

**COUNTY FACILITIES COMMITTEE MEETING
AIRPORT AGENDA
July 28, 2023**

Committee Members: BRUNO, Magowan, Diamond, Geraci, Strough, Conover and Thomas

I. Committee Meeting Call to Order by Chair

II. Approval of Minutes of Prior Committee Meeting

III. Privilege of the floor and public comment

IV. Action Agenda/New Business Items:

1. Request: – Miscellaneous – To amend Resolution 286 of 2023
Rationale: – Due to weather on original date, Young Eagles Fly-In Event will now occur on August 26th
2. Request: – Establish Capital Project
Rationale: – Replace 4-box PAPI Runway 1-19 H422
3. Request: –New Contract
Rationale: – For the New Contract with McFarland Johnson for the design, bidding, construction administration/inspection for the “Replace 4-box PAPI Runway 1-19” project.

V. Discussion Items

1. Southern parcel of airport land deeded from the county to county DPW in April 2020 - may require resolution after discussion.

VI. Referrals/Pending Items

VII. Privilege of the floor and public comment

VIII. Motion to Adjourn

Attachments

1. Resolution Request Form No. 20 - Miscellaneous
2. Resolution Request Form No. 8 - Establish Capital Project
3. Resolution Request Form No. 3 - New Contract

RESOLUTION REQUEST FORM NO. 20

MISCELLANEOUS

****Please List All Other Requests Not Covered by Previous Resolution Request Forms Here.
Please attach any backup information available and be as detailed as possible.***

DEPARTMENT NAME: County Facilities - Airport

DATE: 7/28/2023

- (a) Purpose of Request: **To amend resolution 286/2023 to authorize the change of date for an agreement/s with "EAA Chapter 353" to the use of the Floyd Bennett Memorial Airport for a Young Eagles - Fly In event scheduled. The new date of Fly-In event will be August 26th 2023.**
- (b) Details: **The original event on June 17th 2023 was cancelled due to weather. This agreement shall be for a scheduled Young Eagles Fly-In event to occur on August 26th 2023.**
- (c) Previous Resolution Number: **286/2023**
- (d) Where are the Funds (if required)? List Budget Code, Object Code, Full Title* and Amount: **N/A**

Sample: A.8021 470 Planning & Community Development – Contract

* as listed in budget and LOGOS

RESOLUTION REQUEST FORM NO. 8

Request to Establish Capital Project or Capital Reserve Project*

****If this is the result of a grant award, also complete and submit Form No. 5 or 6***

DEPARTMENT NAME: Airport

DATE: 7/28/2023

- (a) Exact Title **and** Number of Project (**must be obtained from Treasurer's Office**): Replace 4-box PAPI Runway 1-19, H422
- (b) Is this a Capital Project? Yes
- (c) Is this a Capital Reserve Project? No
- (d) Amount of Project: \$271,000
- (e) Source of Funding (including name & title of codes, etc.): FAA \$ 243,900.00 (90%) State Match \$13,550.00 (5%) and Local Match - \$13,550.00 (5%) Reserve, A 892.00 Airport Repair & Projects
- (f) Purpose of Establishment: For the replacement of the 4-box PAPI Runway 1-19 at the Floyd Bennett Airport.

RESOLUTION REQUEST FORM NO. 3

Request for New Contract

DEPARTMENT NAME: County Facilities - Airport

DATE: 7/28/2023

- (a) Is this a Result of a Bid or Request for Proposal? **No**
- (b) Purpose of Contract: **To enter into a consultant agreement for all services related to the Replace 4-box PAPI Runway 1-19 (Design & Construction)**
- (c) Name of Contractor: **McFarland-Johnson, Inc.**
- (d) Address of Contractor: **49 Court Street, Suite 240, Binghamton, NY, 13901**
- (e) Contractor's Contact Person and Telephone Number: **Turner Bradford 518-245- 6663**
- (f) Has or will the Contract be provided, if so, please attach: **Contract Attached**
- (g) Commencement Date of Contract: **Upon execution**
- (h) Termination Date of Contract: **Upon project completion**
- (i) Payment Provisions:
 - i) lump sum amount
 - ii) hourly rate amount
 - iii) total amount not to exceed **\$71,000**
 - iv) how will payments be made (i.e. monthly, quarterly, upon completion of the project, etc.
- (j) Where are the Funds for this Contract? List Budget Code, Object Code, Full Title* and Amount: **OR Capital Project OR Capital Reserve Project Number, Title, and Amount: **Replace 4-box PAPI Runway 1-19 (Design & Construction)****

Sample: A.1010 470 Legislative Board – Contract \$xx.xx
Capital Project No. H289.9550 480 – Old Jail Renovations \$xx.xx

*as listed in budget and LOGOS

ENGINEERING AGREEMENT

for

**PAPI REPLACEMENT FOR RUNWAY 1-19 –DESIGN, BIDDING, CONSTRUCTION
ADMINISTRATION, AND CONSTRUCTION OBSERVATION**

at

Floyd Bennett Memorial Airport

between

Warren County

and

McFarland-Johnson, Inc.

**MJ Project Number 18530.05
AIP Number 03-36-0033-XXX-2023
PIN 1903.XX**

December 2022

This Agreement made this _____ day of _____, 20__ by and between Warren County (hereinafter referred to as the "SPONSOR") and McFarland-Johnson, Inc. (hereinafter referred to as the "CONSULTANT").

WITNESSETH: That the SPONSOR and the CONSULTANT, for the consideration hereinafter named, agree as follows:

ARTICLE 1. DESCRIPTION OF WORK TO BE DONE.

The SPONSOR agrees to and hereby does retain and employ the professional service of the CONSULTANT because of its ability and reputation, and the CONSULTANT agrees to perform such services of said project being particularly described as services in association with the Engineering Design, Bidding, Construction Administration, and Construction Observation for PAPI Replacement for Runway 1-19 at the Floyd Bennett Memorial Airport, as further described in Exhibit "A" – "Scope of Services", attached hereto and made part of this Agreement.

ARTICLE 2. PROVISION FOR PAYMENT.

The SPONSOR shall pay to the CONSULTANT and the CONSULTANT agrees to accept as full compensation for its services under this Agreement:

2.1 The SPONSOR shall pay to the CONSULTANT and the CONSULTANT agrees to accept as full compensation for its services under this Agreement, a Lump Sum of \$70,582, covering salaries of employees assigned to the PROJECT, indirect costs, all direct expenses and profit. The Lump Sum Fee shall not be exceeded for any reason, unless additional services are performed in accordance with the Extra Work Provision of this Agreement. The method of computation of the CONSULTANT's Lump Sum Fee is prescribed in Exhibit "B" – "Fee Estimate", which is attached and made a part of this Agreement.

2.2 The CONSULTANT shall submit to the SPONSOR monthly invoices.

2.3 The SPONSOR shall approve or disapprove said invoices within ten (10) work days of receipt thereof, and shall notify the CONSULTANT in writing within said time of the reason or reasons for any disapproval thereof. Payment of said invoices shall be made within sixty (60) days of invoiced date.

2.4 PARTIAL PAYMENTS.

2.4.1 The CONSULTANT shall be paid in monthly progress payments, based on the percentage of work accomplished during the month.

2.4.2 If SPONSOR fails to make any payment of CONSULTANT's invoices for services completed, which are not disputed by the SPONSOR, within 60 days after receipt of CONSULTANT's invoice, the CONSULTANT may increase its invoice by a rate of one and one-half percent (1½%) per month on the unpaid balance, and in addition, the CONSULTANT may suspend further services under this Contract after having given the SPONSOR seven (7) days written

notice until the moneys due the CONSULTANT have been paid in full.

2.5 FINAL PAYMENT.

- 2.5.1 Upon completion and acceptance of the PROJECT by the SPONSOR, final payment will be made. The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the SPONSOR from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Agreement or for any part thereof except as otherwise provided in Article 2.
- 2.5.2 The CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and make such materials available at its office at all reasonable times during the period of this Agreement and for three years from the date of Final Payment under this Agreement, for inspection by the SPONSOR, the State, Federal Aviation Administration, or any authorized representatives of the Federal Government and copies thereof shall be furnished if required.
- 2.5.3 The CONSULTANT agrees to complete all work of this Agreement in a manner satisfactory to the SPONSOR, within the Lump Sum Amount, as shown in Article 2, Item 2.1.

2.6 In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the SPONSOR all assistance required by the SPONSOR. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this Agreement for the additional services above described, the SPONSOR's directions shall be exercised by the issuance of a separate Agreement, if necessary.

2.7 Other Provisions Concerning Payment

- 2.7.1 If the schedule of completion of CONSULTANT's services contained in the attached Exhibit A, Scope of Services is exceeded through no fault of the CONSULTANT, all rates, measures, and amounts of compensation provided herein shall be subject to fair and equitable adjustment. In such case, this Agreement shall be modified by the issuance of a Supplemental Agreement.
- 2.7.2 Extra Services.

If the CONSULTANT is of the opinion that any work it has been directed to perform is beyond the scope of work contained in this Agreement and constitutes extra services, CONSULTANT shall promptly notify the SPONSOR, in writing, of this fact prior to beginning any such work. In the event that the SPONSOR determines that such work does constitute extra services, it shall provide extra compensation to the CONSULTANT in a fair and equitable

manner. A Supplemental to this Agreement will be prepared and provide for compensation and scope of work for extra services to be executed by SPONSOR and CONSULTANT.

2.7.3 Audit

The SPONSOR, Federal Aviation Administration, the Comptroller General of the United States, or any of the duly authorized representatives shall have access to any books, documents, papers, and records of CONSULTANT's which are directly pertinent to a specific grant program, for the purpose of making audits, examinations, excerpts, and transcriptions. The CONSULTANT shall maintain all required records for three years after the SPONSOR makes final payment and all other pending matters are closed.

ARTICLE 3. STANDARD PRACTICES AND REQUIREMENTS.

The CONSULTANT shall ascertain the standard practices of the SPONSOR, the New York State Department of Transportation and the Federal Aviation Administration prior to beginning any of the work on this project. Where practicable, all work required under this Agreement shall be performed in accordance with these standard practices. In the event that provisions of these standard practices are in conflict or strict adherence to same is impossible or undesirable, the CONSULTANT may, with the written approval of the other parties, vary or deviate from such standards.

ARTICLE 4. SPONSOR'S RESPONSIBILITIES

The SPONSOR shall do the following in a timely manner so as not to delay the services of CONSULTANT:

4.1 Provide all criteria and full information as to SPONSOR's requirements for the project and designate, in writing, a person with authority to act on SPONSOR's behalf on all matters concerning this Agreement.

4.2 Furnish CONSULTANT all existing studies, reports and other available data pertinent to this project, obtain or authorize CONSULTANT to obtain, additional reports and data as required, and furnish to CONSULTANT existing airport data from others required for the performance of CONSULTANT's services.

4.3 Arrange for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform services for this project.

4.4 Review all submissions in a timely manner so as not to delay completion of this project.

ARTICLE 5. TAXES, ROYALTIES AND EXPENSES.

The CONSULTANT shall pay all taxes, royalties and expenses incurred in connection with the

services under this Agreement, unless otherwise stated in this Agreement or in the attached fee estimate.

ARTICLE 6. CONSULTANT LIABILITY.

The CONSULTANT specifically agrees that its subcontractors, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform. Further, it is expressly understood that the CONSULTANT shall indemnify, hold harmless the SPONSOR, New York State Department of Transportation and the Federal Aviation Administration from claims, suits, actions, damages and costs of every name and description resulting from the negligent acts, errors or omissions of the CONSULTANT under this Agreement, to the full extent of the CONSULTANT's culpability in any such claim, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided. Negligent performance of service within the meaning of this Article shall include, in addition to negligence founded upon tort, negligence based upon the CONSULTANT'S failure to meet professional standards.

Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the CONSULTANT or the SPONSOR beyond such as may legally exist irrespective of this Article or this Agreement.

ARTICLE 7. LABOR LAW REQUIREMENTS.

The CONSULTANT specifically agrees, as required by the Labor Law, Sections 220, 220-d and 220-e, as amended, and applicable sections of Appendix H of Federal Aviation Regulations, Part 152, that its execution of this Agreement binds them to the following specific agreements:

7.1 No laborer, workman, or mechanic in the employ of the CONSULTANT, subcontractor or other persons doing or contracting to do the whole or part of the work included in the Agreement shall be permitted or required to work more than eight hours in any one calendar day or more than five days in one week in the performance of work included in this Agreement except in the emergencies set forth in the Labor Law;

7.2 The wages (including supplements) paid for a legal day's work shall be not less than the prevailing rate of wages (including supplements) as defined by law;

7.3 The minimum hourly rate of wages (including supplements) to be paid shall not be less than that designated by the Industrial Commissioner;

7.4 The minimum hourly supplements to be paid shall be in accordance with the prevailing practices in the locality where the project is located and shall be not less than designated by the Industrial Commissioner. Supplements as defined in Section 220 of the Labor Law, as amended, mean all remuneration for employment paid in any medium other than cash or reimbursement for expenses or any payments which are not wages within the meaning of the law including, but not limited to health, welfare, non-occupational disability, retirement, vacation benefits, holiday pay and life insurance;

7.5 The Labor Law provides that the Agreement may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:

7.5.1 The stipulated wage scale (including supplements) as provided in the Labor Law, Section 220, Subdivision 3, as amended, or

7.5.2 The stipulated minimum hourly scale (including supplements) as provided in the Labor Law, Section 220-d, as amended.

7.6 The CONSULTANT specifically agrees as required by the provisions of Labor Law, Section 220-e, as amended, that:

7.6.1 In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, no CONSULTANT, subcontractor nor any person acting on behalf of such CONSULTANT or subcontractor shall by reason of race, creed, sex, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

7.6.2 No CONSULTANT or subcontractor or any person on its behalf shall in any manner discriminate or intimidate any employee hired for the performance of work under the Agreement on account of race, creed, sex, color or national origin;

ARTICLE 8. NON-DISCRIMINATION PROVISIONS.

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

8.1 The CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, creed, sex, color or national origin. Such action shall be taken with reference to, but not limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.

8.2 The CONSULTANT will send to each labor union or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights advising such labor union or representative of the CONSULTANT'S Agreement under clauses (8.1) through (8.7) (hereinafter called "non-discrimination clauses"). If the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiation of this Agreement, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative will not discriminate because of race, creed, sex, color or national origin and that such labor union or representative will affirmatively cooperate within the limits of its legal and contractual authority

in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this Agreement shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights of such failure or refusal.

8.3 The CONSULTANT will post and keep in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Division of Human Rights setting forth the substance of the provisions of clauses (8.1) and (8.2) and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.

8.4 The CONSULTANT will state, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, sex, color or national origin.

8.5 The CONSULTANT will comply with the provisions of Section 291-299 of the Executive Law and Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to its books, records and accounts by the State Commissioner of Human Rights, the Attorney General and the Industrial Commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.

8.6 This Agreement may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the CONSULTANT has not complied with these non-discrimination clauses and the CONSULTANT may be declared ineligible for future Agreements made by or on behalf of the State or a public authority or agency of the State, until it satisfies the State Commissioner of Human Rights that it has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded him to be heard publicly before the State Commissioner of Human Rights or its designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

8.7 The CONSULTANT will include the provisions of clauses (8.1) through (8.6) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The CONSULTANT will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so

notify the Municipal Counsel, requesting him to intervene and protect the interests of the SPONSOR.

ARTICLE 9. WORKER'S COMPENSATION AND LIABILITY INSURANCE.

The CONSULTANT agrees to procure and maintain at its own expense and without direct expense to the SPONSOR until final acceptance by the SPONSOR of the services covered by this Agreement, insurance of the kinds and in the amounts hereafter provided in insurance companies authorized to do business in New York State, covering all operations under the Agreement, whether performed by it or by subcontractors. Before commencing the work, the CONSULTANT shall furnish the SPONSOR a certificate or certificates in form satisfactory to the SPONSOR showing that it has complied with this schedule, which certificate or certificates shall provide that the policies shall not be changed or canceled until thirty days written notice has been given to the SPONSOR. The kinds and amounts of insurance required are as follows:

9.1 Policy or policies covering the obligations of the CONSULTANT in accordance with the provisions of any applicable Worker's Compensation or Disability Benefits Law.

9.2 Policy for bodily injury liability and property damage liability insurance of the types hereinafter specified, with limits of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom, and for all damages arising out of injury to or destruction of property for subject to \$2,000,000 aggregate for all damages arising out of bodily injury to or destruction of property during the policy period. The SPONSOR shall be named as an additional insured with respect to the above general liability insurance.

9.3 Professional Liability (errors and omissions) insurance coverage of not less than \$4,000,000 in the aggregate covering CONSULTANT's activity on this Agreement.

ARTICLE 10. ASSIGNMENT REQUIREMENTS.

The CONSULTANT specifically agrees that:

10.1 It is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the Agreement or of its right, title or interest therein, or its power to execute such Agreement, to any other person, company or corporation without the previous consent in writing of the SPONSOR and the Commissioner of Transportation and Federal Aviation Administration.

ARTICLE 11. ABANDONMENT, CHANGE OF PLAN AND TERMINATION.

The SPONSOR shall have the absolute right to abandon the work, to amend its project, or to change the general basis at any time, and such action on its part shall in no event be deemed a breach of contract.

If the SPONSOR does amend its project or change the general basis and the CONSULTANT is of the opinion that Extra Work is made necessary as a result thereof, the provisions of Article 2 of this Agreement with respect to Extra Work shall apply.

The SPONSOR shall have the absolute right to terminate this Agreement upon seven (7) days

written notice to the CONSULTANT, and such action shall in no event be deemed a breach of contract.

If a termination is brought about for the convenience of the SPONSOR and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the actual cost incurred by the CONSULTANT in accordance with the terms of this Agreement as verified by audit, plus a portion of the Fixed Fee equal to the percentage of the CONSULTANT's work completed. In determining the value of the work performed by the CONSULTANT prior to the termination, no consideration will be given to profit which the CONSULTANT might have made on the uncompleted portion of the work.

If the termination is brought about as a result of default or unsatisfactory performance on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the percent of the amount of such work completed by the CONSULTANT, and acceptable to the SPONSOR, of the total amount of work contemplated by this Agreement. Final payment is to be made, based on a percent of the total estimated cost covered by this Agreement.

The CONSULTANT shall have the right to terminate this Agreement upon seven (7) days written notice to the SPONSOR in the event of substantial failure by the SPONSOR to perform in accordance with the terms of this Agreement, and such action shall in no event be deemed a breach of contract.

Termination brought about as a result or default or breach of contract by the SPONSOR, as well as termination brought about because of circumstances beyond the control of the CONSULTANT, shall be considered as termination brought about for the convenience of the SPONSOR, and CONSULTANT shall be paid in accordance with the Provisions for Termination for Convenience of SPONSOR.

ARTICLE 12. SUSPENSION OF WORK.

In the event that the work under the Agreement is entirely suspended, the CONSULTANT agrees that its services shall likewise be suspended without compensation for the suspended period. Upon the resumption of the work under the Agreement, the CONSULTANT shall resume its services under this Agreement until the work is completed and accepted. Payment for services provided by CONSULTANT following resumption of work shall be subject to the provisions of Article 2, Item 2.7.1.

ARTICLE 13. DEATH OR DISABILITY OF THE CONSULTANT.

The rights and duties to perform under this contract rest with the CONSULTANT as a Corporation and, as such, the death or disability of one or more persons employed by the CONSULTANT shall not affect the CONSULTANT's rights and duties to perform under this Agreement.

ARTICLE 14. INTERCHANGE OF DATA.

All technical data in regard to the project whether (a) existing in the office of the SPONSOR,

or (b) existing in the office of the CONSULTANT, shall be made available to the other party to this Agreement without expense to such other party as the case may be.

ARTICLE 15. DISPOSITION OF PROJECT DOCUMENTS.

At the time of completion of the work, the CONSULTANT shall make available to the SPONSOR all tracings, plans, maps, computerized programs and reports which have been prepared as the result of this Agreement. This material shall become the property of the SPONSOR and the maintenance of the data shall be the responsibility of the SPONSOR. However, any reuse of these documents without written verification or adaptation by CONSULTANT for the specific purpose intended will be at SPONSOR's sole risk and SPONSOR shall indemnify and hold harmless CONSULTANT from all claims arising out of or resulting from such reuse. Any verification or adaptation by CONSULTANT will entitle CONSULTANT to further compensation at rates to be agreed upon by SPONSOR and CONSULTANT. The CONSULTANT may retain a copy of all material developed by the CONSULTANT under any TASK ORDER.

In the event that this Agreement is terminated for any reason, then upon written request, within ten (10) days after such termination, the CONSULTANT shall make available to the SPONSOR all data and material prepared under this Agreement in accordance with the above paragraph.

ARTICLE 16. DAMAGES AND DELAYS.

The CONSULTANT agrees that no charges or claim for damages shall be made by them for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the SPONSOR may decide, it being understood, however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended shall in no way operate as a waiver on the part of the SPONSOR of any of its rights herein. Nothing in this Article will prevent the CONSULTANT from exercising its rights under Article 2, Item 2.7 or any other article of this Agreement.

ARTICLE 17. CODE OF ETHICS.

The CONSULTANT specifically agrees that this Agreement may be canceled or terminated if any work under this Agreement is in conflict with the Code of Ethics for municipal officers and employees, required under the provisions Section 806 of the New York State General Municipal Law, as amended.

ARTICLE 18. INDEPENDENT CONTRACTOR.

The CONSULTANT, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold himself out as nor claim to be an officer or employee of the SPONSOR by reason hereof, and that it will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the SPONSOR including, but not limited to, worker's compensation

coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

ARTICLE 19. PATENT RIGHTS AND COPYRIGHTS.

Any patentable result arising out of this Agreement as well as all information, designs, specifications, know-how data and findings shall be made available without cost to the State or its licensees and the Federal Aviation Administration for public use. No material prepared in connection with this project will be subject to copyright. The State and the Federal Aviation Administration will have the right to publish, distribute, disclose and otherwise use any material prepared under this project.

ARTICLE 20. NEW YORK STATE PARTICIPATION.

The work in this Agreement may be included in a New York State Department of Transportation project which is being undertaken and accomplished by the SPONSOR and the State of New York pursuant to which the State has agreed to pay a certain percentage of the allowable project costs. The State of New York is not a party to this Agreement and no reference in this Agreement to the Commissioner of Transportation or any representative thereof or to any rights granted to the Commissioner of Transportation or any representative thereof or the State of New York, by the Agreement, make the State of New York a party to this Agreement. The approval of this Agreement by the Commissioner of Transportation and the State Comptroller of New York State is only for the purpose of determining that this Agreement meets the terms and conditions of the State Grant Agreement for reimbursement purposes from the State to the SPONSOR.

The CONSULTANT and SPONSOR agree that properly authorized officials of the State of New York may, from time to time, inspect all project documents for the purpose of insuring compliance with New York State laws and protecting the interests of New York State.

ARTICLE 21. MANDATORY FAA PROVISIONS

The Federal Aviation Administration is not a party to this Agreement although work covered by this Agreement may be financially aided in part by a Grant Agreement between the Owner and the Federal Aviation Administration, as provided for under the Airport and Airway Development Act of 1970 (P.L. 91-258) as amended. The Owner and the Engineer hereby agree to comply fully with the conditions set forth in the Grant Agreement as though they were set forth in detail in this Agreement. The Engineer further agrees that by reason of complying with the conditions of the Grant Agreement, no obligation is entailed on the part of the Federal Aviation Administration to the Engineer.

The Engineer and the Owner agree that properly authorized officials of the Federal Aviation Administration may, from time to time, inspect all project documents and work for the purpose of insuring compliance with Federal laws and protecting the interests of the Federal Aviation Administration.

21.1 Access to Records and Reports: The Contractor must maintain an acceptable cost

accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records, and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

21.2 General Civil Rights Provisions: The Contractor agrees that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to ensure 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 benefitting from Federal assistance.

This provision binds the Contractors from the bid 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.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; 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 airport 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.

21.3 Title VI Clauses for Compliance with Nondiscrimination Requirements: During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows;

- a. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- b. Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment

practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- d. Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 1. Withholding payments to the contractor under the contract until the contractor complies; and/or
 2. Cancelling, terminating, or suspending a contract, in whole or in part.
- f. Incorporation of Provisions: The contractor will include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

21.4 Title VI List of Pertinent Nondiscrimination Authorities: During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964); The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

21.5 Disadvantaged Business Enterprise (DBE) Assurances:

- a. Floyd Bennett Memorial Airport DBE Program - The Warren County

(Sponsor) has established a DBE Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Airport has signed an assurance that it will comply with 49 CFR Part 26. Project Contractors are required to comply with the requirements as stated in 49 CFR Part 26 and the Airport DBE Program, which is available at the Airport Manager's Office. The Airport's FAA-approved DBE overall goal for this project is 5% of the Federal financial assistance to be expended on FAA DOT - assisted contracts.

- b. Contract Assurance (§ 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- c. Prompt Payment (§26.29) - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Warren County. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Warren County. This clause applies to both DBE and non-DBE subcontractors.

21.6 Federal Fair Labor Standards Act (Federal Minimum Wage): All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

21.7 Lobbying and Influencing Federal Employees: The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in

connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

21.8 Occupational Safety and Health Act of 1970: All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

21.9 Right to Inventions: All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

21.10 Trade Restriction Clause: The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals

- of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

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 the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor 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 contractor shall provide immediate written notice to the sponsor 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 the Sponsor 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.

21.11 Termination of Contract:

- a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed

- for anticipated profit on unperformed services.
- c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
 - d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph b of this clause.
 - e. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

21.12 Certification Regarding Debarment and Suspension: By submitting a bid/proposal under this solicitation, the bidder/offeror/contractor certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

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

- a. Checking the System for Award Management at website: <http://www.sam.gov>
- b. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above
- c. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

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

21.14 Clean Air and Water Pollution Control: Contractors and subcontractors agree:

- a. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

- b. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- c. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- d. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

21.15 Contract Workhours and Safety Standards Act Requirements:

- a. Overtime Requirements.

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

- b. Violation; Liability for Unpaid Wages; Liquidated Damages.

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

- c. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract

or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph b above.

d. Subcontractors.

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

21.16 Texting While Driving. In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

ARTICLE 22. MISCELLANEOUS.

22.1 The CONSULTANT agrees that it will require all persons employed upon the work including its subcontractors, agents, officers and employees to comply with applicable laws of the jurisdiction in which the work is performed.

22.2 Any provision or part thereof of this Agreement held to be void or unenforceable under any law shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

22.3 By execution of this Agreement, the CONSULTANT represents that it has not paid and also agrees not to pay any bonus or commission for the purpose of obtaining an approval of this Agreement.

22.4 In accordance with Chapter 406 of the Laws of 1981, the CONSULTANT hereby promises, asserts and represents that the CONSULTANT or any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating or shall participate in an

international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the United States Export Administration Act of 1979, or the effective Regulations of the United States Department of Commerce promulgated under either Act.

It is understood further that the State in awarding a contract does so in material reliance upon the promise and representation made by the CONSULTANT in the foregoing paragraph and that such contract shall be rendered forfeit and void by the State Comptroller if subsequent to the bid execution date, the CONSULTANT or such owner or affiliated person, firm, partnership or corporation has been convicted of a violation of the aforesaid Acts or Regulations or has been found upon final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated such Acts or Regulations. The CONSULTANT agrees to and shall notify the Commissioner of Transportation and the Director of the Bureau of Contracts and State Expenditures in the Department of Audit and Control of any such conviction or final determination of violation within five (5) days thereof.

22.5 SPONSOR and CONSULTANT agree that all project documents requiring formal approval by a Federal agency will be submitted to the New York State Department of Transportation for their prior approval and forwarding to the Federal agency for its formal approval. The SPONSOR and CONSULTANT agree that approval of all project documents requires the complete, prior and simultaneous coordination with the Federal agency and New York State Department of Transportation.

ARTICLE 23. SUBCONTRACTORS/SUBCONSULTANTS.

All subcontractors and subconsultants performing work on this project for the CONSULTANT shall be bound by the same required contract provisions contained herein. All agreements between the CONSULTANT and a subcontractor or subconsultant shall include all standard required contract provisions and such agreements shall be subject to review by the State and the Federal Aviation Administration.

ARTICLE 24. ENTIRE AGREEMENT

This AGREEMENT (consisting of pages 1 through 21, inclusive) together with the Exhibit(s) identified below, constitute the entire Agreement between SPONSOR and CONSULTANT and supersede all prior written or oral understandings. This AGREEMENT and said Exhibit may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Exhibit A, Scope of Services

Exhibit B, Fee Estimate

Exhibit C, Methods of Contracting and Allowable Costs

Exhibit D, Overhead

IN WITNESS WHEREOF, this Agreement has been executed by the SPONSOR, acting by and through the Chairman of the Board of Supervisors of Warren County who has caused the seal of its office to be affixed hereto and the CONSULTANT by and through a duly authorized officer who has executed this Agreement, effective the day and year first above written, subject to the approval of the Commissioner, Department of Transportation, the State Comptroller and the Federal Aviation Administration.

Warren County

By _____

(Name)

(Title)

McFarland-Johnson, Inc.

By  _____

James M. Festa, P.E.
Chief Executive Officer

STATE OF NEW YORK)
) ss:
_____)

On this _____ day of _____, 2022, before me, the subscriber, personally came _____ to me known, who being duly sworn, did depose and say that he/she resides in _____; that he/she is the _____, the municipal corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the _____ of said corporation and that he/she signed his/her name thereto by like order.

Notary Public

STATE OF NEW YORK)
) ss:
COUNTY OF BROOME)

On this 5th day of December, 2022, before me, the subscriber, personally came James M. Festa, to me known, who being by me duly sworn, did depose and say that he resides at Vestal, New York; that he is Chief Executive Officer of McFarland-Johnson, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Linda M. Monahan
Notary Public

LINDA M. MONAHAN
Notary Public, State of New York
No. 4968747
Residing in Broome County
My commission expires 7/2/24



EXHIBIT A: SCOPE OF SERVICES



EXHIBIT A
SCOPE OF SERVICES

FOR

FLOYD BENNETT MEMORIAL AIRPORT
WARREN COUNTY, NEW YORK

ENGINEERING DESIGN, BIDDING, CONSTRUCTION ADMINISTRATION, AND
CONSTRUCTION OBSERVATION SERVICES

FOR

PAPI REPLACEMENTS FOR RUNWAY 1-19

PROJECT DESCRIPTION

This project consists of design work associated with the replacement of the 4-box Precision Approach Path Indicator Systems (PAPIs) servicing both ends of Runway 1-19 at the Floyd Bennett Memorial Airport. The existing PAPI's systems are beyond their serviceable life, have become unreliable and require replacement. This project will include:

- Installation of new power feeds to all the PAPI's from the vault through existing conduit and junction cans.
 - No new conduit or structures are anticipated.
- Electrical vault modifications as required to service the proposed PAPI's.
 - Replacement of the existing Constant Current Regulators (CCR's) are anticipated.

The project design efforts will include a review of PAPI siting criteria and other associated FAA Standards. Any deviations will be noted and addressed during the design process.

Construction Sequencing will involve a comprehensive review of the aircraft mix, schedules, and typical taxi patterns to determine appropriate work areas for the project. Sequencing will consider impacts to airport operations and will attempt to minimize these effects to the extent practicable.

SCOPE OF WORK

McFarland-Johnson, Inc (CONSULTANT) shall provide the following professional services under this contract as related to the above described project including the preparation of preliminary and final design, specifications, opinion of probable construction costs, assistance in bidding, construction administration, and construction observation.

The project will be completed by Warren County (SPONSOR), with grant assistance from the Federal Aviation Administration (FAA) Airport Improvement Program (AIP), and New York State Department of Transportation (NYSDOT) at funding levels of 90% FAA, 5% NYSDOT and 5% SPONSOR.



1. ADMINISTRATION/PROJECT MANAGEMENT

The following items of work shall be accomplished on behalf of the SPONSOR under the category of Administration/Project Management:

- A. (1) Telephone Conference with the Federal Aviation Administration to review their programming and design standards and to become knowledgeable of the data that is already available for the project.
- B. The coordination with the FAA Technical Operations Division Regional and Field personnel regarding FAA owned and/or operated facilities that may be impacted by the project.
- C. The CONSULTANT will prepare the FAA Grant Application paperwork for signature by the SPONSOR. The application will include the following information:
 - Application for Federal Assistance (OMB Standard Form 424)
 - Project Approval Information, Part II (FAA Form 5100-101)
 - Project Approval Information, Part IV- Program Narrative
 - Project Funding Summary
 - Consultant Scope of Work
 - Consultant Fee
 - Sponsor Certifications
 - Sponsor Certification of Construction Acceptance (FAA Form 5100-129)
 - Sponsor Certification of Drug Free Workplace (FAA Form 5100-130)
 - Sponsor Certification of Equip/Construct Contracts (FAA Form 5100-131)
 - Sponsor Certification of Project Plans and Specs (FAA Form 5100-132)
 - Sponsor Certification of Selection of Consultants (FAA Form 5100-134)
 - Sponsor Certification of Disclosure/Conflicts (FAA Form 5100-135)
- D. Coordination and liaison efforts between the SPONSOR and the grantor agencies, general correspondence, preparation of special reports necessary for the project development.
- E. A Grant Administrator will be assigned to the Project. The Grant Administrator will assist the SPONSOR with reimbursement requests to the funding agency. The CONSULTANT shall prepare, and process grant reimbursement requests for the applicable FAA and NYSDOT grants. four (4) reimbursement requests are anticipated. The CONSULTANT will obtain all administrative expenses, engineering fees and costs associated with the project and assemble a total project summary.

2. PRELIMINARY DESIGN (90%)

- A. Attend a pre-design meeting with the SPONSOR's representatives, the funding agencies such as the FAA and State Department of Transportation.
- B. Complete an investigation to gather the necessary data for design of project. The



investigation will consist of a review of the existing data such as survey information, geotechnical data, as-built construction drawings and other existing data, as it is readily available.

- C. Assist the SPONSOR in conducting a SEQR review of the project. It is anticipated that the project will qualify as Type II and no further action will be required.
- D. Obtain topographic survey of the two existing PAPI locations including the existing runway centerline elevations to determine the appropriate PAPI siting locations. This task will include soliciting pricing from qualified sub-consultants, reviewing the subconsultant's work and invoices for inclusion into the CONSULTANTS invoices.
- E. Prepare preliminary plans and details based upon criteria contained in FAA AC 150/5300-13, Airport Design. The information to be included will be:
- Cover Sheet and Location Plan (1 sheet)
 - General Notes and Bid Quantities Index (1 sheet)
 - Layout Plans (8 sheets)
 - PAPI Installation Details (1 sheets)
 - Vault Modification Plan (1 sheet)
- F. Prepare a set of preliminary technical specifications. The FAA standard specifications will be used when possible and will be supplemented with State specifications. When special specifications are required, they will be prepared in the same format as the FAA specifications and will be assigned an identifier that distinguishes them from the FAA specifications.
- G. Prepare a quantity take-off from the various design documents, by type of material and FAA or other specification identifier. Separately, a unit cost will be developed for each material to be used on the project. The unit costs will be compiled from other recent projects at the airport, other airports in the area, and other reliable sources. An Engineer's Opinion of Probable Construction Costs will be generated and compared with the available budget for the project. Should any discrepancy occur, the budget will be modified in consultation with the SPONSOR's representative, the FAA, and the NYSDOT; or the project modified to result in a project within the available budget.
- H. Prepare preliminary Design Report in accordance with the New York Airports District Office Sponsor's Guide summarizing the project scope, design standards, design approach, and anticipated costs.
- I. Prepare a preliminary Construction Safety Phasing Plan (CSPP) that will be prepared in accordance with FAA criteria for construction on Airports. This plan will rely upon the criteria contained in FAA AC 150 5370-2E, Operational Safety on Airports During Construction and current FAA Orders, as applicable. This plan will include the type and locations of barricades, the proper clearances, and a series of notes to be provided to the



contractor relative to coordination and safety. This plan will consider access to work areas by construction equipment. Access routes will be developed which will attempt to minimize impact on airport operations and prevent damage to existing aprons and taxiways to the greatest extent practicable.

- J. Perform in-house review of the plans for Quality Assurance and Quality Control. The review will be undertaken for conformance to specified criteria, constructability, and clarity of delivery.
- K. Submit preliminary Plans, Spec's, Engineer's Opinion of Probable Cost, Design Report and CSPP to the SPONSOR for review. Meet with SPONSORS representatives to discuss review comments.
- L. Submit preliminary design Plans, Spec's, Engineer's Opinion of Probable Cost, Design Report and CSPP to the FAA for their formal review in accordance with Memorandum for Implementation at FAA Review of Construction Plans and Specifications dated December 8, 2014. Based on the Review Matrix in Appendix 1 of this Memorandum, a General Review of the contract documents will be completed by the FAA.

3. FINAL DESIGN (100%)

- A. Finalize and submit a CSPP to the FAA's Obstruction Evaluation/Airport Airspace Analysis (OEAAA) website.
- B. Prepare and submit an FAA Form 7460-1, Notice of Proposed Construction or Alteration, for airspace approval through the FAA's OEAAA website. The form will be submitted for the temporary construction equipment only.
- C. Prepare a final set of construction drawings to be used for bidding and construction. These plans will be generated on 22" by 34" sheets and made available to the client in full size paper, half size paper, and .pdf format. The bid set drawings will be stamped and signed by an engineer registered to practice in the State of New York.
- D. Prepare a final set of specifications for use in bidding and construction of the project. The FAA standard specifications will be used when possible and will be supplemented with State specifications. When special specifications are required, they will be prepared in the same format as the FAA specifications and will be assigned an identifier that distinguishes them from the FAA specifications.
- E. Prepare final quantity take-offs from the various design documents, by type of material and FAA or other specification identifier. Separately, a unit cost will be developed for each material to be used on the project. The unit costs will be compiled from other recent projects at the airport, other airports in the area, and other reliable sources. An estimated project cost will be generated and compared with the available budget for the project.



Should any discrepancy occur, the budget will be modified in consultation with the SPONSOR's representative and NYSDOT/FAA or the project modified to result in a project within the available budget.

- F. Attend a final project meeting with the SPONSOR's representatives, airport personnel, fixed base operator, and tenants to discuss final construction drawings, specifications, and CSPP. Incorporate changes from the final project meeting and produce 100 percent plans, specifications, and CSPP.
- G. Perform in-house review of the plans for Quality Assurance and Quality Control. The review will be undertaken for conformance to specified criteria, constructability, and clarity of delivery.
- H. Submit the final Plans, Spec's, Engineer's Opinion of Probable Cost, and Design Report prepared in accordance with the New York Airports District Office Sponsor's Guide to the SPONSOR, the FAA, and NYSDOT.

4. BIDDING AND AWARD ASSISTANCE

- A. Prepare an "Issued for Bid" bid package to reflect the specific requirements of the FAA, State, and the SPONSOR. This will include the Notice to Bidders, the standard contract form, the bidding forms, contractor assurances and questionnaire, the standard provisions and conditions, and the specifications. The bidding booklet and construction plans will be packaged in sets and be made available in quantities and locations as required by the SPONSOR as well as provided digitally in a .pdf format.
- B. Facilitate and attend a project pre-bid meeting to discuss specific project requirements with prospective bidders and answer any questions. Document the meeting proceedings in a formal set of meeting minutes.
- C. Provide responses to questions received from potential bidders through the SPONSOR, and issue formal contract addenda as required. It is anticipated that one addendum will be required.
- D. Compile all changes to the "Issued for Bid" drawings and specifications into a reconciled "Issued for Construction" set of contract documents.
- E. Prepare and compile bid results. Provide the SPONSOR with a certified bid tabulation along with a recommendation to award.
- F. Submit the bid evaluation package to the FAA for review. This package will include the following:
 - Bid Tabulation
 - Bid Proposal



- Bid Bond
- Addendums
- DBE Utilization Statement Form
- DBE Letter of Intent Form(s)
- Buy American Forms
- Sponsor's Recommendation of Award
- Engineer's Recommendation of Award

G. Contact the selected contractor, draft an award letter, and arrange for start-up dates and requirements preliminary to the start of construction. The CONSULTANT will also assist the SPONSOR in reviewing and forwarding contracts for execution by the selected construction contractor.

5. CONSTRUCTION ADMINISTRATION:

The following items of work shall be accomplished on behalf of the SPONSOR under the category of Construction Administration.

- A. **Site Visits:** CONSULTANT's Project Manager/Project Engineer shall make visits to the site at intervals appropriate to the various stages of construction, as CONSULTANT deems necessary, in order to observe the progress and adherence to the Contract Documents of the various aspects of the CONTRACTOR(s)' work. It is anticipated that the Project Manager/Project Engineer will visit the site a minimum of 2 times.
- B. **Shop Drawings:** CONSULTANT shall review and take other appropriate action with respect to Shop Drawings, Material Submittals, Samples and other data which the CONTRACTOR(s) are required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a function of the whole as indicated in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incidental thereto.
- C. **Applications for Payment:** Based on 1) CONSULTANT's on-site observations of work progress; 2) information provided by the Resident Project Representative (RPR); and 3) review of the applications for payment including the accompanying data and schedules:
- CONSULTANT shall determine the amounts owing the CONTRACTOR(s) and recommend in writing payments to CONTRACTOR(s) in such amounts. Such recommendations of payment will constitute a representation to the SPONSOR based on such observations and review, that the work has progressed to the point indicated, and that, to the best of the CONSULTANT's knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as to a functioning whole



prior to, or upon, Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation). In the case of unit price work, CONSULTANT's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

- By recommending any payment, the CONSULTANT will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examination have been made by CONSULTANT to check the quality or quantity of CONTRACTOR(s) work as it is furnished and performed beyond the responsibilities specifically assigned to CONSULTANT in the Agreement and the Contract Documents. CONSULTANT agrees that they will exercise reasonable professional judgement in verifying that the adherence to the Contract Documents and quantity of the work meets requirements of the Contract Documents for which CONSULTANT is contractually responsible. CONSULTANT's review of CONTRACTOR(s)' work for the purposes of recommending payments will not impose on CONSULTANT responsibility to supervise, direct, or control such work or for the means, methods, techniques, sequences, direct, or procedures of construction or safety precautions or programs incident thereto or CONTRACTOR(s) compliance with laws, rules, regulations, ordinances, codes, or orders applicable to their furnishing and performing the work. It will also not impose responsibility on CONSULTANT to make any examination to ascertain how or for what purpose any CONTRACTOR has used the monies paid on account of the Contract Price, or to determine that title to any of the work, materials, or equipment has passed to SPONSOR free and clear of any lien, claims, security interests, or encumbrances, or that there may not be other matters at issue between SPONSOR and CONTRACTOR(s) that might affect the amount that should be paid.

D. **Contractor(s)' Completion Documents:** The CONSULTANT shall receive and review maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection, test and approvals which are to be assembled by CONTRACTOR(s).

E. **Completion Certificates:** The CONSULTANT shall issue certificates of completion to the SPONSOR and the State of New York at the completion of construction.

6. CONSTRUCTION OBSERVATION:

Construction observation services shall be provided by a Full-time Resident Project Representative (RPR) during this project. The RPR, and office support staff will be familiar with airport operations at a facility similar to that of the SPONSOR's. The Consultant shall provide the following services:



- A. **Resident Construction Observation:** Provide technical observation of construction by one RPR and supporting office staff as required, who will also:
- Maintain a project record in conformance with The Manual of Uniform Record Keeping (MURK), adopted for use on an Airport Projects.
 - Complete, review, and verify requests for monthly and final payments to the CONTRACTOR(s).
 - Assist SPONSOR in preparation of the request for reimbursement for State aid.
 - Prepare, compile, and negotiate change order documentation and supplemental agreements with the CONTRACTOR(s) on behalf of the SPONSOR.
 - Conduct weekly project progress meetings on site with all interested parties, and coordinate documentation of these meetings.
 - The CONSULTANT will engage a qualified Material Testing Services, as sub-consultant to perform special inspections and materials testing including steel, soils, and concrete. The CONSULTANT shall assure that all Federal, State, and Local requirements, as applicable to specified materials, are adhered to.
- B. **Final Walk Through:** The CONSULTANT shall conduct a final walk through to determine if the work is substantially complete and if the work is acceptable so that CONSULTANT may recommend, in writing, final payment to CONTRACTOR(s) and may give written notice to SPONSOR and the CONTRACTOR(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed in this Section 6.D.
- C. **Limitation of Responsibility:** The CONSULTANT shall not be responsible for the acts or omissions of any CONTRACTOR(s), or of any Subcontractor or supplier, or any of the CONTRACTOR(s)' work, nor shall the CONSULTANT have the responsibility to supervise, direct, or control CONTRACTOR(s)' work or for the means, methods, techniques, sequences, or procedures of construction or for the safety precautions or safety programs of the CONTRACTOR(s).
- D. **Limitations of Authority:** (RPR, and On-Site Staff)
- Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by the SPONSOR.
 - Shall not exceed limitations of the CONSULTANT's authority as set forth in the agreement or the Construction Contract Documents.
 - Shall not undertake any of the responsibilities of the CONTRACTOR, subcontractors, or CONTRACTOR's superintendent.
 - Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of the construction unless such advice or directions are specifically required by Contract Documents.
 - Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the work.



- Shall not accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.
- Shall not authorize SPONSOR to occupy the Project in whole or in part.
- Shall not participate in specialized field or laboratory tests conducted by others except as specifically authorized by SPONSOR.

E. **Responsibilities/duties of Construction Observation Staff:** In general, the RPR and on-site staff are responsible for monitoring construction activity on the project and documenting their observations in a formal project record. The formal project record for this project will follow the format and guidelines of the MURK system adopted for an airport project. The formal project record consists of the following entries and duties:

- Inspector's Reports
 - To be created daily during full-time inspection
 - To be created weekly during part-time inspection
- Prime/Subcontractor Work Summary
- Preparation of Material Acceptance Reports
- Preparation of Certification and Testing Log Book
- Conduct Wage Rate Interviews with prime and/or subcontractors' employees
- Conduct project meetings with Owner and Contractors
- Field measure quantities
- Collect and monitor certified payrolls for NYS Minimum Wage Compliance
- Review and/or preparation of Periodic Payment Requests
- Record deviations from the contract plans for preparation of Record Drawings
- Preparation and review of Change Orders/Force Account Work

The RPR is also responsible for monitoring construction activity as it relates to airport operations and coordination of construction activities with airport operations staff, including appropriate NOTAMs (Notice to Air Missions). NOTAMs shall be issued by the airport's staff only.

F. **Construction Contract Period:** CONSULTANT agrees to provide the services in this phase of the Agreement during the construction contract period, which is estimated to be 15 calendar days during the 2023 construction season, as well as 5 days prior to the start of construction and 5 days after the completion of construction.

The Construction Observation Fee contained in the Exhibit "B" is based on the stated anticipated hours of effort. If these hours are exceeded, through no fault of the CONSULTANT, the CONSULTANT shall be entitled to additional compensation.

7. PROJECT CLOSEOUT:

A. **Record Plans:** The CONSULTANT shall prepare and furnish two (2) hard copies, and one PDF electronic version, of the Record Plans for the completed project to the SPONSOR. Copies will also be provided to the FAA and NYSDOT, if required. These



plans will show the completed construction per the field and contractor’s records. They are, however, not to be construed as being 100 percent accurate.

- B. Prepare grant closeout documentation (for the design and construction grant). Documentation will include the following:
- Sponsor Cover Letter;
 - Outlay Report and Request for Reimbursement for Construction Programs (Standard Form 271);
 - Federal Financial Report (Standard Form 425);
 - Copy of invoices, receipts, purchase orders, etc. documenting Sponsor administrative costs; and
 - Copy of Final Engineering Invoice.

PROPOSED SCHEDULE OF COMPLETION

The CONSULTANT agrees to complete the work under this Agreement in a manner satisfactory to the SPONSOR within 12 months after receiving an executed copy of this contract from the SPONSOR accompanied by a resolution from its board of supervisors authorizing said execution or within such extended periods as agreed to by the SPONSOR. The project is anticipated to be bid in the winter of 2022/23 and constructed in the summer/fall of 2023.

The tentative schedule is as follows:

<u>Task</u>	<u>Completion</u>
Notice to Proceed	12/15/22
Preliminary Design (90%)	02/15/23
Final Design (100%)	2/28/23
Construction Documents	3/15/23
Bid Returned	4/15/23
Construction Start	08/15/23
Construction Completion	09/15/23
Project Closeout	11/15/23

ASSUMPTIONS:

- The estimated construction budget based upon the Airport Capital Improvement Plan is \$200,000.
- The airport’s latest existing obstruction data available on the FAA’s Airport Data and Information Portal (ADIP) will be used to sight the PAPI’s approach angle. It is assumed that this angle can be set concurrent with the ILS Approach angle.
- The project is a disturbing less than an acre of existing impervious and will not require post construction stormwater practices.
- The project qualifies as a SEQR Type II action.



EXHIBIT B: FEE SUMMARY

EXHIBIT B
PAPI Replacement RW 1-19
Warren County
Floyd Bennett Memorial Airport
December 2022
FIXED FEE SUMMARY

	DESIGN / PLANNING SERVICES	CONSTRUCTION SERVICES
1. DIRECT TECHNICAL LABOR	\$11,479.62	\$8,605.22
2. ESTIMATED OVERHEAD EXPENSES AND PAYROLL BURDEN Based on Percentage of Direct Salary Cost (exclusive of Premium Pay) with the estimated Percentage being 175.00 %	\$20,089.34	\$15,059.14
3. SUBTOTAL OF ITEMS 1 & 2	\$31,568.96	\$23,664.36
4. FIXED FEE / PROFIT	\$4,735.34	\$3,549.65
5. DIRECT EXPENSES	\$176.00	\$1,012.00
6. SUBCONSULTANT COSTS	\$4,975.00	
Survey - Aubertine & Currier	\$4,975	
7. SUBCONTRACT COSTS - (ESTIMATE)		
8. OVERTIME PREMIUM		\$900.00
9. TOTAL FEE ESTIMATE	\$41,455.30	\$29,126.01

10. TOTAL FIXED FEE FOR ALL SERVICES
\$70,582
NOTE: Authorized hours worked in excess of forty per week are subject to a premium time charge

PAPI Replacement RW 1-19
**Warren County
Floyd Bennett Memorial Airport**
December 2022
DIRECT COSTS

	DESIGN / PLANNING SERVICES	CONSTRUCTION SERVICES	
Travel Related Costs:			
Vehicle Cost Plus Fuel	\$116	\$667	
Lodging and Meals	\$60		
Per Diem		\$345	
Reproduction			
CADD Plots			
Prints			
Photocopies			
Photo Costs			
Telephone/Fax:			
Postage/Delivery			
Miscellaneous			
	\$176	\$1,012	
			\$1,188

EXHIBIT C

Advisory Circular 150/5100-14E

CHAPTER 4. METHODS OF CONTRACTING AND ALLOWABLE COSTS

CHAPTER 4. METHODS OF CONTRACTING AND ALLOWABLE COSTS

4.1 General.

The method of contracting selected for consultant services is dependent on the types of services required and specific circumstances relating to the individual project. The permissible types of contracts are established within 2 CFR part 200 and Appendix U of FAA Order 5100.38D. The various types of contracts and methods of compensation are discussed in this chapter and listed in Table 4-1. Contracts may be negotiated to include a combination of two or more of these methods.

- 4.1.1 The Sponsor must negotiate profit as a separate element of the price for each contract and supplemental agreement. When negotiating a fair and reasonable profit, the Sponsor shall give due consideration to the complexity of the work being performed; the risk borne by the firm; the firm's investment; the amount of sub-consultants; the firm's record of past performance; and industry profit rates in the surrounding geographical area for similar work.

4.2 Direct Personal Services.

- 4.2.1 Direct personal services are usually charged on a per diem basis. This method is particularly suited to court work or similar efforts involving intermittent personal service.
- 4.2.2 When such consulting or expert services are furnished, the consultant is compensated for the time devoted to the work and travel. The per diem charge should be based on the complexity of the work involved and the experience of the consultant. In addition to the compensation based on per diem, the consultant is reimbursed for travel and other out-of-pocket expenses incurred while away from the normal place of business provided they are reasonable, allocable, and of a generally allowable nature. Additionally, reimbursable expenses at the normal place of business may be reimbursed, such as special computer work, rendering, exhibits, provided they are reasonable, allocable, and of a generally allowable nature.
- 4.2.3 Each direct personal services contract must include a ceiling price that the contractor exceeds at their own risk. Furthermore, the Sponsor must assert oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- 4.2.4 For services in court or on other engagements in which the consultant appears as an expert, a per diem charge is considered to be earned for each day of such appearance, although the consultant may not be called to testify or, if called, may finish his/her testimony in a fraction of a day.
- 4.2.5 On occasion, the urgency of the engagement requires the consultant to work longer than the normal day. In some instances, this requirement is a necessary feature of the services, and an understanding should be made with the Sponsor as to what constitutes a

day. In such cases, the per diem rate may be based on the normal number of working hours per day, or the per diem rate may be increased to take into consideration the extended work day.

- 4.2.6 For certain kinds of work, compensation based on hourly rates is an equitable arrangement. Compensation for consultant service on an hourly basis demands a higher rate per hour than would be represented in a per diem rate. Also, the hourly rates should apply to time for travel involved, plus reimbursement for travel costs, subsistence, and other out-of-pocket expenses. Depending on the duration of the services, compensation on an hourly basis may include an agreement on a preset minimum amount or retainer in addition to the payments based on the hourly rates.
- 4.2.7 If public hearings are involved in the consultant services, determination of the fee could present a problem since extensive hearings and follow-up work may be required. In these instances, the per diem approach may be considered as an appropriate method of payment for services rendered subsequent to the initial hearing. An estimated upper limit should be set forth in the contract. The contract should provide for renegotiation of the upper limit if unforeseeable conditions are encountered.

Table 4-1. Contracting Methods and Allowable Costs

Contracting Method	Compensation	Allowable Cost
§4-2. Direct Personal Services	<ul style="list-style-type: none"> • Per Diem. • Hourly Rate (§4-2.6). 	Costs must be allowable, reasonable, and allocable to the project. Costs must be consistent with 2 CFR 200.459, FAA Order 5100.38 and 48 CFR Part 31.
§4-3. Retainer	<ul style="list-style-type: none"> • Fixed sum. • Paid monthly. • Some other mutually agreeable basis. 	
§4-4. Cost-Plus-a-Fixed-Fee (NTE)	Fixed sum.	
§4-5. Fixed Lump-Sum Payment	Fixed sum.	
§4-6. Cost-Plus-a-Percentage-of-Cost	Prohibited method.	Prohibited.
§4-7. Specific Rates of Compensation	Hourly Rate	Costs must be allowable, reasonable, and allocable to the project. Costs must be consistent with 2 CFR 200 .459, FAA Order 5100.38 and 48 CFR Part 31.
§4-8. Phasing of Work	May include two or more of the above methods of compensation.	Costs must be allowable, reasonable, and allocable to the project. Costs must be consistent with 2 CFR 200.459, FAA Order 5100.38 and CFR Part 31.

Note: See Paragraph 4.10 for non-allowable costs for all types of service.

See Appendix G for Alternative Project Delivery Systems.

4.3 **Retainer.**

4.3.1 The engagement of consultants on a retainer basis is a common practice. This practice assures the Sponsor of always having the services of a certain individual engineer or organization available for future work. This method is used in cases of protracted litigation or for work over the years when the services of the consultant may be intermittent. It is also used in the development of undertakings for which the services of a consultant specialist are not required on a full-time basis. On large projects, this method enables the Sponsor to have the specialists who prepared the original plans and specifications on hand for maintenance or additions.

4.3.2 The retainer fee varies with the character and value of the services to the Sponsor and with the reputation and standing of the consultant in his/her profession.

- 4.3.3 The terms of agreement for services on a retainer basis vary widely. Compensation may be based on a fixed sum, paid monthly, or on some other mutually agreeable basis, with per diem or hourly rates in addition to time spent at the request of the Sponsor. In any case, the same principles, explained previously for per diem or hourly charges, govern under retainer contracts.
- 4.3.4 This type of contract is rarely used for grant projects. However, it is permissible to use a firm on retainer for projects without further procurement action if:
1. The retainer contract was awarded as a result of competition.
 2. The parties competing for the retainer were advised that subsequent grant funded projects (including the scope of work for those projects) would be performed under the retainer contract.
 3. The price for the work performed under the grant will be fair and reasonable and supported by a price or cost analysis.
- 4.3.5 Detailed records should be kept to identify the work that is part of a Federal grant project and eligible for reimbursement.

4.4 **Cost-Plus-a-Fixed-Fee (Not to Exceed (NTE)).**

- 4.4.1 The cost-plus-a-fixed-fee contract is appropriate when the Sponsor and consultant cannot fully define the scope, complexity, character or duration of effort at the time negotiations take place. This method places a risk on the Sponsor. Because the consultant's fee is fixed, there is an added incentive for the consultant to control cost.
1. Sponsors should consider using the cost-plus-fixed fee contract type for construction phase services. These services are generally dependent upon the construction contractor's performance. For this reason, the necessary level of effort for the consultant's services cannot always be fully established at the time of contract negotiation.
- 4.4.2 If the design services have a high level of variability of effort (e.g., evaluation of design alternatives), the use of a cost-plus-fixed-fee method may be justified. The fixed lump sum is the more appropriate contract method when the level of effort can be fully defined at the time of contract negotiations.
- 4.4.3 This type of contract provides for reimbursement of allowable costs such as salary, overhead, and direct non-salary expenses, plus a fixed fee.
1. A copy of the detailed fee estimate (see sample in Appendix D) must accompany the fee proposal.
 2. The estimate must detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; direct non-salary expenses; and the fixed fee.

- 4.4.4 Fixed Fee: The fixed-fee is a dollar value the Sponsor negotiates with the consultant at inception of the contract. It is in addition to reimbursement for salary, overhead, and direct non-salary expenses.
1. The fixed fee represents an amount for profit, willingness to serve, and assumption of responsibility and risk. The fixed fee does not vary with actual costs.
 2. The Sponsor and consultant may apply customary industry practices to negotiate a fair and reasonable value for the fixed fee. However, the resulting agreement must convey the fixed fee as a dollar value. The cost-plus-percentage of cost payment method prohibits the use of a percentage payment for the contract fee.
 3. The fixed fee value may not be modified unless there is a change in the scope of the work. This includes both additions and subtractions to the scope of service.
- 4.4.5 The establishment of a not-to-exceed contract value is a Sponsor cost control measure that provides a ceiling level for the overall contract. The Sponsor should consider the risk to the consultant when establishing this upper limit.
- 4.4.6 Agreements with a cost-plus-a-fixed-fee payment method must contain provisions that provide for renegotiation of both the contract upper limit and the fixed fee. Sponsor
1. The agreement should include a requirement for the consultant to alert the Sponsor when the consultant's cumulative costs approach the upper limit.
 2. The Sponsor and consultant should assess whether the remaining work effort can be completed within the remaining contract limits.
 3. The consultant must obtain Sponsor approval before exceeding the upper limit.
- 4.4.7 Additional Costs: An increase in costs over the original contract value can occur for several reasons. These include, but are not limited to:
1. Poor performance of construction contractor may result in additional inspection and oversight effort.
 2. Ineffective control of costs by the consultant resulting in an over-run of expenses.
 3. Poor estimate of the necessary level of effort at inception of contract.
 4. Increase in construction contract time due to weather events that exceed the norm for the location.
 5. Added scope of work or services.

If the additional costs are due to a construction contractor's failure to perform per the terms of the contract, the Sponsor may address the additional costs to the consultant by applying liquidated damages on the construction contractor to the extent that liquidated damages have been included in the contract with the contractor.

If the additional costs are due to the consultant's failure to effectively control their costs per the agreement, the original fixed fee and not-to-exceed contract value become the final contract costs the Sponsor is obligated to pay.

If the additional costs are due to reasons outside the control of both the Sponsor and the consultant, the Sponsor and consultant should enter into negotiations to address the anticipated additional costs. This negotiation must occur prior to the consultant incurring the additional costs. The opportunity to negotiate does not necessarily mean that both the contract ceiling value and the fixed fee value require upward revision. The circumstances of the situation will dictate whether just the ceiling rate is revised or if the fixed-fee value requires revision as well. Due to the prohibition of the cost-plus-percentage of cost payment method, an increase in costs does not automatically equate to an increase in the fixed fee.

If the increased costs are due to additions to the contract scope of services, the Sponsor and consultant should enter into negotiations to determine a fair and reasonable price for the additional level of effort.

- 4.4.8 Overhead charges will vary according to the nature, type, diversity, size of firm, and number/amount of contracts currently held by the firm. Such charges are defined by multiplying the approved certified overhead rate by the direct labor costs. Refer to section 4.10 for additional guidance on the allowability of overhead costs.

4.5 **Fixed Lump-Sum Payment.**

- 4.5.1 The fixed lump-sum payment contract is appropriate when the Sponsor and consultant can fully define the scope, complexity, character and duration of effort at the time negotiations take place.

1. Sponsors should consider using the fixed lump sum contract type for design services when the necessary level of effort for the consultant's services can be clearly established at the time of contract negotiation.

- 4.5.2 The fixed lump-sum contract method places most of the risk upon the consultant. Most consultants will address this risk in their profit markup. Once the fixed lump sum contract is established, the consultant has incentive to control their costs to maximize their actual margin.

1. The fixed amount of compensation is determined by estimating the allowable costs such as salary, overhead, and direct non-salary expenses, plus a reasonable margin of profit.
2. A copy of the consultant's detailed fee estimate must accompany a consultant's lump-sum fee proposal during the negotiation phase.
3. The estimate must detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; direct non-salary expenses; and profit..

- 4.5.3 The final agreement may express all these costs as a single lump sum for the entire project or as individual lump sum elements per the various tasks (e.g. Preliminary design, final design, bidding, etc.).
- 4.5.4 Non-salary direct expenses may be included in the lump sum value only if it is certain that such costs will be incurred on the project. If there is uncertainty that non-salary direct expenses will be necessary for the project, such costs should not be a part of a lump sum payment item. Instead, these costs should be handled as pass through cost with a not-to-exceed ceiling.
- 4.5.5 Where consultation is undertaken on a lump-sum basis, the agreement must contain a clearly stated time limit during which the services will be performed. In design contracts, there should be a provision for changes required after the approval of preliminary designs with a clear understanding as to where the final approval authority lies.
- 4.5.6 Lump-sum contracts must contain a clause that provides for renegotiation if the scope of work described in the contract has changed.
- 4.5.7 Overhead charges will vary according to the nature, type, diversity, size of firm, and number/amount of contracts currently held by the firm. Refer to section 4.10 for additional guidance on the allowability of overhead costs.

4.6 **Cost-Plus-a-Percentage-of-Cost.**

In accordance with 2 CFR §200.323, cost-plus-a-percentage-of-cost (CPPC) methods of contracting are prohibited for consultant services under airport grant programs. CPPC contracts may be defined as a payment formula based on a fixed predetermined percentage rate of actual performance costs by which the sum of the consultant's entitlement, uncertain at the time of agreement, increases commensurately with increased performance costs. The types of contracts discussed below are based on the CPPC methods of contracting and, therefore, are prohibited:

1. Salary Cost Times a Percentage Multiplier, Plus Direct Non-salary Expense. This type of contract contains CPPC methods of contracting because the consultant's indirect cost and profit are not fixed at the time the contract is signed.
2. Percentage of Construction Costs. This type of contract contains CPPC methods of contracting since a portion of the consultant's fee that does not reflect actual costs constitutes a profit that is not fixed at the time the contract is executed.

4.7 **Specific Rates of Compensation (Not to Exceed (NTE)).**

- 4.7.1 The "specific rates of compensation" contracting method should only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. Sponsor must get advanced approval from the FAA for all work conducted under this method.

- 4.7.2 The "specific rates of compensation" contracting method provides for reimbursement for consultant services on the basis of direct labor hours at specified fixed hourly rates (including direct labor costs, indirect costs, and fee (profit)) plus any other direct expenses/costs, subject to an agreed maximum amount.
- 4.7.3 While the inclusion of fee (profit) in the loaded hourly rate(s) established for a contract allows the fee earned to be based on the labor hours worked on the project, this is not considered a "cost plus a percentage of cost" contracting method. A key distinction for the "specific rates of compensation" contracting method is that indirect costs and fee must be recovered as a component of the established, fixed hourly billing rates for labor hours worked. The negotiated rate is typically fixed for the life of the project, however, the Sponsor must reserve the right (by contract) to audit and adjust multiplier rates.
- 4.7.4 Use of this contracting method requires close monitoring to ensure efficient methods and cost controls are employed by the consultant.

4.8 **Sponsor Force Account Projects.**

Per FAA Order 5100.38, proposals to accomplish airport engineering with the Sponsor's own personnel or by its agent must be approved by the FAA. Proposals must be submitted in writing and subjected to a review similar to that for engineering contracts. The Sponsor's proposal to use force account rather than contract-engineering services must be fully documented and should contain as a minimum:

1. Justification for doing the work by force account rather than by contract;
2. Estimate of costs, including detailed data on estimated work hours, hourly rates, non-salary expenses, and indirect costs;
3. Names and engineering qualifications of personnel that will be accomplishing specific tasks;
4. Statements concerning the capability of the Sponsor to perform the various tasks of design, supervision, inspections, testing, etc., as applicable to the project with arguments to support the decision to use force account;
5. Summary of Sponsor's experience with airport engineering pertaining to projects with similar design scopes; and
6. Statement by the Sponsor on the ability of its personnel to integrate the project into their workload, with a schedule of accomplishment of tasks, date by which the work will be completed, or dates within which it will take place.

4.9 **Phasing of Work.**

Design projects may be negotiated to be performed in phases and include two or more of the foregoing methods of compensation. For example, the first phase of a project might cover the development of the precise scope of work for a project and be paid for under a cost-plus-fixed-payment contract. The follow-on work could then be negotiated

on the basis of information developed in the first phase and might be accomplished under a lump-sum contract.

4.10 Allowable Costs.

Costs incurred must be consistent with the Federal cost principles contained in 48 CFR part 31, 2 CFR §200 Subpart E, and FAA Order 5100.38 to be reimbursable under an airport planning or development grant. The following are typical expenses allowable under the above regulations:

1. Direct Salary Costs.
 - a. Direct salary costs include the cost of salaries of engineers, planners, computer aided design and drafting (CADD) technicians, surveyors, stenographers, administrative support etc., for time directly chargeable to the project.
 - b. Salaries or imputed salaries of partners or principals, to the extent that they perform technical or advisory services directly applicable to the project, are to be added to salary cost.
2. Overhead Costs. Overhead costs include overhead on direct salary costs and general and administrative overhead. 48 CFR Part 31 establishes the allowability of indirect costs. Consultants must be capable of validating their applied overhead rates by providing the Sponsor a copy of their audit certification that conforms to acceptable industry audit standards such as the Government Auditing Standards (GAGAS) or the Generally Accepted Auditing Standards (GAAS). Unless explicitly requested, the FAA does not require a copy of this audit certification. The Sponsor should retain a copy of this certification for purpose of future independent audit.
 - a. Duplication of costs: Consultants must avoid claiming similar costs both as direct and indirect.
 - b. Field Rates: Consultants often have tasks that require employment of field personnel for extended periods. The application of a home rate to field personnel direct labor hours may result in indirect costs that are in excess of the benefit realized by the field personnel. If field personnel are not receiving the day-to-day benefit of the home rate, it may be appropriate and necessary for the consultant to establish a field office indirect rate. Such rates are generally lower than the home rate due to the omission of costs that do not benefit the field personnel.
3. Direct Non-salary Expenses. Direct non-salary expenses usually incurred may include the following (detailed records must be kept to support charges and allow auditing):
 - a. Living and traveling expenses of employees, partners, and principals when away from the home office on business connected with the project. (Records must include employee name, dates, points of travel, mileage rate, lodging, and meals.)

- b. Identifiable communication expenses such as long-distance telephone, telegraph, cable, express charges, and postage, other than for general correspondence.
- c. Services directly applicable to the work such as special legal and accounting expenses, computer rental and programming costs, special consultants, borings, laboratory charges, commercial printing and bindings, and similar costs not applicable to general overhead.
- d. Identifiable computer and office supplies and stenographic supplies and expenses charged to the Sponsor's work as distinguished from such supplies and expenses that are applicable to two or more projects.
- e. Identifiable reproduction costs applicable to the work.
- f. Advertising costs that are solely for the recruitment of personnel required for the performance by the consultant of obligations arising under the contract.
- g. Sub-consultant and outside services including administrative costs associated with managing said services

4.11 **Non-Allowable Costs.**

Costs incurred must be consistent with the Federal cost principles contained in 48 CFR part 31, 2 CFR §200 Subpart E, and FAA Order 5100.38 to be reimbursable under an airport planning or development grant.

4.12 **Pass-Through Costs**

Consultant markup of pass-through costs is a cost element that is subject to Sponsor negotiation. The determination on whether a markup of non-salary expenses is appropriate relies on the benefit and value the consultant adds to the pass through expense.

Mark up of expenses for which the consultant's effort adds negligible or no value are not reasonable. Such expenses should pass through to the Sponsor without any markup by the consultant (See Section 14 of FAA Order 5100.38 for Cost Reasonableness). Examples of this include travel expenses, supplies, mailing costs, per diem expenses, etc.

A consultant's effort in managing sub-consultants represents expenses that may add value to the contract performance. The extent of this benefit may vary based on factors including but not limited to task complexity, assumption of liability, task duration, schedule issues, and risk management. The value and benefit of consultant effort may vary per sub-consultant.

Sponsors must be careful in how they address consultant markup on pass-through expenses in their contracts. Sponsors must avoid situations where the agreement addresses the markup by simply applying a percentage markup on any pass-through costs. This is due to the regulatory prohibition on cost-plus-percentage of costs payment methods found in 2 CFR 200 Subpart D.

Generally, the consultant's administration expenses associated with sub-consultant management should be addressed as direct labor hours in the consultant fee derivation. Other sub-consultant management expenses must be addressed as a dollar value, as opposed to an applied percentage. The consultant's fee estimate must identify the markup value for other subconsultant management expenses within the non-salary expense section. Sponsors and consultants must also avoid situations where costs for managing sub-consultant agreements are duplicated within the agreement.

EXHIBIT D

McFARLAND-JOHNSON, INC.
 SCHEDULE OF DIRECT LABOR, FRINGE BENEFITS
 AND GENERAL OVERHEAD
 FOR THE YEAR ENDED DECEMBER 31, 2021

	Total Costs	Unallowable Costs	Allowable Costs	FAR Rates
Direct Labor	\$ 8,380,273	(117,292)	8,262,981	
 <u>Fringe Benefits</u>				
Paid absences	\$ 1,785,868		1,785,868	
Bonus & incentive	3,577,247	(923,356)	2,653,891	
Retirement benefits	951,249		951,249	
Unemployment insurance	73,851		73,851	
Disability & workers' compensation	56,286		56,286	
Employee group insurance	1,026,930		1,026,930	
Social security tax	1,221,687		1,221,687	
Education & training	273,424		273,424	
 Total Fringe Benefits	 8,966,542	 (923,356)	 8,043,186	 97.34%
 <u>General Overhead</u>				
Administrative Payroll	2,584,316		2,584,316	
Legal, accounting & other	151,397		151,397	
Misc. business taxes & fees	51,880		51,880	
Vehicle expenses	21,876	(12,357)	9,519	
Office supplies & services	180,708		180,708	
Rent	863,738		863,738	
Telephone	90,127		90,127	
Computer	966,297		966,297	
Professional	124,057		124,057	
Personnel	148,958		148,958	
Office reproductions & prints	86,341		86,341	
Business development	2,316,640	(10,927)	2,305,713	
Miscellaneous travel	32,538		32,538	
Depreciation	112,155	(19,593)	92,562	
Business insurance	290,267	(6,292)	283,975	
Utilities	16,554		16,554	
Non-Reimbursable Labor	1,290,179	(1,290,179)	0	
Court Claims	40,001	(40,001)	0	
Interest Expense	0	0	0	
Promotion & Public Relations	266,575	(266,575)	0	
Contributions	14,500	(14,500)	0	
Bad Debt Expense	(15,000)	15,000	0	
Penalties & fines	24	(24)	0	
Other Non-Reimbursable Overhead	126,348	(126,348)	0	
 Total General Overhead	 9,760,476	 (1,771,796)	 7,988,680	 96.68%
 Total Fringe Benefits and General Overhead	 \$ 18,727,018	 (2,695,152)	 16,031,866	 194.02%

RESOLUTION REQUEST FORM NO. 20

MISCELLANEOUS

****Please List All Other Requests Not Covered by Previous Resolution Request Forms Here.
Please attach any backup information available and be as detailed as possible.***

DEPARTMENT NAME:

DATE:

(a) Purpose of Request:

(b) Details:

(c) Previous Resolution Number:

(d) Where are the Funds (if required)? List Budget Code, Object Code, Full Title* and Amount:

Sample: A.8021 470 Planning & Community Development – Contract

* as listed in budget and LOGOS