for the operation of the field office, as negotiated and approved in prior to commencement of work, shall be determined and agreed to by the Owner prior to initiation of Construction. Any items purchased shall become the possession of the Owner at the project conclusion.

§ B.2.5.5 That portion of the reasonable expenses of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work.

§ B.2.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

§ B.2.6 DESIGN AND OTHER CONSULTING SERVICES

§ B.2.6.1 Compensation, including fees and reimbursable expenses, paid by the Design-Builder for design and other consulting services required by the Design-Build Documents.

§ B.2.7 MISCELLANEOUS COSTS

§ B.2.7.1 That portion of insurance and bond premiums that can be directly attributed to this Design-Build Contract. (If charges for self-insurance are to be included, specify the basis of reimbursement.) The Construction Manager's general liability insurance shall be charged to the Project at a fixed rate of \$6.25 per \$1,000 of billings. This rate is effective through 9/30/2013 and may be adjusted based on upon a mutually agreed amount by Design Builder and Owner.

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Works shall be incorporated in the completed construction cost.

§ B.2.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ B.2.7.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section a.13.5.3 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.13.5.3.

§ B.2.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ B.2.7.6 Data processing costs related to the Work.

§ B.2.7.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Design-Build Documents.

§ B.2.8 OTHER COSTS AND EMERGENCIES

§ B.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and Conditions.

§ B.2.8.3 In repairing or correcting damaged or nonconforming Work executed by the Design-Builder or nonconforming Work not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Design-Builder or the Design-Builder's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Design-Builder, or the failure of the Design-Builder's personnel to supervise adequately the Work of the subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, subcontractors or suppliers.

§ B.3 COSTS NOT TO BE REIMBURSED

§ B.3.1 the Cost of the Work shall not include:

§ B.3.1.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Sections B.2.2.2 and B.2.2.3.

§ B.3.1.2 Expenses of the Design-Builder's principal office and offices other than the site office.

§ B.3.1.3 Overhead and general expenses, except as may be expressly included in Article B.2 of this Exhibit.

§ B.3.1.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.

§ B.3.1.5 Rental costs of machinery and equipment, except as specifically provided in Section B.2.5.2.

§ B.3.1.6 Except as provided in Section B.2.8.3 of this Agreement, costs due to the negligence or failure of the Design-Builder to fulfill a specific responsibility of the Design-Builder, Contractors, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ B.3.1.7 Any cost not specifically and expressly described in Article B.2, Costs to be Reimbursed.

§ B.3.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price, if any, to be exceeded.

ARTICLE B.4 DISCOUNTS, REBATES AND REFUNDS

§ B.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured.

§ B.4.2. Amounts that accrue to the Owner in accordance with the provisions of Section b.4.1 shall be credited to the Owner as a deduction from the Cost of Work.

ARTICLE B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS HIRED BY THE DESIGN-BUILDER

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed by others under contracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons or entities from whom the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Contractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner. The Owner shall then determine which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 Contracts or other agreements shall conform to the applicable payment provisions of the Design-Build Contract, and shall not be awarded on the basis of cost plus a fee without the Owner's prior consent.

ARTICLE B.6 ACCOUNTING RECORDS

§ B.6.1 The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of five years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the Owner's accountant a final accounting of the Cost of the Work.

§ B.6.3 The Owner's accountants will review and report in writing on the Design-Builder's final accounting within 21 days after delivery of the final accounting. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section a.9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's accountants, notify the Design-Builder in writing of the Owner's intention to make final payment or to withhold final payment.

§ B.6.4 If the Owner's accountants report the Cost of the Work as substantiated by the Design-Builder's final accounting to be less than claimed by the Design-Builder, the Design-Builder shall be entitled to initiate resolution of the dispute pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms

and Conditions, for the disputed amount. If the Design-Builder fails to so initiate resolution of the dispute within the period of time required by Section A.4.1.2 of Exhibit A, Terms and Conditions, the substantiated amount reported by the Owner's accountants shall become binding on the Design-Builder. Pending a final resolution pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, the Owner shall pay the Design-Builder the amount, if any, determined by the Owner's accountant to be due the Design-Builder.

EXHIBIT C

DISADVANTAGED BUSINESS ENTERPRISE

for the following PROJECT:

*CIP 1509 Implementation of Water Source Geothermal System
Nashville International Airport*

THE OWNER:

*Metropolitan Nashville Airport Authority
One Terminal Dr, Suite 501
Nashville, TN 37214*

THE DESIGN BUILDER:

*<Insert DB Contractor Name>
<Insert Address>
<City, State, Zip>*

TABLE OF ARTICLES

C.1 DBE PARTICIPATION GOAL

ARTICLE C.1 DBE PARTICIPATION GOAL

§ C1.1 The attainment of the goal established for this Contract is to be measured as a percentage of the total dollar value of the Contract. The Design-Builder, as well as its Subcontractors and vendors, agree that it shall not discriminate on the basis of race, color, national origin, sex or handicap in the performance of Contract. Design-Builders of the MNAA are required to engage in good faith efforts to joint venture, subcontract, or contract for supplies or services with DBEs and meet the goal unless an exception exists that excuses a Design-Builder from compliance with the goals. MNAA established a goal of **One and Seven Tenths Percent (1.7%)** in the ITB. Design-Builder has committed to achieve a **<Insert DB Committed to Amount>** goal. Exhibit F identifies a breakdown of certified companies and associated dollar values which will be expended by the Design-Builder to achieve the **<Insert DB Committed to Amount>**. Failure by the Design-Builder to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as MNAA shall deem appropriate in accordance with the Contract.

§ C.1.2 For the purpose of counting DBE participation toward meeting the goal expressed above, Owner shall grant to its Design-Builders 60 Percent (60%) of expenditures for material and supplies required under a Contract and obtained from a DBE regular dealer, and 100 percent (100%) of such expenditures obtained from a DBE manufacturer.

§ C.1.3 For the purpose of the DBE program, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained.

EXHIBIT D

<Insert Org Chart>

EXHIBIT E

AFFIDAVITS AND BONDS

for the following PROJECT:

*CIP 1509 Implementation of Water Source Geothermal System
Nashville International Airport*

THE OWNER:

*Metropolitan Nashville Airport Authority
One Terminal Dr, Suite 501
Nashville, TN 37214*

THE DESIGN BUILDER:

*<Insert DB Contractor Name>
<Insert Address>
<City, State, Zip>*

EXHIBIT F

DBE SUBCONTRACTOR PARTICIPATION

for the following PROJECT:

*CIP 1509 Implementation of Water Source Geothermal System
Nashville International Airport*

THE OWNER:

*Metropolitan Nashville Airport Authority
One Terminal Dr, Suite 501
Nashville, TN 37214*

THE DESIGN BUILDER:

*<Insert DB Contractor Name>
<Insert Address>
<City, State, Zip>*

EXHIBIT G

Fixed Hourly Rates

Supervisory and Administrative Hourly Rates

EXHIBIT H

DBE PARTICIPATION REPORTS

for the following PROJECT:

*CIP 1509 Implementation of Water Source Geothermal System
Nashville International Airport*

THE OWNER:

*Metropolitan Nashville Airport Authority
One Terminal Dr, Suite 501
Nashville, TN 37214*

THE DESIGN BUILDER:

*<Insert DB Contractor Name>
<Insert Address>
<City, State, Zip>*

DBE PARTICIPATION REPORT

1. DBE listed below must be certified by the Tennessee Unified Certification Program (TDOT) or the Metropolitan Nashville Airport Authority's Certification Program.
2. The Consultant shall enter into an agreement with the DBE Participant for work listed above upon execution of a contract with the Airport Authority.
3. This DBE Participation Report must be completed and returned and made a part of this Contract.
4. Consultant is required to provide reason(s) by completing the Good Faith Effort Non-Participation Statement below if s/he is unable to meet proposed DBE participation goals.
5. Use a separate form for each DBE participant.

Name of Company/Consultant:

<Consultant>

<Address>

<City, State Zip>

<Phone>

Name of DBE/Subconsultant:

<Consultant>

<Address>

<City, State Zip>

<Phone>

☐ Male Owned ☐ Female Owned

Contact Name: _____

Contact Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

MNAA project name and number: _____

Proposed Scope of Services for DBE/Subcontractor: _____

Terms of Proposed Contract: _____

Proposed Total Contract Amount: _____

Proposed Total DBE Amount: _____ (%) Total: _____

Good Faith Effort Non-Participation Statement:

MNAA Approval: _____

Date: _____

Davita Taylor

Director, Business Diversity Development

DBE NAICS No: _____

APPENDIX “K”

SAMPLE ENERGY SAVINGS GUARANTEE AND MEASUREMENT AND VERIFICATION PLAN

1.0 PROJECT INFORMATION

Project Name: Implementation of Water Source Geothermal System (Quarry Project)

Project No: 1509

Owner: Metropolitan Nashville Airport Authority (MNA)
Planning, Design and Construction Department
One Terminal Drive, Suite 501
Nashville, Tennessee 37214-4114

Contact Person: Traci C. Holton, PE
Phone: (615) 275-4139
E-mail: traci_holton@nashintl.com

Contractor: <Contractor name>
<Contractor address>
<Contractor address>

Contact Person: <Contact name>
Phone: <Contact phone number>
Fax: <Contact fax number>
E-mail: <Contact email address>

2.0 MEASUREMENT AND VERIFICATION PLAN OVERVIEW

Measurement and Verification (M&V) strategies in energy performance contracts are required for the contractor to verify the achievement of energy cost savings guaranteed in the contract. Properly applied M&V accurately assesses energy savings, allocates risks to the appropriate parties, reduces uncertainties to reasonable levels, monitors equipment performance, finds additional savings, improves operations and maintenance, verifies that the cost savings guarantee is met, and allows for future adjustments as needed.

This M&V plan is prepared by <Contractor Name> for the MNA to help both parties agree on the methodologies to justify savings for energy conservation measures covered in the project. This M&V plan specifies the approach to monitor the actual energy savings associated with the project, provides sample energy savings calculation documents, and describes the methodology, measurement, and monitoring format of actual energy savings.

When used in this Agreement, the following capitalized words shall have the meanings ascribed to them below:

3.0 DEFINITIONS

“Acceptance of Installation” means an authorized representative of the MNA has inspected and accepted that <Contractor Name>-installed ECMs are operational and comply with contract performance requirements and specifications. The MNA’s acceptance shall not relieve <CONTRACTOR NAME> from responsibility for continued compliance with

contract requirements during the contract term. The Acceptance of Installation shall occur after Substantial Completion.

"Approval" means the **MNAA** has completed review of submittals, deliverables or administrative documents (e.g., insurance certificates, installation schedules, planned utility interruptions, etc.) and has determined that the documents conform to contract requirements. The **MNAA's** approval shall not relieve **<Contractor Name>** from responsibility for complying with contract requirements.

"Energy Conservation Measure (ECM)" is defined as the installation of new equipment/facilities, modification and/or alteration of existing equipment/facilities or rate structures or revised operations and maintenance procedures intended to reduce energy consumption of facilities/energy systems, improve equipment efficiency or provide equipment that complies with existing standards.

"Energy and Operational Savings" is the sum of the Energy Savings and Operational Savings as defined herein.

"Energy Costs" shall mean charges for fuel adjustments, base services, transmission, tariffs, and distributions. The Energy Costs will normally be derived or imputed from the facility's utility bills. This method allows for updating savings calculations with changing rate schedules. In the event of a utility rate decrease, the utility rate(s) used to assign dollar costs will not drop below that of the base year.

"Energy Savings" shall mean the dollar savings associated with utility consumption reduction.

"Facilities" shall mean those buildings and equipment from which the energy and operational cost savings will be realized.

"Final Acceptance Date" shall mean the date all of the ECM's comprising the Project (as defined in the Agreement) have been delivered, installed, and accepted by the **MNAA**.

"First Guarantee Year" is defined as the period beginning on the first day of the month following the Final Acceptance Date and ending on the day prior to the first anniversary thereof.

"Guarantee Period" is defined as the period beginning on the first day of the First Guarantee Year and ending on the last day of the Term.

"Guarantee Year" is defined as each of the successive twelve month periods commencing on the anniversary of the commencement of the First Guarantee Year throughout the Term of this Agreement.

"Guaranteed Savings" is defined as the amount of Energy Savings realized from the ECMs installation and guaranteed by **<Contractor Name>**.

"Installation Period" is from the date of award to Substantial Completion.

"Operational Costs" shall include the costs associated with operating and maintaining the Facilities. Examples include the cost of outside labor to repair and maintain systems and equipment, the cost of replacement parts, the cost of lamp and ballast disposal, and the cost avoidance of equipment failure purchases.

"Operational Savings" shall mean the dollar savings associated with reductions in Operational Cost.

"Retrofit Isolation Method" refers to energy audit methodologies that require pre-retrofit and post-retrofit measurements to isolate energy consumption and costs of specific facility equipment and systems impacted exclusively by this Agreement.

"Substantial Completion" shall mean the date of Final Acceptance or beneficial use of each ECM, acceptance of a particular Facility, or acceptance of the Project, whichever comes first on the Project.

"Term" shall be five years.

"Total Guarantee Year Savings" is defined as the amount of Energy Costs Savings realized by Facilities in each Guarantee Year as a result of the Work.

4.0 TERM AND TERMINATION

The Term of this Guarantee shall commence on the first day of the first month following the date of Final Acceptance of the work installed pursuant to this Agreement, unless terminated earlier as provided for herein.

5.0 SAVINGS GUARANTEE

Guarantee. **<CONTRACTOR NAME>** guarantees to the **MNAA** that the Facilities will realize in each Guarantee Year the Guaranteed Savings as defined herein and illustrated in Table A. Collectively the Guaranteed Savings along with the Operational Savings comprises the Total Savings as shown annually and totaled for the Term in Table A.

5.1 Savings Report. Consumption/savings data will be collected for a total of 365 days, beginning on the first day after Final Acceptance Date. **<CONTRACTOR NAME>** will provide a one time Savings Report indicating the results of testing to verify the savings of the geothermal system no more than 90 days after the conclusion of the data collection period. The Guaranteed Savings in each Guarantee Year are considered satisfied if the total Guaranteed Savings for Year One equals or exceeds the amount identified in *Table A* of this *Exhibit J*. Data and calculations utilized by **<CONTRACTOR NAME>** will be made available to the **MNAA** along with such explanations and clarifications as the **MNAA** may reasonably request.

5.1.1 Operational Savings. The operational savings for this project will be realized from the following components: elimination of cooling tower chemicals, and elimination of cooling tower ozone generator and cooling tower maintenance. Operational Savings are determined by applying either industry standard values for actual materials, replacement costs, service agreement or contracted labor costs as documented and provided by the **MNAA**. The operational costs are agreed to and accepted by **<CONTRACTOR NAME>** and the **MNAA** and are described in Table A – Total Annual Savings. There is no need to verify the agreed-upon operational savings. Operational savings will begin to accrue on the date of completion and acceptance.

5.1.2 Additional Savings. During the course of performing the Work **<CONTRACTOR NAME>** may identify other Energy and Operational Savings associated with the ECMs. These additional savings will be included in the Savings Report.

5.2 Savings Prior to Final Acceptance Date. All Energy and Operational Savings

realized by the **MNAA** that result from activities undertaken by **<CONTRACTOR NAME>** prior to Final Acceptance Date, including any utility rebates or other incentives earned as a direct result of the installed ECMs provided by **<CONTRACTOR NAME>**, will be included in the Savings Report. Energy Savings that are achieved by the upgrades and modifications in the Agreement prior to completion of the entire Project (or Construction Period) will be added to the First Guarantee Year's Energy Savings.

5.3 Activities and Events Adversely Impacting Savings. The **MNAA** shall promptly notify **<CONTRACTOR NAME>** of any activities known to the **MNAA** which adversely impact **<CONTRACTOR NAME>**'s ability to realize the Guaranteed Savings. If this type of situation occurs over the Guarantee Period, **<CONTRACTOR NAME>** shall be entitled to reduce its Guaranteed Savings or make necessary adjustments to the energy baseline in order to quantify the changes in the facility. This will allow **<CONTRACTOR NAME>** and the **MNAA** to recognize and document any such adverse impact to the extent that such adverse impact is beyond **<CONTRACTOR NAME>**'s reasonable control.

5.4 Adjustments to the Guarantee. The Guaranteed Savings will be adjusted as agreed upon by both parties to account for changes incorporated into the Scope of Work.

6.0 GUARANTEED SAVINGS

The Energy Savings in combination with the Annual Operational Savings equals the Total Annual Savings, as illustrated in Table A:

Table A – Guaranteed Savings

Year	Guaranteed Savings (Electrical – Dollars)	Annual Operational Savings (Dollars)	Total Annual Savings (Dollars)
1	\$278,000	\$12,000	\$290,000

7.0 UTILITY RATES

Table B – Nashville Electric Service (NES) Rates (September 2014)

Building	Service Address	NES Rate	Base Unit Demand Charge (kW)	Base Unit Energy Charge (kWh)
Main Terminal includes Offices IAB Building Executive offices/Conf Rm A&B Knuckle Baggage Claim Tug Row Ticketing Rental Car Airfield and All Operations Crown Room Admirals Club Consumer Affairs Terminal and Concourses	1 Terminal Dr	GSB	\$ 22.33	\$0.04768

8.0 M&V APPROACH

The Energy Savings calculations are the methodologies used in the M&V process for verifying savings related to this project. These methodologies are being used with consideration of the characteristics of the specific ECMs, acceptable accuracy, and reasonable cost.

Energy Savings will be carried forward for the Term of the Project and are based upon the calculated methodologies listed herein. The calculated methodologies herein utilize an escalated utility rate of 5% and an escalated operational savings rate of 2%.

8.1 Energy Savings

The verification of the energy savings will involve comparison of the pre-retrofit baseline condition and post-implementation of water source geothermal system measurement of electrical energy savings of the central plant equipment utilizing a calibrated simulation. The Savings Report provided to the **MNAA** will provide measurements and resultant calculated savings.

[<Contractor Name> will build an energy model of the terminal building central plant equipment using eQuest.][A terminal building model with central plant components was created using eQuest for the MNAA Sustainability Master Plan.] This model shall be utilized as the pre-retrofit baseline condition for comparison using data collected by the contractor to calibrate the model. The resulting energy savings will be compared to actual energy consumption data collected for the same time period (12 months minimum).

9.0 GLOBAL ASSUMPTIONS

9.1 Energy Prices

Annual utility rates will be determined by escalating the rates presented in Table B by 5% annually or by taking the actual annual utility rates, whichever is greater. In no case, however, shall the rate used to calculate the Guaranteed Energy Savings be lower than the base year utility rate.

9.2 Performance Period Utility Rate Adjustment Factors, if Applicable

Generally, <**CONTRACTOR NAME**> is not responsible for any utility rate changes other than those defined in the post-installation energy policy. A rate adjustment factor will be applied to calculate actual savings regarding the changes of the utility rates. The actual energy cost savings will be the product of the calculated energy savings from defined rates and the utility adjustment factor when applicable. In no case, however, shall the rate or future escalated rate used to calculate the Guaranteed Energy Savings be lower than the base year utility rate or the agreed upon escalated future year rate.

10.0 DISPUTE RESOLUTION

The M&V plan has been reviewed and accepted by the **MNAA**. It is the primary document for the M&V process. If a dispute arises under this M&V agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation. If not settled by negotiation, this M&V plan will be referred to as the means to solve related disputes.

11.0 POST-INSTALLATION DATA COLLECTED

The **MNAA** will provide access to site locations at reasonable times to perform on-site tests to verify performance, changes in use, and to verify modification of facilities as necessary.

<CONTRACTOR NAME> will not unreasonably interfere with the **MNAA's** operation on the site.

All devices employed to meter electric power use shall be capable of metering continuous Root Mean Squared (RMS) power at an accuracy of +/-1.0% actual value, over the entire load range; metering of polyphase loads shall include independent measurement of each phase.

12.0 COST OF M&V ACTIVITIES

All costs associated with the initial calculations, gathering of data and preparation of the Savings Report have been included in the project cost and are paid by the savings generated.

13.0 DOCUMENTATION FOR SECTION 179D TAX DEDUCTION

As a result of the implementation of this Project, certain tax deductions under Section 179D of the Internal Revenue Code may be available because of the energy efficient improvements to the **MNAA** buildings. The **MNAA** agrees to allocate these Section 179D tax deductions to **<CONTRACTOR NAME>** to the extent such deductions arise from the technical specifications developed by **<CONTRACTOR NAME>** and the implementation of this Project.

Upon job completion, the **MNAA** agrees to execute the required written allocation including the declaration related to this tax code provision. **<CONTRACTOR NAME>** will be responsible for preparing the declaration and all accompanying documentation for **MNAA** signature. **<CONTRACTOR NAME>** will be designated the Section 179D beneficiary.

I. INTRODUCTION

A. BACKGROUND AND SCOPE OF WORK

The goal of the Project is to develop an on-site solar photovoltaic generating facility that will supply up to 80% of the current annual electrical energy needs of the new Santa Barbara Airline Terminal at a rate that is competitive with rates offered by SCE.

B. CITY CONTACT

The City has designated Greg Corral, as its Contact for this RFP. Contact information is listed below:

Greg Corral
Purchasing Supervisor
Telephone: (805) 564-5355
Fax Number: (805) 897-1977
[E-mail: gcorral@SantaBarbaraCA.gov](mailto:gcorral@SantaBarbaraCA.gov)

Sealed proposals for RFP No. 3717 shall be received for the **Santa Barbara Airline Terminal Solar Photovoltaic Project** per the attached terms, conditions and specifications. Proposals will be received in the City of Santa Barbara Purchasing Office, located at 310 E. Ortega Street, Santa Barbara, California, until **3:00 P.M.**, March 20, 2014:

MAILED RFP's should be addressed as follows:

RFP No. 3717
City of Santa Barbara
Purchasing Office
PO Box 1990
Santa Barbara, CA 93102-1990

Or delivery by hand or courier or next day delivery to:

RFP No. 3717
City of Santa Barbara
Purchasing Office 310
K Ortega Street Santa
Barbara, CA 93101

Any inquiries or request regarding this procurement should be submitted to the City's Contact in writing. Offerors may contact **ONLY** the City's Contact regarding this solicitation. Other City employees do not have the authority to respond on behalf of the City and contact with unauthorized City personnel may result in disqualification.

II. CONDITIONS GOVERNING THE PROCUREMENT

GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the City of Santa Barbara procurement codes and procedures.

1. Receiving Time/Late Proposals

It is the responsibility of offeror to see that their proposal is submitted with sufficient time to be received by the Purchasing Office prior to the proposal closing time. The receiving time in the Purchasing Office will be the governing time for acceptability of proposals. Telegraphic, telephonic and facsimile proposals will not be accepted.

Late proposals are not accepted regardless of postmark and will be returned unopened to the sender.

2. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the procurement in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

3. Mandatory Meeting

A **MANDATORY** meeting will be held on February 26, 2014 at 9:00 a.m., at the Airport Maintenance Conference Room, located at 1699 Firestone Road, Santa Barbara, CA, to discuss the specifications and field conditions. RFP Documents are available at the Purchasing Office and at the meeting.

4. Incurring Cost

Any cost incurred by the offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the offeror.

Any cost incurred by the offeror for set up and demonstration or for interviews shall be borne solely by the offeror.

5. Prime Contractor Responsibility

Any contract that may result from the RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the City. The City will make contract payments only to the prime contractor.

6. Subcontractors

Use of subcontractors must be clearly explained in the proposal, and major subcontractors [Comment: can you define "major subcontractors in order to avoid disputes latter?"] must be identified by name. The prime contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

7. • Amended Proposals

An offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The City personnel will not merge, collage, or assemble proposal materials.

8. Offeror's Rights To Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The offeror must submit a written withdrawal request signed by the offeror's duly authorized representative addressed to the City's Contact.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

9. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after receipt of a best and final offer if one is requested by the City.

10. Best and Final Offer

The City reserves the right to request Best and Final Offers from any or all proposers. This will be the only opportunity to amend or modify proposals based on feedback from the City. Information from competing proposals will not be disclosed.

11. Disclosure of Proposal Contents

All proposals will be treated as confidential documents until the selection process has been completed. Once the selection has been made, all proposals will become a public record. Under the California Public Records Act, any information submitted with a response is a public record subject to disclosure unless a specific exemption applies.

In the event that a proposer desires to keep portions of its proposal confidential, the confidential information so claimed must be identified in writing at the time the proposal is submitted. The proposer must clearly identify those portions with the word "Confidential" printed on the top right hand corner of the page. In addition, vendors must provide a written explanation for the basis of the claim, including the reasons why the information is confidential and a certification that the information has not been released to the public and is not publicly available elsewhere. Statements identifying the entire document as confidential or which do not specifically identify which information is claimed as confidential and provide an explanation for the claim are not acceptable for this purpose.

If a proposer submits information clearly marked proprietary or confidential, the City will consider a proposer's request for exemptions from disclosure. However, the City will make a decision regarding disclosure based upon applicable laws, including the California Public Records Act. It is the proposer's obligation to defend any legal challenges seeking to obtain said information as its sole expense and proposer agrees indemnify and hold harmless the City, its agents and employees, from any judgment or damages awarded against the City in favor of the party requesting the materials. The City shall incur no liability due to release of information from a proposer labeled "proprietary" or "confidential."

12. No Obligation

The procurement in no manner obligates the CITY to the eventual rental, lease, purchase, etc., of any equipment, software, or services offered until a valid written contract is awarded and approved by appropriate authorities.

13. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the City determines such action to be in the best interest of the City of Santa Barbara.

14. Sufficient Appropriation

Any contract awarded, for multiple years, as a result of the RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The City's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

15. Errors and Restrictive Specifications

If an offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the offeror should immediately notify the City's Contact at 805-564-5355 designated in Section 1, paragraph B. Without disclosing the source of the request, the City may issue a written addendum to clarify the ambiguity, or to correct the problem, omission, or other error.

If prior to the submission date, a Proposer knows of or should have known of an error in the RFP but fails to notify the City's Contact of the error, the Proposer shall submit their bid at their own risk and if awarded a contract, shall not be entitled to additional compensation or time by reason of error or its later correction.

A Proposer who believes that one or more of the RFP's requirements is onerous or unfair, or unnecessarily precludes less costly or alternative solutions, may submit a written request that the RFP be changed. The request must include recommended language and the reason for proposing the change. **The City's Contact must receive any requests in writing no later than 5 working days before the submission deadline.**

16. Legal Review

The City requires that all proposers agree to be bound by the General Requirements contained in this RFP. Any proposer concerns must be promptly brought to the attention of the Buyer.

17. Governing Law

This procurement and any Contract with proposer that may result shall be governed by the laws of the State of California.

18. Oral Changes and Basis for Proposal

Do not rely upon oral explanations. Changes and addenda will be issued in writing. Only information supplied by the City in writing through the Purchasing Department, the City's Contact, or in this RFP should be used as the basis for the preparation of proposals.

19. Contract Terms and Conditions

The contract between the City and a contractor will follow the format specified by the City and contain the terms and conditions set forth in Appendix A, "Contract Terms and Conditions." However, **the City reserves the right to negotiate with a successful proposer the final provisions or provisions in addition to those contained in this RFP.** The contents of this RFP, as revised and/or supplemented, and the successful proposal will be incorporated into and become part of the contract.

Should a proposer object to any of the City's terms and conditions, as contained in this Section or in Appendix A, that proposer must propose specific alternative language. The City may or may not accept the alternative language. General references to the proposer's terms and conditions or attempts at complete substitutions are not acceptable to the City and may result in disqualification of the proposer.

Proposer must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

20. Proposer's Terms and Conditions

Proposers must submit with the proposal a complete set of any additional terms and conditions that they expect to have included in a contract negotiated with the City.

21. Contract Deviations

Any additional terms and conditions that may be the subject of negotiation will be discussed only between the City and the selected proposer and shall not be deemed an opportunity to amend their proposal.

22. Proposer Qualifications

The City may make such investigations as necessary to determine the ability of the proposer to adhere to the requirements specified within this RFP. The City will reject the proposal of any proposer who is not a responsible proposer or fails to submit a responsive offer.

23. Right To Waive Minor Irregularities

The City reserves the right to waive minor irregularities and the right to waive mandatory requirements provided that all of the otherwise responsive proposals fail to meet the same mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the City.

24. Right To Publish

Throughout the duration of this procurement process and contract term, potential proposers and contractors must secure from the City written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the proposer or termination of the contract.

25. Ownership of Proposals

All documents submitted in response to the RFP shall become the property of the City of Santa Barbara and are subject to public records request.

26. Contract Award

Proposal will be evaluated by Committee comprised of City staff and may include outside consultants. The Evaluation Committee will make an award recommendation to City Council. City Council may approve the agreement and/or direct staff to negotiate the final terms and execute the contract.

This contract shall be awarded to the proposer or proposers whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points or be the lowest cost proposal. Proposers will be notified when the award is being made or an award recommendation goes to Council for approval.

27. Protest Deadline

All parties wishing to file a protest shall comply with the procedures set forth below.

A protest relative to a particular RFP must be submitted in writing and addressed to the General Services Manager, City of Santa Barbara, 310 E. Ortega St., Santa Barbara, CA 93101 and be received by the City by 3 P.M. of the 5th business day following notification to the bidder of a recommendation to award the purchase order/agreement to another firm. The protest shall

contain a full and complete statement specifying in detail the grounds of the protest and the facts in support thereof. The protest shall be hand delivered or sent via certified mail.

- a) The protest document must contain a complete statement of the factual and legal basis of the protest.
- b) The protest document must refer to the specific portion of the RFP document that forms the basis of the protest.
- c) The protest must include the name, address, and telephone number of the person representing the protesting party.
- d) The General Services Manager will issue a written decision on the protest within TEN working days of receipt of the written, protest.
- e) If the protest is rejected, the party filing the protest shall have SEVEN calendar days to file an appeal to the City's Finance Director. He or she will issue a ruling within 15 working days. If he or she determines the protest is frivolous, the party originating the protest may be determined to be irresponsible and may be ineligible for future Purchase Orders/contracts.

Protests received after the deadline will not be accepted.

28. Records and Audits

The CONTRACTOR shall maintain such detailed records as may be necessary to demonstrate its performance of the duties required by this Contract, including the date, time and nature of services rendered. These records shall be maintained for a period of three years from the date of the final payment under this Contract and shall be subject to inspection by CITY. The CITY shall have the right to audit any billings or examine any records maintained pursuant to this Contract both before and after payment. Payment under this Contract shall not foreclose the right of CITY to recover excessive and/or illegal payments.

29. Enforcement of Contract/Waiver

A party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Contract shall be effective unless expressed in writing and signed by the party alleged to have granted the waiver. A waiver by a party of any of its rights shall not be effective to waive any other rights.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Proposers may submit multiple proposals, if desired. The City is not recommending or suggesting that proposers submit multiple proposals. The City is merely stating an available option. If a proposer chooses to submit multiple proposals, each must be entirely separate from the others. The Evaluation Committee will not collate, merge, or otherwise manipulate the proposer's proposals.

B. NUMBER OF COPIES

Proposers shall provide five (5) identical copies of their proposal to the location specified in Section I, Paragraph D on or before the closing date and time for receipt of proposals.

C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.), include a letter of transmittal, and placed within a binder with tabs delineating each section. The submittal (excluding the Letter of Transmittal and appendices) should be no longer than 20 double sided pages and must contain the following items:

1. Letter of Transmittal

- a. Identify the submitting organization and all independent entities participating together;
- b. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization;
- c. Identify the name, title, telephone and fax numbers, and e-mail address of the person designated as point of contact for the organization;
- d. Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
- e. Accepts conditions governing procurement;
- f. Be signed by the person authorized to contractually obligate the organization;
- g. Acknowledge receipt of any and all amendments to this RFP.

2. Qualifications

Demonstrate team experience and expertise. Specifically demonstrate recent (last five years) team experience with each element presented below on projects of similar size and scope, which employ an approach similar to this Project. Place emphasis on projects where the proposed team has worked together in the past.

- Successfully negotiating and executing PPA agreements,
- Financing proposed projects,
- Permitting project development, especially experience with permitting projects located in California's Coastal Zone, or in other complex situations or settings.
- Construction of similar systems that were completed on-schedule and functioned as designed.
- Demonstrate successful long term operation of PV systems, including history of meeting output goals and a commitment to maintenance through documentation of past project performance and reliability.

3. Key Personnel

Describe the Project team composition and include resumes of key personnel. The City must be promptly notified of any changes in personnel prior to award. Identify any Offerors or team members involved in litigation related to design, installation or maintenance of a solar PV collection system, or related to a power purchase agreement.

4. References

List a minimum of three (3) references for whom comparable services were provided to in the last five (5) years. Include the name of the firm, name of the contact, telephone number of the contact, email address of contact (if available), brief description of the services provided and your firm's role, and the start and completion date.

5. Preliminary Design Concept

Present a basic preliminary plan of the proposed solar electric system design, which shall include:

- Site plan showing location and arrangement of proposed solar modules, support structures and inverters;
- Support structure design concept and type of collection system (fixed, single axis, dual axis) proposed;
- Schematic electrical diagram showing points of connection to the City's distribution system or grid, inverter locations, meters and other main components;
- Equipment table listing manufacturer, model number, warranties and quantities for solar modules, inverters and meters;
- Technical system data, including:
 - Power capacity (DC kW), measured at the inverter(s) input
 - Power capacity (AC kW), measured at the site distribution system interconnection points
- Estimated capacity factor (%), annual output (kWh), and annual output degradation rate, including the methodology used to develop the estimates
- Highlight benefits specific to the proposed system and how the proposal showcases solar PV for the public;
- Demonstrate system output by providing a summary printout of a model run using the PVWATTS v.2 computer program developed by the National Renewable Energy Laboratory using appropriate system parameters for the proposed solar energy collection system.

Schedule

Present a proposed development schedule showing major milestones. Identify any anticipated impacts on Airport operations.

Proposal Worksheets

Attach completed *Proposal Worksheets* (Appendix 5) in the form provided herein including:

- Proposed rate sheet for annual kWh pricing
- Anticipated annual production in kWh
- Agree in principle to the Draft Power Purchase Agreement

6. Project Work Plan

Describe your understanding of the project and approach. Include deliverables, milestones, assumptions, and identify potential risks that could delay the project. List any resources you expect the City to provide.

The City may require oral presentations.

IV. PROJECT DESCRIPTION/SPECIFICATIONS

TENTATIVE SCHEDULE

Evaluation, Interview and Selection Completed	May 2014
Contract Negotiation Complete	September
City Council Approval	2014 October
Design and Permitting Complete	2014 November
Construction Complete	2015 May 2016
Project Completion	June 2016

The City shall have the right to modify or cancel the Pre-submittal Meeting and Site Visit date, Deadline for Submitting RFP Questions and RFP Proposal Submittal Due Date prior to the opening of the submitted proposals by duly noticed addendum. All other tentative schedule timeframes are approximate and provided for informational purposes only.

BACKGROUND

The City wishes to identify a qualified Offeror with demonstrated experience in:

- Installation, maintenance and operation of grid connected solar photovoltaic systems in excess of 300 kW;
- Securing financing for development of large solar photovoltaic (PV) collection systems;
- Sale of solar electric power to government agencies by means of a power purchase agreement structured to utilize tax and incentive benefits to minimize the cost of purchased power.

The goal of the Project is to develop an on-site solar photovoltaic generating facility that will supply up to 80% of the current annual electrical energy needs of the new Santa Barbara Airline Terminal at a rate that is competitive with rates offered by SCE. Airport anticipates that such a system will:

- Improve sustainability of new Airline Terminal by reducing carbon emissions and overall environmental impact of the facility through use of solar power.
Provide energy to the Airport over the term of the agreement at a price less than or equal to power provided by SCE.
- Eliminate uncertainty of future electricity rates and reduce dependence on foreign energy sources.
- Create, a decentralized, local power source for the new Airline Terminal.
- Showcase solar PV technology for the community and Airport users.

The new Airline Terminal building, which is located at 500 James Fowler Road, was opened in late 2011. The historic terminal and short-term parking lot portions of the project were opened in August 2012. Over 700,000 airline passengers use the Terminal annually to travel, non-stop, to and from five cities in the western United States aboard 32 flights daily. The facility is open to the public approximately 20 hours each day.

The new Airline Terminal was designed to be energy efficient and has attained a Leadership in Energy and Environmental Design (LEED) gold rating. A 13 kW solar PV collection system was installed and is operated by the Airport on the roof of the new Terminal building. This system is integrated into the Airline Terminal's electrical system and has been enrolled in the California Solar Initiative.

Southern California Edison (SCE) is the electric utility serving the facility. Invoices from SCE for energy used at the Terminal over the past year are attached as Appendix 1.

To provide access for the Offeror's potential connection to the Airline Terminal electric service yard, the Airport installed four 3" conduits running from the Airline Terminal electrical service yard (southwest corner of the new Terminal building), terminating 5' north of the existing SCE Surface Operable Enclosure (SOE) located off the intersection of James Fowler Road and William Moffett Place (see attached PV Conduit Exhibit — Appendix 2 Photovoltaic Conduit Routing Exhibit). These conduits run into the electrical service yard to the proposed location of a future disconnect switch (disconnect to be provided by Offeror) and into the switchgear. The switchgear has a 1,200 amp circuit dedicated for the future photovoltaic installation (Appendix 3). The Offeror will be responsible for any and all additional costs associated with supplying power from the proposed site to the Airline Terminal.

PROJECT DESCRIPTION

The proposed solar collection facility will be constructed on canopies in the Airport's Long Term Parking Lot 1. The lot covers approximately 6 acres and is located directly east of the north end of the Airline Terminal. The long axis of the lot is oriented in an east-west direction. The northern edge of the lot borders the airfield. The proposed solar PV collection system should employ the most appropriate technology and design for the selected site to minimize the cost per kWh for the Airport.

The City expects to enter into a Power Purchase Agreement (PPA) with the Project Developer for a term of twenty (20) years. The Project Developer will have contractual responsibility for accomplishing and paying all costs for design, permitting, installation, operation, maintenance, investor arrangements, and financing of the solar PV collection system and all appurtenant equipment.

The system proposed by the Offeror must be designed and sized to deliver energy to the Airport at a price competitive with current SCE rates. Airport will only consider proposals where the present value of energy purchased from the PPA provider is below, or equal to, the present value of the same energy purchased from SCE over the term of the agreement. Offeror must consider past billing data, including time-of-use and seasonal rates, to determine the feasibility of the proposed system. Airport will model each proposal to determine if the offeror's price for energy produced by the system is competitive with SCE rates over the term of the anticipated agreement. When doing the analysis, Airport will assume a 3% annual rate increase for SCE energy and will use a discount rate of 5% for the present value calculation. Generally, larger capacity systems will be favored over smaller capacity systems, and physically smaller systems will be favored over physically larger systems where the proposed systems demonstrate comparable economics.

To reduce costs to both parties, Airport anticipates that the Draft Power Purchase Agreement, presented as Appendix 4, will form the basis of the agreement between the Airport and the Project Developer. The Santa Barbara City Attorney will negotiate minor changes to the draft agreement on the Airport's behalf, but will not re-negotiate a new agreement. Proposers must agree in concept to the draft agreement and identify any specific terms where additional negotiation would be required.

The Project will be carried out by the Project Developer in conformance with all applicable laws and codes, and SCE interconnection requirements for net-metered installations. The City will assign any incentive payments, Renewable Energy Credits, and all other environmental attributes associated with the project to the Project Developer (or system owner) and will purchase all electrical energy produced by the system pursuant to the PPA. The Project Developer is responsible for seeking incentive payments, and will be expected to take advantage of tax incentives, including tax credits and accelerated depreciation, to minimize the cost of power delivered to the City. The successful proposer will be required to comply with the applicable laws governing wage rates that are in effect at the time of construction.

Some of the unique challenges associated with the Airport that will impact site layout, schedule, technology employed and performance of the system, include:

- Proximity to aircraft and Airport operations,
- FAA requirements and approvals necessary to construct. FAA provides guidance for constructing solar PV at airports, see http://www.faa.gov/airports/environmental/policy_guidance/media/airport_solar_guide_print.pdf
- Located in the California Coastal Zone and subject to requirements of the Local Coastal Plan,
- Subject to City of Santa Barbara requirements, review and permitting process, and
- Proximity to, or presence in, a floodway or floodplain.

The Project Developer will provide real-time web-based monitoring of energy consumption at the Airline Terminal and power generated by the proposed system accessible at no charge to the Airport.

The system proposed herein should be operational by October

2015. DESIGN PARAMETERS

1. The system developed by the Project Developer will be fully integrated into the Airline Terminal power supply system and the electrical grid, with the delivery and metering point in the Airline Terminal electrical service yard. The Project Developer shall supply and install all equipment necessary to interconnect the PV system with the Airline Terminal electrical system. All costs associated with utility interconnection shall be borne by the Project Developer. All transmission lines constructed by the Project Developer will be underground.
2. The PV collection system may not interfere with the safe operation of the Airport, including FAA equipment, aircraft operations, Airport operations and parking lots. If the completed system interferes in any way with safe operation of the Airport, the Project Developer will immediately and entirely eliminate the source of any interference at their sole cost. The Project Developer will phase construction of the Project to minimize disruption to Airport parking activities, if necessary.
3. Capacity of the parking lot should be maintained.

The PV collection system and support structure must be aesthetically pleasing and of a style and design acceptable to the Airport Department, Architectural Board of Review, Planning Commission, building department, and other review and approval bodies, while minimizing environmental impacts. Santa Barbara Solar Design Guidelines are available for general guidance. See <http://www.santabarbaraca.gov/services/planning/design/features/solar.asp>

4. Project Developer shall install PV modules with a minimum manufacturer's warranty of 25 years and inverters with a minimum manufacturer's warranty of 10 years. All Project equipment and appurtenances will be installed in conformance with manufacturer's recommendations and applicable codes. All solar electric generating equipment, inverters and meters used on the Project must:
 - a. All photovoltaic (PV) modules shall be tested and listed by UL and shall meet the requirements specified in UL 1703 to ensure compliance with applicable safety standards, including but not limited to safe operation and disconnection from the electrical distribution system in the event of internal equipment failure, or separation from the distribution system.

- b. PV Modules shall:
 - 1) Be CA Energy Commission Certified and shall meet all the requirements for being eligible for CSI Incentives.
 - 2) Be on the CA Energy Commission list of approved products
see: www.gosolarcalifornia.ca.gov/equipment/index.html.
 - 3) Have a minimum CA Energy Commission PTC rating of 88% of the nameplate.
 - 4) Have a minimum rating of 12.0 watts per square foot DC. PV modules shall have a positive electrical tolerance.
- c. The manufacturer of the PV modules must have had at least 5 (five)-years of successful operating experience in producing PV modules with an aggregate successful operating capacity of at least 5 MW per year. Manufacturer" of the module shall be able to provide evidence of this qualification.
- d. PV Module shall have a warranty that includes the following elements:
 - 1) All PV modules shall have a warranty period that begins at the date of start-up:
 - 2) PV Module(s) produce a power output of ninety percent (90%) or greater at the end of 10 years.
 - 3) PV Module(s) produce a power output of eighty percent (80%) or greater at the end of 25 years.
 - 4) State if the warranty is based on PVUSA Test Conditions or Standard Test Conditions.
 - 5) PV Module(s) must possess at ten-year workmanship warranty.
- 5. If the proposed solar facility impacts existing lighting for public or operational areas, Project Developer will provide adequate high-efficiency replacement lighting, consistent with FAA and city requirements, as part of development of the Project. Lighting conditions will meet lighting standards appropriate for the area. All parking lot lighting should continue to be grid tied.
- 6. Support structure design must minimize perching and nest building opportunities for birds.
- 7. All materials used to construct the Project shall be suitable for marine environment applications, including but not limited to, the following:
 - a. Above-ground conduit and conduit fittings shall be rigid, liquid tight flexible metallic conduit, or equivalent, as approved by City
 - b. Fasteners and hardware shall be galvanized steel, stainless steel, or corrosion and sunlight resistant material, as approved by City
 - c. In addition to meeting the local electrical code requirements, all conductors shall be copper and carry at least a damp location rating or better if required by code.
 - d. Structural materials shall be suitable for use under the prevailing environmental conditions for which they are intended. This includes, but is not limited to, a marine environment. Material exposed to the marine environment shall be galvanized steel, stainless steel, anodized aluminum, or corrosion and sunlight resistant material, as approved by City.

- e. PVC electrical raceways, enclosures, and/or fittings shall not be approved where exposed to sunlight.
- 8. Maintenance of the proposed system will be the responsibility of the Project Developer. Non-storm water discharges associated with maintenance of the system are prohibited.
- 9. While the system should showcase solar PV technology for the public, the Airport will not be responsible for theft, damage or vandalism.

SERVICES PROVIDED BY THE CITY OF SANTA BARBARA

- 1. Provide a City Project Manager as a point of contact for all dealings with the Project Developer.
- 2. Provide any available information about the site facilities.
- 3. Provide assistance with the City's discretionary review and permitting process.
- 4. Maintain on-site vegetation during the term of the agreement so as to provide access to sunlight substantially equal to the currently existing conditions.

Appendix List

- 1. Past SCE bills
- 2. Photovoltaic conduit routing exhibit
- 3. Electrical single line diagram
- 4. Proposed Power Purchase Agreement
- 5. Required proposal worksheets
- 6. Nondiscriminatory Employment Certificate
- 7. Non-Collusion Declaration

V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of Section IV specifications identifying points assigned to each item. These weighed factors will be used in the evaluation of the proposals. Only finalist proposers will receive points for an oral presentation and demonstration.

<u>Specifications:</u>	<u>Maximum Points:</u>
Economic Value	45
System	30
Experience	15
Schedule	10
<hr/>	
TOTAL	100

B. EVALUATION FACTORS

1. Economic Value - Proposed price per AC kWh delivered to Airport over term. (45 points)
2. System —Generating capacity, size, configuration and type of equipment. (specifying module type, inverters, preliminary mounting type/design, monitoring equipment, output, how Project is showcased to public) (30 points)
3. Experience - Demonstration of successful experience in the timely finance, planning, development and operation of solar PV systems of comparable size and/or type under a PPA (or similar) approach. (15 points)
4. Schedule— Detailed schedule including agreement development, construction and operation timeline, with anticipated impacts to Airport operations (10 points).

C. EVALUATION PROCESS:

1. All proposals will be reviewed for compliance with the mandatory requirements as stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The City may contact the proposer for clarification of their response as specified in Section II, Paragraph B, Subparagraph 6.
3. The City may use other sources of information to perform the evaluation as specified in Section II, Paragraph 22.
4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsible proposers with the highest scores may be selected as finalist based upon their initial proposals or the City may proceed with the proposer receiving the best score. Finalists who are asked or who choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. Points awarded from oral presentations and product demonstrations will be added to the previously assigned points to attain final scores. The responsible proposer whose proposals is most advantageous to the City, taking into consideration the evaluation factors in Section V, will be recommended for contract award to the City Council as specified in Section II, Paragraph B, Subparagraph 11. Please note, however,

that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

SELECTION AND NEGOTIATION PROCESS

The City will conduct the following steps in making the selection and negotiating an agreement:

- All proposals will be reviewed for completeness, clarity and conformance with Project criteria and submittal requirements. The top proposals will be identified based on the above selection criteria, clarification of any key issues, as necessary, and reference checks.
- Project Developers that have submitted the best proposals will be invited for an interview with the City selection committee. Project Developer must be represented by Key Personnel identified in the submittal during any interview.
- Based on the proposal submittals and interview results, the City will enter into negotiations with the Project Developer(s) whose proposal(s) best serve the City's interests with the goal of finalizing the power purchase agreement and any other needed agreements. Negotiations may include a request by the City for a best and final offer from any or all of the Project Developers.

POWER PURCHASE AGREEMENT

This Power Purchase Agreement is entered into as of _____, 20 by and between _____ ("Provider") and the City of Santa Barbara, a municipal corporation ("Host").

WHEREAS, Provider desires to develop, design, construct, own and operate a solar powered electric generating facility at Host's property located at Host's

Santa Barbara, California, and sell the electric energy produced by the facility to Host.

WHEREAS, Host desires to make a portion of its property available to Provider for the construction, operation and maintenance of the facility and to purchase the electric energy produced by the facility.

NOW, THEREFORE, in consideration of the promises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

1. DEFINITIONS. The following terms, when used herein, shall have the meanings set forth beside them below.

"Access Rights" means the rights provided in this Agreement for Provider and its designees, including Installer, to enter upon and cross the Site to install, operate, repair, remove, and maintain the Facility, and to interconnect the Facility with the Local Electric Utility and to provide water, electric and other services to the Facility.

"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

"Applicable Law" means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any governmental authority having jurisdiction over such Party or its property, enforceable at law or in equity.

"Change in Law" means that after the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful. Change in Law does not include changes in federal or state income tax laws. Change in Law does include changes in the interpretation of an Applicable Law.

"Commercial Operation Date" means the date, which shall be specified by Provider to Host pursuant to Section 4(g), when the Facility is physically complete and has successfully completed all performance tests and satisfies the interconnection requirements of the Local Electric Utility.

"Confidential Information" has the meaning provided in Section 15(b).

"Construction Guaranty" means a performance bond or escrow agreement in favor of the Host and in accordance with Host's requirements in the amount of _____ dollars, or such other construction guaranty deemed by Host to be sufficient to secure the construction of the Facility in substantial conformance with the Proposal.

"CSI" means the California Solar Initiative.

"Dispute" has the meaning provided in Section 24(a).

"Electric Service Provider" means any person, including the Local Electric Utility, authorized by the State of California to provide electric energy and related services to retail users of electricity in the area in which the Site is located.

"Environmental Attributes" means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Facility and its displacement of conventional energy generation.

"Facility" means an integrated system for the generation of solar energy consisting of the photovoltaic panels and associated equipment to be installed on the Premises in accordance with this Agreement.

"Facility Lessor" means, if applicable, any Person to whom Provider transfers the ownership interest in the Facility, subject to a leaseback from such Person.

"Fair Market Value" means the price that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Facility and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation.

"Force Majeure Event" has the meaning provided in Section 20(a).

"Governmental Authority" means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or

regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

"Host" means the City of Santa Barbara, and its successors and

assigns. "Initial Period" has the meaning provided in Section 2.

"Installer" means the person designated by Provider to install the Facility on the Premises. Installer shall be _____ or such other qualified and licensed contractor as may be approved by Host.

"Land Registry" means the office where real estate records for the Site are customarily filed.

"Lender" means persons providing construction or permanent financing to Provider in connection with installation of the Facility and shall include investors in sale-leaseback transactions.

"Local Electric Utility" means the local electric distribution owner and operator which under the laws of the State of California are responsible for providing electric distribution and interconnection services to Host at the Site.

"Operations Period" has the meaning provided in Section 2.

"Party" means either Host or Provider, as the context shall indicate, and "Parties" means both Host and Provider.

"Person" means any individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

"Point of Delivery" has the meaning set forth in Section 6(a).

"Premises" means the portion of the Site described on Exhibit

D. "Provider" means _____, and its successors and

"Renewable Energy Certificate" or "REC" means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a specified quantity of energy from a renewable energy source by a renewable energy facility.

"Site" means the real property described on Exhibit C attached hereto, which property includes the Premises.

"Term" shall have the meaning provided in Section 2 hereof.

2. TERM.

(a) This Agreement shall consist of an Initial Period, and, unless the Host has exercised its right under Section 4(b) hereof to terminate the Agreement or the Provider has exercised its right under Section 4(c) hereof to terminate the Agreement prior to the end of the Initial Period, an Operations Period. As used herein, "Term" shall mean all of the Initial Period and the Operations Period.

(b) The Initial Period will begin on the later of the date set forth above or such time when thirty (30) days have elapsed from Host's _____ adoption of an ordinance approving this Agreement and during such thirty (30) day period there has been no filing of a referendum on such ordinance approval. The Initial Period will terminate on the earlier of (i) the Commercial Operations Date or (ii) the date this Agreement is terminated pursuant to the provisions of Section 4(b) or Section 4(c).

(c) If applicable, the Operations Period will commence on the Commercial Operations Date and, subject to the provisions of this Agreement, shall terminate at 11:59 p.m. on the last day of the month in which the twentieth (20th) anniversary of the Commercial Operation Date occurs.

(d) Twenty-four months prior to the end of the Operations Period, the Parties will meet to discuss the extension of this Agreement on terms and conditions reflecting the then current market for solar generated electricity and with such other amendments and additional terms and conditions as the Parties may agree. Neither Party shall be obligated to agree to an extension of this Agreement.

3. ACCESS TO PREMISES, OWNERSHIP OF FACILITY

(a) Host hereby grants Provider and its designees access to the Premises, for the Term, for the purposes of designing, installing, operating, and maintaining the Facility, and any other purpose set forth in this Agreement, and otherwise in accordance with the provisions of this Agreement. Access shall be subject to and consistent with Airport Security Plan requirements as they exist from time to time.

(b) Provider shall be the legal and beneficial owner of the Facility at all times. The Facility is personal property and shall not attach to or be deemed a part of, or fixture to, the Site. The Facility shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will use reasonable commercial efforts to place all persons having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the Facility and the legal status or classification of the Facility as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the Facility as a fixture of the Premises, Host shall provide a

disclaimer or release from such lienholder. If Host is the fee owner of the Premises, Host consents to the filing of a disclaimer of the Facility as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If Host is not the fee owner, Host will obtain such consent from such owner of the Premises. Provider may mortgage, pledge, grant security interests, or otherwise encumber, or enter into a sale and lease of the Facility in connection with any construction or permanent financing obtained by Provider in connection with the installation of the Facility, and any refinancing thereof.

(c) Host grants Provider and its representatives the following Access Rights with respect to the Site, including without limitation:

(i) reasonable vehicular and pedestrian access across the Site to the Premises as designated on Exhibit C for purposes of designing, installing, operating, maintaining, repairing and removing the Facility. In exercising such access Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site. Access will be subject to and consistent with the Airport Security Plan;

(ii) the right to locate transmission lines and communications cables across the Site as designated on Exhibit C. The location of any such transmission lines and communications cables outside the areas designated on Exhibit C shall be subject to Host's prior written approval and shall be at a location that minimizes any disruption to Host's activities occurring on the Site, including Host's aviation uses, and minimizes aesthetic impacts, subject to the description of the Facility in Exhibit E.

(iii)adequate storage space on the Site convenient to the Premises for materials and tools used during construction, installation of the Facility. Host shall maintain overall security of the Site consistent with current practices, including lockable gates at all entrances. Provider shall provide and maintain such fencing or other enclosures as necessary to secure the specific storage area made available to Provider by Host.

(iv)water, drainage, and electrical connections on the Premises for use by Provider in installing, operating and maintaining the Facility, provided that Provider shall pay the cost of utilities and comply with storm water discharge limitations applicable to the City.

(d) Provider will be responsible for connecting monitoring equipment for the Facility to external networks so that it is possible for Provider to remotely monitors the Facility. Provider shall not interconnect with Host's systems.

(e) Unless otherwise mandated by the federal government, Host, or any lessee, grantee or licensee of Host, will maintain its buildings and plantings on the Site and its adjacent properties to maintain the solar access of the Facility in substantially the

same condition as of the date of this Agreement and in a manner that shall not interfere with the construction, operation or maintenance of the Facility.

4. PLANNING AND INSTALLATION OF FACILITY.

(a) During the first thirty (30) days of the Initial Period, Provider shall, at its own expense, diligently assess the suitability of the Premises for the Facility. The assessment shall include inspection of the Premises on which the Facility will be located; application for any building permits or other governmental authorizations necessary for the construction of the Facility; making arrangements for interconnection with the Local Electric Utility; making any applications to the California Public Utilities Commission or other agencies for receipt of payments for the Facility under the CSI or other applicable programs; applying to any other governmental agencies or other persons for grants or other determinations necessary for the construction of or receipt of revenues from the Facility; and any other investigation or determination necessary for the construction, operation or maintenance of the Facility.

(b) Based on the assessment conducted pursuant to Section 4(a), during the first three hundred sixty five(365) days of the Initial Period, Provider shall have the right to cease development of the Facility on the Premises, if any of the following conditions have occurred:

(i) Provider, after consultation with Host, demonstrates with reasonable certainty that Provider will not be able, despite reasonable diligence, to obtain building permits, architectural approval, and all other permits or other approvals necessary to construct the Facility;

(ii) Information about the Site provided to Provider by Host is found to be inaccurate and such inaccuracy results in a material and substantial change in the cost or feasibility of constructing the Facility;

(iii) Circumstances beyond Provider's reasonable control prevent interconnection with the Local Electric Utility; or

(iv) The Local Electric Utility notifies Host or Provider that the Facility is ineligible to qualify for payments under CSI.

If Provider determines that any of such conditions have occurred, Provider shall furnish evidence, of such to Host. Provider will consider any information given by Host to Provider within seven (7) days of receipt of such evidence, after which Provider may terminate this Agreement without any further liability of the Parties to each other, by delivering to Host notice of such termination, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to its pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 16,

the indemnity obligations under Section 17 hereof, and the dispute resolution provisions of Section 26 hereof shall continue to apply notwithstanding the termination of this Agreement.

(c) If neither party has terminated the Agreement by the end of the time period set forth in Section 4(b), or upon an earlier date as may be mutually agreed by the Parties, Host shall issue to Provider a Notice to Proceed and Provider shall proceed to construct the Facility as described in Exhibit E at Provider's sole expense, except to the extent Exhibit E expressly identifies a cost as Host's responsibility. Provider shall, within ten (10) days of such Notice to Proceed provide the Construction Guaranty to Host. Provider shall give as much notice of intent to commence installation of the Facility on the Premises as reasonably possible, but in no case less than fifteen (15) days, during which time Host and Provider will schedule a pre-construction meeting to discuss arrangements for the period of construction. Provider shall commence construction of the Facility not later than sixty (60) days following issuance of the Notice to Proceed. As of the date hereof; Provider anticipates that the Facility shall consist of the components and shall have the design set forth in Exhibit E attached hereto. Provider, however, has the right, subject to Host's reasonable approval, to modify the design of the Facility, including the selection of the components in the Facility, provided, however, that such changes shall not result in the Facility exceeding the nameplate capacity, building footprint, location and height set forth in Exhibits D and E, except as Host, in its sole discretion, may approve.

(d) If within 365 days (not including any days in which a Force Majeure condition existed) following the date of the Notice to Proceed, the Commercial Operations Date has not occurred, Host may terminate this Agreement by delivering notice to Provider of its intention to terminate this Agreement, and the Agreement shall terminate thirty (30) days after Provider's receipt of such notice unless the Commercial Operation Date occurs within such thirty (30) day period, provided, however, that if Provider is unable to achieve the Commercial Operation within such period due to difficulties in receiving timely supply of equipment to be incorporated in the Facility or the presence of hazardous materials on the Site, Host's right to terminate under this Section 4(d) shall be extended for such period as may be reasonably necessary to accommodate the supply of such equipment or the remediation of such hazardous materials. Upon such termination, neither Party shall have any further liability to the other, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to their pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 16, the indemnity obligations under Section 17 hereof, and the dispute resolution provisions of Section 25 hereof shall continue to apply notwithstanding the termination of this Agreement.

(e) Provider shall install one or more meter(s), the quantity and specifications of which are consistent with the specifications set forth in Exhibit E, to measure the

output of the Facility at the Point of Delivery. Provider shall install an Interval Data Recorder (IDR) with industry standard telemetry.

(f) Provider shall give Host regular updates, on a schedule reasonably requested by Host, on the progress of installation of the Facility and shall notify Host of when Provider will commence testing of the Facility. Host shall be entitled to have its representatives present during the testing process, but subject to written rules and procedures as may be established by Provider and Installer. After Provider has determined, in its reasonable judgment, and has provided Host with appropriate documentation that the Facility meets the requirements of the Local Electric Utility, has been installed in accordance with all Applicable Laws, and is capable of producing electricity on a continuous basis, Provider shall notify Host that installation of the Facility is complete and shall specify the Commercial Operations Date for the Facility, which may be immediately upon delivery of such notice to Host, provided however that Provider shall have notified Host of Provider's intent to specify the Commercial Operations Date at least ten (10) days prior to such date. All electricity produced by the Facility prior to the Commercial Operations Date shall be delivered to Host and Host shall pay for such electricity at a rate equal to 75% of the rate applicable to the first year of the Operations Period, provided that Host has inspected the Facility to confirm that all necessary equipment, including metering, is in place and functioning properly.

(g) Host shall release its interest in the Construction Guaranty within thirty (30) days from Provider's achieving the Commercial Operation Date as evidenced by satisfactory documentation from the Local Electric Utility.

(h) Provider and Installer are not responsible for any hazardous materials encountered at the Site. Upon encountering any hazardous materials, Provider and Installer will stop work immediately in the affected area and duly notify Host and, if required by Applicable Law, or any Governmental Authority with jurisdiction over Site. Upon receiving notice of the presence of suspected hazardous materials, Host shall take all measures required by Applicable Law to remediate the site, provided however if such remediation cost will exceed one hundred thousand dollars, Host may terminate this Agreement without any further liability of the Parties to each other, by delivering to Provider notice of such termination, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to its pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 16, the indemnity obligations under Section 17 hereof, and the dispute resolution provisions of Section 25 hereof shall continue to apply notwithstanding the termination of this Agreement. Provider and Installer shall be obligated to resume work at the affected area of the Site only after a qualified independent expert provides written certification that (i) remediation has been accomplished as required by Applicable Law and (ii) all necessary approvals have been obtained from Governmental Authority having jurisdiction over the Project or Site. Notwithstanding the preceding provisions, Host is not responsible for any hazardous materials introduced to the Site by Provider or Installer.

5. OPERATION OF THE FACILITY

(a) Provider shall use licensed and bonded contractors to perform the work of installing, operating, and maintaining the Facility. All labor to install, operate, and maintain the Facility shall be paid not less than the minimum rates established by the State of California's Director of the Department of Industrial Relations (State Wage Rates). Provider intends to use Installer to perform such work, but may use other contractors, for all or a portion of such work, subject to the reasonable approval of Host. Provider shall advise Host of the contractors being used by Provider. Provider shall, to the extent consistent with applicable law and local practice, have contractors execute lien waivers to prevent the imposition of any mechanics, labor or materialman's liens against Host's interest in the Site. Provider shall be responsible for the conduct of its contractors, and Host shall have no contractual relationship with the contractors in connection with the work on the Facility. Provider shall ensure that Installer maintains insurance applicable to the Installer's activities which satisfy the requirements in Exhibit F.

(b) Provider shall design, obtain permits, install, operate, and maintain the Facility so as to keep it in good condition and repair, in compliance with all Applicable Laws and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at Provider's sole expense, except to the extent Exhibit E expressly identifies a cost as Host's responsibility. Provider shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Host for conduct of business on the Site.

(c) Host will provide security for the Facility to the extent of its normal security procedures for the Site.

(d) Provider may shut down the Facility at any time in order to perform required emergency repairs to the Facility. At other times, Provider shall give Host notice of the shutdown as may be reasonable in the circumstances. Provider shall not have any obligation to reimburse Host for costs of purchasing electricity which would have been produced by the Facility but for such shutdown. Provider shall not schedule shutdowns during peak periods of electric generation and periods when peak energy and demand prices are charged by the Electric Service Provider, except as may be required in accordance with prudent electric industry practices in the event of equipment malfunction.

6. SALE OF ELECTRIC ENERGY

(a) Throughout the Operations Period, subject to the terms and conditions of this Agreement, Provider shall sell to Host and Host shall buy from Provider all electric energy produced by the Facility, whether or not Host is able to use all such electric energy (Host shall be free to sell energy which is excess to its requirements to the Local Electric Utility or receive any applicable net metering credit from the Local Electric

Utility as contemplated by the provisions of Section 9(b)). The Point of Delivery of the electric energy shall be as indicated on the one-line diagram included in Exhibit E. Title to and risk of loss with respect to the energy shall transfer from Provider to Host at the Point of Delivery.

(b) The electric energy from the Facility shall be delivered from Provider to Host at the specifications set forth in Exhibit E and otherwise in compliance with all requirements of the Local Electric Utility.

(c) Provider does not warrant or guarantee the amount of electric energy to be produced by the Facility for any hourly, daily, monthly, annual or other period. Provider is not a utility or an electric service provider, and does not assume any obligations of a utility or electric service provider, including any obligation to provide service or be subject to rate review by governmental authorities.

(d) The output of the Facility will be measured by the meter installed in accordance with Section 4(e). Provider shall conduct tests of the meters at such times as it deems appropriate in accordance with industry standards, but not less than once in any two year period. Host shall pay for any independent testing of the meter(s) in excess of such minimum testing schedule that Host deems necessary, except if, after such testing, the meter is shown to be in error by more than 2%, in which case Provider shall pay for the cost of such test and billing adjustments shall be made retroactively to the date which is half-way in between the Host testing and the last testing date of the meter by Provider, but in no event longer than 180 days.

7. PAYMENT AND BILLING

(a) Host shall pay Provider for electricity produced by the Facility at the rates set forth in Exhibit A hereto. The rate shall become effective on the Commercial Operations Date at the "Year 1" rate shown in Exhibit A and shall adjust annually thereafter in accordance with Exhibit A on each anniversary of such date. The energy purchase rates contained in Exhibit A reflect Provider's responsibility to pay for all costs for the design, permitting, construction, maintenance, operation, administration, and removal of the Facility pursuant to this Power Purchase Agreement. . . Host shall have no responsibility for any portion of any such costs, except to pay for electricity produced as provided in this Power Purchase Agreement.

(b) Host shall pay for the electricity produced by the Facility quarterly in arrears. Promptly after the end of each calendar quarter, Provider shall provide Host with an invoice setting forth the quantity of electricity produced by the Facility in such quarter, the applicable rates for such and the total amount due, which shall be the product of the quantity and the applicable rates.

(c) Invoices shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv)

transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a business day or in any other case as of the next business day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

Santa Barbara Municipal Airport
601 Norman Firestone Road
Santa Barbara, CA 93117
Facsimile: (805)964-1380

(d) Host shall pay each invoice within twenty (20) days of receipt of the invoice. Provided the Host has the ability to make payment by electronic funds transfer, payment shall be made by electronic funds transfer to an account designated by Provider in the invoice or in a written notice delivered to Host; otherwise payment shall be made by check or other means agreed by the Parties. Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, shall accrue interest on the unpaid amount at the rate of 1% per month, compounded monthly.

(e) If Host objects to all or a portion of an invoice, Host shall, on or before the date payment of the invoice is due, (i) pay the undisputed portion of the invoice, and (ii) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections. If Host does not object prior to the date payment of any invoice is due, Host shall be obligated to pay the full amount of such invoices but Host may subsequently object to such invoice and, if such objection proves to be correct, receive a refund of the disputed amount plus interest on the disputed amount at the rate of 1% per month, compounded monthly; provided, however, that Host may not object to any invoice more than twelve (12) months after the date on which such invoice is rendered. The right to dispute or object to an invoice, shall, subject to the time limitation provided in this Section 7(e), survive the expiration or termination of this Agreement.

8. GUARANTEE OF MINIMUM ANNUAL OUTPUT

Provider has estimated that the system will deliver the Expected Annual Output as indicated in Exhibit A of this agreement. Provider guarantees a Minimum Annual Output from the system of 90% of the Expected Annual Output from the system over the course of an operational year commencing with the commercial operation date. If Provider fails to meet the Minimum Annual Output requirement on an operational year basis, for reasons other than shutdown required by the Host, as described in Section 11, Provider will pay the Host, or the Host may, at its option, offset against future payments due Provider, an amount equal to the Host's lost savings.
The formula for calculating lost savings:

Lost Savings (Minimum Annual Output — Actual Annual Output Delivered) X
(Annual Average Tariff Price in \$/kWh — Annual Contract Price for PV Electricity Produced)

If Provider fails to pay the Host the amount due for any annual shortfall of the guaranteed Minimum Annual Output within 60 days after notice to make such payment, Host shall have the express right to withhold payment, up to the shortfall amount due, from any payment otherwise payable to the Provider for electricity.

9. SUPPLEMENTAL POWER, NET METERING AND RECS

(a) Throughout the Term, Host shall be responsible for obtaining all of its requirements for electric energy in excess of the amounts produced by the Facility and pay for such service pursuant to contracts with or applicable tariffs of the Local Electric Utility or other Electric Service Provider. Provider shall have no obligation to obtain or pay for such supplemental or back-up electricity.

(b) At any time that electric production from the Facility is greater than Host's requirements at such time, Host shall nevertheless pay Provider for all of the electricity produced by the Facility, except as provided in Section 14(e) of this Agreement, at the rates and in the manner provided in this Agreement. At Host's option, power in excess of Host's requirements may be delivered to the Local Electric Utility through the Point of Delivery and Host shall receive any payments from the Local Electric Utility, whether directly for the electricity or through receipt of credits or payments that may be available from the Local Electric Utility under net metering or similar programs. If Applicable Law or the practice of the Local Electric Utility restricts the ability of the Host to sell electricity produced by the Facility to the Local Electric Utility, then the Parties shall agree on alternate arrangements to enable them, insofar as possible, to receive payments from the Local Electric Utility, provided that the economic benefits to Provider remain as provided in this Section 9(b).

Except as provided in Section 9(b), Provider shall receive all payments available under the CSI and any other federal, state or local programs applicable to renewable energy sources and Host shall assist Provider in preparing all applications and other documents necessary for Provider to receive such payments, including designating Provider as the customer for purposes of the CSI or assigning payments from the CSI to Provider. If Host receives any payments under the CSI or other programs in respect of the Facility, except as provided in Section 9(b), it shall promptly pay them over to Provider. Host's obligation to make any payments to Provider under this paragraph (c) is limited to any payments actually received by Host.

(d) Host shall be the owner of any Renewable Energy Certificates and Environmental Attributes which may arise as a result of the operation of the Facility and shall be entitled to transfer such Renewable Energy Certificates and Environmental Attributes to any person. Provider shall assist Host in preparing all documents necessary for Host to receive such Renewable Energy Certificates and Environmental Attributes, and if Provider is deemed to be the owner of any such Renewable Energy Certificates and Environmental Attributes, Provider shall assign the same (or the proceeds thereof) to Host. If Provider receives any payments in respect of such certificates or attributes, it shall promptly pay them over to Host.

(e) Provider shall be entitled to receive any payments for electric capacity or ancillary services which may become available as a result of the construction or operation of the Facility. Host shall assist Provider in preparing all documents necessary for Provider to receive such payments, and if Host is deemed to be the owner or provider of such capacity or services, Host shall assign the same to Provider. If Host receives any payments in respect of capacity or such services it shall promptly pay them over to Provider.

(f) Except as contemplated by the provisions of Section 9(b), the electricity purchased by Host from Provider under this Agreement shall not be resold, assigned or otherwise transferred to any other person, and Host shall not take any action which would cause Host or Provider to become a utility or public service company.

(g) Neither Party shall assert that Provider is an electric utility or public service corporation or similar entity which has a duty to provide service, is subject to rate regulation or is otherwise subject to regulation by any governmental authority as a result of Provider's obligations or performance under this Agreement.

10. PURCHASE OPTIONS.

(a) Commencing on the seventh anniversary of the Commercial Operation Date, and on each subsequent anniversary of the Commercial Operation Date, the Host may, at Host's election, approach Provider to discuss the possible purchase of the Facility by Host from Provider. Host acknowledges that Provider shall have no obligation to sell the Facility, and Provider acknowledges that by initiating discussions Host shall not have made any commitments with respect to the purchase of the Facility.

(b) Host shall have the right, but not the obligation, to purchase the Facility from Provider at the expiration of the Operations Period at the then Fair Market Value of the Facility. No earlier than twelve months prior to the expiration of such Operations Period and no later than nine (9) months prior to the expiration of the Operations Period, Host shall notify Provider of its intent to exercise the option. Within ninety-one (91) days of its receipt of such notice, Provider shall give Host its appraisal of the Fair Market Value of the Facility at the end of the Term, which appraisal shall be based on Provider's knowledge of solar industry facilities. Host may, but is not obligated to, accept such appraisal. If Host does not accept such appraisal within ten (10) days of receiving the appraisal from Provider, the Parties shall meet to discuss the appraisal. If they are unable to reach agreement within twenty (20) days of the Host's receipt of the appraisal from Provider, then the Parties shall mutually select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry. Such appraiser shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties, provided however Host is under no obligation to purchase.

(c) Upon Host's notice that it elects to exercise the option set forth in either Section 10(a) or 10(b) above, Provider shall prepare and deliver, or cause to be delivered, to Host a set of records on the operation and maintenance history of the Facility and a set of as-built drawings of the entire Facility. Upon payment of the option price, Provider shall deliver, or cause to be delivered, to Host a bill of sale conveying the Facility to Host. Such bill of sale shall not contain any warranties other than a warranty against any defects in title arising through Provider. Provider shall use all reasonable efforts to transfer any remaining manufacturer's warranties on the Facility, or portions thereof, to Host.

(d) In connection with, and prior to the effective date of, Hosts' purchase of the Facility, Host and Provider may discuss entering into an operation and maintenance agreement under which Provider shall perform all or a portion of the operation and maintenance requirements of the Facility following Host's purchase of the Facility. However, neither party shall be under an obligation to enter into such an agreement.

(e) If Host does not exercise the option to purchase the Facility and the Parties do not agree to any subsequent agreement with respect to the Facility by the end of the Operations Period, then Provider, at its expense, shall promptly decommission and remove the Facility within three (3) months of the expiration of the Operations Period. Host grants Provider and its representatives reasonable vehicular and pedestrian access across the Site to the Premises for purposes of decommissioning the Facility. In exercising such access and performing the decommissioning, Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site. Host will provide adequate storage space on the Site convenient to the Premises for materials and tools used during decommissioning, which space Provider shall secure with fencing or other equipment as Provider deems necessary. During decommissioning, Provider will comply with all Applicable Law.

(f) Host's option to purchase the Facility under Section 10(b) shall not survive the termination of this Agreement.

11. SHUTDOWNS, SALE OF SITE, CLOSURE OF PREMISES

(a) Host from time to time may request Provider to temporarily stop operation of the Facility, such request to be reasonably related to Host's activities in operating the Airport, including compliance with FAA mandates, or maintaining and improving the Site. During any such shutdown period (but not including periods of Force Majeure), Host will pay Provider an amount equal to the sum of (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced during the period of the shutdown; and (ii) revenues that Provider would have received under the CSI and any other assistance program with respect to electric energy that would have been produced during the period of the shutdown. Determination of the amount of energy that would have been produced during the period of the shutdown shall be based, during the first year of the Operations Period, on the estimated levels of production and, after the first year of the Operations Period, based on actual operation of the Facility in

the same period in the previous calendar year, unless Provider and Host mutually agree in writing to an alternative methodology.

(b) If Host sells the Site and the improvements thereon Host may, in lieu of Host's continuing performance under this Agreement with respect to the Facility at the Site, cause a subsequent owner of the Site, who shall demonstrate to Provider's lenders that it possesses investment grade credit, to assume this Agreement with respect to such Site. Host shall give Provider at least 180 days' notice of a pending sale.

(c) In the event the Premises are closed as a result of an event not related to Force Majeure, Host shall nevertheless continue to pay Provider for all electricity produced by the Facility and delivered to the Point of Delivery.

(d) Notwithstanding anything to the contrary in this Section 11, if there is a temporary shutdown or stop in operation of the Facility, not the result of a Force Majeure event, caused by or related to any action or inaction of Provider such that Facility is no longer able to produce electricity or transfer electricity to the Premises or to the Local Electric Utility and as a result, the Facility is not operating and producing electric energy for a continuous period of ninety (90) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days' notice to the other Party. Upon such termination, Provider shall be required within three (3) months of such termination to decommission and remove the Facility from the Site in accordance with the provisions of Section 10(e) hereto. In the event of such a termination of this Agreement with respect to the Facility, the Parties shall not be released from any payment or other obligation arising under this Agreement prior to the shutdown of the Facility, and the indemnity, confidentiality, and dispute resolution provisions shall survive the termination of this Agreement.

12. PERMITS AND OTHER APPROVALS

(a) Provider shall be responsible for paying all costs for and arranging the interconnection of the Facility with the Local Electric Utility and shall obtain any consents or approvals from the Local Electric Utility which are necessary for the construction, commissioning, or operation of the Facility.

(b) Provider shall pay for and obtain all approvals from governmental entities necessary for the construction and operation of the Facility, including land use permits, building permits, and demolition and waste disposal permits.

(c) Host shall pay for and obtain all consents required for it to enter into and perform its obligations under this Agreement from its lenders, tenants, and any other persons with interests in the Site. These consents shall include estoppel certificates which recognize the rights of Provider, and its assignees and successors, under this Agreement.

13. TAXES

(a) Provider shall be responsible for any and all income taxes associated with payments from Host to Provider for electric energy from the Facility. Provider, as owner of the Facility, shall be entitled to all deductions, credits and other tax benefits under federal and state income tax laws with respect to the Facility, including depreciation allowances, investment and production tax credits.

(b) Host shall be responsible for all taxes, fees, and charges, including sales, use and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of electric energy by Provider to Host. Host shall timely report, make filings for, and pay any and all such taxes assessed directly against it and shall reimburse Provider for any and all such taxes assessed against and paid by Provider.

(c) Host shall be responsible for all ad valorem personal property or real property taxes levied against the Site, improvements thereto and personal property located thereon, except that Provider shall be responsible for ad valorem personal property or real property taxes levied against the Facility. Provider acknowledges and agrees that this Agreement may create a possessory interest subject to property taxation. Provider agrees to pay and discharge any possessory interest taxes associated with the Facility, hereinafter levied or assessed or imposed upon or against the Facility, or against any of Provider's personal property now or hereafter located at the Site, or which may be levied, charged, assessed or imposed upon any taxable possessory interest or right of Provider acquired pursuant to this Agreement. If Host is assessed any taxes related to the existence of the Facility on the Premises, Host shall immediately notify Provider. Host and Provider shall cooperate in contesting such assessment; provided, however, that Host shall pay such taxes to avoid any penalties or interest on such Taxes, subject to reimbursement by Provider. If after resolution of the matter, such tax is imposed upon Host related to the improvement of real property by the existence of the Facility on the Site, Provider shall reimburse Host for such tax.

(d) Each Party has the right to contest taxes in accordance with Applicable Law and the terms of encumbrances against the Site. Each Party shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

(e) In the event either Party fails to pay any taxes that may become a lien upon the other Party's property, such Party may pay such amounts and in such event shall be entitled to recover such paid amount from the other Party, together with interest thereon at the rate of one percent (1%) per month, compounded monthly

Any reimbursement of taxes owing pursuant to this Section 13 shall be paid within twenty (20) days of receiving an invoice therefor from the Party who paid the taxes.

14. INSURANCE

(a) Provider shall maintain the insurance coverage set forth in Exhibit F in full force and effect throughout the Term.

(b) Provider will also meet any additional insurance requirements as may be specified in the CSI program contract and/or utility interconnection agreement.

(c) Provider shall furnish current certificates indicating that the insurance required under this Section 14 is being maintained. The insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the Host thirty (30) days written notice before the insurance is cancelled or materially altered.

(d) Provider's insurance policy shall be written on an occurrence basis and shall include the Host as an additional insured as its interest may appear. A cross liability clause shall be made part of the policy. Provider's insurer shall waive all rights of subrogation against the Host.

(e) All insurance maintained hereunder shall be maintained with companies rated no less than **B+ XII** as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated).

15. COOPERATION.

(a) The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, that in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

(b) Host acknowledges that Provider will obtain construction and/or permanent financing from third party sources in connection with the installation of the Facility, and may from time to time refinance such financing. Such financing shall recognize Host's right under this agreement and shall not encumber Host's right and interests in the Site and Premises. Host agrees to execute all consents to assignment and provide such opinions of counsel as may be reasonably requested by Provider and Lender in connection with such financing.

(c) Unless otherwise mandated by the federal government, Host will maintain its buildings and plantings on the Site and its adjacent properties to maintain the solar access of the Facility in substantially the same condition as on the date of this Agreement.

(d) The Parties acknowledge that the installation of the Facility is part of a process of managing and reducing the cost of Host's electric requirements. Host agrees

to discuss with Provider other concepts, systems and approaches which Provider may propose from time to time to assist Host in the managing and reducing the cost of Host's electric requirements.

(e) If during the term of this Agreement Provider determines that it can significantly increase the capacity or availability of the Facility beyond the capabilities of the Facility as initially installed under Section 4 hereof whether through availability of improved technology or otherwise, Host and Provider shall first discuss such opportunities and may agree to amend this Agreement accordingly on such terms as they may agree to.

16. PRESS RELEASES

(a) The Parties acknowledge that they each desire to publicize information about this Agreement and the Facility. The Parties therefore agree that they may each make press releases about entering into this Agreement, the size and location of the Facility, and the identity of the other Party. To the extent allowed by law, the terms of this Agreement and information about the Facility, other than that described above, constitutes Confidential Information, as defined below.

(b) For purposes of this agreement, Confidential Information means information of a confidential or proprietary nature that is specifically marked as confidential. Such information shall include, but not be limited to any documentation, records, listing, notes, data, computer disks, files or records, memoranda, designs, financial models, accounts, reference materials, trade-secrets, prices, strategic partners, marketing plans, strategic or other plans, financial analyses, customer names or lists, project opportunities and the like, provided however that Confidential Information does not include information which (i) was in the possession of the receiving party before receipt from the disclosing party; (ii) is or becomes publicly available other than as a result of unauthorized disclosure by the receiving party; (iii) is received by the receiving party from a third party not known by the receiving party with the exercise of reasonable diligence to be under an obligation of confidentiality respecting the information; or (iv) is independently developed by the receiving party without reference to information provided by the disclosing party.

17. INDEMNIFICATION

As part of the consideration for this Agreement, Provider shall provide the following:

a. Provider shall, to the extent permitted by law, investigate, defend, indemnify, and hold harmless the Host, its officers, employees, and agents from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges, and expense (including reasonable attorney fees), and causes of action of whatsoever character (hereinafter collectively referred to as "claims") which the Host may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way

connected with the work to be performed under this Agreement, except to the extent a claim arises from a professional error or omission.

b. With respect to those claims arising from a professional error or omission, the following indemnification shall be applicable: Provider shall investigate, defend, indemnify and hold harmless the Host, its officers, agents, and employees from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges, and expenses (including reasonable attorney's fees) and causes of action of whatsoever character which Host may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof; or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or due to the professionally negligent acts, errors or omissions of Provider.

18. SECURITY FOR OBLIGATIONS

(a) Host and/or Provider shall make any necessary filings to disclaim the Facility as a fixture of the Premises and the Site in the Land Registry to place all interested parties on notice of the ownership of the Facility by Provider.

(b) Upon request by Provider, the Parties shall execute and record with the Land Registry easements and other instruments documenting the Access Rights granted by Host to Provider in this Agreement, and which shall be in form and substance reasonably acceptable to both Parties. The cost of recording shall be borne by the Provider.

(c) With respect to consents that Host obtains under Section 12(c) hereof from holders of mortgages, liens or other encumbrances against the Site such consents shall include recognition of, and agreement not to disturb, the rights of Provider hereunder. Such consents, or acceptable notices thereof; shall be recorded, at Host's expense, in the Land Registry. Host may in the future mortgage, pledge, grant security interests in all or a portion of the Site and the improvements thereon, provided the mortgagee or other grantee of the encumbrance acknowledges this Agreement, the Facility, the Access Rights granted hereunder, and the priority of Provider's rights in the Facility and the Access Rights.

(d) Each Party shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature, including claims by governmental authorities for taxes (collectively referred to as "Liens" and each, individually, a "Lien") on or with respect to the interests of the other in the Site, the Premises, and the Facility, and in the Access Rights granted hereunder. Each Party shall promptly notify the other of the imposition of a Lien on the property interests of the other Party, and shall promptly discharge such lien, provided however, that a Party may seek to contest the amount of validity of any Lien affecting the property of the other Party, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require

the posting of security, the Party establishes for the benefit of the other Party a deposit, letter of credit or other security acceptable to the other Party to indemnify the other Party against any Loss (as defined in Section 17(a)) which could reasonably be expected to arise if such Lien is not removed or discharged.

19. REPRESENTATIONS AND WARRANTIES.

(a) Each Party hereby represents and warrants to the other, as of date hereof, that:

(i) Organization. It is duly organized, validly existing and in good standing under the laws of its state of formation and the State of California, and has the power and authority to enter into this Agreement and to perform its obligations hereunder.

(ii) No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under (i) its organizational documents; (ii) any agreement or other obligation by which it is bound; (iii) any law or regulation.

(iii) Enforceability. (i) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken; (ii) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (iii) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws, provided however that with respect to Host, such representations are subject to the adoption of an ordinance approving this Agreement and no challenge or filing of a referendum on such ordinance approval being made within a thirty (30) day period after such adoption.

(iv) No Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any governmental authority, arbitral tribunal or other body or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any governmental authority which could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

(b) In addition to the representations and warranties in Section 19(a), Host hereby represents and warrants to Provider, as of date hereof, that:

(i) Electric Usage. Host has given Provider complete and correct records of its electric usage at the Site.

(ii) Condition of Premises. Host has given Provider, to the extent of its knowledge, complete and correct records of the physical condition of the Premises. Provider acknowledges that it has had an opportunity to review the condition of the Site and Premises prior to entering into this Agreement.

20. FORCE MAJEURE

(a) "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure Event may include the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes; and (v) action by a governmental authority, including a moratorium on any activities related to this Agreement. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event. Changes in prices for electricity shall not constitute Force Majeure Events.

(b) Except as provided in Section 20(c) or otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other Party in writing of the existence and details of the Force Majeure Event; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

(c) Obligations to make payments for services already provided shall not be excused by a Force Majeure Event.

(d) In the event of a casualty event which destroys all or a substantial portion of the Premises, Host shall elect, within sixty (60) days of such event, whether it will restore the Premises, which restoration will be at the sole expense of Host. If Host does not elect to restore the Premises, then Provider shall not restore the Facility and this Agreement will terminate. If Host does elect to restore the Premises, Host shall provide notice of such election to Provider and Provider shall then elect, within sixty (60) days of receipt of such notice, whether or not to restore the Facility, subject to the Parties agreeing on a schedule for the restoration of the Premises and an equitable extension to the Term of this Agreement. If the Parties are not able to so agree or if Provider does not elect to restore the Facility, it shall promptly remove any portions of the Facility

remaining on the Premises and this Agreement will terminate. If Provider does elect to restore the Facility it shall do so at its sole expense. Termination provisions pursuant to this paragraph 19(d) shall be: (i) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the casualty event; and (ii) the confidentiality provisions of Section 16, the indemnity obligations under Section 17 hereof, and the dispute resolution provisions of Section 25 hereof shall continue to apply notwithstanding the termination of this Agreement.

(e) Notwithstanding anything to the contrary in Sections 20 (a) — (c) , if nonperformance on account of a Force Majeure event continues beyond a continuous period of ninety (90) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days' notice to the other (it being agreed that in case of a casualty event which destroys all or a substantial portion of the Premises, the provisions of Section 20(d) shall apply). Upon a termination in accordance with this Section 20(e), Provider shall be required to decommission and remove the Facility from the Site in accordance with the provisions of Section 10(e). In the event of such a termination of this Agreement with respect to the Facility, the Parties shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the shutdown of the Facility or the Premises, and the indemnity, confidentiality and dispute resolution provisions of this Agreement shall survive the termination of this Agreement.

21. CHANGE OF LAW

In the event there is any Change in Law that is applicable to the operation of the Facility, the sale of electric energy produced by the Facility, or any other obligation of the Provider or Host hereunder, there shall be no adjustment to the rates for electric energy from the Facility set forth in this Agreement, notwithstanding that compliance with the Change in Law results in an increase in Provider's costs to operate and/or maintain the Facility or increases the cost to Host of using electricity produced by the Facility.

22. PROVIDER DEFAULT AND HOST REMEDIES

(a) Events of Default by Provider. Provider shall be in default of this Agreement if any of the following ("Provider Events of Default") shall occur:

(i) Any representation or warranty by Provider under Section 19 hereof; is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Host identifying the defect.

(ii) Provider, fails to commence installation of the Facility as provided in Section 4(d), abandons construction of the Facility and fails to resume construction within thirty (30) days after receipt of notice from Host stating that, in Host's determination, Provider has abandoned construction of the Facility;

(iii) After the Commercial Operation Date, Provider fails to operate the Facility for a period of ninety (90) days which failure is not due to damage to the Facility not caused by Providers operation or in operation, act of governmental authority, or exercise of Provider's rights under this Agreement, or otherwise excused by the provisions of Section 20 (b) (relating to Force Majeure Events); and Provider fails to resume operation within thirty (30) days after receipt of notice from Host stating that, in Host's determination, Provider has ceased operation of the Facility.

(iv) Provider fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 20(b) (relating to Force Majeure Events), and such failure is not cured within: (x) ten (10) days if the failure involves a failure to make payment when due or maintain required insurance; or (y) thirty (30) days if the failure involves an obligation other than the payment or the maintenance of insurance, after receipt of notice from Host identifying the failure.

(v) Provider (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Provider in an involuntary case under bankruptcy law or seeking to dissolve Provider under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Upon an Event of Default by Provider, Host shall provide Lender with a reasonable opportunity to cure such Event of Default pursuant to Section 27(e)(iv), and if Lender does not cure such Default, Host may terminate this Agreement, seek to recover damages for costs of replacement electricity and pursue other remedies available at law or equity, in such case, Provider shall within three (3) months of written request of Host remove the Facility from the Premises and restore the Premises as described in Section 10(e).

23. HOST DEFAULT AND PROVIDER REMEDIES.

(a) Events of Default by Host. Host shall be in default of this Agreement if any of the following ("Host Events of Default") shall occur:

(i) Any representation or warranty by Host under Section 19 hereof, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and

such defect is not cured within fifteen (15) days after receipt of notice from Provider identifying the defect.

(ii) Host obstructs commencement of installation of the Facility or fails to take any actions necessary for the interconnection of the Facility, or fails to take electric energy produced by the Facility, and fails to correct such action within thirty (30) days after receipt of notice thereof from Provider;

(iii) Host sells the Site without the buyer assuming the obligations of Host hereunder and Buyer does not provide adequate assurance, including appropriate credit support, to Provider for purchasing quantities of electric energy from the Facility comparable to that purchased (or anticipated to be purchased) by Host hereunder.

(iv) Host fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 20(b) (relating to Force Majeure Events), and such failure is not cured within: (x) ten (10) days if the failure involves a failure to make payment when due or maintain required insurance; or (y) thirty (30) days if the failure involves an obligation other than the payment or the maintenance of insurance, after receipt of notice from Provider identifying the failure.

(v) Host (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Host in an involuntary case under bankruptcy law or seeking to dissolve Host under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Upon an Event of Default by Host, Provider may terminate this Agreement, sell electricity produced by the Facility to persons other than Host and recover from Host any loss in revenues resulting from such sales and pursue other remedies available at law or in equity.

24. LIMITATIONS ON DAMAGES. NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT, OR IN CONNECTION WITH THIS AGREEMENT.

25. DISPUTE RESOLUTION

(a) The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out or relating to this Agreement (a "Dispute") within 30 days after the date that a Party gives written notice of such Dispute to the other Party.

(b) If; after such negotiation in accordance with Section 25(a), the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three (3) hours with a mediator whom they choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the American Arbitration Association to appoint a mediator. The mediator's fee and expenses shall be paid one-half by each Party.

(c) In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to Sections 25(a) or 25(b), both Parties shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

26. NOTICES

All notices or other communications which may be or are required to be given by any party to any other party pursuant to this Agreement shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a business day or in any other case as of the next business day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

If to Host:

Airport Director
601 Norman Firestone Road
Santa Barbara, CA 93117
Facsimile: (805)964-1380

If to Provider:

Notices shall be effective when delivered (or in the case of email, when acknowledged by the recipient) in accordance with the foregoing provisions, whether or not (except in the case of email transmission) accepted by, or on behalf of, the Party to whom the notice is sent.

Each Party may designate by Notice in accordance with this section to the other Party a new address to which any notice may thereafter be given.

27. MISCELLANEOUS.

(a) Governing Law. This Agreement shall be governed by the laws of the State of California.

(b) Rules of Interpretation. Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words "hereto", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "person" shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word "including" shall be deemed to be followed by the words "without limitation". In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern

(c) Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Party's benefits, the matter shall be resolved under Section 25(c) in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

(d) Amendment and Waiver. This Agreement may be amended only in writing signed by both Parties. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.

(e) Assignment. Subject to the prior written approval of Host, Provider may assign its rights and obligations hereunder to an affiliate of Provider and may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this

Agreement to any Persons providing financing for the Facility. Host acknowledges that Provider will be financing the acquisition and installation of the Facility either through a Facility Lessor, Lender, or with financing accommodations from one or more financial institutions and that Provider may sell or assign the Facility and/or may secure Provider's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Facility. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any Lender or Facility Lessor, as applicable, Host agrees as follows:

- (0) Consent to Collateral Assignment. Subject to the prior written approval of Host, Host may consent to the sale of the Facility to a Facility Lessor and the collateral assignment to the Lender or Facility Lessor of the Provider's right, title and interest in and to this Agreement.
- (ii) Rights Upon Default by Provider Under a Sale/Leaseback Transaction. Notwithstanding any contrary term of this Agreement: (1) The Facility Lessor, as owner of the Facility, or the Facility Lessor or Lender as collateral assignee of this Agreement, respectively, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. The Facility Lessor or Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Facility; (2) The Facility Lessor or Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Facility Lessor or Lender to cure any default of Provider under this Agreement or (unless the Facility Lessor or Lender has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Host hereby gives it the option to do so; (3) Upon the exercise of remedies, including any sale of the Facility by the Facility Lessor or Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Facility Lessor or Lender (or any assignee of the Facility Lessor or Lender as defined below) in lieu thereof, the Facility Lessor or Lender shall give notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement; (4) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of Facility Lessor or Lender made within ninety (90) days of such termination or rejection, Host may, but is not obligated to do so, enter into a new agreement with Facility Lessor or Lender or its assignee having substantially the same terms and conditions as this Agreement.

- (iii) Acknowledgement and Confirmation. Host shall provide an Acknowledgement and Confirmation in substantially the same form as Exhibit G, Exhibit H, or Exhibit I to this Agreement, as applicable, from Host's landlord or lessor, if any, that the ownership of the Facility remains in Provider and further acknowledging that the Facility is personal property of Provider.
- (iv) Right to Cure. (1) Host will not exercise any right to terminate or suspend this Agreement unless it shall have given the Facility Lessor or Lender prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Facility Lessor or Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Provider default reasonably cannot be cured by the Facility Lessor or Lender within such period and the Facility Lessor or Lender commences and continuously and with due diligence pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period. (2) If the Facility Lessor or Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Facility Lessor or Lender, shall acquire title to or control of Provider's assets and shall, within the time periods described in Section 27(e)(iv)(1) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such Person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed. For purposes of this Section 27(e), transfer does not include any sale of all or substantially all of the assets of Provider or any merger of Provider with another Person, whether or not Provider is the surviving entity from such merger, or any other change in control of Provider.

(f) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(rest of page left blank intentionally — signatures appear on next page)

DRAFT SubkeTio further negohatiori

IN WITNESS WHEREOF, intending to be legally bound hereby, Provider and Host have executed this Power Purchase Agreement as of the date first set forth above.

By:

By: _____

Name (printed):

Title:

City of Santa Barbara, a municipal corporation:

Karen Ramsdell, Airport Director

ATTEST:

City Clerk

APPROVED AS TO CONTENT:

Hazel Johns, Assistant Airport Director

APPROVED AS TO INSURANCE:

Mark Howard, Risk Manger

APPROVED AS TO FORM:

Stephen P. Wiley
City Attorney

By _____

EXHIBIT A
EXPECTED ANNUAL OUTPUT AND ENERGY PURCHASE RATES

Year	Expected Annual Output in kWh	Purchase Rate per kWh
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

EXHIBIT B
RESERVED

EXHIBIT C
DESCRIPTION OF SITE

DRAFT-Subject to further negotiation

EXHIBIT D
DESCRIPTION OF PREMISES

EXHIBIT E
DESCRIPTION OF FACILITY

The Facility will be constructed substantially in conformance with the technical criteria shown in this Exhibit E. The following specific provisions shall apply:

1. In accordance with the provisions of Host's Request For Proposals, installation of the Facility shall be in accordance with the City of Santa Barbara Solar Design Guidelines, shall require neat and orderly installation of all equipment, and shall not include any overhead wires.
2. Each point of connection of the Facility solar energy system to the site distribution system will be equipped with a revenue-grade meter approved by the City, such as Itron Sentinel or equivalent. The meter(s) shall be a socketed type, form 9S. Host recognizes that State-mandated metering requirements shall also dictate the selected metering equipment. All costs associated with utility interconnection shall be borne by the Project Developer.
3. Provider is responsible for all costs associated with the design, structural analysis, construction, maintenance, and repair of the Facility.
4. Provider shall consult with Host on a weekly basis during design and preparation of final construction drawings with the goal of confirming that the work is being done in conformance with this Agreement.
5. The Facility may not interfere with the safe operation of the Airport, including FAA equipment, aircraft operations, Airport operations and parking lots. If the Facility interferes in any way with FAA equipment or aircraft operations the Project Developer will immediately and entirely eliminate the source of any interference at their sole cost. The Project Developer will phase construction of the Project to minimize disruption to Airport parking activities, if necessary.
6. The PV collection system and support structure must be aesthetically pleasing and of a style and design acceptable to the Airport Department, Architectural Board of Review, Planning Commission, building department, and other review and approval bodies, while minimizing environmental impacts.
7. Project Developer shall install PV modules with a minimum manufacturer's warranty of 20 years and inverters with a minimum manufacturer's warranty of 10 years. All solar electric generating equipment, inverters and meters used on the Project must be eligible for California Solar Initiative funding. All Project equipment and appurtenances will be installed in conformance with manufacturer's recommendations and applicable codes.

8. If the proposed Facility impacts existing lighting for public or operational areas, Project Developer will provide adequate high-efficiency replacement lighting, consistent with FAA and city requirements, as part of development of the Project. Lighting conditions will meet lighting standards appropriate for the area. All parking lot lighting should continue to be powered by SCE.
9. Support structure design must minimize perching and nest building opportunities for birds.
10. All materials used to construct the Project shall be suitable for marine environment applications, including but not limited to, the following:
 - a. Above-ground conduit and conduit fittings shall be rigid, liquid tight flexible metallic conduit, or equivalent, as approved by City
 - b. Fasteners and hardware shall be galvanized steel, stainless steel, or corrosion and sunlight resistant material, as approved by City
 - c. In addition to meeting the local electrical code requirements, all conductors shall be copper and carry at least a damp location rating or better if required by code.
 - d. Structural materials shall be suitable for use under the prevailing environmental conditions for which they are intended. This includes, but is not limited to, a marine environment. Material exposed to the marine environment shall be galvanized steel, stainless steel, anodized aluminum, or corrosion and sunlight resistant material, as approved by City.
 - e. PVC electrical raceways, enclosures, and/or fittings shall not be approved where exposed to sunlight.

EXHIBIT F
INSURANCE REQUIREMENTS

Insurance Requirements as to Provider

INDEMNIFICATION PROVISION

As part of the consideration for this Agreement, Provider shall provide the following:

a. Provider shall, to the extent permitted by law, investigate, defend, indemnify, and hold harmless the Host, its officers, employees, and agents from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges, and expense (including reasonable attorney fees), and causes of action of whatsoever character (hereinafter collectively referred to as "claims") which the Host may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed under this Agreement, except to the extent a claim arises from a professional error or omission.

b. With respect to those claims arising from a professional error or omission, the following indemnification shall be applicable: Provider shall investigate, defend, indemnify and hold harmless the Host, its officers, agents, and employees from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges, and expenses (including reasonable attorney's fees) and causes of action of whatsoever character which Host may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof; or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or due to the professionally negligent acts, errors or omissions of Provider.

INSURANCE

As part of the consideration of this Agreement, Consultant agrees to purchase and maintain at its sole cost and expense during the life of this agreement insurance coverage as specified in I.,II.,III & IV. below. All insurance coverage is to be placed with insurers that: 1) have a Best rating of no less than B+: XII, and 2) are admitted insurance companies in the State of California. All other insurers require prior approval of the City.

- I. General and Automobile Liability: Combined single limits of not less than Two Million Dollars (\$2,000,000) of General Liability and Two Million Dollars (\$2,000,000) of Automobile Liability insurance, including Bodily Injury and Property Damage.

Such insurance shall include:

- A. Extension of coverage to City, its officers, employees and agents, as additional insureds, with respect to Consultant's liabilities hereunder in insurance coverage identified in item "1." above, but only as respects to the operations of the named insured. A copy of the endorsement evidencing that the City of Santa Barbara has been added as an additional insured on the policy, must be attached to the certificate of insurance.
 - B. A provision that coverage will not be cancelled or subject to reduction until at least thirty (30) days' prior written notice has been given to the City Clerk, addressed to P.O. Box 1990, Santa Barbara, California 93102-1990.
 - C. A provision that Consultant's insurance shall apply as primary, and not excess of, or contributing with the City.
 - D. Contractual liability coverage sufficiently broad so as to include the liability assumed by the Consultant in the indemnity or hold harmless provisions included in this Agreement.
 - E. A Cross Liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each.
 - F. Broad form Property Damage Endorsement.
 - G. Policy shall apply on an "occurrence" basis.
- II. Workers' Compensation: In accordance with the provisions of the California Labor Code, Consultant is required to be insured against liability for Workers' Compensation or to undertake self-insurance. Statutory Workers' Compensation and Employers' Liability of at least \$1,000,000 shall cover all Consultant's staff while performing any work incidental to the performance of this agreement. The policy shall provide that no cancellation, major change in coverage or expiration shall be effective or occur until at least thirty (30) days after receipt of such written notice by City.
- III. Professional Liability: Professional Liability (Errors and Omission) insurance with limits of liability of not less than One Million Dollars (\$1,000,000) to cover all services rendered by the Consultant pursuant to this Agreement. Said policy shall provide that City shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.
- IV. Builders All Risk: Builders All Risk insurance with limits equal to the anticipated cost of construction for the facility.

Approval of the insurance by City or acceptance of the certificate of insurance by City shall not relieve or decrease the extent to which the Consultant may be held responsible for payment of

damages resulting from Consultant's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.

A Certificate of Insurance supplied by the City evidencing the above shall be completed by Consultant's insurer or its agent and submitted to the City prior to execution of this Agreement by the City. Consultant shall exercise due diligence to require all subcontractors and all tiers of such subcontractors to provide General and Automobile Liability, Workers' Compensation, and Professional Liability insurance as set forth in I., II., and III. of this section.

If, for any reason, Consultant fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from the Consultant resulting from said breach. Alternately, City may purchase such required insurance coverage, and without further notice to Consultant, City may deduct from sums due to Consultant any premium costs advanced by City for such insurance.

EXHIBIT G

FORM OF ACKNOWLEDGEMENT AND CONFIRMATION

This Acknowledgement and Confirmation, dated as of _____ (this "Acknowledgement"), is made by _____, a _____, the "Host" under that certain Power Purchase Agreement dated _____, 200_ (as amended from time to time, the "Agreement") with **[Project LLC]**, a Delaware limited liability company ("Provider"). This Acknowledgement is provided pursuant to Section [1] of the Agreement to the Provider, Lender or Facility Lessor (as defined in the Agreement).

The solar photovoltaic facility (the "Facility") to be operated and maintained by Provider pursuant to the PPA is located at Host's facility at _____ (the "Premises").

1. Acknowledgement of Collateral Assignment.

- (a) Host acknowledges the collateral assignment by Provider to the Facility Lessor, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 1 of the Agreement.
- (b) The Facility Lessor as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider's interests in the Agreement, including those rights provided to Lenders and Facility Lessor in Section 1 of the Agreement.
- (c) Host acknowledges that it has been advised that Provider has i) conveyed the ownership interest and ii) granted a first priority security interest in the Facility to Lender and that Facility Lessor has relied upon the characterization of the Facility as personal property, as agreed in the Agreement.
- (d) Until further written notice, Host agrees to make all payments due Provider under the Agreement to Facility Lessor at the following address:

[address information to be added]

2. Confirmation. Host confirms the following matters for the benefit of the Facility Lessor:

- (a) To Host's knowledge, there exists no event or condition which constitutes a default, or that would, with the giving of notice or lapse of time, constitute a default, under the Agreement.
- (b) Host has approved the Facility as installed at the Premises.

- (c) Host is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises which could attach to the Facility as an interest adverse to Lender's or Facility Lessor's security interest therein.

3. Third-Party Beneficiary. Facility Lessor shall be a third-party beneficiary to this Acknowledgement with full right and authority to enforce the provisions hereof.

HOST

By: _____

Name:

• PROVIDER

[Project LLC]

By: _____

Name

EXHIBIT H

**FORM OF INDEPENDENT LANDLORD - OWNER/LESSOR ACKNOWLEDGEMENT
AND CONFIRMATION**

This Owner/Lessor Acknowledgement and Confirmation, dated as of _____ (this "Acknowledgement"), is made by _____, a _____, ("Owner/Lessor"). Owner/Lessor is the [owner] [lessor] of real property situated in the City/Town of _____ County of _____, and State of _____ having a street address of _____ (the "Premises"). The Premises are leased to _____ ("Host") by Lease dated _____ (the "Lease").

Owner/Lessor has been advised of a certain Power Purchase Agreement dated _____, 200_ (the "Agreement") between Host and [**Project LLC**] ("Provider") pursuant to which a solar photovoltaic facility (the "Facility") is to be installed, operated and maintained by Provider at Host's [retail] [_____] facility (the "Building") at the Premises. The Facility will be connected to the electrical system of the Building as a supplemental source of electrical power.

This Acknowledgement is provided pursuant to Section [_____] of the Agreement at the request of the Host to [Project LLC], a Delaware limited liability company ("Provider") and Lender or Facility Lessor (as defined in the Agreement). Owner/Lessor has been advised that part of the collateral securing such financial accommodations is the granting of a first priority security interest (the "Security Interest") in the Facility to Lender or Facility Lessor to be perfected by the filing of a Financing Statement (Form UCC-1) under the Uniform Commercial Code. The Security Interest will cover the Facility as personal property only, and not as a fixture.

Owner/Lessor hereby acknowledges and confirms to Provider and Lender or Facility Lessor the following matters with respect to the Premises:

- (a) Host either has the absolute right to install the Facility and grant the Security Interest under the terms of the Lease or has it obtained the consent of the Owner/Lessor to do so.
- (b) The granting of the Security Interest will not violate any term or condition of the Lease or, to the best of Owner/Lessor's knowledge, of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.
- (c) Owner/Lessor acknowledges that Lender or Facility Lessor has relied upon the characterization of the Facility as being and remaining at all times personal property, as agreed in the Agreement in accepting the Security Interest as collateral for its financing of the Facility.

- (d) Owner/Lessor is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the Facility as an interest adverse to Lender's or Facility Lessor's Security Interest therein.
- (e) To the Owner/Lessor's knowledge, there exists no event or condition which constitutes a default, or which would, with the giving of notice or lapse of time, constitute a default, under the Lease.
- (f) Owner/Lessor will use commercially reasonable efforts to place its successors, assigns, and lienors on notice of the ownership of the Facility by Provider, the existence of the Security Interest, and the fact that the Facility is not a part of the Premises or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.
- (g) Owner/Lessor disclaims any right to receive any rebate, subsidy, tax credit, or renewable energy credits or other environmental attributes based upon the installation of the Facility at the Premises.

Provider and Lender or Facility Lessor shall be third-party beneficiaries to this Acknowledgement with full right and authority to enforce the provisions hereof.

OWNER/LESSOR

HOST

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT I

FORM OF HOST LANDLORD - OWNER/LESSOR ACKNOWLEDGEMENT AND CONFIRMATION

This Owner/Lessor Acknowledgement and Confirmation, dated as of _____, 200_ (this "Acknowledgement"), is made by _____ ("Owner/Lessor"). Owner/Lessor is the owner of real property situated in the City/Town of _____, County of _____ and State of _____ having a street address of _____ (the "Premises").

Owner/Lessor is party to that certain Power Purchase Agreement dated _____ (the "Agreement") between Owner/Lessor and **[PROJECT LLC]** ("Provider") pursuant to which a solar photovoltaic facility (the "Facility") is to be installed, operated and maintained by Provider at Owner/Lessor's facility (the "Building") at the Premises. The Facility will be connected to the electrical system of the Building as a supplemental source of electrical power. Owner/Lessor is the "Host" under the Agreement

This Acknowledgement is provided pursuant to Section 1 of the Agreement to Provider and Lender or Facility Lessor (as defined in the Agreement, which is providing financial accommodations to Provider to finance the installation of the Facility. Owner/Lessor has been advised that part of the collateral securing such financial accommodations is the granting of a first priority security interest (the "Security Interest") in the Facility to Lender to be perfected by the filing of a Financing Statement (Form UCC-1) under the Uniform Commercial Code. The Security Interest will cover the Facility as personal property only, and not as a fixture.

Owner/Lessor hereby acknowledges and confirms to Lender or Facility Lessor the following matters with respect to the Premises:

- (a) Host has the absolute right to install the Facility and grant the Security Interest.
- (b) To the best of Owner/Lessor's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.
- (c) Owner/Lessor acknowledges that Lender or Facility Lessor has relied upon the characterization of the Facility as being and remaining at all times personal property, as agreed in the Agreement, in accepting the Security Interest as collateral for its financing of the Facility.
- (d) Owner/Lessor is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the Facility

as an interest adverse to Lender's or Facility Lessor's Security Interest therein.

- (e) Owner/Lessor will use commercially reasonable efforts to place its successors, assigns, and lienors on notice of the ownership of the Facility by Provider, the existence of the Security Interest, and the fact that the Facility is not a part of the Premises or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.
- (f) Owner/Lessor disclaims any right to receive any rebate, subsidy, tax credit, or renewable energy credits or other environmental attributes based upon the installation of the Facility at the Premises.

OWNER/LESSOR

[Type in name of Host/Owner/Lessor]

By: _____

Name:

Title