

Exhibit "A"



Subcontractor Addition and Substitution

Policy and Procedure

Mayor Frank G. Jackson

EFFECTIVE DATE: November 1, 2011

Direct Questions to: Commissioner James E. Hardy (216) 664-2629

Sub-contractor Addition and Substitution Policy and Procedure

Purpose

The purpose of this Policy is to state the policies and practices which all City departments should follow to obtain the previous written Board of Control consent required for a City contractor to add a subcontractor, or to substitute one subcontractor for another subcontractor, under a City contract.

Policy and Procedure

Each subcontractor proposed for a City contract, whether for a purchase, public improvement, or professional services, must be approved by the Board of Control (the "BOC") *prior* to the commencement of work and or services by the subcontractor. Subcontractor approval will be considered by the BOC upon recommendation of the department Director. A subcontractor identified as a certified Cleveland-Area Small Business ("CSB"), a Minority Business Enterprise ("MBE"), or a Female Business Enterprise ("FBE") (each generically also a "certified sub-contractor") proposed for a contract, whether as an additional or substitute subcontractor, must also be verified as such by the Office of Equal Opportunity ("OEO").

Note: The City assumes no obligation to pay, and will not pay, a contractor for any work and or services performed by a sub-contractor on the contract prior to Board of Control approval of that sub-contractor.

Except upon occurrence of an emergency requiring immediate use of a subcontractor to prevent an interruption of public service or endangerment of public health, safety or welfare as declared and determined solely by the Director, the prime contractor is responsible for submitting all required supporting documentation to the contracting department Director, through the designated Project Manager for the contract (the "Project Manager"), if any, no less than 3 (three) weeks in advance of the date the additional or substitute subcontractor is needed on the project, to allow time for internal and BOC approvals without delay or interruption of the project.

Note: The Director will not grant any City contractor additional time to meet project deadlines, and will not authorize or pay additional compensation or delay damages of any kind arising from the contractor's inability to add or substitute a subcontractor because the contractor failed to submit the approval request and supporting documentation at least 3 (three) weeks in advance of the date the additional or substitute sub-contractor is needed.

The contracting department Project Manager, if any, for a particular contract will serve, on behalf of the department Director, as the primary contact for the prime contractor. The contracting department Director is responsible for assessing the completeness and sufficiency of the supporting documentation received from the prime contractor and subcontractor, for timely processing of the documentation through the appropriate internal department review(s) and approval(s) and forwarding to the OEO, if required, for evaluation and approval prior to any placement on the Board of Control agenda and for submitting the appropriate Board of Control resolution for approval.

Substitution for a Certified Subcontractor. A contractor must provide the contracting department director, through the Project Manager, written justification for any proposed substitution for a certified sub-contractor.

When obtaining one or more substitutes for a certified subcontractor, a contractor shall make a good-faith effort to fulfill or exceed its original certified subcontractor utilization commitment or the contract goal(s) for the contract, whichever is greater. (Section 187.13 C.O.) The contractor shall document its good-faith effort by submitting complete, revised OEO Schedules 2 and 3 to the contracting department Director, through the Project Manager, with its request to the City for approval.

Note: The OEO shall evaluate each subcontractor addition and substitution for increased CSB, MBE, or FBE participation even if the original contract had no certified sub-contractor participation.

Federally Funded Projects. For projects funded directly or indirectly by the federal government where the contracting department is responsible for monitoring Disadvantaged Business Enterprise ("DBE") participation, the department's monitoring unit shall perform the role otherwise performed by OEO. The supporting documentation for the evaluation and approval of an additional or substitute DBE subcontractor must be forwarded to OEO for information purposes. The department Director shall also submit any necessary supporting documentation with its request for Board of Control approval.

Monitoring and Enforcement. The Project Manager shall, under direction of the department Director, verify that the contractor's subcontractor utilization complies with the Board of Control's subcontractor approval(s) by reviewing the contractor's documentation and by worksite visits. The presence on the Project worksite of any subcontractor not previously approved by the Board of Control shall be immediately reported to the department Director for action.

The Project Manager shall maintain copies of all verification records in the contracting department.

Penalties for Non-Compliance. The Project Manager will document and report any findings of non-compliance with this Policy by a contractor to the contracting

department Director. The department Director will then submit a copy of the findings, and a recommendation for action or no action, to the Director of Law. If non-compliance with Chapter 187 C.O. is found regarding a certified sub-contractor, the department Director must also submit a copy of the findings to the Director of the OEO for determination of sanction(s) or penalty (ies) under that chapter and/or under the contract terms.

Exhibit "B"

Ordinance No. 1660-A-09

(As a substitute for Ord. No. 1660-09)

Mayor Jackson and
Council Member Cimperman

AN ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Sections 187A.01 to 187A.06 and 187A.99, relating to the Local Producer, Local-Food Purchaser, and Sustainable Business Preference Code.

WHEREAS, large purchasers of goods and materials such as the City of Cleveland can strengthen the regional economy by procuring a greater percentage of their purchases from local businesses; and

WHEREAS, purchasing local products will reduce the City of Cleveland's carbon footprint by reducing the distance that goods travel from factories and farms to the city, thereby decreasing the amount of harmful emissions; and

WHEREAS, the Greater Cleveland region has a vibrant manufacturing, industrial, and food production history and we are continuing to strengthen our local economy by supporting local producers; and

WHEREAS, purchasing local goods and materials will increase the City of Cleveland's self-reliance and resiliency, as well as acting as a model for local purchasing policies that support both local and regional business development and economic growth; and

WHEREAS, encouraging local businesses to follow sustainable practices will expedite their participation in high-growth sectors of the economy such as renewable energy, recycling, green building, zero waste and other sustainable businesses, which in turn will encourage more graduates to remain in the Greater Cleveland region and attract new talent to the region; now, therefore

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Sections 187A.01 to 187A.06 and 187A.99, to read as follows:

Ordinance No. 1660-A-09

(As a substitute for Ord. No. 1660-09)

Mayor Jackson and
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CHAPTER 187A LOCAL PRODUCER, LOCAL-FOOD PURCHASER, AND SUSTAINABLE BUSINESS PREFERENCE CODE

Section 187A.01 Definitions of Terms

As used in this Chapter, the following words, phrases, and terms shall be defined as set forth below:

- (a) "Bidder" means a Person offering or proposing to contract with the City respectively in response to an Invitation to bid or to a request for proposals.
- (b) "Bid Discount" means the application of a percentage discount to the total amount of a bid submitted by a Bidder for a Contract solely for the purpose of bid comparisons when determining the lowest and best bid, or lowest responsible bid. The use of a Bid Discount for Bid Comparison does not alter the total amount of the bid submitted by a Bidder or the Contract executed based on a bid.
- (c) "Business Enterprise" means a firm, sole proprietorship, partnership, association, corporation, company, or other business entity of any kind including, but not limited to, a limited liability corporation, incorporated professional association, joint venture, estate, or trust.
- (d) "City" means the City of Cleveland, Ohio.
- (e) "Commercially Useful Function" means when a Local Producer or Local-Food Purchaser:
 - (1) Assumes the actual and contractual responsibility for furnishing the supplies or materials;
 - (2) Is recognized as a provider of the contracted supplies and materials by the industry involved;
 - (3) Owns or leases a warehouse, yard, building or other facilities for stocking inventory or otherwise conducts business in a manner which is usual and customary in the industry and market for the supplies or materials; and
 - (4) Distributes, delivers, and services products primarily with its own staff and/or equipment.
- (f) "Commissioner" means the Commissioner of Purchases and Supplies or the Commissioner's designee.
- (g) "Contract" means a binding agreement executed on or after the effective date of this Local Producer, Local-Food Purchaser, and Sustainable Business Preference Code by which the City either grants a privilege or is committed to expend or does expend its funds or other resources, or confers a benefit having monetary value including, but not limited to, a grant, loan, interest in real or personal property, or tax

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Incentive in any form for or in connection with any work, project, or public purpose including, but not limited to, a contract for the:

- (1) Construction of any public improvement, including change orders or subsidiary agreements approved by the City during the performance of such construction;
- (2) Purchase of personal property;
- (3) Purchase of any supplies, equipment or services; or
- (4) Lease of any personal property.

"Contract" shall include a binding agreement, funded or benefited by the City, between a party to a Contract and a third party, but shall exclude contracts with other public entities, except as provided in Section 187.09.

(h) "Contracting Department" includes any administrative department under charge of the Mayor or any office, board, or commission treated or construed as a department of City government for any purpose under the Charter or ordinances of the City for the benefit or program of which the City enters into a particular Contract.

(i) "Contractor" means a separate or distinguishable Business Enterprise employing one or more persons and participating in the performance of a Contract and shall include a Person in privity of contract with a Contractor for implementation of a Contract.

(j) "Director" means the official authorized to enter into a Contract on behalf of a particular Contracting Department.

(k) "Evaluation Credit" means a predetermined number of points in the evaluation of proposals submitted by a bidder for a Contract to be added solely for the purpose of proposal comparison when evaluating comparable proposals. The use of Evaluation Credits does not alter the amount of the proposal submitted by a bidder or the Contract executed based on the proposal.

(l) "Local Contracting Market" or "Contracting Market" means the geographic market area consisting of Cuyahoga County, Geauga County, Lake County, Lorain County, and Medina County, Ohio; provided, however, that with respect to growers or producers of food only, the geographic market area shall include: Erie County, Huron County, Richland County, Ashland County, Wayne County, Holmes County, Stark County, Summit County, Portage County, and Tuscarawas County.

(m) "Local Food" means and includes food that is grown, extracted, produced, recycled or manufactured within the Local Contracting Market.

(n) "Local Producer, Local-Food Purchaser, and Sustainable Business Preference Code", "Preference Code", "Code" or "Chapter" means all of the provisions of this Chapter 187A of the Codified Ordinances of Cleveland, Ohio, 1976.

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(o) "Local Producer" means a Person that:

(1) has its principal office (headquarters) located physically in the Local Contracting Market and whose highest executive officers and highest level managers maintain their offices and perform their respective executive and managerial functions and duties in the Local Contracting Market; and

(2) A. grows food or fabricates goods, whether or not finished, from organic or raw materials;

B. processes goods, materials, food or other products so as to increase their commercial value by not less than 50%;

C. supplies goods by performing a Commercially Useful Function; or

D. provides, by its qualified full-time employees, maintenance, repair, personal, or professional services.

(p) "Local-Food Purchaser" means a Business Enterprise that, in implementation of its City contract, purchases Local Food in an amount comprising not less than twenty percent (20%) of the Business Enterprise's City Contract amount.

(q) "Local Sustainable Business" means a Business Enterprise that:

(1) has its principal office (headquarters) located physically in the Local Contracting Market and whose highest executive officers and highest level managers maintain their offices and perform their respective executive and managerial functions and duties in the Local Contracting Market; and

(2) has established sustainability goals for itself and is a member of or signatory to a nationally-recognized sustainability program, which goals and program have been determined acceptable by the City Chief of Sustainability or other officer designated by the Mayor.

(r) "OEO Director" means the Director of the Office of Equal Opportunity of the City.

(s) "Person" means and includes a natural person, a Business Enterprise or other entity, unless the context or usage requires otherwise.

Section 187A.02 Preference for Local Producers, Local-Food Purchasers, and Sustainable Businesses

(a) Application of Bid Discount - A Contracting Department shall apply a Bid Discount of two percent (2%) to a bid received from a Local Producer; two percent (2%) to a bid received from a Local Sustainable Business; and two percent (2%) to a bid received from a Local-Food Purchaser; provided that the maximum total Bid Discount applied under this division (a) shall not exceed four percent (4%). Bid

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Discounts applied under this division (a) shall be in addition to any Bid Discount applied under Sections 187.03 and 187.05. The maximum amount of any Bid Discounts applied to a bid under this division (a) shall not exceed \$50,000.00, provided, however, that the maximum cumulative amount of all Bid Discounts applied to the bid under this division (a) and under Sections 187.03 and 187.05 shall not exceed \$75,000.00.

(b) Application of Evaluation Credit - A Contracting Department shall apply an Evaluation Credit of two percent (2%) of the total points awarded for a proposal received from a Local Producer, two percent (2%) of the total points awarded for a proposal received from a Local Sustainable Business, and two percent (2%) of the total points awarded for a proposal received from a Local Food Purchaser, provided that the maximum total Evaluation Credit applied under this division (b) shall not exceed four percent (4%).

Section 187A.03 Duties of Director of Office of Equal Opportunity: Compliance Monitoring

(a) In addition to those duties specified in Section 123.08 and Section 187.02, the OEO Director, through the Office of Equal Opportunity employees as necessary, shall implement and enforce the provisions of this Code. The OEO Director's duties shall include, but not be limited to:

(1) Reviewing all submittals and other information required or necessary under this Code to determine whether a particular Person qualifies for certification or approval as a Local Producer or a Local-Food Purchaser or a Local Sustainable Business and is in compliance with this Code;

(2) Notifying an affected Contracting Department that the certificate or approval pertaining to a particular person is or is not currently effective with respect to the matters for which the same were issued;

(3) Initiating and receiving complaints of non-compliance with this Code; and

(4) Investigating complaints pertaining to non-compliance with this Code and recommending appropriate sanctions.

(b) The OEO Director shall monitor a Contractor's compliance with its bid representations of its qualification(s) as a Local Producer or Local-Food Purchaser or Local Sustainable Business during the performance of a Contract it was awarded because of applying a Bid Discount or Evaluation Credit under Section 187A.02. If the OEO Director determines that there is cause to believe that a Contractor failed to qualify as a Local Producer or Local-Food Purchaser or Local Sustainable Business as represented in its bid or proposal, the OEO Director shall notify the Contractor of the apparent breach of or default under the contract. The OEO Director may require a Contractor or Bidder to submit such reports, information and documentation as reasonably necessary to determine its status as a Local Producer or Local-Food Purchaser or Local Sustainable Business in the performance of its Contract.

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(c) The OEO Director shall maintain complete and accurate records of the use of Local Producer's or Local-Food Purchaser's or Local Sustainable Businesses' goods, materials, supplies, or services in performance of the Contracting Department's Contracts, including the dollar value of orders supplied by Local Producers or Local-Food Purchasers or Local Sustainable Businesses, the nature of the goods, materials, supplies, or services provided, and the name and address, and the qualifications of each Local Producer or Local-Food Purchaser or Local Sustainable Business as such.

Section 187A.04 Sanctions for Noncompliance

If the OEO Director determines that a Contractor is in breach or default with respect to any representation regarding its status as a Local Producer or Local-Food Purchaser or Local Sustainable Business when the Contractor would not have been the lowest bidder or recommended proposer for a Contract but for application of any Bid Discount(s) or Evaluation Credit(s) based upon that status, the OEO Director, in addition to other remedies available with respect to the foregoing or other defaults under any Contract in question, may recommend that the Contracting Department Director cancel the contract and declare a forfeiture of any performance bond.

Section 187A.05 Responsibilities of Commissioner and Contracting Departments

The Commissioner and each Contracting Department shall:

(a) Endeavor to maximize the purchase of Local Producers, Local-Food Purchasers, and Local Sustainable Businesses goods, materials, supplies, or services in Contracts of \$10,000 or less; and

(b) Develop lists of Local Producers, Local-Food Purchasers, and Local Sustainable Businesses for whose goods, materials, supplies, or services the City typically contracts.

Section 187A.06 Contracts with Other Governmental Entities as Contractors

Contracts or other agreements between the City and other political subdivisions, governmental, or quasi-governmental agencies, under which those entities receive money from or through the City for the purpose of contracting with Business Enterprises to perform projects in the City, shall encourage Business Enterprises to comply with the provisions of this Chapter in awarding, administering, and implementing the contracts.

Section 187A.99 Violations: Penalty

(a) No Person shall willfully falsify, conceal or cover up by a trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statements or representations or make use of any false writing or document knowing the same to

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contain any false, fictitious, or fraudulent statement or entry in any matter administered under this Chapter.

(b) No Person shall fraudulently obtain, attempt to obtain, or aid another Person fraudulently obtaining or attempting to obtain a Local Producer's or Local-Food Purchaser's or Local Sustainable Business' Bid Discount or Evaluation Credit.

(c) Any Person who violates the provisions of this section is guilty of a misdemeanor of the first degree.

(d) In addition to other remedies available with respect to violations of divisions (a) and (b) of this section, the OED Director may recommend to a Contracting Department Director, and a Contracting Department Director may:

(1) Recommend to the Director of Law that the City take such legal action, whether civil or criminal, as the Director of Law deems appropriate;

(2) - Disqualify a Bidder, Contractor, or other Business Enterprise from eligibility as Contractor, subcontractor, or Local Producer or Local-Food Purchaser or Local Sustainable Business for providing goods, materials, supplies, or services to the City for a period not to exceed two (2) years; or

(3) Make a claim for payment of damages, including but not limited to any liquidated damages specified in the Contract.

Section 2. That Sections 187A.01 to 187A.06 and 187A.99 of the Codified Ordinances of Cleveland, Ohio, 1976, shall take effect and be in force sixty (60) days after passage of this ordinance.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

JBM:RFH:nl
01-25-10

FOR: Mayor Jackson



FAA
Airports

Exhibit "C"

Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects

BREACH OF CONTRACT TERMS

This provision is required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II (A). This threshold is occasionally adjusted for inflation and is now equal to \$150,000.

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

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

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

GENERAL CIVIL RIGHTS PROVISIONS

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

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

TITLE VI SOLICITATION NOTICE:

The **City of Cleveland**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises (or airport concession disadvantaged business enterprises if this Agreement is a Concessions Agreement) will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

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

Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems,

places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

CLEAN AIR AND WATER POLLUTION CONTROL

This provision is required if the Agreement and lower tier contracts exceed \$150,000.

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

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

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

This provision applies if the Agreement exceeds \$100,000 and employs laborers, mechanics, watchmen, and guards. This includes members of survey crews and exploratory drilling operations.

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) of this clause, the Contractor and any subcontractor responsible therefor 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) of this clause, 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) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner 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 moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

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 prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

DISADVANTAGED BUSINESS ENTERPRISE

Information Submitted as a matter of bidder responsiveness:

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

As a condition of bid responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1)
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal; and
- 5) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

Information submitted as a matter of bidder responsibility:

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in its commitment within five days after bid opening.

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;

-
- 3) The dollar amount of the participation of each DBE firm listed under (1)
 - 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal; and
 - 5) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

SOLICITATION LANGUAGE (RACE/GENDER NEUTRAL MEANS)

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

DISADVANTAGED BUSINESS ENTERPRISES

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 Department of Transportation-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 Owner deems appropriate, which may include, but is not limited to:

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

Prompt Payment (§26.29) – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from the Department of Port Control. The prime contractor agrees further to return retainage payments to each subcontractor within 10 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 Department of Port Control. This clause applies to both DBE and non-DBE subcontractors. Failure to comply with these prompt payment requirements is a breach of the Contract, which may lead to any remedies permitted under law, including, but not limited to Contractor debarment.

EQUAL OPPORTUNITY CLAUSE

This section applies if the dollar amount of the Agreement exceeds \$10,000.

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

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, sexual orientation, gender identify, 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 considerations for employment without regard to race, color, religion, sex, or national origin.

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

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the 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, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The 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, 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 as the administering agency 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 vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE) SOLICITATION CLAUSE

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if

given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

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

CERTIFICATION REGARDING LOBBYING

This section applies if the dollar amount of the Agreement exceeds \$100,000.

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

PROHIBITION OF SEGREGATED FACILITIES

This section applies if the Agreement includes tasks that qualify as construction work as defined by 41 CFR part 60.

- (a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

PROCUREMENT OF RECOVERED MATERIALS

This section applies if the Agreement involves the procurement of a product that exceeds \$10,000.

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

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

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

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

RIGHTS TO INVENTIONS

This section applies if the Agreement is with a small business firm or nonprofit organization and includes the performance of experimental, developmental, or research work.

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14.

Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)

This section applies if the dollar amount of the Agreement exceeds \$10,000.

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

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

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

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

TERMINATION FOR DEFAULT (PROFESSIONAL SERVICES)

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

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

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

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

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

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

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

b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Owner:

1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

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

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

EXHIBIT D

Department of Port Control Specifications

For all work performed under the jurisdiction of the Department of Port Control, the technical specifications located through the below link must be followed. Any deviation to these specifications must be approved by Asset Management, in writing, before the performance of any work, bidding or qualifying.

<https://www.clevelandairport.com/about-us/business-cle/asset-management>

