



CITY COUNCIL STAFF REPORT

DATE: May 6, 2015

CONSENT AGENDA

SUBJECT: APPROVE FAA GRANT NO. 3-06-0181-052-2015 AND AWARD CONSTRUCTION CONTRACT FOR AIRPORT TECHNOLOGY SYSTEMS REPLACEMENT AND SECURITY DOOR INSTALLATION PROJECT

FROM: David H. Ready, City Manager

BY: DEPARTMENT OF AVIATION

SUMMARY

An action to award a construction contract for the Airport's Technology Systems Replacement Project, and approval of a Federal Aviation Administration (FAA) Airport Improvement Project (AIP) Grant as the project's funding source.

RECOMMENDATION:

1. Approve FAA AIP Grant No. 3-06-0181-052-2015 in the total amount of \$4,079,346.00 for construction of the project.
2. Award the construction contract for the Airport Technology System and Security Door Project in the amount of \$3,934,346.00 to the lowest responsive bidder, Johnson Controls, Inc., in a form approved by the City Attorney.
3. Authorize the City Manager to execute all necessary documents, including up to ten percent (10%) additional change order work as required to address changes in the project scope.

STAFF ANALYSIS:

On March 18, 2015, Council authorized the bid process for the Technology Systems Replacement Project at Palm Springs International Airport, under the previous acceptance of FAA Grant No. 3-06-0181-051-2014 on April 16, 2014.

This technology project will replace the current security access control system and will provide new software to control the closed circuit television cameras, record data, and access control hardware throughout the Airport. Two new revolving doors will be installed within the large foyer of the exit portal from the concourses into the terminal.

ITEM NO. 2, E.

The proposed revolving security doors are designed as extra-large, automated units are specially designed for airports and include the latest and most advanced technology available to allow passengers unfettered and welcome access into the terminal, but prevent any passenger backflow into the secured area. The location of the doors will not encroach on the unique design of the courtyard's modern exterior pointed glass entry doors constructed in 2008.

The Flight Information System will be replaced with the latest hardware and software to improve reliability and accommodations to passengers using both the terminal and accessing the website. Monitors will be replaced with larger units for optimum visibility and color contrast, and will be repositioned throughout the terminal complex to optimize passenger compatibility and flow throughout the airport. The new system will include energy saving technology that will reduce electrical consumption by at least fifty percent.

The Procurement Division posted and distributed the Notice Inviting Bids on March 19, 2015, advertised the bid on March 21, 2015, and on March 28, 2015; conducted a Pre-Bid conference on April 2, 2015, and then received bids by 3:00 p.m. on April 23, 2015, the bid closing date and time. The four bids received are as follows:

BID	
Johnson Controls Inc.	\$ 3,934,346.00
G4S Technology	\$ 4,129,109.75
Strong Hold Engineering	\$ 4,815,210.00
Doug Wall Construction Inc.	\$ 5,305,956.00

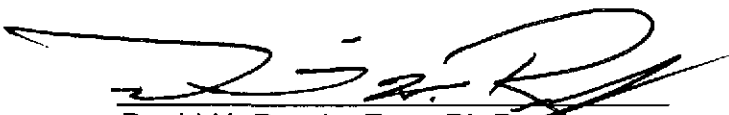
After evaluation by City Procurement and Airport staff, and the recommendation of the engineer of record, Johnson Controls, Inc. has been determined to be the lowest responsive bidder with a total bid amount of \$3,934,346.00.

Staff is requesting that City Council approve the acceptance of a FAA - AIP Grant 3-06-0181-052-2015 which will fund nearly 91% of the project. However, due to the FAA grant cycle timing and the expedited construction schedule, it is necessary to obtain Council approval ahead of actual receipt of grant documents.

FISCAL IMPACT:

The cost of the construction project bid will be funded at 90.66% through FAA - AIP Grant 3-06-0181-052-2015. The Airport's grant match of 9.34% is currently budgeted in Airport Account No. 416-6401-56172.


Thomas Nolan
Executive Director, Airport


David H. Ready, Esq., Ph.D.
City Manager

April 27, 2015

Thomas Nolan
Executive Director
Palm Springs International Airport
3400 E. Tahquitz Canyon Way, Suite CFC
Palm Springs, CA 92262

RE: Terminal System Capacity Improvements, Security Equipment and Exit Lane Improvements

Dear Mr. Nolan,

The bid documents for all of the bidders for the subject project, Terminal System Capacity Improvements, Security Equipment and Exit Lane Improvements IFB 15-15, have been reviewed and appear to be in conformance with the requirements of the contract.

The documents were checked for mathematical errors and those that were found did not affect the order of award.

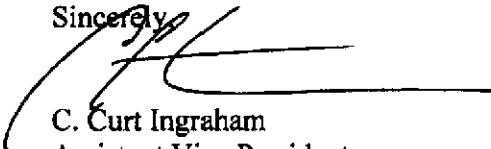
It is our recommendation that the subject bid is accepted and award of this contract be made to:

Johnson Controls, Inc.
5770 Warland Dr.
Cypress, CA 90630

Please find attached the Bid Comparison Analysis.

If any questions or concerns should arise regarding this letter, please feel free to call me at (909) 888-1106.

Sincerely,



C. Curt Ingraham
Assistant Vice President
Construction Manager

Attachments: 1

CONTRACT AGREEMENT

PALM SPRINGS INTERNATIONAL AIRPORT
FAA AIP PROJECT NO. 3-06-0181-052-2015
INVITATION FOR BIDS (IFB) 15-15

**TERMINAL SYSTEM CAPACITY IMPROVEMENTS, SECURITY EQUIPMENT
AND EXIT LANE IMPROVEMENTS**

THIS AGREEMENT, made and entered into this 6th day of May, 2015, by and between the City of Palm Springs, California, (City) and Johnson Controls Inc., Contractor.

WITNESSETH:

Article 1. For and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the City, and under the conditions expressed in the bonds bearing even date to these presents and hereunto annexed, Contractor agrees with the City, at his or her own proper cost and expense, to do all the work and furnish all materials, except such as are mentioned in the specifications to be furnished by the City, necessary to complete in good workmanlike and substantial manner all of the work for: Improvements to Palm Springs International Airport, FAA AIP Project No. 3-06-0181-052-2015, Invitation for Bids (IFB) 15-15 in accordance with the drawings, proposal, description of work, and special provisions therefore, and also in accordance with the technical specifications for this project, at the first publication of the Invitation for Bids, and all other codes and ordinances referred to and thereby made a part hereof.

The limits and location of said work to be done is shown upon the City of Palm Springs Drawings entitled Improvements to Palm Springs International Airport, FAA AIP Project No. 3-06-0181-052-2015 Invitation for Bids (IFB) 15-15, consisting of numbered sheets which said sheets are hereby made a part of this Agreement.

Article 2. Contractor is responsible for furnishing all said materials and labor, furnishing and removing all plants, temporary work or structures, tools and equipment, and doing all the work contemplated and embraced in this Agreement; also, for all loss and damage arising out of the nature of the work aforesaid, or from the action of the elements or from any unforeseen difficulties which may arise or be encountered in the prosecution of the work until its acceptance by the City, and for all risks of every description connected with the work; also, for all expense incurred by or in consequence of the suspension or discontinuance of work except such as, in the said specifications, are expressly stipulated to be borne by the City, and for well and faithfully completing the work and whole thereof, in the manner shown and described in the said drawings and specifications and in accordance with the requirements of the Engineer. The City shall pay and the Contractor shall receive in full compensation therefore, the prices for the several items named in the bidding sheet of the proposal.

Article 3. The City hereby promises and agrees with the Contractor to employ and does hereby employ the Contractor to provide the materials and do the work according to the terms and conditions herein contained and referred to for the unit prices bid, and hereby contracts to pay the same at the time, in the manner, and upon the conditions above set forth; and the said Parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

Article 4.

- A. Contract Documents: The Contract Documents consist of: Notice Inviting Bids, Instructions to Bidders and the Federal Supplementary Instructions; the prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations; Federal Wage Rates of the U.S. Dept. of Labor, the accepted Bid Schedule, the Schedule of Values or cost-loaded CPM schedule on lump-sum projects, Equipment or Material Proposed (when required); Bidder's General Information; Bid Security or Bid Bond; Affirmative Action, Minority Business Enterprise, and Equal Employment Opportunity Certificates; this Agreement; Worker's Compensation Certificate; Performance Bond; Payment Bond; Certificate of Non-Segregated Facilities; Notice of Award; Notice to Proceed; Notice of Completion; General Provisions; Special Provisions;

Technical Specifications; Drawings listed on the Sheet Index of the Drawings; inclusive; and all Change Orders and Work Directive Changes which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto.

B. Order of Precedence of Contract Documents:

1. In resolving disputes resulting from conflicts, errors, or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:
 - a. Change Orders or Work Directive Changes
 - b. Agreement/ Contract
 - c. Federal Requirements
 - d. Addenda
 - e. Special Provisions
 - f. Notice Inviting Bids
 - g. Instructions to Bidders
 - h. General Provisions
 - i. Technical Specifications
 - j. Referenced Standard Specifications
 - k. Contract Drawings
 - l. Referenced Standard Drawings.
 - m. Contractor's Bid (Bid Forms)

2. With reference to the Drawings the order of precedence shall be as follows:
 - a. Figures govern over scaled dimensions
 - b. Detail drawings govern over general drawings
 - c. Addenda or Change Order drawings govern over Contract Drawings
 - d. Contract Drawings govern over standard drawings
 - e. Contract Drawings govern over shop drawings

Article 5. Contract Clauses and Requirements for Construction Contracts.

A. General and Labor Clauses for All Construction Contracts and Subcontracts.

1. Airport Improvement Program Project. The work in this contract is included in Airport Improvement Program Project No. 3-06-0181-052-2015 which is being undertaken and accomplished by the City in accordance with the terms and conditions of a grant agreement between the City and the United States under the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, as amended, pursuant to which the United States has agreed to pay a certain percentage of the costs of the project that are determined to be allowable project costs under the Act. The United States is not a party to this contract and no reference in this contract to the FAA or any representative thereof, or to any rights granted to the FAA or any representative thereof, or the United States, by the contract, makes the United States a party to this contract.
2. Consent to Assignment. The Contractor shall obtain the prior written consent of the City to any proposed assignment of any interest in or part of this contract.
3. Convict Labor. No convict labor shall be employed under this contract.
4. 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.

Withholding City from Contractor. Whether or not payments or advances to the City are withheld

or suspended by the FAA, the City may, pursuant to applicable law, withhold or cause to be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor on the work the full amount of wages required by this contract.

5. Nonpayment of Wages. If the Contractor or any subcontractor fails to pay any laborer or mechanic employed or working on the site of the work any of the wages required by this contract, the City may take such action as may be provided for under any applicable law, to cause the suspension of any further payment or advance of funds until the violations cease.
6. FAA Inspection and Review. The Contractor shall allow any authorized representative of the FAA to inspect and review any work or materials used in the performance of this contract.
7. Subcontracts. The Contractor shall insert in each of his subcontracts the provisions contained in paragraphs 1, 3, 4, 5, 6, and 7 of this section and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.
8. Contract Termination. A breach of paragraphs 6, 7 and/or 8 may be grounds for termination of the contract.
9. Lobbying and Influencing Federal Employees. (1) No Federal appropriated funds shall be paid, by or on behalf of the contractor, 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 and the amendment or modification of any Federal grant. (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 any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.
10. Liquidated Damages - Contractor understands and agrees that if Contractor fails to complete the work required by the Contract in accordance with the Contract Documents, City will suffer damages which cannot be quantified as of the date of execution hereof. Therefore, Contractor and City have agreed to stipulate the amount payable by the Contractor in the event of its failure to meet a Completion Deadline. As such, in the event of Contractor's failure to achieve the required deadlines, Contractor agrees to pay the City Liquidated Damages in the amount of \$25,000 per calendar for each day the project is not substantially complete and accepted beyond the overall project performance period. The overall project performance period shall be set as 120 calendar days after issuance of Notice-to-Proceed (NTP). Liquidated damages cover all extra costs incurred by the Airport for additional construction management and construction engineer and inspection time while the project is still underway beyond the projected performance period of the agreement.

Liquidated damages will be set at \$5,500 per calendar day for each day a phased work area is not fully re-opened per the phasing limitations set forth in the Agreement.

The parties intend for the Liquidated Damages set forth herein to constitute liquidated damages as such term is used in California Government Code Section 53069.85 to the extent said statute may apply, and to constitute stipulated damages to the extent that said statute is not applicable. Contractor acknowledges and agrees that the Liquidated Damages are intended to compensate the City solely for Contractor's failure to meet the deadlines for completion set forth in the Contract Documents and shall not excuse Contractor from liability from any other breach of Contract requirements, including any failure of the work to conform to applicable requirements.

B. Miscellaneous Clause Requirements for All Construction Contracts and Subcontracts Unless Otherwise Indicated.

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:

1. Compliance with Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (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 incorporated by reference and made a part of this contract.
2. Nondiscrimination. The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, sex, age, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The 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.
3. Solicitations for Subcontractors 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 shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, sex, age, color, or national origin.
4. Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directive 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 City or the FAA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the City or the FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the, nondiscrimination provisions of this contract, the City shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. Cancellation, termination or suspension of the contract, in whole or in part.
6. Incorporation of Provisions. The Contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Contractor shall take action with respect to any subcontract or procurement as the City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the City to enter into such litigation to protect the interests of the City and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
7. Breach of Contract Terms - Sanctions. Contracts/Subcontracts shall contain such contractual provisions or conditions which will allow for administrative, contractual or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A sample clause is: "Any violation or breach of the terms of this contract on the part of the Contractor/Subcontractor may result in the suspension or termination

of this contract or such other action which may be necessary to enforce the rights of the parties of this agreement."

The terms and conditions of paragraph 80-09 of the General Provisions of these Contract Documents are hereby made a part of this agreement as fully as if set out at length herein.

8. Contract Termination. (For contracts in excess of \$10,000.) 49 CFR Part 18.36(i)(2)
 - a. The City may, by written notice, terminate this contract in whole or in part at any time, either for the City's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the City.
 - b. If the termination is for the convenience of the City, an equitable adjustment, as determined by the City in its sole discretion, in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
 - c. If the termination is due to failure to fulfill the contractor's obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the City for any additional cost occasioned to the City thereby.
 - d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.
 - e. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
9. Rights to Inventions - Materials. (For contracts or agreements involving imported products, processes, methods, etc.) All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the recipient of the Federal grant under which this contract is executed. Information regarding these rights is available from the FAA and the City.
10. Airport and Airway Improvement Act of 1982, Section 520 – General Civil Rights Provisions. The contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures of improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the City 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 City 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.
11. Energy Conservation – 49 CFR Part 18.36. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163)

C. Access to Documents, Records, Etc.

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1. For All Cost Reimbursement Type of Contracts.

The Contractor shall maintain an acceptable cost accounting system. The City, the Administrator of the FAA and the Comptroller General of the United States, or an authorized representative of either, shall be allowed access to the Contractor's records which are pertinent to the contract for the purpose of accounting and audit. The Contractor shall maintain all required records for three years after the City makes final payment and all other ending matters are closed.

2. For All Negotiated Contracts in Excess of \$10,000.

The Contractor shall maintain an acceptable cost accounting system. The City, the FAA, the Comptroller General of the United States, or any of their duly authorized representatives, shall be allowed access to any books, documents, papers and records of the Contractor which are directly pertinent to an AIP project(s) for the purpose of making audit, examination, excerpts and transcriptions. The Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed.

D. Labor Contract Clauses for All Construction Contracts and Subcontracts in Excess of \$2,000.

1. Minimum Wages.

a. All laborers and mechanics employed or working on the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to laborers or mechanics, subject to the provisions of paragraph (l)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification maybe compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time set in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (l)(ii) of this section and the Davis-Bacon poster (WH-1321) shall be posted all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

b. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits, therefore, only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determinations; and

- (2) The classification is utilized in the area by the construction industry, and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- c. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U. S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140).
 - d. In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140).
 - e. The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (l)(c) or (d) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
 - f. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - g. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside, in a separate account, assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140).
2. Withholding. The Federal Aviation Administration or the City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor, the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the

Contractor, City, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payroll and Basic Records.

- a. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof as described in 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB control Numbers 1215-0140 and 1215-0017).
- b. The Contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the applicant, City, or owner, as the case maybe, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (3)(a) above. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of the Management and Budget under OMB Control Number 1215-0149).
- c. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be maintained under paragraph (3)(a) above and that such information is correct and complete;
 - (2) That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

- d. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 (Section VIII – Contract Forms) shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(c)(2) of this section.
- e. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code. The Contractor or subcontractor shall make the records required under paragraph (3)(a) of this section available for inspection, copying or transcription by authorized representatives of the City, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, City, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

- a. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits, in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- b. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval,

evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll as a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- c. **Equal Employment Opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
5. **Compliance With Copeland Act Requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.
6. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5 and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all contract clauses in 29 CFR Part 5.5. The Contractor agrees to abide by all requirements for Subcontractor listing and replacement, found in the California Public Contract Code.
7. **Contract Termination: Debarment.** A breach of the contract clauses in paragraph (1) through (10) of this section and paragraphs (1) through (5) of the next section below may be grounds for termination of the contract, and for the debarment as a contractor and subcontractor as provided in 29 CFR 5.12.
8. **Compliance With Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1 and 5 are herein incorporated by reference in this contract.
9. **Disputes Concerning Labor Standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of Eligibility.**
 - (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any

person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act of 29 CFR 5.12(a)(I).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act of 29 CFR 5.12(a)(I).

(iii) The penalty for making false statements is prescribed in the US. Criminal Code, 18 U.S.C. 1001.

E. Contract Work Hours and Safety Standards

1. Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph 1 above, the Contractor or any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.
3. Withholding for Unpaid Wages and Liquidated Damages. The Federal Aviation Administration or the City shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.
4. Subcontractors. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4.
5. Working Conditions. No contractor or subcontractor may require any laborer or mechanic employed in the performance of any contract to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to his health or safety as determined under construction safety and health standards (29 CFR Part 1926) issued by the Department of Labor.

F. Equal Employment Opportunity Clause For All Construction Contracts and Subcontracts Exceeding \$10,000. During the performance of this Contract, the Contractor agrees as follows, except any contracts/subcontracts (or certifications preliminary thereto) with a state or local government or any agency, instrumentality or subdivision of such governments which does not participate in work on or under the Contract or subcontract.

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their

race, color religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the Contractors' commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provision of this nondiscrimination clause.

4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations and others of the Secretary of Labor, or pursuant, thereto, and will permit access to his books, records and accounts by the FAA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by Law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph 1 and the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or Vendor. The Contractor will take such action with respect to any subcontract or purchase order, enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with litigation with a subcontractor or Vendor as a result of such direction by the FAA the Contractor may request the United States to enter into such litigation with a subcontractor or Vendor as a result of such direction by the FAA the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. Notices to be Posted per Paragraphs (1) and (3) of the EEO Clause – 41 CFR Part 60-1.4(b) – (Version 1, 1/5/90). Equal Employment Opportunity is the Law – Discrimination is Prohibited by the Civil Rights Act of 1964 and by Executive Order No. 11246 Title VII of the Civil Rights Act of 1964 – Administered by:

The Equal Employment Opportunity Commission

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin by Employers with 25 or more Employees, by Labor Organizations with a hiring hall of 25 or more members, by Employment Agencies, and by Joint Labor-Management Committees for Apprenticeship or Training.

Any Person who believes he or she has been discriminated against should contact:

The Office of Federal Contract Compliance Programs
U.S. Department of Labor
Washington, D.C. 20210

G. Disadvantaged Business Enterprises (DBE)

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

Prompt Payment (§26.29) - The contractor agrees to pay each subcontractor under this contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the contractor receives from the City. The Contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

1. Contractor Responsibilities: The Contractor shall agree to the below stated Department of Transportation Policy and Disadvantaged Business Enterprises Obligation and further agree to insert the following clauses a, b, and c in any subcontracts.
 - a. Policy. It is the policy of Palm Springs International Airport to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:
 1. To ensure nondiscrimination in the award and administration of DOT-FAA-AIP assisted contracts;
 2. To create a level playing field on which DBE's can compete fairly for DOT-FAA-AIP assisted contracts;
 3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
 4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE's;
 5. To help remove barriers to the participation of DBE's in DOT-FAA-AIP assisted contracts; and
 6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.
 - b. DBE Obligation The Contractor, sub recipient 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. The Contractor or subcontractor, by submission of any offer and/or execution of a contract, agrees to

include these assurances in all subcontracts. The Contractor shall report quarterly DBE participation as required.

c. Compliance. 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.

2. Documentation. The Contractor shall keep such records as are necessary to show compliance with the City's DBE Program and, on the request of the City, shall make such records available on a quarterly basis for review by the City and the FAA.

H. Clean Air and Water Pollution Control Requirements for All Construction Contracts and Subcontracts Exceeding \$100,000.

Contractors agree:

1. That any facility to be used in the performance of the contract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) list of Violating Facilities.
2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder.
3. That as a condition for award of a contract they will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be utilized for performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. To include or cause to be included in any contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.
5. Contractor agrees to include all language in Section H. in all subcontracts.

I. Bonding Clauses for Construction Contracts and Subcontracts.

1. The Contractor agrees to furnish a performance bond in a form approved by the City for 100 percent of the contract price. This bond is one that is executed in connection with a contract to secure fulfillment of all of the Contractor's obligation under such contract.
2. The Contractor agrees to furnish a payment bond in a form approved by the City for 100 percent of the contract price. This bond is one that is executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the Contract.

J. Buy American - Steel and Manufactured Products for Construction Contracts (Jan 1991)

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

- b. Components. As used in this clause, components means those articles, materials, and supplies incorporated directly into steel and manufactured products.
 - c. Cost of Components. This means the costs for production of the components, exclusive of final assembly labor costs.
2. The Contractor will be required to assure that only domestic steel and manufactured products will be used by the Contractor, subcontractors, materialmen, and suppliers in the performance of this contract, except those
- a. that the U.S. Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality,
 - b. that the U.S. Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, that domestic preference would be inconsistent with the public interest; or
 - c. that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

Article 6. The Contractor agrees to accept as his full and only compensation for the performance of all the work required under this Contract such sum or sums of money as may be proper in accordance with the price or prices set forth in the Contractor's Proposal attached hereto and made a part hereof covering all of the items.

Article 7. To the extent allowed by law, the Contractor agrees to indemnify, defend and hold harmless the City, from any and all claims and damages to property and injury to persons which may arise both of and during operations under this Contract, whether such operations be by the Contractor or by any subcontractor or anyone directly or indirectly employed by the Contractor or any other employee or person employed or engaged on or about, of in connection with, the construction.

Article 8. Venue and jurisdiction of any action will only be brought in the Indio Superior Court, Riverside County, California.

Attorney Fees, Costs, and Expenses of Litigation - If any action at law or in equity is necessary to enforce or interpret the terms of this agreement, each party shall bear its own attorneys' fees, costs and necessary disbursements. Notwithstanding the foregoing, if any action is brought against the Contractor or any subcontractor to enforce a Stop Notice or Notice to Withhold which names the City as a party to said action, the City shall be entitled to reasonable attorneys' fees, costs and necessary disbursements arising out of the defense of such action by the City. The City shall be entitled to deduct its costs for any Stop Notice filed, whether court action is involved or not.

Article 9. In the event a Stop Notice or Notice to Withhold is filed, the CITY, at its sole discretion, may, at any time, retain out of any amounts due to the CONTRACTOR, sums sufficient to cover any and all claims filed pursuant to Section 3196 *et seq.*, of the California Civil Code."

Article 10. Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the Notice.

Article 11. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or

discharge the assignor from any duty or responsibility under the Contract Documents.

Article 12. Subsection 70-12 of Section 70 of 09-General Provisions of the Specifications and Contract Documents for Improvements to Palm Springs International Airport (FAA AIP Project No.: 3-06-0181-053-2015 (Construction), dated February, 2015, is amended to read:

70-12 THIRD PARTY BENEFICIARY CLAUSE. Except as otherwise provided in these Specifications (including without limitation Subsections 70-10 and 70-11 above), the parties executing the contract agree that it is not intended that this contract creates for the public or any member thereof, a third party beneficiary or to authorize anyone not a party to the contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the contract.

Article 13. Subsection 7-14 is added to Section 70 of 09-General Provisions of the Specifications and Contract Documents for Improvements to Palm Springs International Airport (FAA AIP Project No.: 3-06-0181-053-2015 (Construction), dated February, 2015, to read:

70-14 INSURANCE REQUIREMENTS. Contractor shall procure and maintain, at its sole cost and expense, the insurance described below. The insurance shall be for the duration of this Agreement and includes any extensions, unless otherwise specified in this Contract. The insurance shall be procured in a form and content satisfactory to City's Risk Manager. The insurance shall apply against claims which may arise from the Contractor's performance of Work under this Agreement, including Contractor's agents, representatives, or employees. In the event the City's Risk Manager determines that the Work or Services to be performed under this Contract creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City's Risk Manager or his designee. Contractor shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified in this Contract. Except as otherwise authorized below for professional liability (errors and omissions) insurance, all insurance provided under this Contract shall be on an occurrence basis. The minimum amount of insurance required shall be as follows:

A. **Workers' Compensation Insurance.** Contractor shall obtain and maintain, in full force and effect throughout the term of this Contract, workers' compensation insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Contractor agrees to waive and obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies. If Contractor has no employees, Contractor shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

B. **Commercial General Liability Insurance.** Contractor shall obtain and maintain, in full force and effect throughout the term of this Contract, a policy of commercial general liability insurance written on a per occurrence basis with a combined single limit of at least five million dollars (\$5,000,000.00) and five million dollars (\$5,000,000.00) general aggregate for bodily injury and property damage including coverages for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.

C. **Business Automobile Insurance.** Contractor shall obtain and maintain, in full force and effect throughout the term of this Contract, a policy of business automobile liability insurance written on a per occurrence basis with a single limit liability in the amount of two million dollars (\$2,000,000.00) bodily injury and property damage. The policy shall include coverage for owned, non-owned, leased, and hired cars.

D. **Employer Liability Insurance.** Contractor shall obtain and maintain, in full force and effect throughout the term of this Contract, a policy of employer liability insurance written on a per occurrence basis with a policy limit of at least two million dollars (\$2,000,000.00) for bodily injury or disease.

70.14.1 **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City's Risk Manager or his/her designee prior to commencing any work or services under this Contract. Contractor guarantees payment of all deductibles and self-insured retentions. City reserves the right to reject deductibles or self-insured retentions in excess of \$1,000,000, and the City's Risk

Manager or his/her designee may require evidence of pending claims and claims history as well as evidence of Contractor's ability to pay claims for all deductible amounts and self-insured retentions proposed in excess of \$1,000,000.

70.14.2 Other Insurance Requirements. The following provisions shall apply to the insurance policies required of Contractor under this Contract:

A. For any claims related to this Contract, Contractor's coverage shall be primary insurance with respect to the City and its officers, council members, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City and its officers, council members, officials, employees, agents, and volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

B. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and its officers, council members, officials, employees, agents, and volunteers.

C. All insurance coverage and limits provided by Contractor and available or applicable to this Contract are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Contract or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.

D. No required insurance coverages may include any limiting endorsement which substantially impairs the coverages set forth in this Contract (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City Manager and approved in writing.

E. Contractor agrees to require its insurer to modify insurance endorsements to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the endorsements. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Contractor's obligation to ensure timely compliance with all insurance submittal requirements as provided in this Contract.

F. Contractor agrees to ensure that subcontractors, and any other parties involved with the Project who are brought onto or involved in the Project by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.

G. Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it waive any rights in this or any other regard.

H. Contractor shall provide proof that policies of insurance required in this Contract, expiring during the term of this Contract, have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. Endorsements as required in this Contract applicable to the renewing or new coverage shall be provided to City no later than ten (10) days prior to expiration of the lapsing coverage.

I. Requirements of specific insurance coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements, or as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

J. The requirements in this section supersede all other sections and provisions of this Contract to the extent that any other section or provision conflicts with or impair the provisions of this section.

70.14.3 Contractor agrees to provide immediate notice to City of any claim or loss against Contractor arising out of the Work performed under this Contract and for any other claim or loss which may reduce the insurance available to pay claims arising out of this Contract. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City, or to reduce or dilute insurance available for payment of potential claims.

70.14.4 Contractor agrees that the provisions of this Subsection 70.14 shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages resulting from the Contractor's activities or the activities of any person or person for which the Contractor is otherwise responsible.

70.14.5 Sufficiency of Insurers. Insurance required in this Contract shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VII, or better, unless such requirements are waived in writing by the City Manager or his designee due to unique circumstances.

70.14.6 Verification of Coverage. Contractor shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, affecting all of the coverages required by this Contract. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Contractor's insurers to provide complete, certified copies of all required insurance policies at any time.

Verification of Insurance coverage may be provided by: (1) an approved General and/or Auto Liability Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

A. "The City of Palm Springs, its officials, employees, and agents are named as an additional insured..." ("as respects City of Palm Springs Contract No.____" or "for any and all work performed with the City" may be included in this statement).

B. "This insurance is primary and non-contributory over any insurance or self-insurance the City may have..." ("as respects City of Palm Springs Contract No.____" or "for any and all work performed with the City" may be included in this statement).

C. "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named." Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out.

D. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents, and volunteers.

In addition to the endorsements listed above, the City of Palm Springs shall be named the certificate holder on the policies. All certificates of insurance and endorsements are to be received and approved by the City's Risk Manager before work commences. All certificates of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

The total estimated cost for AIP Project No. 3-06-0181-052-2015 and Invitation for Bids (IFB) 15-15, thereof to be **Three million, nine hundred, thirty four thousand, three hundred forty six dollars (\$3,934,346.00)**.

Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates stated below.

"CITY"
City of Palm Springs

Date: _____

By: _____

David H. Ready
City Manager

APPROVED AS TO FORM:

ATTEST

By: _____

Douglas C. Holland,
City Attorney

By: _____

James Thompson,
City Clerk

APPROVED BY CITY COUNCIL:

Date: _____ **Agreement No.** _____

Corporations require two notarized signatures. One signature must be from Chairman of Board, President, or any Vice President. The second signature must be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.

COMPANY NAME:

Check one Individual Partnership Corporation

Address

By _____

Signature (Notarized)

By _____

Signature (Notarized)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1180

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____
Date Here Insert Name and Title of the Officer
personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer is Representing: _____

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer is Representing: _____