

Attachment D

GENERAL CONSULTING SERVICES MASTER AGREEMENT

THIS CONSULTING SERVICES AGREEMENT ("Agreement") is made and entered into as of the ____ day of 2023 ("Effective Date"), by and between the TITUSVILLE-COCOA AIRPORT AUTHORITY, with offices located at 51 Bristow Way Titusville, Florida 32780 (hereinafter referred to as "TCAA"), and _____, with offices located at _____ (hereinafter referred to as "CONSULTANT"). Collectively, TCAA and CONSULTANT are hereinafter referred to as "the Parties."

WITNESSETH:

WHEREAS, the TCAA desires to obtain professional services on a continuing contract and as-needed basis from a duly qualified and licensed consultant(s) for TCAA-assigned projects on property owned by the TCAA (the Continuing Service Projects");

WHEREAS, the TCAA is authorized to enter into continuing contracts for professional services and has chosen a qualifications-based selection process pursuant to Florida Statutes, Section 287.055, "Consultants' Competitive Negotiation Act" (CCNA), to select a firm qualified, capable, and available to provide the necessary professional services for the Continuing Service Projects listed in Exhibit "A";

WHEREAS, the TCAA has issued a Request for Qualifications number RFQ-2023-001 ("RFQ"), and CONSULTANT submitted a responsive Qualifications Proposal;

WHEREAS, CONSULTANT was among the firms selected by TCAA to be the most qualified to furnish the professional services necessary to complete the Continuing Services Projects, and the Parties desire to enter into this Agreement to memorialize the terms under which CONSULTANT will provide professional services for the Continuing Service Projects during the Term of this Agreement; and

NOW, THEREFORE, the Parties, in consideration of the foregoing recitals and the mutual covenants hereinafter set forth and in subsequently issued written agreements, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. PROVISION OF SERVICES/METHOD OF AUTHORIZATION

1.1. This Agreement provides the terms upon which TCAA may avail itself of the professional services of CONSULTANT for Continuing Service Projects, including all professional and non-professional staff, materials, equipment, supplies, and other resources necessary to perform the services (the "Services") as and when directed and assigned to do so by TCAA as needed from time to time over the period of time specified hereinafter.

1.2. CONSULTANT agrees to provide, in accordance herewith, the professional consulting services described in each task order (the "Task Order") issued hereunder. Each Task Order, when signed by the Parties, shall be incorporated into and form a part of this Agreement. Each such Task Order shall contain (1) a Project Description (the "Project"), (2) a detailed Scope of Services including any subconsultants or other third parties to be utilized for the Project, (3) a Project Schedule including milestones when applicable, (4) a Detailed Fee Schedule (time and materials or lump sum) including labor hours, rates, and expenses, (5) Deliverables and (6) any special provisions or conditions specific to the services or project being authorized. In the event of a conflict between this Agreement and any Task Order issued hereunder, the terms of this Agreement shall govern. For each authorized Task Order, CONSULTANT shall endeavor to engage directly or specify the use of the services of qualified

local businesses, DBEs, service-disabled and other veteran owned businesses as necessary to assist CONSULTANT in providing the requested Services.

1.3. CONSULTANT shall commence its Services for an assigned project upon receipt of a Notice to Proceed and a Task Order (Purchase Order) issued by TCAA for the assigned project. Time is of the essence in the performance of CONSULTANT's Services for assigned projects. CONSULTANT shall diligently and in a timely manner perform Services for assigned projects to ensure timely completion of CONSULTANT's Services in accordance with the schedule accepted by TCAA for the assigned Project.

1.4. CONSULTANT's opinions of probable costs provided as a service hereunder are to be made on the basis of its experience and qualifications and represent its best judgment as a design professional familiar with the construction industry; however, it is understood that CONSULTANT cannot guarantee that proposals, bids, or the construction costs will not vary from opinions of probable costs prepared by it. If TCAA wishes greater assurance as to the construction costs, it shall employ an independent cost estimator at its own expense. Services to modify approved documents to bring the construction cost within any limitations established by TCAA will be considered additional services and entitle CONSULTANT to additional compensation which shall be negotiated and mutually agreed upon by the Parties and set forth in a Task Order as defined hereunder.

1.5. If the Services are to include services during construction, any construction inspection or testing provided by CONSULTANT is for the purpose of determining the contractor's compliance with the functional provisions of Project specifications only. CONSULTANT neither guarantees nor ensures any contractor's work nor assumes responsibility for (a) the means, methods or materials used by any contractor, (b) Project site safety, or (c) any contractor's compliance with laws and regulations. TCAA agrees that, in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for Project site conditions during the course of construction of the Project, including safety of all persons and property, and that this responsibility shall be continuous and not be limited to normal working hours.

1.6. The Services shall be performed by CONSULTANT with reasonable care, skill and diligence in accordance with generally accepted professional practice. Other than as expressly set forth herein, CONSULTANT makes no warranties or guarantees whatsoever, whether expressed or implied, of merchantability or fitness for a particular purpose, with respect to any services performed under this agreement.

1.7. Sub-Consultants. If the CONSULTANT, as part of its Statement of Qualifications leading to its selection by TCAA, submitted the qualifications of any Sub-Consultant designated to provide specialized expertise as a member of the CONSULTANT's team, CONSULTANT agrees to engage the appropriate Sub-Consultant team member as part of the performance of its Services hereunder. The CONSULTANT's failure to engage its Sub-Consultants that are qualified, capable, and available to do specialized work for which it was included in the SOQ may be found to have misrepresented its qualifications and experience which may result in termination of this agreement. If the CONSULTANT intends to engage the services of a Sub-Consultant, the following provisions shall apply:

1.7.1. CONSULTANT shall obtain the TCAA's written consent prior to engaging the services of any proposed Sub-Consultant not specifically included in the SOQ ;

1.7.2. TCAA shall not be liable to CONSULTANT in any manner arising out of the TCAA's non-consent to a proposed Sub-Consultant;

1.7.3. All Sub-Consultants shall be qualified and properly licensed to perform any services contemplated by this Agreement and any Sub-Consultant agreement between CONSULTANT and the Sub-Consultant ;

1.7.4. CONSULTANT shall direct and coordinate the services and work product of any and all Sub-Consultants commissioned by CONSULTANT, including, but not limited to, reviewing and approving any designs, surveys, maps, drawings, specifications, shop drawings, submittals, test results, reports, or other services produced or furnished by any and all Sub-Consultants before furnishing same to the TCAA;

1.7.5. CONSULTANT shall bear full responsibility under this Agreement for all Services performed by or for CONSULTANT and any Sub-Consultant (s) of any tier, including, but not limited to, each Sub-Consultant 's errors, omissions, and deficiencies, and nothing herein or any Sub-Consultant agreement shall in any way relieve CONSULTANT from any of its duties under this Agreement;

1.7.6. The costs of all Sub-Consultants' services in the performance of any Services performed on a time-and-materials, lump sum, or cost-reimbursable basis shall be billed without CONSULTANT markup;

1.7.7. The TCAA shall have no obligation to pay, or be responsible in any way, for the payment of any monies to any Sub-Consultant , except as may otherwise be required by applicable law;

1.7.8. CONSULTANT shall, at a minimum, incorporate into all Sub-Consultant agreements provisions that are substantially similar to those provisions contained herein, and, to the extent of the Services to be performed by the Sub-Consultant , to assume toward CONSULTANT all obligations that the CONSULTANT assumes toward the TCAA in this Agreement; and

1.7.9. TCAA shall be a third party beneficiary of all obligations under any Subconsultant agreement between CONSULTANT and any Sub-Consultant ; however, nothing contained herein or therein shall create any contractual relationship between the TCAA and any Sub-Consultant or any obligation of the TCAA to any Sub-Consultant .

2. TCAA'S RESPONSIBILITIES.

2.1. TCAA shall provide full information regarding its requirements for the Services or Project and shall arrange for CONSULTANT's, its agents' and subconsultants' access to the site of work.

2.2. TCAA shall designate a representative authorized to act in its behalf with respect to the Services or Project. TCAA's authorized representative shall examine all studies, reports, sketches, estimates, drawings, specifications, proposals, and other documents submitted by CONSULTANT or furnish information required of TCAA and shall render in writing decisions pertaining thereto promptly so as not to delay the progress of CONSULTANT's Services.

2.3. TCAA shall provide CONSULTANT, its agents and subconsultants reasonable access to its records to the extent necessary to perform CONSULTANT's obligations hereunder. If any off-site investigations are required, it shall be TCAA's responsibility to secure the required access rights from site owners.

3. TERM OF AGREEMENT.

3.1. Term. This Agreement shall be effective upon the Effective Date set forth above and, unless previously terminated as set forth below, shall continue in effect for three (3) years from that date.

This Agreement may be renewed by the TCAA and CONSULTANT, effective upon the anniversary date of the Effective Date, each year for a total of no more than two (2), one (1)-year periods. Any renewal of this Agreement is contingent upon satisfactory performance evaluations by the TCAA and subject to the availability of funds. Costs for renewal may not be charged. The initial three (3)-year term of this Agreement, along with any renewals, is referred to in this Agreement as the "Term" of this Agreement. Any assigned project started after the Effective Date and not completed prior to the termination date shall be completed by the CONSULTANT, subject to the termination provisions below.

3.2. Termination.

3.2.1. The TCAA may terminate this Agreement for convenience, without cause and without prejudice to any other right or remedy of the TCAA, upon thirty (30) calendar days' written notice to CONSULTANT.

3.2.2. The TCAA may terminate this Agreement for cause, without prejudice to any other right or remedy of the TCAA, if CONSULTANT: (1) fails to substantially perform its obligations in accordance with this Agreement; the applicable professional standard(s) of care; all applicable laws, regulations, rules, or all requirements, codes, policies, or procedures of any public entity having jurisdiction over any improvements for which CONSULTANT's Services are furnished; or all lawful and reasonable directives or instructions of the TCAA, and (2) if any such nonperformance can be corrected, CONSULTANT fails to commence correction of such nonperformance within five (5) calendar days of receipt of written notice of such nonperformance and fails to diligently and completely correct the nonperformance within no more than thirty (30) days after receipt of said written notice or by such later time as may be agreed by the TCAA.

3.2.3. CONSULTANT may terminate this Agreement for cause, without prejudice to any other right or remedy of CONSULTANT, if the TCAA fails to substantially perform its obligations under this Agreement and fails to cure any such nonperformance within thirty (30) days of TCAA's receipt of written notice of said nonperformance.

3.2.4. Upon termination, CONSULTANT will be paid for all authorized Services satisfactorily performed and authorized expenses incurred up to the termination date. The TCAA will thereafter have no further obligation to CONSULTANT for payment of compensation under this Agreement. CONSULTANT shall not be paid on account of any loss of anticipated profits or revenue or other economic loss arising out of or resulting from the termination.

3.2.5. Any Task Order issued pursuant to this Agreement may also be terminated as set forth herein. Unless otherwise stated in any written notice of termination of a Work Order, the termination of the Task Order shall not operate to terminate this Agreement. Unless stated otherwise herein or in any written notice of termination of this Agreement, any termination of this Agreement shall also constitute a termination of any Task Order issued pursuant to this Agreement.

4. COMPENSATION AND METHOD OF PAYMENT. TCAA shall pay CONSULTANT for Services authorized by a Task Order and satisfactorily completed and furnished to the TCAA, in accordance with the following:

4.1. The Fee Schedule of CONSULTANT, attached hereto as Exhibit "B". No additional fee shall be payable to CONSULTANT under this Agreement or any Task Order for Services for an assigned project

if the actual cost of the Services exceeds the amount in CONSULTANT's proposal for the assigned project. No overtime payment shall be approved by the TCAA unless authorized by the TCAA prior to the performance of the overtime work. Overtime rates shall be agreed upon prior to the performance of the work. At the discretion of the TCAA, cost of living increases may be considered. If authorized by the TCAA, increases shall not exceed the rate established annually by the Federal Bureau of Labor Statistics. The rate schedule may be adjusted for cost of living expenses each January 1, beginning in 2024, upon review and approval of the TCAA. The Fee Schedule may be modified only by a written Change Order to this Agreement executed by the TCAA and CONSULTANT.

4.2. Upon receipt of written approval of the TCAA, the CONSULTANT will engage the services of other professionals when necessary to complete the CONSULTANT's Work Orders. In these circumstances, CONSULTANT shall bill the TCAA only for the actual and reasonable amounts that CONSULTANT paid to such other professionals, and CONSULTANT shall not be entitled to any mark-up on the fee for services of other professionals.

4.3. Reimbursable Expenses. Reimbursable Expenses are defined as actual expenditures made by CONSULTANT or its subconsultants in the interest of the Services or Project including but not limited to:

4.3.1. Reproduction and printing charges of all types for project-specific documents, overnight express shipping charges, project-specific fees paid by CONSULTANT to permitting authorities and utilities, and miscellaneous items purchased by CONSULTANT for the project which are specifically authorized in advance by TCAA.

4.3.2. For CONSULTANT, travel within Brevard and adjacent counties, mail, telephone, internet, computer time, and minor office photocopying for general correspondence are normal business expenses included in general overhead, and are not Reimbursable Expenses. For subconsultants, arrangements for reimbursement of expenses may vary. Such arrangements shall be described in detail in the description of subconsultant fees in the Task Order or other written amendment, including attachments to the same.

4.3.3. CONSULTANT shall also be reimbursed at cost, without mark-up, other actual and necessary costs and expenses reasonably and properly incurred by CONSULTANT in furtherance of furnishing Services under this Agreement, provided that CONSULTANT furnishes to the TCAA supporting documentation and/or receipts.

4.4. Task Order Limits. If the total amount to be paid to CONSULTANT in connection with any assigned project exceeds the threshold amount provided in section 287.017, Florida Statutes, as may be amended, for CATEGORY FOUR purchases (which threshold amount at the time of executing this Agreement is \$195,000.00), CONSULTANT shall execute and furnish to the TCAA a Truth-in-Negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of the issuance of each Work Order. The original Task Order price and any additions thereto will be adjusted to exclude any significant sums that the TCAA determines the Task Order amount was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

4.5. Billing. For each assigned project, CONSULTANT shall submit an invoice on a monthly basis covering the Services for the assigned project and describing the Services performed and expenses incurred during the applicable period. CONSULTANT's invoices shall be submitted with

detail satisfactory to the TCAA and sufficient for a proper pre-audit and post-audit of said invoices.

- 4.6. Records. CONSULTANT agrees to keep and maintain all of its direct personnel expense records, CONSULTANT expense records and other expense records pertaining to Continuing Service Projects and its record of accounts between CONSULTANT and the TCAA pertaining to Continuing Service Projects on a generally recognized and acceptable accounting basis. CONSULTANT further agrees to keep and maintain accurate time records to within the nearest one-tenth (1/10) of an hour for each time entry, of all Services performed by employees of CONSULTANT. All of the foregoing records and documentation shall be retained by CONSULTANT for a minimum of three (3) years from the date of termination of this Agreement or the date a Task Order is completed, or such longer time as may be required by this Agreement or law, whichever is later. These records and documentation shall be available to the TCAA or the TCAA's designated representatives for inspection and copying at all reasonable times.
- 4.7. Invoicing and Payment CONSULTANT shall invoice TCAA not more often than every four weeks for all Services rendered and Reimbursable Expenses incurred pursuant to this Agreement, and each invoice shall be due and payable within 30 calendar days unless other arrangements have been made in advance.
- 4.8. Remittances. Compensation due CONSULTANT under this Agreement is due and payable to its corporate offices, whose address is _____, or at such other location as may be specified by CONSULTANT in writing.

5. Delays/Changes

5.1. Any delay or default in the performance of any obligation of CONSULTANT under this Agreement resulting from any cause beyond CONSULTANT's reasonable control shall not be deemed a breach of this Agreement.

5.2. During the performance of the Services hereunder, TCAA shall have the right, by written instrument, to make changes in, deletions from, or to require additions to the Services (hereinafter collectively referred to as "Changes"). In the event that such Changes require the preparation of additional drawings and/or specifications, or require additional services by CONSULTANT, then, upon completion of such additional services, CONSULTANT shall be entitled to an equitable increase in compensation for additional services rendered due to such Changes. The compensation for additional services shall be agreed upon in writing by the Parties prior to the performance of the additional services. The compensation may be a lump-sum payment of a specific amount, compensation on an hourly-rate basis, or other method of compensation agreed upon by the Parties.

6. ERRORS AND OMISSIONS.

6.1. CONSULTANT shall, at its own expense and without any expense to the TCAA, promptly correct or revise any errors, omissions, or deficiencies in the tests, reports, or other Services produced pursuant to this Agreement and any Task Order and shall, promptly thereafter, provide to the TCAA such corrected or revised tests, reports, or other Services.

6.2. CONSULTANT shall be obligated and responsible to the TCAA for, and CONSULTANT shall promptly and forthwith pay to the TCAA upon demand of the TCAA, any and all damages and additional costs and/or expenses incurred, sustained, or paid by the TCAA, or for which the TCAA may otherwise become liable, caused by or on account of any and all errors, omissions, or deficiencies

made by CONSULTANT or any Sub-Consultant of any tier in the performance of the Services under this Agreement and any Work Order.

7. INDEMNITY

To the fullest extent permitted by applicable law, CONSULTANT shall indemnify and hold harmless the TCAA and the TCAA's officers, employees, and agents from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONSULTANT and persons employed or utilized by the CONSULTANT in the performance of this Agreement or any Work Order. The foregoing obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any Subconsultant or other individual or entity under any contract, workers' compensation acts, disability benefits acts, or other employee benefit acts.

8. Insurance. CONSULTANT shall procure and maintain insurance of the types and to the limits specified herein as a mandatory condition precedent to performing Services under this Agreement. Except as otherwise stated, the amounts and types of insurance shall conform to the following minimum requirements:

8.1. Commercial General Liability – commercial general liability (“CGL”) insurance coverage for all operations by or on behalf of CONSULTANT and all Sub-Consultant s of any tier and providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- a) premises and operations;
- b) products and completed operations;
- c) broad form property damage;
- d) contractual liability insuring the obligations, including, but not limited to, the indemnity obligations, assumed by CONSULTANT in this Agreement;
- e) explosion, collapse and underground hazards;
- f) personal injury and advertising liability; and
- g) products completed operations extension endorsement extending products and completed operations through any applicable statute(s) of repose.

The commercial general liability insurance policy shall be written on an occurrence basis (not a "claims made" basis) in a form at least as broad as CG 00 01 and, if not part of such policy, an endorsement deleting any employee exclusion as to personal injury coverage. Commercial general liability shall be written on a per project basis. Endorsements restricting, limiting or eliminating Product or Completed Operations coverages above shall be identified and approved in writing by TCAA. A Total Pollution exclusion shall have a Hostile Fire Exception. A waiver of subrogation endorsement is required to be issued in favor of the TCAA.

Limits of Liability shall not be less than:

- \$1,000,000 Each Occurrence
- \$1,000,000 Personal and Advertising Injury
- \$2,000,000 General Aggregate

\$2,000,000 Products and Completed Operations Aggregate
\$5,000,000 Per Project Endorsement.

8.2. Business Auto Liability. Coverage for bodily injury and property damage liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles) having limits of liability of not less than \$1,000,000 combined single limit for each accident for bodily injury and property damage combined. The automobile liability insurance policy shall be written on a form that provides coverage equal or greater than that provided in ISO Form CA 0001.

8.3. Professional Liability Insurance. Professional liability coverage limits of not less than \$2,000,000 per claim. Said professional liability insurance shall provide insurance coverage for all sums that CONSULTANT shall be obligated to pay as damages for claims or damages arising out of the Services provided or performed by CONSULTANT in conjunction with this Agreement, including, but not necessarily limited to, any acts or omissions of CONSULTANT or its Subconsultants of any tier. CONSULTANT's professional liability insurance shall apply on a primary basis, and any other insurance maintained by the TCAA shall be in excess of and shall not contribute with CONSULTANT's insurance. The professional liability insurance shall also be maintained for a minimum of three (3) years after completion of the Services under the scope of any Task Order pursuant to this Agreement, including any modification(s) thereto. A waiver of subrogation endorsement is required to be issued in favor of the TCAA.

8.4. Workers' Compensation and Employer's Liability – Workers' compensation insurance coverage to apply for all employees of CONSULTANT and anyone for whom CONSULTANT may be liable for workers' compensation claims arising out of or relating to the Services performed under this Agreement or any Task Order for statutory limits in compliance with all applicable state and federal laws and regulations. Companies with three (3) or fewer employees shall be required to have worker's compensation coverage meeting the minimum requirements of this section. CONSULTANT shall require:

- a) All Sub-Consultants to similarly provide workers' compensation insurance for their employees and anyone for whom such Subconsultants may be liable for workers' compensation claims arising out of or relating to the Services performed under this Agreement.
- b) Employer's liability insurance coverage in the amount of not less than \$1,000,000 for each accident for bodily injury and not less than One Million and No/100 Dollars \$1,000,000 for each employee for bodily injury or disease.
- c) Worker's Compensation Leasing shall not be an approved coverage without prior written approval from the TCAA. A Waiver of Subrogation Endorsement is required.

8.5. Commercial Umbrella/Excess Liability – follow form commercial umbrella/excess liability insurance, which will be identified to TCAA, in the amount of \$10,000,000. The commercial follow form umbrella/excess liability insurance shall have the same inception and expiration dates as the underlying liability policies and shall provide coverage no less broad than those in the primary policies.

8.6. TCAA to be Additional Insured: Each liability insurance policy required by this Agreement shall designate or name the TCAA and the TCAA's officers, directors, employees, representatives, and agents as additional insureds. The liability insurance shall apply on a primary and non-contributory basis with respect to any other liability insurance maintained by the TCAA. CONSULTANT's insurance

shall contain a severability of interest provision, providing that, except with the respect to the total limits of liability, the insurance shall apply to each insured or additional insured in the same manner as if separate policies had been issued to each. The form of additional insured endorsement shall be at least as broad as ISO Form CG 2010 (11/85). If the GC 2010 (11/85) is not available, then the combination of CG 2010 (10/01) with CG 2037 (10/01) or their equivalent will be acceptable.

8.7. Evidence of Insurance: The insurance procured and maintained by CONSULTANT shall be subject to approval of the TCAA. CONSULTANT shall file with the TCAA prior to commencing any Services under this Agreement and at such other times requested by the TCAA, a Certificate(s) of Insurance evidencing the insurance coverage required herein. The required Certificates of Insurance shall: name the types of policies provided, refer specifically to this Agreement and section and the above paragraphs in accordance with which insurance is being furnished, and state that such insurance is required by this Agreement. All additional insured and waiver of subrogation endorsements shall be provided to the TCAA along with the Certificate of Insurance. Any Acceptance of Certificates of Insurance by the TCAA shall in no way relieve CONSULTANT of any duty or responsibility under this Agreement. Prior to commencing any Services under this Agreement and thereafter upon the TCAA's request, CONSULTANT shall promptly furnish or cause to be furnished to the TCAA complete copies of all policies of insurance procured and maintained by CONSULTANT and its Sub-Consultant s of any tier in connection with CONSULTANT's insurance obligations under this Agreement.

8.8. Sub-Consultant s' Insurance: CONSULTANT shall require and ensure that its Sub-Consultant s of any tier procure and maintain insurance in like form and amounts, including the additional insured and waiver of subrogation requirements, as is required by CONSULTANT in this Agreement. CONSULTANT shall require its Sub-Consultant s of any tier to furnish to the TCAA, prior to said Sub-Consultant s performing any Services contemplated by this Agreement and thereafter upon the TCAA's request to CONSULTANT, Certificates of Insurance evidencing the insurance procured and maintained by said Sub-Consultant s of any tier.

8.9. Waiver of Subrogation: Any policy of insurance issued pursuant to the requirements of this Agreement covering the CONSULTANT or its Sub-Consultant s of any tier shall include an endorsement providing that the insurers waive their rights of subrogation against the TCAA and the TCAA's officers, directors, agents, representatives, employees, assigns, insurance carriers, and attorneys. CONSULTANT hereby waives and shall require its Sub-Consultant s of any tier to waive, any and all rights of recovery which they or any of them may now have or subsequently may have against the TCAA and the TCAA's officers, directors, agents, representatives, employees, assigns, insurance carriers, and attorneys in connection with any insured loss arising out of or relating to the Services.

8.10. Notice of Cancellation and Renewal of Insurance: The insurance policies shall provide that the insurance shall not be canceled or reduced in an amount or coverage below the requirements of this Agreement, without at least thirty (30)-days' written notice to the TCAA as additional insured. In the event any insurance coverage expires prior to the completion of the Services, renewal Certificates of Insurance shall be furnished to TCAA by no later than thirty (30) days prior to the date of expiration.

8.11. The Certificates of Insurance shall be forwarded directly to the following:

Deputy Director of Finance & Administration
Titusville-Cocoa Airport Authority
51 Bristow Way
Titusville, Florida 32780

9. Use of Documents and Electronic Deliverables.

9.1. All documents are instruments of service in respect to this Project, and CONSULTANT shall retain an ownership and property interest therein (including the right of reuse at the discretion of CONSULTANT) whether or not the Project is completed. Electronic files of text, data, graphics, or other types ("Electronic Deliverables ") that are furnished by CONSULTANT to TCAA are furnished for the convenience of TCAA. However, the Electronic Deliverables are subject to error and can be modified or corrupted without the knowledge or authorization of the CONSULTANT. Therefore, in the event of any discrepancy between the Electronic Deliverables and the signed and sealed printed copies (the "Hard Copies") of the documents furnished to TCAA, the Hard Copies shall govern and TCAA's use of the Electronic Deliverables is at TCAA's own risk.

9.2. When transferring Electronic Deliverables, CONSULTANT makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by CONSULTANT during the project.

9.3. TCAA may make and retain copies of Electronic Deliverables for information and reference in connection with use on the Project by TCAA. Such Electronic Deliverables are not intended or represented to be suitable for reuse by TCAA or others on extensions of the Project or on any other project. CONSULTANT retains ownership of all documents and Electronic Deliverables and is providing such documents and Electronic Deliverables for TCAA's use only for this Project. TCAA is not authorized to use, reuse, or modify the documents or Electronic Deliverables for any other use or purpose. Any such reuse or modification without written verification or adaptation by The CONSULTANT, as appropriate for the specific purpose intended, shall be at TCAA's sole risk and without liability or legal exposure to CONSULTANT or its subconsultants.

9.4. TCAA shall have the unconditional right to receive, at any time upon request, a copy of all electronic files stored on CONSULTANT's principal computer that pertain specifically to the TCAA. Such files generally consist of AutoCAD drawings; Word, WordPerfect, Excel, and PDF documents, and image files. These files are backed up regularly and the back-up copies are stored off-premises, but all of the files reside in the principal computer hard drive. In the event that CONSULTANT personnel are unable to provide a copy of the electronic files to the TCAA (due to accident, injury, or other limitation), TCAA is authorized to retain and utilize a third party of its choosing to assist in obtaining and delivering the files to the TCAA.

9.5. Nothing in this section shall supplant or otherwise modify TCAA 's obligations to maintain and produce for inspection public records as set forth in chapter 119, Florida Statutes. Additionally, as a contractor/consultant for TCAA, CONSULTANT itself is or may be subject to the provisions of chapter 119, Florida Statutes, regarding public records. TCAA makes no representations to CONSULTANT regarding the application of chapter 119, Florida Statutes, to CONSULTANT, and CONSULTANT acknowledges and represents that it is familiar with and will comply with all of its obligations under chapter 119, Florida Statutes. To the extent they are able, the Parties agree to assist one another with fulfilling any obligations under chapter 119, Florida Statutes, that either may have as a result of or related to this Agreement.

10. Hazardous Site Conditions. TCAA recognizes that the Project site may involve the presence of hazardous, toxic or pollutive substances. Unless specifically agreed to in a specific amendment hereto, CONSULTANT has no responsibility for the condition of the Project site or the handling, storage or disposal of any substance or materials from any Project site or otherwise.

11. Confidentiality. Subject to Section 8.5, above, and chapter 119, Florida Statutes, CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than CONSULTANT's employees, subconsultants and the general contractor and subcontractors, if appropriate, any data and information not previously known to and generated by The CONSULTANT or furnished to CONSULTANT and marked "Confidential" by TCAA. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict CONSULTANT from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for CONSULTANT to defend itself from any suit or claim. TCAA agrees that the technical methods, techniques and pricing information contained in any proposal submitted by CONSULTANT pertaining to the Project or in this Agreement or any amendment hereto, are to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of the CONSULTANT.

12. Equal Opportunity Employer. CONSULTANT is an equal opportunity employer. CONSULTANT does not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability or veteran status and will take affirmative action to employ and advance in employment qualified minorities, women, disabled veterans, veterans of the Vietnam Era or disabled individuals.

13. Contingent Fees. CONSULTANT warrants that it has not employed or retained any person or entity, other than bona fide employees working solely for CONSULTANT, whose fee, commission, percentage, gift, or other consideration from CONSULTANT is contingent upon, or results from, that person's or entity's procuring this Agreement.

14. Controlling Law/Venue. This Agreement, the rights and obligations of the Parties hereto, and any claims or disputes relating thereto shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of Florida. Venue for any disputes arising from this agreement shall be Brevard County, Florida to the exclusion of all other jurisdictions and venues .

15. Waiver of Jury Trial. TCAA and CONSULTANT hereby knowingly, voluntarily, and intentionally waive the right either of them have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with this Agreement and any agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of either party.

16. Dispute Costs. In any litigation arising from this Agreement, the prevailing party may recover costs, expenses and attorneys' fees from the non-prevailing party including without limitation reasonable attorneys' fees incurred on appeal and in litigating entitlement to and/or amount of attorneys' fees to be awarded.

17. Successors and Assigns . Except as otherwise expressly provided, all provisions herein shall be binding upon and shall inure to the benefit of the Parties, their legal representatives, successors and assigns.

18. Entire Agreement. This Agreement together with each separate Task Order and/or the exhibits thereto or other written amendment, constitute the entire and integrated Agreement between CONSULTANT and TCAA and supersedes all prior negotiations, representations or agreements, either written or oral as to the subject matter hereof. This Agreement and said attachments may only be amended, supplemented, modified, or canceled by written instrument signed by an authorized representative of each party. The captions and numbers appearing herein are inserted only as a matter of

convenience and are not intended to define, limit, construe or describe scope or intent of any paragraph nor in any way affect this Agreement.

19. Severability. If any provision of this Agreement or any application thereof to any person or circumstances shall, to any extent, be invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

20. Notices. Any notice, demand, request or other instrument which may be or required to be given under this Agreement shall be sent via electronic delivery, delivered in person, sent by United States First Class Certified or Registered Mail, Return Receipt Requested, postage prepaid, or sent by a reputable overnight courier service, and shall be addressed to either party at the address as herein above given, or at the current e-mail address for electronic delivery. Any notice shall be deemed delivered upon hand delivery, receipt of an acknowledging reply for electronic delivery, three (3) days after depositing such notice in postal receptacles, return receipt requested, or one (1) day after depositing such notice with a reputable overnight courier service. Either party may designate such other address as shall be given by written notice.

21. No Partnership. Nothing contained in this Agreement shall, or shall be deemed or construed so as to create the relationship of employer-employee, principal-agent, joint ventures, co-ventures, or partners between TCAA and CONSULTANT, and they are and shall remain independent contractors one as to the other.

22. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (49 CFR Part 29). CONSULTANT certifies, by submission of its proposal and acceptance of this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded from participation in this transaction by any department or agency. It further agrees that by executing this Agreement, it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where CONSULTANT or any lower tier participant is unable to certify this statement, it shall attach an explanation to the salient document which shall remain a part thereof.

23. Certification Regarding Foreign Trade Restrictions (49 CFR Part 30). CONSULTANT and any subconsultant, by submission of an offer and/or execution of a contract related to any Task Order or other amendment hereto, certifies that it:

23.1. 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 published by the Office of the United States Trade Representative (USTR);

23.2. 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 on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list.

23.3. Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

23.4. 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 CONSULTANT or any subconsultant who is unable to certify to the above. If CONSULTANT knowingly procures or subcontracts for the

supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct, through the TCAA, cancellation of the contract at no cost to the government.

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

23.6. CONSULTANT shall provide immediate written notice to the TCAA if it learns that its certification or that of a subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances. The subconsultant agrees to provide immediate written notice to CONSULTANT, if at any time it learns that its certification was erroneous by reason of changed circumstances.

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

23.8. 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 CONSULTANT is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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

24. Veterans Preference. In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans as defined in Section 515(c)(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

25. Breach of Contract Terms. Any violation or breach of the terms of this Agreement on the part of the CONSULTANT or its subconsultants and/or agents may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the parties hereto. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. (49 CFR Part 18).

26. Access to Records and Reports. CONSULTANT shall maintain an acceptable cost accounting system. CONSULTANT agrees to provide the TCAA, 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 CONSULTANT which are directly pertinent to the specific contract for the purposes of making audit, examination, excerpts and transcriptions. CONSULTANT agrees to maintain all books, records and reports required under this contract for a period of not less than three (3) years after final payment is made and all other pending matters are closed. (49 CFR Part 18.36(i)).

27. Rights to Inventions. All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the TCAA of the federal grant under which this contract is executed, if any. Information regarding these rights is available from the FAA and the TCAA. (49 CFR Part 18.36(i)(8)).

28. Airport and Airway Improvement Act of 1982, Section 520 - General Civil Rights Provisions. CONSULTANT assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision obligates the CONSULTANT or its transferee for the period during which federal assistance is extended to TCAA, except where federal assistance is monetary, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates CONSULTANT or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

29. Civil Rights Act of 1964, Title VI- Contractor Contractual Requirements (49 CFR Part 21). During the performance of this Agreement, CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

30. Compliance with Regulations. Contractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

30.1. Nondiscrimination. Contractor, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the regulations, including employment practices when the contract covers a program set forth in Appendix B of the regulations.

30.2. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Contractor of its obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, or national origin.

30.3. Information and Reports. Contractor shall provide all information and reports required by regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TCAA or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the TCAA or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

30.4. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the TCAA shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

30.4.1. Withholding of payments to Contractor under the Agreement until the Contractor complies, and/or

30.4.2. Cancellation, termination, or suspension of the Agreement, in whole or in part .

30.5. Incorporation of Provisions. Contractor shall include the provisions of paragraphs 28.1 through 28.5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as the TCAA or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction from TCAA, Contractor may request the TCAA to enter into such litigation to protect the interests of the TCAA and, in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

31. Termination of Contract

31.1. This Agreement may be terminated without cause by either party upon thirty (30) days written notice. In the event of termination, CONSULTANT shall be compensated, as provided herein, for Services performed through the effective date of such written notice of termination, together with Reimbursable Expenses due and for all expenses directly attributable to termination.

31.2. If the Project is suspended for more than thirty (30) consecutive days, CONSULTANT shall be compensated, as provided herein, for Services performed through receipt of written notice of such suspension, together with Reimbursable Expenses then due. When the Project is resumed, CONSULTANT's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the CONSULTANT's Services.

32. Disadvantaged Business Enterprises.

32.1. Contract Assurance (49 CFR Part 26.13). CONSULTANT or its subconsultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the recipient deems appropriate.

32.2. Prompt Payment (49 CFR Part 26.29). CONSULTANT agrees to pay each subconsultant under this Agreement for satisfactory performance of its contract no later than 30 days from the receipt of each payment CONSULTANT receives from the TCAA. CONSULTANT agrees further to return any retainage payments to each subconsultant within 30 days after the subconsultant's work is satisfactorily completed and receipt of final payment CONSULTANT receives from the TCAA for the services of said subconsultant's satisfactorily completed work. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the TCAA. This clause applies to both DBE and non-DBE subconsultants.

33. Lobbying and Influencing Federal Employees (49 CFR Part 20, Appendix A)

- 33.1. No federal appropriated funds shall be paid, by or on behalf of CONSULTANT, 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 the making of any federal grant or any modification(s) thereof.
- 33.2. If any funds other than federally 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 any federal grant, CONSULTANT shall complete and submit Standard Form - LLL, "Disclosure of Lobby Activities," in accordance with its instructions.
34. Counterparts. This Agreement may be executed in two or more counterparts, each of which may be executed by one or both of the Parties hereto, but all of which, when delivered and taken together, shall constitute but one Agreement binding upon both of the Parties hereto .
35. Indemnification. CONSULTANT shall indemnify and hold harmless TCAA and its officers, directors, employees and agents from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, that TCAA or its officers, board members, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from this Agreement and stemming from or related to the acts or omissions, whether intentional or unintentional, of CONSULTANT or its employees, agents, servants, partners, principals, contractors, subcontractors, subconsultants or invitees. CONSULTANT shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or action of any kind or nature in the name of TCAA, including appellate proceedings, and CONSULTANT shall pay all costs, judgments and reasonable attorney 's fees which may be incurred in relation thereto. CONSULTANT expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by CONSULTANT shall in no way limit the responsibility to indemnify, hold harmless and defend TCAA and its officers, employees, agents, and instrumentalities as provided herein. CONSULTANT's obligations hereunder shall survive the termination of this Agreement. Nothing in this paragraph is intended to or does limit or modify TCAA's right to assert sovereign immunity or any other form of governmental immunity in any claim or action against it, including without limitation the rights of TCAA under section 768.28, Florida Statutes.
36. Waiver of Consequential Damages. In no event shall either CONSULTANT or TCAA have any claim or right against the other, whether in contract, warranty, tort (including negligence), strict liability or otherwise, for any indirect, incidental or consequential damages of any kind or nature whatsoever, such as but not limited to loss of revenue, loss of profits on revenue, loss of customers or contracts, loss of use of equipment or loss of data, work interruption, increased cost of work or cost of any financing, howsoever caused, even if same were reasonably foreseeable.
37. Force Majeure. In no event shall either CONSULTANT or TCAA have any claim or right against the other for any failure of performance where such failure of performance is caused by or is the result of causes beyond the reasonable control of the other party due to any occurrence commonly known as a "force majeure," including but not limited to: acts of God; fire, flood, or other natural catastrophe; acts of any governmental body; labor dispute or shortage; national emergency; insurrection; riot; or war.
38. Good Faith. This Agreement imposes an obligation of good faith, fair dealings and the mitigation of damages among the Parties in all matters relating to this Agreement. Good faith, for this purpose, includes honesty in fact and the observance of reasonable commercial standards of fair dealings and in the mitigation of damages even in situations where a decision is left to the sole discretion of a single party.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on their behalf by their duly authorized representatives, under seal, all as of the day and year first above written.

TITUSVILLE-COCOA AIRPORT AUTHORITY

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