

AGREEMENT BETWEEN THE RAPID CITY REGIONAL AIRPORT BOARD AND \_\_\_\_\_ FOR  
MARKETING SERVICES

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and between the City of Rapid City by and through the Rapid City Regional Airport Board, 4550 Terminal Road, #102, Rapid City, SD 57703, hereinafter called the "Airport" and \_\_\_\_\_, hereinafter called "Consultant".

WITNESSETH THAT:

WHEREAS, the Airport desires professional marketing services (hereinafter called the "Scope of Services") that are specifically set forth in this Agreement; and

WHEREAS, Consultant possesses the skills and expertise necessary to provide such Scope of Services as desired by the Airport; and

WHEREAS, the Airport issued a Request for Proposals ("RFP") for Marketing Services, attached hereto and incorporated herein as Exhibit A; and Consultant submitted a proposal, attached hereto and incorporated herein as Exhibit B, to the Airport in response to the RFP issued by the Airport, and the Airport thereafter selected that Proposal; and

NOW, THEREFORE, for the consideration hereinafter set forth, the parties hereto do mutually agree as follows:

## 1. HIRING OF CONSULTANT

The Airport retains and employs Consultant to act for and represent it in all matters involved in the performance of the Services, subject to the terms, conditions, and stipulations as hereinafter stated.

## 2. INDEPENDENT CONTRACTOR STATUS

The parties agree that Consultant is providing the Scope of Services under this Agreement as an independent business. The relationship between the Airport and the Consultant shall be that of the Airport and an independent contractor and not as an employer-employee relationship. Neither Consultant nor any of Consultant's agents, employees or helpers shall be deemed to be the employee, agent or servant of the Airport. Airport is interested in only the results or product obtained under this Agreement; the manner, means and mode of completing the same are under the sole control of the Consultant.

### 3. TERM OF AGREEMENT

This Agreement shall commence on January 1, 2026. The original term shall extend and continue for a period of three years from and after the commencement date, expiring on December 31, 2028, subject to cancellation and termination as described herein.

### 4. OPTION TO RENEW

Airport shall have an option to renew this Agreement upon the same terms and provisions herein (except that the “Scope of Services” and “Compensation” as those terms are defined below, may be modified as agreed upon by the parties) for one (1) successive one (1) year renewal term.

### 5. SCOPE OF SERVICES

Consultant shall render in a satisfactory and proper manner the services including, but not limited to development of overall Marketing Strategies, Strategic Planning, Creative Development and Production Services, Media and Market Strategy, Planning and Buying, Web Production, and Overall Reporting. In partnering at the strategic level, Consultant will be recognized as the Airport’s Agency of Record (AOR).

The Consultant shall lead a comprehensive brand redevelopment initiative that reflects the Airport’s strategic direction and modernized identity. This shall include:

- Designing a new logo and cohesive visual identity
- Developing comprehensive brand usage guidelines (including color palette, typography, and layout standards)
- Establishing new brand messaging and tone of voice
- Facilitating stakeholder engagement to ensure alignment and buy-in
- Creating a rollout strategy for the rebrand across all digital, print, and environmental applications

#### 5.1.Strategic Marketing Consultation & Creative Development

Consultant agrees to provide consultative services to the Airport. Such services shall include, but are not limited to, advice and project management of projects related to marketing of the Airport on a local, regional and national basis and the development of a Strategic Marketing Plan.

The Plan will detail the objectives, strategies and methods of execution to be undertaken, including measures to assess effectiveness to determine if objectives are met. Details could include, but may not be limited to campaign objectives, situation analysis (SWOT); target audiences; key products; key messages; creative concepts and briefs; recommendations for

research and creative pre-testing, as required; budget; timing; rationale; deliverables; actions and next steps; and evaluation process.

Consultant will be available to the Airport on an ongoing basis for discussion, meetings, and planning sessions in providing the following consultative services. Weekly conference call (or as mutually determined) will be held. The role and responsibilities of the Consultant include, but are not limited to:

- Develop the overall Marketing Strategic Plan (Plan).
- Provide advice and guidance on the use of new and emerging media and methods of execution, and consumer trends and technology developments that may impact strategies developed under the Agreement.
- Work on behalf of the Airport to develop partnerships with other travel industry businesses for leveraged and collaborative marketing campaigns.
- Prepare strategies using information provided in intake meetings and agency briefs, taking into consideration other marketing activities coordinated outside the Agreement.
- Assist in identifying inbound markets (cities) for Plan implementation.
- Assist on special marketing projects when new air travel routes are added, special events occur, and others as needed.
- Ensure strategies are actionable with validated support and ideas that are aligned.
- Ensure strategies are approved by the Airport prior to implementation.

## 5.2. Creative and Production Services

Estimates will be provided by the Consultant for production of all specific goods and services, including development of campaign concepts, copywriting, graphic design, technical pre- production, field production & post production. The role and responsibilities of the Consultant include, but are not limited to:

- Developing and producing advertising campaign creative in support of the Marketing Strategic Plan, creative briefs and guidance from the Airport.
- Attending client briefings and meetings, and participating in conference calls as required.
- Providing copy direction and ensuring overall quality of copy elements from concepts to final materials, including all digital advertising creative materials and any other marketing materials in support of digital advertising activities.
- Creating new copy elements and ensuring that messaging is consistent and appropriate for target audiences.

### 5.3. Production Services Outside of Consultant

Consultant will assume responsibility for contracting the services of outside suppliers and coordinate the completion of projects through those firms to ensure that agreed upon deadlines are met and high-quality standards are maintained. Consultant will provide Airport with all cost estimates prior to entering any agreements for outside services. Consultant will work to obtain the best price and quality for each project.

### 5.4. Media Services

The role and responsibilities of the Consultant include, but are not limited to:

- Developing a media plan based on the Marketing Strategic Plan, media strategies and tactical plans while optimizing cost efficiencies and effectiveness. Media plans could include, but may not be limited to:
- Campaign timing;
- Media selection and rationale, including but not limited to:
- Recommended media placements and costs; media weights, reach frequency and ad formats; media properties and cost by property; total media budget; flight plan, flow chart of activity and media exposure.
- Coordinating timely delivery of all creative materials in the proper formats for trafficking, in accordance with production requirements.
- Providing ongoing media consultation while keeping up to date on market and audience trends, recommending schedules or promotions that fit with the Airport's brand and goals, and fielding all media calls and questions on behalf of the Airport.
- Providing quarterly review and analysis of the performance of selected media.
- Presenting final media plan and schedule, including scheduling and rotation of ad creative, detailed media budgets, deadline dates, positioning, relative discounts, blocking charts, material instructions and ad production specifications.
- Performance Planning – Consultant will provide a document plan to accomplish set campaign goals. Upon an initial review period, key performance metrics will be able to be utilized to measure and optimize campaign performance in a real- time manner. Budgets will be determined or adjusted upon these measured goals with media investments continually adjusted to ensure campaign success.
- Post Buy Analysis – Consultant will audit all electronic, print and web invoices for proof of performance. Consultant will analyze the delivery on all invoices to ensure projected media goals are delivered as planned and will negotiate make- goods if necessary.
- Real-Time Dashboard Tracking – Consultant will provide a dashboard resource that tracks spending and impressions by time period, property level and medium.
- Campaign Performance Reports – Consultant will review campaign performance and key optimizations, and recommendations with the Airport on a monthly basis to ensure goals are pacing to expectations.

- Account Access – Consultant will provide the Airport access to all applicable advertising accounts for digital and social campaigns, including, but not limited to, Google Ads and Facebook Ads.
- The Consultant shall implement a real-time dashboard accessible by the Airport to monitor campaign spend, media impressions, and key performance indicators.
- Monthly performance reports shall be submitted, including analytics summaries, insights gained, and strategic recommendations for future optimizations.

### 5.5 Affiliate Marketing

The Consultant will assist in implementing an Expedia booking widget on Rapid City Regional Airport's website.

- Consultant will establish and maintain an affiliate program to monetize the Airport's website.
- On a monthly basis, the Consultant will report generated commission.
- All accumulated revenue from the affiliate program will be applied to any marketing efforts by the Consultant on behalf of the airport.

### 5.6 Non-Exclusivity

The Consultant acknowledges and agrees that this Agreement does not grant exclusivity. The Airport may, at its sole discretion, perform its own marketing efforts or assign work to other vendors for any services, campaigns, or projects, whether or not they are similar to the Scope of Services in this Agreement.

## 6.COMPENSATION & PAYMENT TERMS

Compensation is provided based on the three categories of Services as presented in this Agreement: Strategic Marketing Consultation and Creative Development, Creative and Production Services and Affiliate Marketing. All Services provided by the Consultant will be presented as a Proposal to the Airport on a project by project basis including all estimated costs for said project. Compensation will be based on each approved Proposal with no monthly retainer paid as part of this Agreement. Proposals are valid for thirty (30) days from the date they are submitted. No work shall begin on any project until it has been approved by the Airport.

For its media placement services, Consultant will receive a maximum media commission of twenty percent (20%) applicable on all traditional and digital paid media that is placed on behalf of the Airport such as television, radio, magazine, newspaper and online paid advertising including search engine marketing (SEM).

Consultant will provide billing statements on or before the twelfth business day of each month for all elements which have been completed during the previous month including consultation, production & media. In the event that billable projects are extended over a

period of more than sixty (60) days, projects will be billed in-progress. Payment is due forty-five (45) days after the billing statement is received.

In addition to billing statements, Consultant will provide Airport with detailed documentation of media placement and reimbursable expenses. Consultant will also provide copies of all tear sheets generated by media companies, as soon as they become available, detailing fulfillment of all media placement.

If funds are not budgeted or appropriated for any fiscal year for services provided by the terms of this agreement, this agreement shall impose no obligation on the Airport for payment. This agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage shall accrue to the benefit of the Contractor, its successors or assignees, for any further payments. For future phases of this or any project, project components not identified within this contract shall not constitute an obligation by the Airport until funding for that component has been appropriated.

Brand redevelopment services shall be distinctly scoped and invoiced, with clear breakdowns by project phase such as discovery, creative development, stakeholder input, and implementation. The Airport will allocate a separate budget specifically for these branding efforts in addition to the general annual marketing budget.

## 7. TRAVEL EXPENSES

All travel expenses incurred by the Consultant in fulfillment of this Agreement will be billed to the Airport at cost. Travel hours will be billed at 50% of the applicable billable rate. Consultant will make every reasonable effort to combine scheduled travel with other clients and share all travel related expenses equally among all clients being served with said travel.

## 8. CHANGES AND EXTRA SERVICES

The Airport may make changes within the general scope of this Agreement. If Consultant is of the opinion that any proposed change causes an increase or decrease in the cost/and or the time required for performance of this Agreement, Consultant shall so notify the Airport of that fact. Any agreed-upon changes will be reduced to writing amending this Agreement through Addendum signed by both parties.

Any changes to the guidelines of a project that result in budgetary changes must be agreed upon by both parties in writing. Should an initiated project be cancelled prior to completion, Consultant will bill Airport based on the number of hours and any out-of-pocket expenses associated with the canceled project.

The Airport may request Consultant to perform extra services not covered by the Scope of Services as set forth in this Agreement. Consultant shall perform such extra services and will be compensated for such extra services provided they are reduced to writing amending this Agreement through Addendum signed by both parties.

The Airport shall not be liable for payment of any extra services nor shall Consultant be obligated to perform any extra services except upon such written Addendum.

All proposals and estimated provided by the Consultant shall be deemed valid for a period of thirty (30) days from the date submitted to the Airport.

## 9. DELAYS

Consultant shall perform its Scope of Services with due diligence upon receipt of a written Notice to Proceed from the Airport. Upon written request of Consultant, the Airport may authorize costs to be incurred prior to such written Notice to Proceed.

If a delay in the performance of the Scope of Services arises due to causes beyond the Consultant's reasonable control and without its fault or negligence, the Consultant must promptly notify the Airport in writing of the delay. Such notice must include a description of the cause, expected duration, and steps taken to mitigate the delay.

Except as provided below, any adjustment to the timeline or total compensation caused by the delay will be made only by mutual written agreement of the parties, and only to the extent the delay demonstrably affects the Consultant's work. Adjustments may include either an increase or a reduction in compensation. If Consultant requests an adjustment to the compensation or timeline, Consultant must provide supporting documentation showing the cost or resource implications of the delay.

If the delay results in a reduction in scope, efficiency, or deliverable value, the Airport may unilaterally reduce compensation on a proportional basis to reflect the percentage of work not performed or value not delivered.

## 10. OWNERSHIP OF DOCUMENTS

All work products prepared by Consultant and its subcontractors pursuant to this Agreement, including, but not limited to, creative work, reports, work papers, and exhibits shall be and remain the property of the Airport and shall be made available and/or delivered to the Airport at any time at the Airport's request. A set of each document shall be provided to the Airport for its files. Consultant may retain copies of such documents as part of its record of professional activity. Consultant will retain pertinent records relating to the Scope of Services performed in connection with the Project for a period of three (3) years following completion of the Project, during which three (3) year period said records would be made available to the Airport at reasonable times.

Consultant will provide a copy of raw or working files and materials generated on their behalf for reproduction purposes. This will ensure brand standards and graphic treatments are used consistently throughout all messaging not done by Consultant.

All digital platforms, platforms, software tools, and online accounts created or utilized under this Agreement are the exclusive property of the Airport. The Consultant shall promptly provide full administrative access and transfer all login credentials to the Airport upon creation. Under no circumstances shall the Consultant restrict, delay, or deny the Airport's access to these digital resources.

All digital accounts, including but not limited to social media, website CMS, project management tools, advertising platforms, and analytics dashboards shall be created in the Airport's name. Full administrative access and all credentials shall be provided to the airport immediately upon creation. Consultant shall not restrict, delay or deny the airport's access or ability to edit any such assets.

## 11. CONFIDENTIALITY

All data, including originals, images and reproductions, prepared by, obtained by, or transmitted to Consultant in connection with this Agreement is confidential and proprietary information owned by the Airport. Except as specifically provided in this Agreement, Consultant shall not disclose data generated in the performance of the Services to any third person without the prior written consent of the Airport. The obligations of Consultant under this section shall survive the termination of this Agreement.

All deliverables, strategies, analytics, and campaign performance data created under this Agreement shall be deemed confidential and proprietary to the Airport and may not be disclosed without prior written consent.

## 12. INTELLECTUAL PROPERTY PROTECTION

Consultant will not obtain clearance or registration of intellectual property rights on behalf of the Airport, nor will it conduct an examination to determine the intellectual property rights of others. It is agreed that the Airport will utilize its own legal counsel in determining intellectual property rights of others as well as potential registration opportunities of executions developed for the Airport when and if necessary.

## 13. INDEMNIFICATION AND INSURANCE

General Indemnity. Consultant shall indemnify, save, hold harmless, and defend the Airport, its officials, agents and employees, its successors and assigns, individually or collectively, from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in any way by, resulting in any way from, or arising in any way out of the negligent acts, errors, or omissions of Consultant, its officers,



employees, agents or representatives in performance of Scope of Services under this Agreement unless such injury or damage is occasioned by the negligence or willful misconduct of the Airport, its officers, employees, or agents.

Insurance. During the term of this Agreement, Consultant shall at a minimum maintain the following insurance coverage in a policy format and with an insurer or insurers reasonably acceptable to the Airport:

1. Worker's compensation liability insurance in the amount of and form required under South Dakota law;
2. General Liability Insurance with limits of at least \$1,000,000 per occurrence for Bodily Injury and Property Damage, \$2,000,000 general aggregate. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be included. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Consultant or its employees carrying out the work involved in this Agreement.
3. Professional Liability Insurance with limits of at least \$1,000,000 per occurrence covering all work performed by the Consultant, its employees, subconsultants, or independent subconsultants. If this coverage is written on claims made policy form, the certificate of insurance must clearly state coverage is claims made and coverage must remain in effect for at least two years after final payment with the Consultant continuing to furnish the Airport certificates of insurance.

Consultant's General Liability Insurance shall include the "City of Rapid City and the Rapid City Regional Airport Board, individually and collectively, and its representatives, officers, officials, employees, agents and volunteers" as additional insured. The amounts of said insurance shall not be deemed a limitation on Consultant's agreement to save and hold the Airport harmless to the extent required under this Agreement.

The aforesaid insurance amounts and types of insurance shall be reviewed from time to time by the Airport and may be adjusted by the Airport if the Airport reasonably determines such adjustments are necessary to protect the Airport's interests. Consultant shall furnish the Airport no later than thirty (30) days following the execution of this Agreement a certificate or certificates of insurance as evidence that such insurance is in force. The Airport reserves the right to require a certified copy of such certificates upon request. Consultant shall name the Airport (as notated above) as an additional insured on such insurance policy or policies to the extent of contractual liability assumed by Consultant under this Agreement. Said policies shall be issued by an insurance company reasonably satisfactory to the Airport and shall be in a form and content satisfactory to the Airport and shall provide for thirty (30) days written notice to the Airport prior to the cancellation of or any material change in such policies.

## 14. TERMINATION

This Agreement may be terminated by either party hereto upon thirty (30) days' written notice in the event of failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the Airport for its convenience or because the Project has been permanently abandoned, but only upon fourteen (14) days' written notice to Consultant. Consultant shall not include any costs or perform any billable services after receipt of the notice of termination.

In the event of termination, Consultant shall be compensated for all services performed and costs incurred up to the effective date of termination for which Consultant has not been previously compensated, plus all obligations reasonably contracted for in advance and subject to payment, i.e., leases or similar contracted expenses reasonably incurred.

Upon receipt of notice of termination from the Airport, Consultant shall discontinue the Scope of Services unless otherwise directed by the Airport. Consultant shall complete and place all advertisements previously approved by the Airport unless otherwise instructed. All other rights and duties of the parties shall continue during such notice period with the Airport responsible to Consultant for payment of contract obligations incurred with third parties during this period.

If either Airport or Consultant desire to terminate all work in process commenced before the receipt of notice of termination, both party's written mutual consent is required. The parties shall mutually determine and agree in writing upon the amount of compensation to be received by Consultant for partially completed work.

Upon termination of this Agreement, Consultant shall assign the Airport all of its rights and contracts, agreements and arrangements, or other transactions made with third parties, effective on the termination date or on other such date as agreed by both parties. The Airport shall assume all obligations and hold Consultant harmless from all liability from that date forward. If any contract is non-assignable and consent to assignment is refused, or Consultant cannot obtain a release from its obligations, then, as to the unassigned or unreleased contracts only, Consultant shall continue performance and the Airport shall meet its obligations to Consultant as though the Agreement has not been terminated.

## 15. SUCCESSORS AND ASSIGNS

It is mutually understood and agreed that this Agreement may not be assigned without the Consultant first obtaining the prior written approval of the Airport. All of the terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of successors and assigns of the respective parties.

## 16. NONWAIVER

No failure or waiver or successive failures or waivers on the part of either party hereto, their successors or permitted assigns, in the enforcement of any condition, covenant, or article of this Agreement shall operate as a discharge of any such condition, covenant or article nor render the same invalid, nor impair the right of either party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other party hereto, its successors or permitted assigns.

## 17. NOTIFICATION

Any Notice shall be deemed to have been received (a) if deposited postage pre-paid in the United States mail, on the day of receipt, (b) if transmitted via email, on the day of such transmission, and (c) if personally delivered or if transmitted via Federal Express, United Postal Service, Express Mail or any commercial carrier, on the day of receipt. Notices shall be addressed as follows:

To the Airport:

Rapid City Regional Airport

Attn: Megan Johnson 4550 Terminal Road, #102

Rapid City, SD 57703-08706

Megan.johnson@rcgov.org

With Copy to:

City Attorney's Office Attn:

Carla Cushman 300 Sixth Street Rapid City, SD 57701

Carla.Cushman@rcgov.org

To the Consultant:

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## 18. APPLICABLE AND COMPLIANCE WITH LAW

Consultant shall comply with all existing and subsequently enacted Federal, State of South Dakota, and local laws, ordinances, codes and regulations that are, or become applicable to this Agreement. This Agreement shall be subject to, interpreted and enforced according to the laws of the State of South Dakota, without regard to any conflicts of law provisions. Parties agree to submit to the exclusive venue and jurisdiction of the State of South Dakota, 7th Judicial Circuit, Pennington County.

## 19. EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the Airport and Consultant and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations, or representations, written or oral, with respect to this Project.

## 20. AUDIT/RECORDS

The Airport reserves the right to, at reasonable times, audit Consultant's books and records relative to the performance of Scope of Services under this Agreement. All records pertaining to this Agreement shall be kept on a generally accepted accounting basis for a period of three (3) years following termination of the Agreement.

## 21. EQUAL OPPORTUNITY CLAUSES

Civil Rights Act of 1964, Title VI-49 CFR part 21 during the performance of this Agreement, Consultant for itself, its assignees and successors in interest agree as follows:

- A. Compliance with Regulations. Consultant shall comply with regulations relative to non-discrimination in Federally-assisted programs of the Department of Transportation (DOT) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (Regulations) which are herein incorporated by reference and made a part of this Agreement.
- B. Non-discrimination. Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, gender, age, national origin, or sexual orientation in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers the program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontractors, Including Procurements of Materials and Equipments. Install solicitations either by competitive bidding or negotiation made by

Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or suppliers shall be notified by Consultant of its obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, gender, color or national origin.

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

E. Sanctions for Non-Compliance. In the event of Consultant's non-compliance with the non-provisions of the Agreement, the Airport shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding of payments to Consultant under the Agreement until Consultant complies; and/or cancellation, termination or suspension of the Agreement in whole or in part.

F. Incorporation of Provisions. Consultant shall include the provisions of paragraphs A thorough E in every subcontract, including procurements of materials and leases of equipment, unless exempted by the Regulations or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as the Airport or the FAA may direct as a means of enforcing such provisions including sanctions for non-discrimination provided, however, that in the event Consultant becomes involved in or is threatened with litigation with a subcontractor or a supplier as a result of such direction, Consultant may request the Airport to enter into such litigation to protect interest of the Airport and, in addition, Consultant may request the United States to enter into such litigation to protect the interest of the United States.

[Disadvantage Business Enterprise Policy](#). It is the policy of the United States DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 and 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds and that a level playing field on which DBE's can compete is fairly created. Consequently, the DBE requirements of 49 CFR Part 26 and 49 CFR Part 23 may apply to this Agreement.

Airport and Airway Improvement Act of 1982, Section 520, General Civil Rights Provisions. Consultant assures that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to assure that no persons shall, on the grounds of race, creed,

color, national origin, gender, age, or physical disability, be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates

Consultant, its subcontractors, successors, or assignees 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 an interest therein or structures for improvements thereon. In these cases, the provision obligates the Consultant, its subcontractors, successors and assigns for the longer of the following period:

the period during which the property is being used by the Airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits, or the period during which the Airport sponsor or any transferee retains ownership or possession of the property.

In the case of Consultants, this provision binds the Consultants from the bid solicitation period to the completion of the Agreement.

## 22. GOVERNMENTAL CERTIFICATION REQUIREMENTS

Trade Restriction Clause – 49 CFR Part 30. The Consultant and/or its subcontractors, by submission of an offer and/or execution of an Agreement, certifies that it:

- A. Is not owned or controlled by one (1) or more citizens of a foreign country included in the list of countries that discriminate against U.S. Consultants published by the Office of the United States Trade Representatives (USTR);
- B. Has not knowingly entered into any contract or subcontract for this Project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list; and
- C. Has not procured any product or subcontracted for the supply of any product for use on the Project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.1, no contract shall be awarded to a Consultant or subcontractor who is unable to certify to the above. If the Consultant knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the Project, the FAA may direct through the Airport cancellation of the Agreement at no cost to the Government.

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

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

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

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

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

Certification regarding debarment, suspension, ineligibility, and involuntary exclusions 49 CFR Part 29. Consultant certifies, by submission of this proposal or acceptance of this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where Consultant or any lower tier participants is unable to certify to this statement, it shall attach an explanation to its solicitation/proposal.

## 23. DOCUMENTS INCORPORATED BY REFERENCE

The following attachments are incorporated in this Agreement in full text and become an integral part of the Agreement. In the event that changes to any exhibits are made by mutual written agreement which do not alter the provisions of this Agreement then said revised exhibits may be substituted herein without necessity for amendment.

- EXHIBIT A – REQUEST FOR PROPOSALS

- EXHIBIT B – SUCCESSFUL PROPOSAL

## 24. GENERAL PROVISIONS

A. Headings. The headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

B. Effect of Invalid Provision. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

C. No Individual Liability. No member, commissioner, officer, agent, director, affiliate, parent company or employee of the Airport or Consultant shall be charged personally or held contractually liable by or to the other party under the terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

D. Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties.

E. Savings. The parties acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto and have sought and received whatever competent advice and counsel as necessary for them to form a full and complete understanding of all rights and obligations herein. The parties further acknowledge that this Agreement is the result of extensive negotiations between the parties and shall not be construed against either party by reason of the preparation of this Agreement by such party.

### F. Prohibited Entity Certification

The Consultant affirms that it is not a Prohibited Entity under SDCL 5-18A-1(19A), which includes entities ultimately owned or controlled by foreign governments listed in the statute. A signed Certification of Prohibited Entity Status must be submitted and further documentation provided upon request by the Airport.

IN WITNESS WHEREOF, this Agreement has been executed by the Airport and Consultant, effective from the day and year first written above.



AIRPORT:

CONSULTANT: