DULUTH AIRPORT AUTHORITY

Duluth International Airport
Solicitation 24-4407
Request for Proposals for:
Development of Aviation Facility
North Business Development Area
Issued: February 22, 2024
Statements Due: April 1, 2024, 3:00 pm (local time)

A. INTRODUCTION

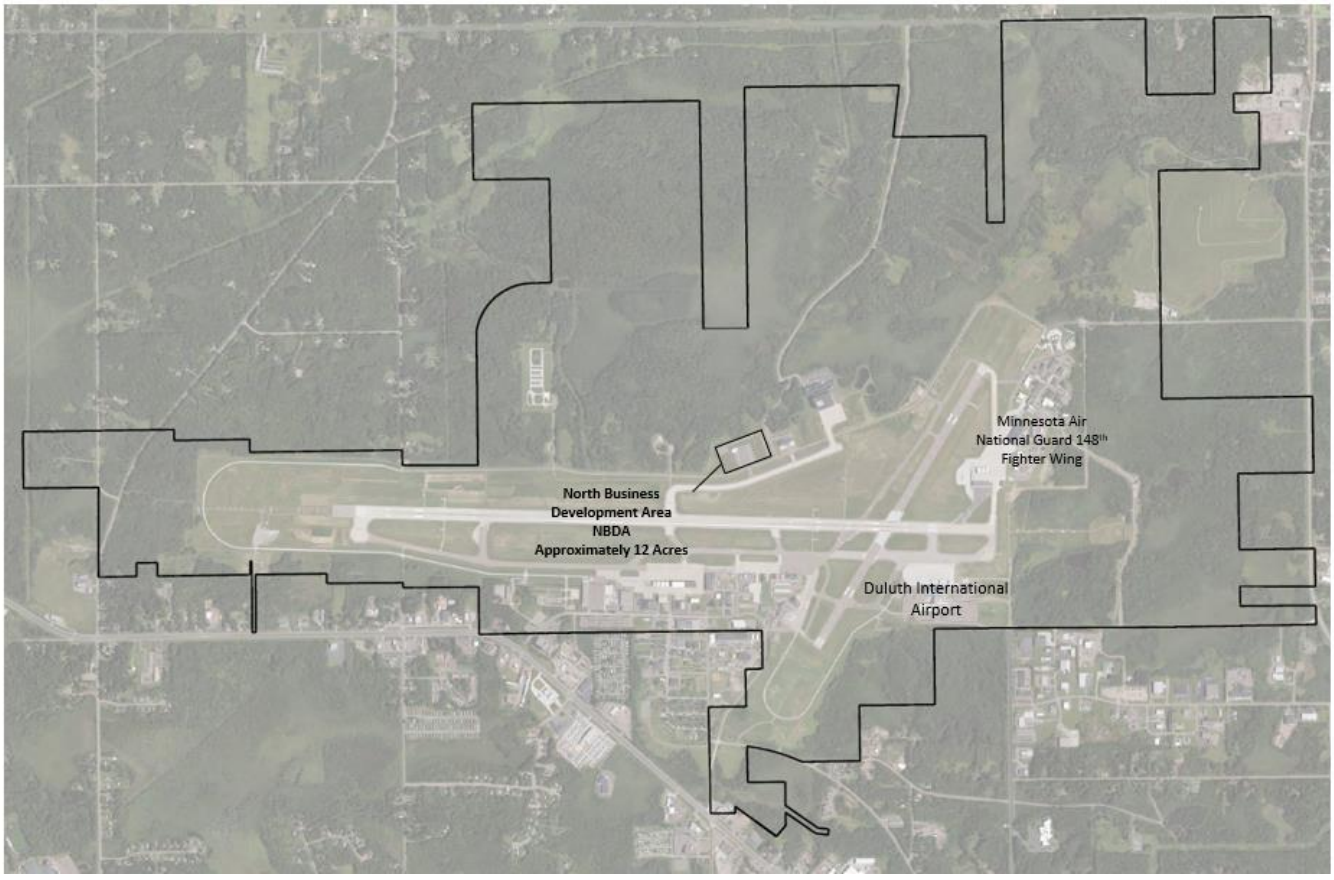
The Duluth Airport Authority (DAA) is seeking lease and development agreement proposals for an aviation facility located on an shovel ready site known on the Airport's Master Plan as the "North Business Development Area" (NBDA). The DAA desires to enter into a lease and development agreement with a successful proposer by August 31, 2024, and have project construction completed by December 31, 2026.

B. AIRPORT DESCRIPTION

The DAA operates and maintains the Duluth International Airport (DLH) and is located at 4701 Grinden Drive Duluth, MN 55811. DLH is a Non-hub Primary Commercial Service Airport and is served by Delta Air Lines, United Airlines, and seasonal service from Sun Country Airlines. DLH is home to Cirrus Aircraft, Minnesota Air National Guard, Lake Superior College Center for Advanced Aviation and Lake Superior Helicopters. The fixed based operator is Monaco Air Duluth. The Airport's current facilities include a 109,000 square foot terminal building built in 2013. The Airport is located on approximately 3,200 acres with a primary runway of 10,591 feet long and crosswind runway of 5,719 feet long.

C. GENERAL PROVISIONS OF REQUEST FOR PROPOSALS (RFP)

The DAA is seeking proposals through this RFP from parties interested in partnering with the DAA to develop the site and lease the aviation facility on the NBDA site shown below.





The NBDA is located on the airfield and inside the security fence at DLH and includes 3.465 acres of developable land around the paved apron. The apron size is 119,000 sf. The taxiway is designed to handle Group III aircraft or aircraft with 118 ft wingspan or smaller.

Infrastructure in place includes access road, taxiway, apron, parking lot, and utilities stubbed. Natural gas is located on the south and west sides of the site, however, will not be run to site until building is constructed.

The NBDA is currently zoned I-G-Industrial General which allows for airport and related facilities.

Street Access: Stebner Rd
City: Duluth
County: St. Louis
Zip Code: 55811

The approximate footprint of aviation facility to be developed under this RFP is 100 feet by 80 feet. Specific build out features to be finalized with successful proposer.
This project may be funded up to ninety percent (90%) by the Federal Aviation Administration and the State of Minnesota. Unique or customized portions of construction outside of the hangar itself may not be eligible for reimbursement. Please include supplementary or alternative funding methods in your proposal for ineligible portions of construction.

In addition to the lease and development agreements and the provisions of this RFP, successful proposers will also need to meet the responsibilities described below which include but are not limited to:

1. Adherence to the Airport's Rules and Minimum Standards: DLH-Rules-and-Standards-Adopted-June-2014.pdf (duluthairport.com).
2. Adherence to the Airport's Master Plan which can be found here: https://duluthairport.com/master-plan/.
3. Adherence to the Federal Aviation Administration's (FAA's) standards for aviation use (e.g., residential, and non-aviation related retail development is prohibited), and the FAA's policy on Non-Aeronautical Use of Airport Hangars: https://www.govinfo.gov/content/pkg/FR-2016-06-15/pdf/2016-14133.pdf.
4. Conform to FAA Federal Aviation Regulation (FAR) Part 77 height restrictions.
5. Not to cause the DAA to violate any FAA grant assurances.

The DAA has retained the services of an Architectural, Engineering, Design and Planning firm (the "Engineer") to provide engineering, design, planning, construction administration, and other typical architectural services for proposed development projects at the Airport when the DAA deems applicable to engage them.

D. CONTRACTS

After a pre-qualified entity is selected, DAA and the selected entity will enter into a lease and development agreement to be approved by the Duluth Airport Authority Board of Directors.

E. PROPOSAL FORMAT

a. Contact Information: Individual/Company name and name of entity leasing the premises with appropriate contact information.
b. Legal Status: A statement that the proposer is not currently disbarred or suspended by the federal government, the State of Minnesota or any of its departments or agencies or another government entity.
c. Company/Business History: length of time in business.
d. Proof of operating licensure for intended aeronautical use.
e. Description of proposed use of premises.
f. Proposed term of lease including options.
g. Proposed rent amount, annually and monthly.
h. Evidence of the financial capability of the proposer to partner with the DAA on the development of an aviation facility and any capital contributions proposed for the project.
i. Economic impact of proposed project: jobs, aircraft operations, and increase in generation of new airport revenue.
j. Ability to meet proposed development completion timeline.
k. References: At least two references from similar projects completed in last five years.
l. Any other information the proposer deems necessary and helpful to Evaluation Committee's consideration of the proposal.
m. Addenda acknowledgment if any.

F. PROPOSAL SUBMISSION

All proposals must be received at the address below no later than local time 3:00 p.m. April 1, 2024. All proposals must be addressed to:

Duluth Airport Authority
Solicitation 24-4407
NBDA Development RFP
Attn: Jana Kayser
4701 Grinden Drive
Duluth, MN 55811

All proposals must be submitted in a sealed envelope clearly marked as shown directly above. All submittals shall include one (1) complete, original statement marked "ORIGINAL"; five (5) complete copies of the original statement; and other related documentation required by this RFP as well as one (1) electronic copy (USB drive.). Any proposal submittal not received by the deadline may not be considered.

It is the sole responsibility of the Proposer to ensure delivery of statements by the deadline. It is not the responsibility of DAA to ensure delivery.

It is the obligation of each Proposer to examine instructions, requirements, and specifications before submitting a proposal. DAA will not be responsible for, nor honor any claims resulting from, or alleged to be the result of misunderstanding by the Proposer.

Cost of Proposal Development: DAA claims no financial responsibility for any costs incurred by the Proposer in responding to this RFP, whether it is the successful Proposer or not. These costs include, but are not limited to, bonding, legal costs for any reason, production, reproduction, travel, postage and mailing.

G. REQUEST FOR PROPOSAL TIMELINE

Description	Date and Time
RFP Issued	February 22, 2024
Deadline to submit questions	March 12, 2024, 10:00am local time
Final response to questions	March 19, 2024
Deadline for RFP Submissions	April 1, 2024, 3:00pm local time
Anticipated Proposer Selection	End of April 2024

H. RFP QUESTIONS

All RFP questions must be submitted in writing via email no later than local time 10:00 a.m. on March 12, 2024. Questions must be emailed to purchasing@duluthmn.gov. Please be sure to put "24-4407 Airport NBDA Development RFP" in the subject line. Any question submitted after this date will not be answered. All questions submitted in accordance with the requirements stated above will be answered in writing and posted to the Purchasing website at http://www.duluthmn.gov/purchasing/bids-request-for-proposals/ along with the original RFP. The Proposer shall acknowledge receipt of any addenda that may be necessary in their proposal.

I. SELECTION AND SCORING CRITERIA

The DAA has selected a group of personnel to act as the evaluation committee. At the discretion of the

DAA, there may be two rounds of scoring depending on number of proposals received. The first round of scoring will be based on the criteria listed below. Upon initial scoring, each proposed project will be further evaluated based on investigation into size, scale and scope of building construction and investment by the Authority and proposer. All evaluation personnel will use the evaluation criteria stated below:

- **a.** Commitment to adherence to laws, rules, policies and regulations of the Federal Aviation Administration, The State of Minnesota, The City of Duluth, St. Louis County and the DAA. (5%)
- **b.** Proposer's financial feasibility & stability (30%):
    i. Demonstration of good financial standing.
    ii. Financial ability to meet proposed rent structure in your proposal.
    iii. Proposed financial participation. Capital contribution to complete project.
    iv. References
- **c.** Economic Impact (40%):
    i. Increase in generation of airport revenue.
    ii. Minimize facility and site related maintenance costs of the DAA.
    iii. Increase in airport operations.
    iv. Creation and retention of jobs.
- **d.** Feasibility of the proposer to successfully enter and complete the proposed development (25%):
    i. Operationally ready to participate in design and construction of new facility.
    ii. Able to meet proposed timeline of construction completion.

During the evaluation process, the DAA may request additional information or clarifications from the proposers and/or personal interviews.

J. CONTRACTS

After a pre-qualified entity is selected, DAA and the successful proposer will enter into a lease and development contract to be approved by the Duluth Airport Authority Board of Directors.

The DAA may invite up to three proposers to present their proposal in a live interview with the evaluation committee. Proposers selected to participate in the live interview will be based off initial proposal scoring criteria.

K. Required Information

Appendix A: Mandatory Provisions
Appendix B: Base Lease Agreement Template

APPENDIX A

FEDERAL AVIATION ADMINISTRATION
Mandatory Contract Clauses

Civil Rights Title VI Assurances
49 USC § 47123
GENERAL CIVIL RIGHTS PROVISIONS

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

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.
The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

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:

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

discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
b. Cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Mandatory Solicitation Clause

Title VI Solicitation Notice:

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

Title VI List of Pertinent Nondiscrimination Acts and Authorities:

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq*., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq*.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq*.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the

programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

ACCESS TO RECORDS AND REPORTS

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

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade: 1%
Goals for female participation in each trade: 6.9%

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

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

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

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is **Minnesota, St. Louis County, Duluth.**

BREACH OF CONTRACT TERMS

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

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

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

FAA BUY AMERICAN PREFERENCE

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

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

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious

materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

Certification of Comp^{2}liance with FAA Buy American Preference – Construction Projects
As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101, BABA and other related Made in America Laws, U.S. statutes, guidance, and FAA policies, by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e., not both) by inserting a checkmark (✓) or the letter "X".

☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:

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

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

a) To provide to the Airport Sponsor or the FAA evidence that documents the source and origin of the iron, steel, and/or manufactured product.
b) To faithfully comply with providing U.S. domestic products.
c) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
d) Certify that all construction materials used in the project are manufactured in the U.S.

☐ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

a) To the submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
d) To furnish U.S. domestic product for any waiver request that the FAA rejects.

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

Required Documentation

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

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

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

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

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

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

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

Date	Signature
Company Name	Title

Certification of Compliance with FAA Buy American Preference – Equipment/Building Projects

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101, and other Made in America Laws, U.S. statutes, guidance, and FAA policies by

selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter "X".

☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:

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

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

a) To provide to the Airport Sponsor or FAA evidence that documents the source and origin of the steel and manufactured product.
b) To faithfully comply with providing U.S. domestic product.
c) To furnish U.S. domestic product for any waiver request that the FAA rejects.
d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

☐ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

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

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

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

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

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

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

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

Date	Signature
Company Name	Title

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

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

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

permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

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

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

Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq*., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq*.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq*.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

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:

2. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
3. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
4. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
5. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
6. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
    a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
    b. Cancelling, terminating, or suspending a contract, in whole or in part.
7. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

<u>Bid Information Submitted as a matter of responsiveness:</u>

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR § 26.53.
As a condition of responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:

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

Bid Information submitted as a matter of **responsibility**:
The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR § 26.53.
As a condition of responsibility, every Bidder or Offeror must submit the following information on the forms provided herein within five days after bid opening.

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

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

Contract Assurance (49 CFR § 26.13)

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

1) Withholding monthly progress payments;
2) Assessing sanctions;
3) Liquidated damages; and/or
4) Disqualifying the Contractor from future bidding as non-responsible.
5)

Prompt Payment (49 CFR § 26.29)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [specify number of days, not to exceed 30] days from the receipt of each payment the prime contractor receives from [Name of recipient]. The prime contractor agrees further to return retainage payments to each subcontractor within [specify number of days, not to exceed 30] days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the [Name of Recipient]. This clause applies to both DBE and non-DBE subcontractors.

Termination of DBE Subcontracts (49 CFR § 26.53(f)

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

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

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

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

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

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

CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

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

TEXTING WHEN DRIVING

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

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with

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

CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

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

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

TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

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

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to an Offeror or subcontractor:

1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on

the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

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

CERTIFICATION REGARDING LOBBYING

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

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

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

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

CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

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

Certifications

1) The applicant represents that it is (✓) is not (✓) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
2) The applicant represents that it is (✓) is not (✓) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the Sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 USC § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)

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

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

1. Completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;

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

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

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

TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)

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

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

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

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

TERMINATION FOR CAUSE (CONSTRUCTION)

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes standard language for conditions, rights, and remedies associated with Owner termination of this contract for cause due to default of the Contractor.

TERMINATION FOR CAUSE (EQUIPMENT)

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract for cause if the Contractor:

1. Fails to begin the Work under the Contract within the time specified in the Notice- to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed

equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

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

TERMINATION FOR CAUSE (PROFESSIONAL SERVICES)

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

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

a) **Termination by Owner**: The Owner may terminate this Agreement for cause in whole or in part, for the failure of the Consultant to:
   1. Perform the services within the time specified in this contract or by Owner approved extension;
   2. Make adequate progress so as to endanger satisfactory performance of the Project; or
   3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

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

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

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

   If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

b) **Termination by Consultant**: The Consultant may terminate this Agreement for cause in whole or in part, if the Owner:
   1. Defaults on its obligations under this Agreement;
   2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
   3. Suspends the project for more than [180] days due to reasons beyond the control of the Consultant.

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

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

VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

PROHIBITION OF SEGREGATED FACILITIES

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.
(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

PROCUREMENT OF RECOVERED MATERIALS

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

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

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.
Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

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

APPENDIX B
DULUTH AIRPORT AUTHORITY
BUILDING AND GROUND LEASE AGREEMENT TEMPALTE
**Final contract terms to be negotiated with successful proposer.*

The parties to this Agreement are the DULUTH AIRPOR AUTHORITY, a governmental body organized and existing up Chapter 577 of the Laws of Minnesota, 1969, hereinafter known as "Authority", and X hereinafter referred to as "Lessee".

THE PARTIES ACKNOWLEDGE THE FOLLOWING:

1. The Authority, created by Minnesota Laws 1969 Chapter 577, operates the Duluth International Airport, located in the City of Duluth, State of Minnesota and hereinafter referred to as "Airport".
2. Lessee is desirous of leasing the building and property described in Exhibit A attached hereto for purposes allowed herein.
3. The Authority is desirous of leasing property to Lessee.
4. In consideration of the mutual promises, covenants and agreements contained herein, the parties agree as follows:

SECTION 1
DEFINITIONS

The following terms, as used in this Agreement, shall have the meanings as ascribed to them hereunder.

A. Airport: shall mean the Duluth International Airport located in and adjacent to the City of Duluth, County of St. Louis, State of Minnesota.
B. City: shall mean the City of Duluth, Minnesota.
C. Consent or Approval of Authority and of Executive Director: where this Agreement calls for the consent or approval of the Authority, the same shall be in the form of a resolution approved by the Authority as provided by law; where consent or approval of the Executive Director is required, the same shall be evidenced by a written document dated and signed by him/her, or by a person designated by him/her to sign such document.
D. Leased Premises: shall refer to those premises Airport Division leased to Lessee for its exclusive use as further described in Section 2 of this Agreement and Exhibit A attached hereto.
E. Leasehold Improvements: shall refer collectively to all items attached to or located on and within the Leased Premises provided or purchased by Lessee, including such items as decorations, partitions, wiring, lighting and plumbing fixtures, piping, finished ceilings, ventilation duct work, grills, floor and wall coverings, heaters, cabinets, lockers, sinks, counters and signs.

SECTION 2
EXHIBITS

A. Exhibit A: Leased Premises
B. Exhibit B: Maintenance Matrix
C. Exhibit C: FAA Mandatory Information*Please refer to Appendix A as part of RFP.
D. Exhibit D: Development Agreement: **To be drafted upon selection of successful proposer.*

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SECTION 3
GROUND LEASE, DEVELOPMENT AGREEMENT AND USE OF PUBLIC FACILITIES

A. Ground Lease: The Authority does hereby lease to Lessee and Lessee does hereby lease and accept from Authority that property located at the Airport described in Exhibit A attached hereto. The Ground Lease contains approximately X square feet.

B. Building Lease: Lessee is hereby granted use of approximately X square feet of space of Building X, as identified on Exhibit A. The Leased Premises shall be used solely for X and other items related to its business.

C. Development Agreement: Lessee and Authority will enter into a Development Agreement prior to the start of construction that further sets forth the terms of the development and construction of the project. The development agreement will be attached hereto and identified as Exhibit C.

D. Use of Public Facilities: In addition to the above specified Leased Premises, it is agreed that Lessee will have free access to and use of all public facilities at the Airport in common with the general public, such facilities including but not limited to: landing areas, runways; taxiways; ramps; navigational aids and parking areas; provided however, that such access and use shall be upon such terms and under such rules and regulations as they now exist or be hereinafter enacted by the Authority and subject to any charges to various classes of users for such use as may be established from time to time by the Authority. Said terms, regulations and charges shall be made upon the same basis as they are applied to or assessed against other users of the facilities involved unless otherwise set forth herein. Authority shall inform Lessee of any such charges.

SECTION 4
ACTIVITIES PERMITTED ON AIRPORT

Lessee shall have the right to carry out the following activities on the Leased Premises, and no others:
A. Store aircraft owned and/or operated by Lessee;
B. Maintain aircraft owned and/or operated by Lessee;
C. Store equipment and materials and carry out such other activities related to storage, maintenance and operation of Lessee's aircraft.
D. Other activities approved by the Executive Director.

SECTION 5
RENT

A. Leased Premises: Lessee agrees to pay the Authority, together with the payments of fees and charges required by this Agreement, an annual rent of $ per square foot of Leased Premises for a total of $. Payments shall be made in equal monthly installments of $ and paid by due date stated on invoice.

B. Land Rent: Lessee agrees to pay the Authority, together with the payments of fees and charges required by this Agreement, an annual land rent of $.26 per square foot of lease for a total of $. Payments shall be made in equal monthly installments of $ and paid by due date stated on invoice. On X of each subsequent year during the term of this Agreement, or any extension, renewal or holding over thereof, the annual rent shall increase to the amount calculated by multiplying the previous year's rent by the rate of increase, if any, of the most recent Consumer Price Index, U.S.

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City Average, published by the U.S. Bureau of Labor Statistics for the preceding twelve-month period.

C. Fee for Failure to Maintain: In the event that Lessee fails to keep the Leased Premises in a neat, clean, orderly and sanitary condition and the Executive Director has issued a written notice of such deficiency and provided a reasonable cure period as determined solely by the Executive Director, Authority may itself clean or cause to be cleaned those portions of the Leased Premises not so kept, and Lessee agrees to reimburse Authority for the direct and indirect costs incurred by Authority for the performance of said work plus a fifteen percent (15%) administrative fee, due and payable upon receipt.

D. Fee for Repair and Replacement: Lessee shall promptly repair or replace any property of the Authority lost, destroyed or damaged by its operations hereunder. If Lessee fails to promptly repair or replace such property following written notice by the Executive Director of such deficiency and a reasonable cure period as determined solely by the Executive Director, Authority may repair or replace it and Lessee agrees to reimburse for the direct and indirect costs incurred by Authority for such repair or replacement plus a fifteen (15%) percent administrative fee, due and payable upon receipt.

E. Fee for Unpaid Licenses, Fees, Taxes, and Assessments: Lessee hereby agrees to pay all licenses, fees, taxes and assessments of any kind whatsoever which arise because of, or in the course of any operations covered by this Agreement during the term hereof. Should Lessee fail to pay such amounts following written notice of such deficiency and a reasonable cure period as determined solely by the Executive Director, it is expressly agreed that Authority may pay the same on behalf of Lessee, and Lessee agrees to reimburse Authority for said amounts paid plus a fifteen percent (15%) administrative fee due and payable upon receipt.

F. Late Payment: If Lessee is delinquent for thirty (30) days or longer in paying any amounts owed to the Authority under this Agreement, Lessee shall pay to the Authority a late payment charge assessed on the delinquent amount at the Authority's then-prevailing rate on delinquent accounts (the rate at the date of execution of this Agreement is one and one-half percent (1½%) per month). The late payment charge shall accrue from the date the delinquent amount was due until paid.

G. Remedies not Cumulative: The remedies provided by this Section are in addition to all other remedies the Authority may have for a breach of this Agreement by Lessee, and nothing in this Section shall be deemed to be a waiver by the Authority or prevent the Authority from asserting any other remedy.

H. Payment Obligations Unconditional: The obligations of Lessee to pay any amounts due to Authority under this Lease Agreement in accordance with the terms hereof shall be absolute and unconditional, irrespective of any defense or rights of set off, recoupment or counterclaim which may at any time be available against Authority. Such payments shall be due without notice or demand therefore except as specifically provided for herein.

SECTION 6
TERM

A. Base Term: The Base Term of this Agreement shall be for a period of fifteen (15) years commencing June 1, 202X and ending on May 31, 203X.

B. Option Term: Lessee shall have the option to extend the term of this Agreement by providing written notice to Authority at least six (6) months prior to the termination date of its desire to extend

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this Agreement. In such event and provided no default has occurred and is continuing, the term of this Agreement shall be extended for up to two (2) additional five-year (5) terms. As used in this Agreement, the word “term” shall include any extension or option terms. This Agreement shall continue during any extension or option term in accordance with the terms and provisions herein. On or after the expiration of the term of this Agreement, or extensions thereof, and upon the prior written approval of the Executive Director, this Agreement shall continue on a month-to-month basis subject to the right of either party to terminate without cause upon thirty (30) days' written notice to the other party.

SECTION 7
CONSTRUCTION AND LEASEHOLD IMPROVEMENTS

This section shall not apply to the initial construction of the project as that will be governed by the Development Agreement.

A. In the event that Lessee wishes to make any Leasehold Improvements on or in the Leased Premises after construction of new building is completed, it shall present its request to the Executive Director in writing together with design development or construction drawings showing all details of said Leasehold Improvements. No Leasehold Improvement shall be made in the Leased Premises without the prior written approval of the Executive Director and then only in conformance with the approved plans and this Section.
B. All work done by Lessee, or under its direction, shall conform to all applicable regulations, building codes and health standards, as well as the following requirements:
    1. All construction shall meet the requirement of Type I (fire resistant) construction as set forth in the Minnesota State Building Code (current edition) and the building standards for the Airport.
    2. Complete contract drawings and specifications on all work, including alterations, additions or replacements, must be submitted to and receive prior written approval of the Executive Director.
    3. All work must be done in the time and manner approved by the Executive Director and coordinated with the Executive Director. Lessee shall comply with the indemnity and insurance and bond requirements of this Agreement.
    4. An authorized representative of Lessee shall be available at all reasonable times at the site to coordinate the work of the improvements.
C. Construction Bonds and Insurance
    1. Bonds: During the term of this Agreement, when any improvements are constructed, installed or renovated, Lessee shall procure and furnish to Authority a bond or bonds written by a company or companies authorized to write such bonds in the State of Minnesota and who are acceptable to the Authority, in an amount not less than the cost of such construction, installation or renovation, for the use of obligee, Lessee and the Authority and all persons doing work or furnishing skills, tools, machinery, materials, insurance premiums, equipment or supplies incident to such construction, installation or renovation, such bond or bonds to be conditioned for payment of claims as required and in full compliance with Minnesota Statutes Section 574.26. Further, during the term of this Agreement, for any construction, installation or renovation of improvements, and before the commencement of work thereon, Lessee shall furnish to Authority performance bonds, written by similarly qualified companies, covering all work to be performed thereunder guaranteeing the performance of all such work.
    2. Public Liability and Property Insurance: Before commencing any improvement, work or equipment installation on the Leased Premises, Lessee shall itself or shall require all

TEMPLATE-NOT FINAL

contractors and subcontractors to procure and maintain insurance during the life of such contracts, protecting both the Authority, the City and the Lessee as follows:

a. Workers' Compensation Insurance.
b. Contractors Comprehensive Public Liability and Property Damage Insurance.
c. Contractors Automobile Liability and Property Damage Insurance, including automobile and non-ownership and hired cars.
d. Owners Protective Public Liability and Protective Property Damage Insurance.
e. Builders Risk Insurance (fire, extended coverage, vandalism and malicious mischief, including sprinkler leakage).

Amounts shall not be less than One Million Five Hundred Thousand Dollars ($1,500,000) for injuries, including accidental death to any one person, and subject to same limit for each person, and in an amount not less than One Million Five Hundred Thousand Dollars ($1,500,000) for any one accident with a One Million Five Hundred Thousand Dollar ($1,500,000) aggregate for the policy. Insurance, as above provided, shall be kept intact and in force throughout the term of construction work and equipment installation on the Leased Premises. Such insurance shall be subject to the approval of the Executive Director and copies furnished to the Executive Director prior to the commencement of construction.

D. Subsequent Improvements: Any changes in, additions to or deletions from existing or later constructed improvements shall be subject to the prior approval of the Executive Director, and Executive Director may impose such conditions as it shall deem necessary to protect the Authority and the integrity of all operations at the Airport, including, but not limited to, bonding and insurance requirements.

SECTION 8
LESSEE'S OBLIGATIONS

A. Snow Removal: Lessee agrees to remove snow from those portions of the Leased Premises used or intended for pedestrian and vehicular use at its sole expense. Authority agrees to render snow removal assistance to Lessee only in the event of rare and unusually heavy snows that cause aircraft operations to be severely restricted. Lessee is responsible for snowfall clean up including hauling of snow. Authority shall not remove snow from the Leased Premises, nor shall Lessee allow it to remain there.

Plowing inside the AOA (Air Operations Area) is the responsibility of the Authority and will be done according to the DAA Snow and Ice Control Plan.

B. Utilities: The Authority shall have no responsibility to provide any utility to the Leased Premises. Lessee shall maintain and pay any costs or user fees as may be necessary to service the Leased Premises.

C. Maintenance: Lessee agrees to keep the Leased Premises in a clean, neat, safe and orderly condition, and in compliance with all laws and codes applicable to the Leased Premises, and to provide at its cost all heat and utilities necessary for the operation of the Leased Premises. Lessee agrees to perform all janitorial services. Lessee further agrees to make no attachment to, change of, or exterior redecoration or modification of the Leased Premises without prior written consent of the Executive Director. Detailed Maintenance responsibilities are identified on Exhibit B attached hereto.

D. Authority's Fire Insurance: Lessee covenants that it will not do or permit to be done any act which:

TEMPLATE-NOT FINAL

1. Will invalidate or be in conflict with any fire insurance policies covering the Airport or any part thereof or upon the contents of any building thereof; or
2. Will increase the rate of any fire insurance on the Airport or any part thereof or upon the contents of any building thereof; or
3. In the opinion of the Authority, will constitute a hazardous condition so as to increase the risks normally attendant upon the operations contemplated by this Agreement.

If, by any reason of the Lessee's failing to comply with the provisions of this section, any fire insurance rate on the Airport or any part thereof or upon the contents of any building thereof, at any time, be higher than it otherwise would be, then the Lessee shall, upon demand, reimburse the Authority for that part of all fire insurance premiums paid or payable by the Authority which shall have been charged because of such violation by the Lessee.

D. Drugs and Alcohol: Lessee's operation and use of the Leased Premises shall be in conformance with all federal, state, and local laws, regulations or valid orders controlling drug or alcohol use or possession, including Authority's Drug and Alcohol Policy.

F. Signs: Signs shall be of safe, legal construction, and shall not detract from the business-like appearance of the Airport, nor lower the value of any Airport property. Location and design of exterior signs must be approved by the Executive Director, in writing.

SECTION 9
AUTHORITY'S OBLIGATIONS

The Authority shall properly maintain, operate and manage the Airport at all times in a safe manner consistent with the generally accepted good practices in the State of Minnesota for airports of similar size and character. If for any reason beyond the control of the Authority (including, without in any manner limiting the generality of the foregoing, war, strikes, riots, change in laws, civil commotion and the like) the Authority shall fail to properly maintain, operate and manage said Airport, such failure shall not operate as a breach of this Agreement nor render the Authority liable in damages.

SECTION 10
INDEMNITY

A. Defense and Indemnity: Lessee shall indemnify, save, hold harmless, and defend Authority and the City, their officials, agents and employees, successors and assigns, individually or collectively, (1) from and against any and all claims including a claim for contribution or indemnity, demands, causes of action, loss, injury, liability, costs and expenses of whatsoever kind or nature (including but not limited to reasonable attorneys' fees, disbursements, court costs, and expert fees) and damages for or related to injury to or death of persons or damage to property, and (2) from and against any fines in any way arising from or based upon the violation by Lessee, its agents, employees, successors and assigns of any federal, state, or municipal laws, statutes, resolutions, or regulations, including rules or regulations of the Authority now in effect or hereafter promulgated; all arising out of, resulting from, in conjunction with or incident to any act or omission of Lessee, its officials, agents or employees, successors or assigns, Lessee's performance of obligations under this Agreement, or the use and/or occupancy of the Leased Premises or of the Airport by Lessee, its officials, agents or employees, or successors or assigns, and on ten (10) days' written notice from the Authority, the Lessee shall appear and defend all claims and lawsuits against the Authority and/or the City growing out of any such injury or damage.

TEMPLATE-NOT FINAL

B. Environmental Liability: In addition to the general indemnity stated above, and as part of it, it is specifically agreed between the parties that Lessee shall be responsible in all respects for the use of or generation of or release or threatened release of any petroleum based substance or product, or any volatile organic compound, or any substance classified as a pollutant, contaminant, toxic substance, solid waste or a "hazardous waste" by either the Environmental Protection Agency of the Government of the United States or the Minnesota Pollution Control Agency by Lessee, its officials, agents or employees, successors or assigns. Lessee shall specifically be responsible for the disposition of all such waste or substances and for the environmental response activities and costs, monitoring, or cleanup of any environmental condition deemed by those agencies or either of them to require environmental response, monitoring or cleanup activities of any kind which arises directly or indirectly out of the use of or generation of such substances by Lessee, its officials, agents or employee, successors or assigns arising out of the use and/or occupancy of the Leased Premises or its operations at the Airport; and Lessee specifically agrees that the obligations of Paragraph A above shall apply specifically to any costs or obligations of Authority arising out of any such disposition, cleanup, or environmental response.

C. Survival: The provision of this Section shall survive the expiration, termination and early cancellation of this agreement.

SECTION 11
INSURANCE

A. Insurance: Lessee shall carry and maintain in full force and effect during the term of this Agreement the minimum amounts of insurance set forth below. The Lessee shall carry workers' compensation insurance on all of its employees employed on the Airport. Lessee may request the Authority to approve alternative types of insurance providing at least equal protection. All such insurance shall be in at least the following amounts and shall be in a form acceptable to the Authority and approved by the City Attorney, shall name the Authority and the City as additional insureds on each liability policy and shall provide for thirty (30) days' written notice to the Authority of any cancellation or modification thereof. Certified copies thereof or appropriate certificates of insurance evidencing the existence thereof shall be delivered to the Authority prior to the execution of this Agreement. The Authority reserves the right and Lessee agrees to revisions upward or downward in the minimum insurance requirements hereinafter set forth. All insurance required under this Agreement shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota. All insurance policies required below shall be primary and shall not require contribution from any coverage maintained by the Authority and/or the City.

1. Commercial general liability insurance, including contractual, completed operations, premises and operations and products liability coverage in an amount of not less than $1,500,000 combined single limit or $1,500,000 bodily injury per occurrence; $1,500,000 property damage per occurrence and $1,500,000 in aggregate.
2. Owned, non-owned and hired vehicles in an amount not less than $1,500,000 combined single limit or $1,500,000 bodily injury per occurrence; $1,500,000 per occurrence.
3. Aircraft Liability insurance from an admitted aviation insurance carrier in limits per each occurrence of not less than $1,000,000 and Aircraft Passenger Liability insurance in limits of not less than $100,000 for each passenger seat.
4. Worker’s Compensation insurance in accordance with the laws of the State of Minnesota.

TEMPLATE-NOT FINAL

C. Insurance Primary: All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by Authority and/or City.

D. Insurance Not Limitation: It is understood that the specified amounts of insurance stated in this paragraph shall in no way limit the liability of Lessee under this Section.

D. Disclaimer: Authority does not represent or guarantee that these types or limits of coverage are adequate to protect the Lessee's interests and liabilities. It shall be the obligation and responsibility of Lessee to insure, as it deems prudent, its own personal property, against damage. Authority does not have insurance coverage for Lessee's property and Authority expressly disclaims any and all liability for any and all losses, damage and/or claims to vehicles and/or personal possessions of Lessee.

SECTION 12
LAWS, ORDINANCES, RULES AND NON-DISCRIMINATION

A. Laws, Ordinances and Rules: The Lessee agrees to observe and comply with all the laws, ordinances, rules and regulations of the United States of America, State of Minnesota, the City of Duluth, the Authority, and any agency, department of governmental subdivision thereof, including but not limited to the Department of Homeland Security and the Federal Aviation Administration and their respective agencies now in effect or hereinafter promulgated which are applicable to its business at the Airport including all laws relating to unlawful discrimination, and further agrees to observe and comply with all Airport rules and regulations in existence at the execution of this agreement and which may, from time to time, be promulgated by the Authority governing conduct on and operations at the Airport and the use of its facilities, as administered by the Executive Director. Further, Lessee agrees to fulfill its responsibilities pursuant to the Airport Security Plan approved by the Federal Aviation Administration and any amendments thereto.

B. Non-discrimination: The Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant with the land that:

   a. No person on the grounds of race, color, religion, sex, creed, age, disability, or national origin or ancestry, lawful source of income, marital status or familial status shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities; and
   b. In the construction of any improvement on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, creed, age, disability, or national origin or ancestry, lawful source of income, marital status or familial status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and
   c. That the Lessee shall use the premises in compliance with all of the requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of l964, and as said Regulations may be amended.

SECTION 13
AUTHORITY'S RIGHTS UPON DEFAULT

A. Authority's Rights: If at any time Lessee shall be in default, as defined in this Section, with regard to the requirements of this Agreement, it shall be lawful for the Authority, and the Authority may at any time thereafter:

TEMPLATE-NOT FINAL

1. Immediately, or at any time thereafter without further notice to Lessee, re-enter into or upon the Leased Premises or any part thereof and take possession of the same fully and absolutely without such re-entry working a forfeiture of the rents or other charges to be paid of the covenants, terms and conditions to be performed by Lessee for the full term of this Agreement, and in the event of such re-entry, the Authority may proceed with the collection of rents and other charges to be paid under this Agreement or to recover damages; or
2. Authority may at its election terminate this Agreement upon written notice in the manner hereinafter provided and re-enter upon the Leased Premises and take possession and use thereof as authorized by law, including the Duluth Airport Authority enabling act (Laws of Minnesota, 1969, Chapter 577), and the Lessee covenants in case of such termination to indemnify the Authority against all loss of rents and expense which the Authority has suffered or paid by reason of such termination, during the residue of the term; or
3. The Authority shall further have all other rights and remedies including injunctive relief, ejectment or summary proceedings for unlawful detainer, and any or all such legal remedies, actions and proceedings and all such remedies shall be cumulative.

B. Default Defined: For the purposes of this Section only "default" shall be defined when any of the following circumstances exist:
   1. If the Lessee has failed to pay rent, fees, taxes or other charges when due hereunder and such failure to pay shall continue for ten (10) days after notice in writing in the manner hereinafter provided for.
   2. If the Lessee fails in the observance or performance of any of the other terms, covenants and conditions of this Agreement and such failure shall continue for twenty (20) days after Authority has given Lessee written notice, or the Lessee shall have failed to commence the rectification of such failure within twenty (20) days after such notice and to diligently prosecute the same cannot be completed within twenty (20) days, or
   3. If a petition to reorganize the Lessee or for its arrangement of its unsecured debts shall be filed, or
   4. If the Lessee shall be adjudicated bankrupt, or
   5. If a receiver or trustee of the Lessee's property shall be appointed by any court, or
   6. If the Lessee shall make a general assignment for the benefit of creditors, or
   7. If all of the interest of the Lessee in its property shall be taken by garnishment, attachment, execution or other process of law, or
   8. If the Leased Premises shall be deserted or vacated.

C. Notice to Lender: Lessee agrees that it will give to Authority notice of any commercial lending institution to which rights under this Agreement have been assigned pursuant to Section 17 below. In the event of default under this Agreement, Authority agrees to give notice to any such institution in the same manner as notice is provided for in paragraph B.2. above.

SECTION 14
TERMINATION BY LESSEE

A. Termination: Lessee may terminate this Agreement prior to the end of its term, or any extension thereof, for the following reasons:
   1. Failure of Authority to substantially perform its obligations hereunder, if such failure shall continue for sixty (60) days after Lessee has given Authority written notice or the Authority shall fail to commence the rectification of such failure within sixty (60) days after such notice and to diligently prosecute the same where the same cannot be completed within sixty (60) days.

TEMPLATE-NOT FINAL

2. If the Authority shall commit any act or engage in any activity that prevents the Lessee from conducting its business as provided under the terms of this Agreement for a period of sixty (60) days without the consent of Lessee and after Lessee has given notice to the Authority as provided for herein.

B. In Lieu of Termination: In lieu of termination of this Agreement by the Lessee under the provisions of Paragraph A above, the Lessee may, at its option, declare a moratorium on rent payments, or any other payments provided hereunder to the Authority during the interruptions of Lessee's activities and in such event, the term of this Agreement shall be extended for the period of such interruption, or interruptions, and the moratorium on any payments hereunder by Lessee shall continue until Lessee operations can be uninterruptedly continued. Lessee shall not be in default of its payment obligations under this Agreement by virtue of the moratorium authorized herein.

SECTION 15
WAIVER OF BREACH

The waiver by the Authority or the Lessee of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. To be effective, waivers must be in writing.

SECTION 16
REVERSION

A. Reversion: At the end of the Term, all improvements shall revert to the Authority. Should Lessee desire to exercise their Option Term to extend the Lease, subject to all provisions of this agreement, then the Lessee may do so.

B. Restore Premises: In all events upon the termination of this Agreement, Lessee agrees to repair or restore any damage to the Leased Premises or diminution in the value thereof resulting from Lessee's operation on the Airport except normal wear and tear which are the natural and normal consequences of Lessee's operations at the Airport.

C. Removal: In all events upon the termination of this Agreement, if requested by the Authority and at the sole descretion of the Authority, Lessee shall remove at its own expense any Leasehold Improvements the Authority has requested removal of.

SECTION 17
SUBLEASES & ASSIGNMENTS

Any sublease of the Leased Premises or assignment of this lease must be approved, in writing, by Authority before it is effective. It is expressly agreed by the Lessee that in the event of subletting of the Leased Premises, the sub-lessee or assignee shall be required to assume and agree to perform the covenants of this Agreement and that notwithstanding any such subletting, the Lessee shall be and remain liable for the payments of all rents and the performance of all covenants and conditions for the full term of this Agreement.

SECTION 18
ERECTION OF SIGNS

The Lessee shall be allowed to erect suitable signs on the Leased Premises, but the form, type, size, materials, and method of installation of any such signs shall be subject to the approval of the

TEMPLATE-NOT FINAL

Executive Director of the Authority. Signs shall also be in conformance with Section 8.F. of this Agreement.

SECTION 19
GOVERNMENTAL COMMITMENTS

Nothing herein shall be construed to prevent the Authority from making such commitments as it desires to the Government of the United States or to the State of Minnesota in order to qualify for the expenditure of Federal or State funds at the Airport or related in any manner to the operation thereof, and this Agreement shall be subordinate to the provisions of any existing or future agreement between the Authority and the Government of the United States or the State of Minnesota relative to the operation or maintenance of the Airports.

SECTION 20
SEVERABILITY

It is the intent of both parties hereto that the provisions of this Agreement shall be severable with respect to the effect of a declaration of invalidity by any court of competent jurisdiction of any provision of the Agreement or the application thereof.

SECTION 21
MODIFICATION OF THE AGREEMENT

Any of the terms of this Agreement may be changed upon the mutual consent of the Authority and the Lessee, but to be valid any such changes must be in writing, dated, and duly executed by the Parties.

SECTION 22
NOTICES

All notices to be given by Lessee to the Authority shall be deemed to have been given by depositing written notice in the Unites States Mail, addressed to:

Duluth Airport Authority: 4701 Grinden Drive Duluth MN 55811

All notices to be given by Authority to Lessee shall be deemed to have been delivered by depositing the same in writing in the United States Mail addressed to:

Lessee Information:

TEMPLATE-NOT FINAL

SECTION 23
COUNERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile,

by electronic mail in “portable document format” (“.pdf”), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

SECTION 24
APPLICABLE LAW

This Agreement, together with all of its sections, terms and provisions, is made in the State of Minnesota and shall be construed and interpreted according to the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota.

SECTION 25
ENTIRE AGREEMENT

This Agreement, including Exhibits A and B constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereto. There are no representations, warranties, or stipulations either oral or written not herein contained.

IN WITNESS WHEREOF, the parties have hereunto set their hands this _____ day of _____, 2024.

DULUTH AIRPORT AUTHORITY

By_____
Its President

By_____
Its Secretary

LESSEE

By _____

Its _____

TEMPLATE-NOT FINAL

EXAMPLE Exhibit B - Building Maintenance Matrix
Duluth International Airport

Key
L=Lessee
A=Authority
N/A= Not applicable

***To be negoiated with contract terms upon award. Will be negoitated based on an evaluation of site, building, and resource needs. Responsibility may be a combination of Lessor/Tenant, DAA or third party contractor. DAA makes no commitment now that it will be responsbile for the items listed below.**

Description of Services	**Responsbility**	
Type of Service or Maintenance		
Heating, Ventilation and Air Conditioning		
Installation		
Maintenance		
Distribution		
Electrical		
Bulb, tube and ballast Replacement		
Electrical Including Illumination		
(1) Installation- Lessee improvement		
(2) Maintenance- Lessee improvement		
(3) Modifications based on Lessee needs		
Water		
Installation		
Maintenance		
Building Maintenance		
Paint		
Carpet		
Hard Floor		
Overhead Doors		
Personnel Doors / Locks & keys		
Structural		
Specialty finishes, signs, furniture, counters, podiums (excluding computers)		
Exterior of All Kinds		
Elevators		
Escalators		
Fire Alarm & Suppression System		
Sewage, Plumbing		
Installation		
Maintenance		
Distribution		
Fixtures		

EXAMPLE Exhibit B - Building Maintenance Matrix
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***To be negoiated with contract terms upon award. Will be negoitated based on an evaluation of site, building, and resource needs. Responsibility may be a combination of Lessor/Tenant, DAA or third party contractor. DAA makes no commitment now that it will be responsbile for the items listed below.**

Janitorial and Recycling Service		
Recycling of Paper, Plastic, and Cardboard		
Basic Janitorial service		
Window Cleaning		
(1) Exterior		
(2) Interior		
Pest Control		
Ramp Maintenance		
Snow Removal		
Ramp Cleaning		
Pavement Painting		
Pavement (Hard Surface) Maintenance		
Communications Infrastructure & IT		
Fiber, Conduit, Cable *		
(1) Installation		
(2) Maintenance		
Wireless Network		
(1) Installation		
(2) Maintenance		
Antennae and Towers		
(1) Installation		
(2) Maintenance		
Computer Equipment		
Paging System		
Installation		
Maintenance		