

This is a business meeting of the governing body for the City of Herington. There is no implied or expressed right for persons outside the governing body to speak or voice their opinion unless specifically recognized by the chair.

Regular Meeting
January 4, 2022
5:30 p.m.

1. Pledge of Allegiance

2. Call to Order

3. Consider Minutes of the Regular Meeting December 21, 2021

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Hartman, Mayor Urbanek

4. Additional Agenda Items

5. Approval of Agenda

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Hartman, Mayor Urbanek

6. Present Plaque of Appreciation to Commissioner Curtis Hartman

7. Adjourn Sine Die

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Hartman, Mayor Urbanek

8. Call to Order

9. Oath of Office Commissioner-Elect Robbin Bell

10. Oath of Office Commissioner-Elect Eric Gares

11. Public Forum

12. Additional Agenda Items

13. Approval of Agenda

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

14. Discuss and Action to Elect Mayor

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

15. Discuss and Action to Elect Vice-Mayor

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

16. Discuss and Acton on Designating Central National Bank and The First National Bank of Hope
Official City of Herington, KS Depositories for the 2022 Year

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

17. Discuss and Action on Designating the Dickinson County News Times as the Official Newspaper
for The City of Herington, KS for the 2022 Year

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

18. Discuss and Consider Standard Traffic Ordinance for Kansas Cities, 48th Edition for 2022

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

19. Discuss and Consider Uniform Public Offense Code for Kansas Cities, 37th Edition for 2022

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

20. Police Update

21. Fire Update

22. Neighborhood Enforcement Officer Update

23. Update on Hope and Woodbine Water Rate Increases

24. Discuss and Action on Appointment of Joshua Boyd as an Alternate for the KMEA Board of Directors Term to Expire 4/30/2024

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

25. Discuss and Action on Appointing a Commissioner to the Flint Hills Regional Council

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

26. Discuss and Action on Using American Rescue Plan Act (APRA) funds for the pump house for \$108,995.00

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

27. Discuss and Action on Using APRA Funds for the Water System GIS Mapping for \$20,228.00

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

28. Discuss and Action on Using APRA Funds for the Sewer System GIS Mapping for \$5,163.00

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

29. Discuss and Action on Lochner Agreement to Rehabilitate Aircraft Parking Apron and Connecting Taxiway for \$54,800.00

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

30. City Manager Comments

31. Commissioner Comments

32. Adjourn

Motion _____ Seconded _____ Action _____
Commissioner Castleberry, Commissioner Donahue, Commissioner Bell,
Commissioner Gares, Commissioner Urbanek

To join the City Commission meetings from your computer, tablet, or smartphone, go to
<https://www.youtube.com/channel/UCbvSBw6l4w85XQHSX0S1BXg> Public Forum Comments can be
dropped in the deposit box or emailed to cityoffice@cityofherington.com.



December 9, 2021

City of Herington Kansas

Re: Lake Pump VFD's

Atlas Electric is pleased to offer the following work:

Lake Pump VFD's

- Provide and install 2- 25 HP Yaskawa P1000 VFD's
- Control wiring to existing Comm Tronix control panel
- Disconnect and reconnect new pump motors (motors and install by others)
- Demo existing pump transfer switch
- Start up and testing of VFD's
- **Price for above work \$9,200.00**

Lake Pump Chemical Feed Pump

- Provide and install 120 Volt outlet interlocked with VFD's thru a relay to power feed pump with any VFD in operation
- **Price for above work \$1,450.00**

Water Plant Dewatering Pump VFD

- Provide and install Yaskawa P1000 VFD on existing dewatering pump
- Connect VFD to existing Start-stop motor control signals
- Start up and testing of VFD
- **Price for above work \$2,900.00**

NOT INCLUDED:

New lake pumps or motors

Changes or upgrades to existing SCADA system (Atlas will relocate existing start stop signals to new VFD's)

Respectfully Submitted

Jeff Keys

1607 N. Wabash, 67214 • Wichita, KS
(316) 858-1560 • Fax (316) 858-1564

Herington Pump Station

Contact:

Phone:

Fax:

Quote To:

Job Name:

Date of Plans:

Revision Date:

Phone:

Fax:

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
10	Pump-Pipe-Interior Valves Supply Install	1.00	LS	86,840.00	86,840.00
20	Pumps Install Only (Existing Valves Operational)	1.00	LS	54,497.00	54,497.00
30	14" Insert Valve (if Required)	1.00	EA	47,767.00	47,767.00
40	12" Insert Valve (If Required)	1.00	EA	25,824.00	25,824.00
50	14" MJ Gate Valve Supply and Install	1.00	EA	20,480.00	20,480.00
60	12" MJ Gate Valve Supply and Install	1.00	EA	13,185.00	13,185.00
GRAND TOTAL					248,593.00

NOTES:

Item 10: Includes the supply and install of 2 new pumps, Discharge Piping, Suction Piping to a point past valve connection to header. New check valves and gate valves are included. To enable this item the City would be responsible for shutting down complete water flow from both the suction and discharge supply. Pumps included per the attached submittals for Weinman Pumps which match the existing or Grundfos Pumps.

Item 20: Includes the supply and install of 2 new pumps only. No piping supplied or installed and exiting valves would remain. City would be responsible for shutting down complete water flow from both the suction and discharge supply.

Item 30: Supply and install of a 14" insert valve to allow for shut down of suction side water flow. Two of these would be required to be completed to shut down flow.

Item 40: Same as Item 30 on the discharge side. One of these would be required for water shut down.

Item 50: Install a 14" MJ gate valve on suction side if required, two of these could be required.

Item 60: Install a 12" MJ Gate valve on discharge side.

All electrical is complete by others.

ESTIMATE



City Of Herington Pump House
17 N Broadway
Herington, Kansas 67449

Bird Contracting, Inc.
1426 E Woodland Ave
Salina, KS 67401
Phone: (785) 493-2785
Email: birdcontractinginc@gmail.com

Estimate # 2021-404
Date 11/11/2021

Description	Total
Roof	\$6,475.00
29 Gauge Pro Rib metal roofing	\$5,200.00
Ridge cap (ft)	\$400.00
Remove 1 old layer asbestos tile roofing Properly dispose per requirements	\$455.00
Ice & Water Shield 2 Square Rolls	\$420.00
R & R Drip edge Ft.	\$0.00
Foam closures Ft	\$0.00
Seam sealer	\$0.00
Remove brick chimney below roofline	\$0.00
Haul off old materials Inc.	\$0.00
Soffit and Fascia	\$2,130.00

GIS Mapping Proposal

System Name: **City of Herington – Sewer System**

Date: **9/9/2021**

Data collection; map development:

	Number of meters
	Number of valves
430	Number of tanks, pump stations, interconnections, line points, all other points
430	Total estimated points
13	KRWA collection rate (points per hour for preparing mapping cost estimates)
33	Estimated hours for data collection
48	Estimated hours for data interpretation (acquiring aerials, connecting points and labeling)
8	Estimated travel time to and from project (includes additional trip to proof final corrections)
89	Estimated total time for data collection and map development
\$50.00	KRWA's rate per hour
\$4,443	Total estimate for data collection and map production

Travel estimate:

4	Estimated days (assuming 8 hour days)
\$300	Estimate for motel charge
\$144	Estimate for per diem charge (\$36 per day)
472	Estimated total miles to and from project
\$276	Mileage charge
\$720	Total estimated travel costs
\$5,163	Total data collection, travel and map development

Map Products: (additional charge to above depending on quantity requested)

Mapbook (18" x 24") costs: \$5.00 per page:	Varies
42" x 42" wall map	\$75 each
24" x 36" (laminated)	\$15 each

The above estimate is based on GPS data collection and heads up digitizing in ArcGIS format. KRWA will provide viewing software and training. The data will be stored at KRWA in Seneca, Kansas with backup at Kansas Geospatial Community Commons.

This estimate is valid for 80 days from the date stated at top right of this proposal.

Date: _____ Signed: _____

System Representative

Kansas Rural Water Association Staff

GIS Mapping Proposal

System Name: **City of Herington – Water System**

Date: **3/23/2021**

Data collection: map development:

1400	Number of meters
500	Number of valves
300	Number of tanks, pump stations, interconnections, line points, all other points
2200	Total estimated points
20	KRWA collection rate (points per hour for preparing mapping cost estimates)
110	Estimated hours for data collection
244	Estimated hours for data interpretation (acquiring aerials, connecting points and labeling)
8	Estimated travel time to and from project (includes additional trip to proof final corrections)
362	Estimated total time for data collection and map development
\$50.00	KRWA's rate per hour
\$18,122	Total estimate for data collection and map production

Travel estimate:

14	Estimated days (assuming 8 hour days)
\$1,050	Estimate for motel charge
\$504	Estimate for per diem charge (\$36 per day)
944	Estimated total miles to and from project
\$552	Mileage charge
\$2,106	Total estimated travel costs
\$20,228	Total data collection, travel and map development

Map Products: (additional charge to above depending on quantity requested)

Mapbook (18" x 24") costs: \$5.00 per page:	Varies
42" x 42" wall map	\$75 each
24" x 36" (laminated)	\$15 each

The above estimate is based on GPS data collection and heads up digitizing in ArcGIS format. KRWA will provide veiwng software and training. The data will be stored at KRWA in Seneca, Kansas with backup at Kansas Geospatial Community Commons.

This estimate is valid for 60 days from the date stated at top right of this proposal.

Date: _____ Signed: _____
System Representative

Kansas Rural Water Association Staff



CERTIFICATE – ALTERNATE

KANSAS MUNICIPAL ENERGY AGENCY BOARD OF DIRECTORS

This certificate duly documents the appointment of an **Alternate** to serve on the Board of Directors of the Kansas Municipal Energy Agency (KMEA) as provided for in Article V, Section 5.7 of KMEA's Bylaws.

I, the undersigned City Clerk of the City of _____, Kansas, a member of KMEA, do hereby certify that at a meeting of the City Governing Body duly held on the ____ day of _____, ____; and

Name:	_____	Title:	_____
Address:	_____		
City:	_____	State:	_____
		Zip Code:	_____
Office Phone:	_____	Cell Phone:	_____
		Fax:	_____
Email Address:	_____		

who (a) resides within the territory served by the City's electric utility; or (b) is an employee of the City, was appointed to serve on the KMEA Board of Directors beginning January 5, 2022, until

Term expiring _____

Permanent

The above appointed Alternate is **is** **not** (check one) entitled to vote on behalf of the City.

I further certify that the foregoing appointment is reflected in the official Minutes of the Governing Body of the City for the meeting on the date indicated above.

This certificate given this ____ day of _____, ____.

City Clerk

_____, Kansas

CONSULTANT AGREEMENT (the "Agreement")

Owner: **City of Herington, Kansas**

Client: **City of Herington, Kansas**

Consultant: **H.W. Lochner, Inc. ("Lochner")**

Date:

Project: **BASE BID
Rehabilitate Aircraft Parking Apron and Connecting Taxiway**

Lochner and the Client (collectively, the "Parties" and individually, a "Party") agree as follows:

1. **Agreement.** This Agreement is a contract between Lochner and the Client for Lochner to perform engineering design services on the Project.

2. **Lochner.** Lochner shall be the general administrator for the services listed in the Agreement which Lochner is contracting to provide for the Project, and Lochner shall facilitate the exchange of information between or among Lochner and the Client, Lochner and other consultants retained by the Client, and Lochner and other consultants that Lochner may have retained for the Project. All communications between Lochner and the Owner shall be through the Client unless the Client authorizes otherwise.

Lochner represents that it is a properly licensed engineering firm and is registered to practice its profession and to conduct business in the State of Kansas.

3. **Lochner's Scope of Services.** Lochner shall perform the services set forth in Article I of Attachment A hereto (the "Scope of Services, Time Schedule, and Compensation"). The standard of care applicable to Lochner's Scope of Services shall be the degree of skill and care normally employed by professionals engaged to perform services similar to the Services required herein at the same time and in the same geographic area as the performance of Services hereunder and on projects similar in size and scope to the Project (the "Standard of Care"). In the event a standard of care is prescribed by statute, such statutory formulation shall be the Standard of Care.

Lochner shall strive to cooperate with and to coordinate its Scope of Services with the activities of all other parties to the Project, including other consultants retained by the Client or the Owner.

4. **Schedule.** Lochner shall perform its Services within a timeframe mutually agreed to by Lochner and the Client as defined in Article II of Attachment A.

5. **Lochner's Additional Services.** If the Client requests Lochner to perform Services that Lochner believes to be in addition to the Scope of Services ("Additional Services"), and for which Lochner believes it is entitled to additional time or additional compensation, Lochner shall submit a Claim in accordance with Section 15 hereof.

6. **Compensation for Lochner's Scope of Services.** Subject to paragraph 8, the Client shall compensate Lochner for Lochner's Scope of Services as defined in Article III of Attachment A.

7. **Payment for Lochner's Additional Services.** Subject to Paragraph 8, the Client shall compensate Lochner for Additional Services in accordance with a negotiated fee mutually agreeable to Lochner and the Client.

8. **General Payment Provisions.** For Lochner's Scope of Services and Lochner's Additional Services, Lochner shall send invoices to the Client at monthly intervals. Payment will be made to Lochner for invoiced Services not more than 30 days following submittal of invoice to the Client.

9. **Correction of Lochner's Work.** Lochner shall correct any Services that fail to conform to the Standard of Care set forth in Paragraph 4 of this Agreement at Lochner's own expense.

10. **Termination by Lochner.** Lochner may terminate this Agreement upon written notice if the Client breaches any term of this Agreement. The Client may terminate this Agreement upon seven (7) days written notice without cause for the Client's own convenience. If this Agreement is terminated by Lochner for the Client's breach, the Client shall be liable to Lochner for all costs and expenses that Lochner incurred prior to the termination as a result of the Client's breach. If this Agreement is terminated by the Client for its convenience, Client shall be liable to Lochner for all costs and expenses that Lochner incurred prior to the termination.

11. **Insurance.** Lochner agrees to purchase and maintain the following policies of insurance under the terms and conditions set forth below:

1. Professional Liability Insurance retroactive to the date of commencement of Lochner's services in relation to the Project with a per claim and aggregate limit in the amount of the greater of \$1.0mm. This policy shall be maintained in effect for a period of 1 year after completion of all Lochner's Scope of Services hereunder.

2. Commercial General Liability ("CGL") Insurance in the amount of \$1.0mm per occurrence, \$1.0mm aggregate limit, and \$1.0mm products and completed operations aggregate limit. In addition to the coverage provided by the Commercial General Liability Insurance, if not already included in such coverage, such insurance shall also provide coverage for personal injury, bodily injury, property damage, products-completed operations (for a minimum of 1 year after completion of work) and broad form contractual liability.

3. Comprehensive Automobile Liability ("Auto") Insurance in the amount of \$1.0mm per occurrence, and \$1.0mm aggregate limit. In addition to the coverage provided by the Comprehensive Automobile Liability Insurance, if not already included in such coverage, such insurance shall also provide coverage for personal injury, bodily injury and property damage arising out of owned, hired, leased and non-owned vehicles, automobiles, trucks and trailers.

4. Workmen's Compensation Insurance in the amount of the statutory maximum, if there is one, and if there is no statutory maximum, in the amount of \$1.0mm and Employer's Liability Insurance of at least \$1.0mm.

5. Umbrella Excess Liability Insurance in the minimum amount of \$1.0mm each occurrence, and \$1.0mm aggregate limit. The Umbrella Excess Liability Insurance shall be written on an umbrella excess basis over, and shall follow form to, the Commercial General Liability Insurance policy, the Comprehensive Automobile Liability Insurance policy, and the Employer's Liability Insurance policy. The Umbrella Excess Liability Insurance policy shall be endorsed to provide defense coverage obligations.

6. Lochner must include coverage for its subcontractors in its policies or obtain from its subcontractors equivalent insurance as required of Lochner hereunder. The provisions of Paragraph 11 of this Agreement shall apply equally to Lochner's subcontractors as they do to Lochner.

All insurance policies must be endorsed to provide that the insurance company will give the Client at least thirty (30) days written notice of cancellation or material change prior to such cancellation or modification.

Prior to commencement of Lochner's Scope of Services hereunder, Lochner shall provide the Client with certificates of insurance evidencing the requirements set forth herein.

12. Indemnification by Lochner. Lochner agrees to indemnify the Client and its officers, directors, members, managers, and employees and assigns (the "Indemnitees") from and against liability, claims, damages, losses and expenses (including, but not limited to, reasonable attorneys' fees, expert witness costs, other litigation costs, judgments, settlements and economic losses to the extent caused by negligent performance of any Services or duties under this Agreement by Lochner, its subcontractors, or sub-subcontractors, provided, however, that in the event of a Loss arising out of damages to persons or property, the foregoing obligation (1) shall not require Lochner to indemnify any Indemnitee for Losses other than to the extent caused by the act, omission or default of Lochner, its contractors, subcontractors, or sub-subcontractors, where such is prohibited by law, and (2) shall not require Lochner to indemnify any Indemnitee for Losses caused in whole or in part by any act, omission, or default of the Indemnitee. If the obligation to indemnify set forth in this Section is broader than that allowed by applicable law, this Section should be interpreted as providing the broadest indemnification obligation permitted and should be limited only to the extent necessary to comply with that law.

Lochner shall reimburse the Client for its reasonable attorneys' fees, expert witness costs and other litigation costs to enforce this Section 12. Section 12 shall survive the termination or full performance of this Agreement by either or both Lochner and/or the Client. Section 12 is to be read separately and independently of Section 11 and the additional insured obligations therein contained.

13. Waiver of Immunity. In claims against any person or entity indemnified under Section 12 by an employee of Lochner, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable (a "Claimant"), the indemnification obligation under Section 12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Claimant's employer under workers' compensation acts, disability benefit acts or other employee benefit acts.

14. Ownership of Documents. If the Agreement requires that any of the Client's documents, drawings, plans, specifications or other work product are, or shall become, the property of another person, Lochner shall, at the Client's request, assign all rights of ownership of any like document prepared by Lochner to the same person.

15. Claims. Lochner shall make any claim for additional time or additional money or otherwise, regardless of the reason therefore (the "Claim") within ten days of Lochner's knowledge of the circumstances giving rise to the Claim. Lochner shall continue diligent, timely and proper performance of its Services despite any pending Claim, and the fact that a Claim is pending shall not be grounds for Lochner to suspend or cease performance of its Services.

Claims arising under this Agreement shall be decided in the state or federal courts located in Kansas.

16. Confidentiality. Lochner acknowledges, that as part of the Lochner's relationship with the Client, it will have access to information that is not publicly available ("Confidential Information"). Lochner agrees that it will maintain strict confidentiality with respect to such Confidential Information and will not, directly or indirectly, disseminate it or use it for any purpose unrelated to Lochner's obligations under this Agreement. Lochner shall not, without the prior written consent of the Client, make any public statement, announcement or release concerning the Project or the Confidential Information to trade publications, the press, or any other individual, corporation, partnership, or entity except as may be

necessary to comply with the requirements of any applicable law, governmental order or regulation. In the event Lochner believes it is required to disclose any Confidential Information in order to comply with any applicable law, governmental order or regulation, Lochner shall promptly notify the Client of same with sufficient time to allow the Client to object or otherwise take actions to prevent the disclosure of such Confidential Information.

17. Quality Control/Quality Assurance. Lochner shall perform Quality Control/Quality Assurance (QC/QA) commensurate with the Standard of Care throughout the provision of all Services by Lochner pursuant to the terms of this Agreement.

18. Miscellaneous Provisions.

1. Assignment. Lochner shall not assign this Agreement or the benefits arising therefrom without the prior written consent of the Client.

2. Integration. This Agreement represents the entire and integrated Agreement between Lochner and Client and supersedes all prior negotiations, representations or agreements, either written or oral.

3. Third Parties. There are no third party beneficiaries to this Agreement other than as expressly indicated in Paragraph 11 (Insurance) and Paragraph 12 (Indemnity).

4. Mutually Negotiated. The Parties acknowledge that the terms and conditions of this Agreement have been the subject of mutual negotiation, and that this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

5. Survival. Notwithstanding anything herein to the contrary, the provisions of this Agreement providing for limitation of or protection against liabilities between the Parties, shall survive termination of the Agreement and/or completion of the Scope of Services hereunder.

6. Limitation of Liability. Lochner's liability for any claim or breach of Standard of Care shall be limited to the amount of its Compensation as defined in paragraph 6.

7. Mutual Waiver of Consequential Damages. In no event shall either Party, their members, managers, affiliates, officers, directors, employees, agents, or shareholders be liable to the other Party for any incidental or consequential damages, direct or indirect, including, but not limited to, lost revenue, lost profits, financing costs, overhead, penalties, fines, liquidated damages and lost opportunities, whether incurred by a Party or by third parties to that Party may be liable, whether sounding in breach of contract, warranty, tort (including negligence), strict or statutory liability or otherwise, arising from or relating Sub consultant's services under this Agreement.

8. Notices. Unless otherwise provided herein, all notices, requests, consents, approvals, demands and other communications to be given hereunder shall be in writing and shall be deemed given upon (a) the date of delivery when hand delivered to the respective Parties as set forth below, or (b) actual receipt as evidenced by proof of delivery by a national courier service or the United States Postal Service, addressed to the respective Parties at the following addresses:

9. Electronically Produced Documents. Electronically produced documents will be submitted in data files compatible with AutoCAD Release 2020. Lochner makes no warranty as to the compatibility of the data files beyond the above specified hardware and release or version of the stated software.

Because data stored on electronic media can deteriorate undetected or be modified without Lochner's knowledge, the electronic data files submitted to the Sponsor or other Agencies will have an acceptance period of thirty (30) days. If during that period the Sponsor or other Agencies find any errors or omissions in the files, Lochner will correct the errors or omissions as a part of the basic Agreement. Lochner will not be responsible for maintaining copies of the submitted electronic data files after the acceptance period.

10. Engineer's Opinion of Probable Project Cost and Construction Cost. Since Lochner has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s) methods of determining prices, or over competitive bidding or market conditions, Lochner's opinions of probable Project Cost and Construction Cost provided for herein are to be made on the basis of Lochner's experience and qualifications and represent its best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Lochner cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinions of probable cost prepared by Lochner. However, Lochner represents that it will use reasonable engineering care and judgment commonly exercised by an engineer in the same or similar circumstances in making and transmitting such cost estimates to the Client.

11. Force Majeure. Any delay or failure of Lochner in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God, war, riot, strike, fire, storm, flood, windstorm, discovery or uncovering of hazardous or toxic materials or causes beyond the reasonable control of Lochner, provided that prompt written notice of such delay or suspension be given by Lochner to the Client. Upon receipt of said notice, if necessary, the time for performing shall be extended for a period of time reasonably necessary to overcome the effect of such delays and Lochner shall be reimbursed for the cost of such delays.

12. Client's Responsibilities.

- 1) Arrange for access to and make all provisions for Lochner to enter upon public and private property as required for it to perform his/her services.
- 2) Assist in approvals and permits from all governmental entities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project.
- 3) Designate in writing a person to act as Client representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define Sponsor policies and decisions.
- 4) Give prompt written notice to Lochner whenever Client observes or knows of any development that affects the scope or timing of Lochner's services.
- 5) Pay publishing cost for advertisements of notices, public hearings, request for bids, and other similar items. The Sponsor shall pay for all permits and licenses that may be required by local, state or federal authorities; and shall secure the necessary land, easements and rights-of-way required for the project.
- 6) Available information relating to environmental conditions at the property, including any permits, clearances, investigations, and remediation required for federal, state, and local agencies identified by environmental consultants for the Sponsor in currently available reports.

13. Mandatory Federal Contract Provisions. (Reference Attachment B)

Notice to Lochner:

Ryan M. DaMetz, PE
Project Manager, Aviation
H.W. Lochner, Inc.
16105 W. 113th Street, Suite 107
Lenexa, KS 66219

Notice to Client:

Branden Dross
City Manager
City of Herington
17 N. Broadway
Herington, KS 67449

H.W. LOCHNER, INC.

CITY OF HERINGTON, KANSAS

By: _____

By: _____

Title: Vice President

Title: _____

Date: _____

Date: _____

DRAFT

**ARTICLE I
SCOPE OF SERVICES**

WHEREAS, the Owner has agreed to employ the Consultant to provide the engineering services required for performing site investigations, and for preparing engineer's design report, designs, construction plans, contract documents/technical specifications, tabulation of construction quantities, engineer's opinion of probable construction cost and project budget. The Consultant shall also assist the Owner with bidding and administrative services including DBE goal calculation and administration. The Owner may enter into a separate Agreement for the additional services of providing construction administration, construction observation, and materials acceptance testing services for the proposed Project upon completion of the Design Phase services.

All services will be performed in accordance with good engineering practice and applicable published design criteria of the FAA, primarily FAA Advisory Circulars and Central Region Guidance publications.

- AC 150/5300-13A "Airport Design", with Change 1 dated 02/26/2014
- AC 150/5340-1M "Standards for Airport Markings"
- AC 150/5370-2G "Operational Safety on Airports During Construction"
- AC 150/5370-10H "Standard Specifications for Construction of Airports"
- AIP Guide 900, "Project Design Development Projects"
- AIP Guide 1000, "Construction Phase"

The following is a detailed description of the specific engineering services that are a duty of this Agreement.

A. BASIC SERVICES

1. Preliminary Phase

- a. Coordinate with the Owner and FAA regarding Project scope, schedule, and budget and conduct predesign teleconference.
- b. Conduct site visit to assess condition of existing aircraft parking apron and connecting taxiway pavement.
- c. Prepare Sponsor Certification for Selection of Consultants for Owner review and submittal to the FAA.
- d. Prepare Disadvantaged Business Enterprise (DBE) Program and DBE goal calculation Scope of Services Vendor Agreement.

2. Design Phase – Engineer's Design Report and CSPP Report

- a. Prepare Preliminary Engineer's Design Report: The Design Report will include a narrative regarding the proposed construction project, construction safety and phasing, proposed pavement repair methods, pavement marking design, engineer's opinion of probable construction cost, Project budget and identification of deviation from FAA design criteria.

- b. Prepare Construction Safety and Phasing Plan (CSPP) Report: The CSPP Report will be prepared in accordance with the guidelines included in Chapter 2, “*Construction Safety and Phasing Plans*” and Chapter 3, “*Guidelines for Writing a CSPP*” of Advisory Circular (AC) 150/5370-2G. The CSPP document will also include the Phasing Plans prepared for the Project that are applicable to all phases of construction.
 - c. Submit CSPP Report and Preliminary Engineer’s Design Report, including engineer's opinion of probable construction cost and Project budget, to the Owner and the FAA for review and comment. PDF copies will be submitted electronically with hard copies provided upon request. (This submittal shall be considered the 30% complete project submittal.)
 - d. Finalize Engineer’s Design Report and CSPP Report with consideration of preliminary review comments and submit Final Engineer’s Design Report and CSPP Report to the Owner and the FAA for final approval and authorization to advertise. PDF copies will be submitted electronically with hard copies provided upon request. Final Engineer’s Design Report and CSPP Report will be submitted with final Construction Plans and Contract Documents/Technical Specifications.
3. Design Phase – Plans and Specifications
- a. Prepare Construction Plans and Contract Documents/Technical Specifications for the Project.
 - 1) Prepare Construction Plans for the Project. The Construction Plans will generally include the following:
 - Title Sheet
 - General Airport Layout Plan and General Notes
 - Safety Plan and Details
 - Summary of Quantities
 - Existing Pavement Condition Photos
 - Demolition Plan
 - Aircraft Parking Apron Rehabilitation Plan
 - Connecting Taxiway Rehabilitation Plan
 - Pavement Rehabilitation Details
 - Pavement Marking Plan and Details
 - 2) Prepare Contract Documents/Technical Specifications that are in accordance with FAA criteria and satisfy project specific needs. The specifications shall be developed using FAA Advisory Circular 150/5370-10H.
 - 3) Submit preliminary (90% completion) Construction Plans, Contract Documents/Technical Specifications, updated engineer's opinion of probable construction cost, and Project budget to the Owner and the FAA for review and comment. PDF copies will be submitted electronically with hard copies provided upon request.

- 4) Finalize Engineer's Design Report, Construction Plans, and Contract Documents/Technical Specifications with consideration of preliminary review comments.
- 5) Submit Final Construction Plans and Contract Documents/Technical Specifications along with Final Engineer's Design and CSPP Reports to the Owner and the FAA for final approval and authorization to advertise. PDF copies will be submitted electronically with hard copies provided upon request.

4. Bidding Phase

- a. Assist the Owner with advertisement for bids. The Consultant shall prepare the advertisement and send the "Notice to Bidders" to prospective Contractors. (The Owner shall place the advertisement in the appropriate media.)
- b. Print and distribute Construction Plans and Contract Documents/Technical Specifications to plan holding houses and prospective Bidders.
- c. Answer questions, clarify points, and issue addenda as necessary pertaining to the Construction Plans and Contract Documents/Technical Specifications during the Bidding Phase.
- d. A prebid conference will not be conducted for this project.
- e. The Consultant will attend the bid opening in Herington, Kansas and assist the Sponsor with one (1) receipt of bids.
- f. Tabulate and analyze bid results, prepare Project budget, review Contractor's qualifications and DBE subcontractor's list provided by the Contractor, and make recommendation of contract award.

B. SPECIAL SERVICES

1. Administrative Assistance

- a. Prepare and submit FAA Form 7460 for project limits identified in the CSPP.
- b. Assist the Owner in preparation of FAA Grant Application for federal funding for submittal to the FAA Airports Division.
- c. Assist the Owner in preparation of required Sponsor Certifications for submittal to the FAA Airports Division.
- d. Assist the Owner in preparation of Invoice Summary forms as required for requests for reimbursement and SF Forms 271 and 425.
- e. Assist the Owner in preparation of Quarterly Performance Reports for submittal to the FAA Airports Division on a quarterly basis for the duration of the Project.

2. DBE Program and Goal Calculation

- a. Prepare DBE Program and Goal Update for FFY 2022-2024 per guidelines acceptable by the Civil Rights Division of the FAA.
- b. Develop a schedule for development of the DBE Program Update for delivery to the Civil Rights Division of the FAA.
- c. Provide the Owner with one (1) copy of the completed DBE Program Update. An electronic copy will be submitted to the Civil Rights Division of the FAA, as this is their preferred method of receipt.
- d. Provide a sample copy of required legal announcements to the Owner.
- e. Provide assistance to aid the Owner in understanding their responsibilities in the administration of the DBE Program.

C. CONSTRUCTION SERVICES

- 1. The Scope of Services required for construction administration, construction observation, and materials acceptance testing for the Project may be added by separate Agreement.

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**ARTICLE II
TIME SCHEDULE**

The Consultant agrees to proceed with the services immediately upon receipt of a written Notice to Proceed (NTP) by the Owner, and to employ such personnel as required to complete the Scope of Services in accordance with the following time schedule:

SCHEDULED PERFORMANCE IN CALENDAR DAYS

A. BASIC SERVICES

- 1. Preliminary PhaseAs Required
- 2. Design Phase – Engineer’s Design Report and CSPP Report
 - c. Submit Preliminary Engineer’s Design Report and CSPP Report45 Calendar Days After Receipt of NTP
 - d. Submit Final Engineer’s Design Report and CSPP Report30 Calendar Days After Receipt of Review Comments for Item A.3.a.3)
- 3. Design Phase – Plans and Specifications
 - a.3) Submit Preliminary Plans and Specifications.....21 Calendar Days After Receipt of Review Comments for Item A.2.c.

- a.5) Submit Final Plans and Specifications30 Calendar Days After
Receipt of Review Comments for Item A.3.a.3)
- 4. Bidding PhaseAs Required

B. SPECIAL SERVICES

- 1. Administrative AssistanceAs Required
- 2. DBE Program and Goal Calculation.....60 Calendar Days After
Receipt of Notice to Proceed

C. CONSTRUCTION SERVICES

- 1. Construction ServicesMay be Added by Separate Agreement

The schedule presented above does not include review time by the Owner, FAA or other interested agencies.

**ARTICLE III
COMPENSATION**

The Owner agrees to compensate the Consultant for performing engineering services as described herein on the following basis:

COMPENSATION SCHEDULE

A. BASIC SERVICES

- 1. Preliminary Phase \$5,800.00 Lump Sum
- 2. Design Phase – Engineer’s Design Report and CSPP Report \$9,000.00 Lump Sum
- 3. Design Phase – Plans and Specifications..... \$18,600.00 Lump Sum
- 4. Bidding Phase \$5,700.00 Lump Sum
- Subtotal Basic Services \$39,100.00 Lump Sum

B. SPECIAL SERVICES

- 1. Administrative Assistance \$4,100.00 Lump Sum
- 2. DBE Program and Goal Calculation..... \$11,600.00 Lump Sum
- Subtotal Special Services \$15,700.00 Lump Sum
- Total Basic and Special Services \$54,800.00 Lump Sum**

C. CONSTRUCTION SERVICES

- 1. Construction ServicesMay be Added by Separate Agreement

The Consultant shall not proceed with the services described herein until written authorization in the form of a Notice to Proceed is received from the Owner.

For Item A. Basic Services, and Item B. Special Services, partial payment shall be made to the Consultant for those portions of the services completed. The Consultant shall submit to the Owner a monthly statement showing an estimate of completion, and the portion of compensation requested for each element and phase of the services. The request for partial payments will not be in excess of the value of the services completed at the time the statement is rendered.

DRAFT

DERIVATION OF CONSULTANT PROJECT COSTS

BASE BID

REHABILITATE AIRCRAFT PARKING APRON AND CONNECTING TAXIWAY

FAA PROJECT NO. TBD

HERINGTON REGIONAL AIRPORT (HRU)

HERINGTON, KANSAS

BASIC AND SPECIAL SERVICES

November 17, 2021

1. DIRECT SALARY COSTS:

<u>TITLE</u>	<u>HOURS</u>	<u>RATE/HOUR</u>	<u>COST (\$)</u>
Principal	0	\$65.00	\$ -
Project Manager	47	\$60.00	\$ 2,820.00
Design Engineer II	20	\$45.00	\$ 900.00
Design Engineer I	141	\$38.00	\$ 5,358.00
Senior Electrical Engineer	0	\$52.00	\$ -
Senior Airport Planner	0	\$43.00	\$ -
Environmental Scientist	0	\$40.00	\$ -
Technician	110	\$30.00	\$ 3,300.00
Administrative Asst.	97	\$25.00	\$ 2,425.00
Total Direct Salary Costs			= \$ 14,803.00

2. LABOR AND GENERAL ADMINISTRATIVE OVERHEAD:

Percentage of Direct Salary Costs @ 152.85% = \$ 22,626.39

3. SUBTOTAL:

Items 1 and 2 = \$ 37,429.39

4. PROFIT:

15% of Item 3 Subtotal = \$ 5,614.41

Subtotal of Items 3 and 4 = \$ 43,043.80

5. OUT-OF-POCKET EXPENSES:

a. Mileage	580	miles @ \$0.56/mile =	\$ 324.80
b. Meals	3	@ \$59.00/day =	\$ 177.00
c. Motel	0	days @ \$96.00/day =	\$ -
d. Mailing & Misc. Expenses		=	\$ 254.40

Total Out-of-Pocket Expenses = \$ 756.20

6. SUBCONTRACT COST:

a. DBE Plans & Goals Preparation Services (DBE Program and Goal) = \$ 11,000.00

7. TOTAL FEE:

Items 4, 5 and 6 = \$ 54,800.00

ENGINEERING BASIC AND SPECIAL SERVICES - COST BREAKDOWN
BASE BID
REHABILITATE AIRCRAFT PARKING APRON AND CONNECTING TAXIWAY
HERINGTON REGIONAL AIRPORT (HRU)
HERINGTON, KANSAS
November 17, 2021

Classification:	Principal	Project Manager	Design Engineer II	Design Engineer I	Senior Elec. Engineer	Senior Airport Planner	Environ. Scientist	Technician	Admin. Assistant	Other Costs
Hourly Rate:	\$189.01	\$174.47	\$130.85	\$110.50	\$151.20	\$125.03	\$116.31	\$87.23	\$72.69	
A. BASIC SERVICES										
1. Preliminary Phase:	0	15	0	20	0	0	0	0	9	(1,2)
Labor Subtotal =	\$5,481.16	\$2,617.00	\$0.00	\$2,209.91	\$0.00	\$0.00	\$0.00	\$0.00	\$654.25	
Expense Subtotal =	\$ 318.84									\$ 318.84
Subconsultant Subtotal =	\$ -									\$ -
Total Fee =	\$ 5,800.00									
2. Design Phase - Engineer's Design Report and CSPP Report:	0	4	3	40	0	0	0	14	30	(2)
Labor Subtotal =	\$8,912.33	\$697.87	\$392.55	\$4,419.82	\$0.00	\$0.00	\$0.00	\$1,221.27	\$2,180.83	
Expense Subtotal =	\$ 87.67									\$ 87.67
Subconsultant Subtotal =	\$ -									\$ -
Total Fee =	\$ 9,000.00									
3. Design Phase - Plans and Specs:	0	9	10	53	0	0	0	87	30	(2)
Labor Subtotal =	\$18,505.08	\$1,570.20	\$1,308.50	\$5,856.26	\$0.00	\$0.00	\$0.00	\$7,589.29	\$2,180.83	
Expense Subtotal =	\$ 94.92									\$ 94.92
Subconsultant Subtotal =	\$ -									\$ -
Total Fee =	\$ 18,600.00									
4. Bidding Phase:	0	10	4	16	0	0	0	9	9	(1,2)
Labor Subtotal =	\$5,475.34	\$1,744.67	\$523.40	\$1,767.93	\$0.00	\$0.00	\$0.00	\$785.10	\$654.25	
Expense Subtotal =	\$ 224.66									\$ 224.66
Subconsultant Subtotal =	\$ -									\$ -
Total Fee =	\$ 5,700.00									
PART A SUBTOTAL =	\$ 39,100.00									
B. SPECIAL SERVICES										
1. Administrative Assistance:	0	9	3	8	0	0	0	0	17	(2)
Labor Subtotal =	\$4,082.52	\$1,570.20	\$392.55	\$883.96	\$0.00	\$0.00	\$0.00	\$0.00	\$1,235.80	
Expense Subtotal =	\$ 17.48									\$ 17.48
Subconsultant Subtotal =	\$ -									\$ -
Total Fee =	\$ 4,100.00									
2. DBE Program and Goal for FFY 2022 - 2024	0	0	0	4	0	0	0	0	2	(2,3)
Labor Subtotal =	\$587.37	\$0.00	\$0.00	\$441.98	\$0.00	\$0.00	\$0.00	\$0.00	\$145.39	
Expense Subtotal =	\$ 12.63									\$ 12.63
Subconsultant Subtotal =	\$ 11,000.00									\$ 11,000.00
Total Fee =	\$ 11,600.00									
PART B SUBTOTAL =	\$ 15,700.00									
GRAND TOTAL =	\$ 54,800.00									

- (1) Mileage, Motel and Meals
- (2) Equipment, Materials and Supplies
- (3) Vendor Services

FEDERAL CONTRACT PROVISIONS FOR A/E AGREEMENTS

ALL REFERENCES MADE HEREIN TO “CONTRACTOR”, “PRIME CONTRACTOR”, “BIDDER”, “OFFEROR”, AND “APPLICANT” SHALL PERTAIN TO THE ARCHITECT/ENGINEER (A/E).

ALL REFERENCES MADE HEREIN TO “SUBCONTRACTOR”, “SUB-TIER CONTRACTOR” OR “LOWER TIER CONTRACTOR” SHALL PERTAIN TO ANY SUBCONSULTANT UNDER CONTRACT WITH THE A/E.

ALL REFERENCES MADE HEREIN TO “SPONSOR” AND “OWNER” SHALL PERTAIN TO THE STATE, CITY, AIRPORT AUTHORITY OR OTHER PUBLIC ENTITY EXECUTING CONTRACTS WITH THE A/E.

ACCESS TO RECORDS AND REPORTS

Reference: 2 CFR § 200.333, 2 CFR § 200.336, and FAA Order 5100.38

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

CIVIL RIGHTS – GENERAL

Reference: 49 USC § 47123

The contractor agrees that it will 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 sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

CIVIL RIGHTS – TITLE VI ASSURANCE

Reference: 49 USC § 47123 and FAA Order 1400.11

A) Title VI Solicitation Notice

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises 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.

B) Title VI Clauses for 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) **Non-discrimination:** 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 Nondiscrimination Acts and Authorities, 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 Nondiscrimination Acts and Authorities, 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.

C) Title VI List of Pertinent Nondiscrimination 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 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 non-discrimination 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 U.S.C. 1681 et seq).

DISADVANTAGED BUSINESS ENTERPRISE

Reference: 49 CFR part 26

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

Prompt Payment (§26.29) - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) calendar days from the receipt of each payment the prime contractor receives from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) calendar 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 Sponsor. This clause applies to both DBE and non-DBE subcontractors.

ENERGY CONSERVATION REQUIREMENTS

Reference: 2 CFR § 200, Appendix II (H)

Contractor and each subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq).

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

Reference: 29 USC § 201, et seq.

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

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Reference: 20 CFR part 1910

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. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor 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). Contractor 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.

RIGHT TO INVENTIONS

Reference: 2 CFR § 200 Appendix II (F) and 37 CFR §401

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 in the 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

SEISMIC SAFETY

Reference: 49 CFR part 41

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

TAX DELINQUENCY AND FELONY CONVICTION

Reference: Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76) and DOT Order 4200.6

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

Certification - The applicant represents that it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months. A felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

TRADE RESTRICTION CERTIFICATION

Reference: 49 USC § 50104 and 49 CFR part 30

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

- a) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- 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 included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.; and
- c) has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

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.

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

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

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

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

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Offeror has knowledge that the certification is erroneous.

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

VETERAN'S PREFERENCE

Reference: 49 USC § 47112(c)

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

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$3,500**DISTRACTED DRIVING**

Reference: Executive Order 13513 and DOT Order 3902.10

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

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$10,000**TERMINATION OF CONTRACT**

Reference: 2 CFR § 200 Appendix II (B)

Termination for Convenience

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 by Default

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;
 - 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.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$25,000**DEBARMENT AND SUSPENSION**

Reference: 2 CFR part 180 (Subpart C), 2 CFR part 1200, and DOT Order 4200.5

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

- 1) Checking the System for Award Management at website: <https://www.sam.gov>.
- 2) Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
- 3) Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$100,000**CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

Reference: 2 CFR § 200 Appendix II (E)

- 1) Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- 2) Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor 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 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

- 3) Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any

other Federal contract with the same 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 above.

4) Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The 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 section.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

Reference: 31 U.S.C. § 1352 – Byrd Anti-Lobbying Amendment; 2 CFR part 200, Appendix II (J); and 49 CFR part 20, Appendix A

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, sub-grants, 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.

P

ROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$150,000**BREACH OF CONTRACT TERMS**

Reference: 2 CFR § 200 Appendix II (A)

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.

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.

CLEAN AIR AND WATER POLLUTION CONTROL

Reference: 2 CFR § 200 Appendix II (G)

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 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.

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CONSULTANT AGREEMENT (the "Agreement")

Owner: **City of Herington, Kansas**

Client: **City of Herington, Kansas**

Consultant: **H.W. Lochner, Inc. ("Lochner")**

Date:

Project: **BASE BID
Rehabilitate Aircraft Parking Apron and Connecting Taxiway**

Lochner and the Client (collectively, the "Parties" and individually, a "Party") agree as follows:

1. **Agreement.** This Agreement is a contract between Lochner and the Client for Lochner to perform engineering design services on the Project.

2. **Lochner.** Lochner shall be the general administrator for the services listed in the Agreement which Lochner is contracting to provide for the Project, and Lochner shall facilitate the exchange of information between or among Lochner and the Client, Lochner and other consultants retained by the Client, and Lochner and other consultants that Lochner may have retained for the Project. All communications between Lochner and the Owner shall be through the Client unless the Client authorizes otherwise.

Lochner represents that it is a properly licensed engineering firm and is registered to practice its profession and to conduct business in the State of Kansas.

3. **Lochner's Scope of Services.** Lochner shall perform the services set forth in Article I of Attachment A hereto (the "Scope of Services, Time Schedule, and Compensation"). The standard of care applicable to Lochner's Scope of Services shall be the degree of skill and care normally employed by professionals engaged to perform services similar to the Services required herein at the same time and in the same geographic area as the performance of Services hereunder and on projects similar in size and scope to the Project (the "Standard of Care"). In the event a standard of care is prescribed by statute, such statutory formulation shall be the Standard of Care.

Lochner shall strive to cooperate with and to coordinate its Scope of Services with the activities of all other parties to the Project, including other consultants retained by the Client or the Owner.

4. **Schedule.** Lochner shall perform its Services within a timeframe mutually agreed to by Lochner and the Client as defined in Article II of Attachment A.

5. **Lochner's Additional Services.** If the Client requests Lochner to perform Services that Lochner believes to be in addition to the Scope of Services ("Additional Services"), and for which Lochner believes it is entitled to additional time or additional compensation, Lochner shall submit a Claim in accordance with Section 15 hereof.

6. **Compensation for Lochner's Scope of Services.** Subject to paragraph 8, the Client shall compensate Lochner for Lochner's Scope of Services as defined in Article III of Attachment A.

7. **Payment for Lochner's Additional Services.** Subject to Paragraph 8, the Client shall compensate Lochner for Additional Services in accordance with a negotiated fee mutually agreeable to Lochner and the Client.

8. **General Payment Provisions.** For Lochner's Scope of Services and Lochner's Additional Services, Lochner shall send invoices to the Client at monthly intervals. Payment will be made to Lochner for invoiced Services not more than 30 days following submittal of invoice to the Client.

9. **Correction of Lochner's Work.** Lochner shall correct any Services that fail to conform to the Standard of Care set forth in Paragraph 4 of this Agreement at Lochner's own expense.

10. **Termination by Lochner.** Lochner may terminate this Agreement upon written notice if the Client breaches any term of this Agreement. The Client may terminate this Agreement upon seven (7) days written notice without cause for the Client's own convenience. If this Agreement is terminated by Lochner for the Client's breach, the Client shall be liable to Lochner for all costs and expenses that Lochner incurred prior to the termination as a result of the Client's breach. If this Agreement is terminated by the Client for its convenience, Client shall be liable to Lochner for all costs and expenses that Lochner incurred prior to the termination.

11. **Insurance.** Lochner agrees to purchase and maintain the following policies of insurance under the terms and conditions set forth below:

1. Professional Liability Insurance retroactive to the date of commencement of Lochner's services in relation to the Project with a per claim and aggregate limit in the amount of the greater of \$1.0mm. This policy shall be maintained in effect for a period of 1 year after completion of all Lochner's Scope of Services hereunder.

2. Commercial General Liability ("CGL") Insurance in the amount of \$1.0mm per occurrence, \$1.0mm aggregate limit, and \$1.0mm products and completed operations aggregate limit. In addition to the coverage provided by the Commercial General Liability Insurance, if not already included in such coverage, such insurance shall also provide coverage for personal injury, bodily injury, property damage, products-completed operations (for a minimum of 1 year after completion of work) and broad form contractual liability.

3. Comprehensive Automobile Liability ("Auto") Insurance in the amount of \$1.0mm per occurrence, and \$1.0mm aggregate limit. In addition to the coverage provided by the Comprehensive Automobile Liability Insurance, if not already included in such coverage, such insurance shall also provide coverage for personal injury, bodily injury and property damage arising out of owned, hired, leased and non-owned vehicles, automobiles, trucks and trailers.

4. Workmen's Compensation Insurance in the amount of the statutory maximum, if there is one, and if there is no statutory maximum, in the amount of \$1.0mm and Employer's Liability Insurance of at least \$1.0mm.

5. Umbrella Excess Liability Insurance in the minimum amount of \$1.0mm each occurrence, and \$1.0mm aggregate limit. The Umbrella Excess Liability Insurance shall be written on an umbrella excess basis over, and shall follow form to, the Commercial General Liability Insurance policy, the Comprehensive Automobile Liability Insurance policy, and the Employer's Liability Insurance policy. The Umbrella Excess Liability Insurance policy shall be endorsed to provide defense coverage obligations.

6. Lochner must include coverage for its subcontractors in its policies or obtain from its subcontractors equivalent insurance as required of Lochner hereunder. The provisions of Paragraph 11 of this Agreement shall apply equally to Lochner's subcontractors as they do to Lochner.

All insurance policies must be endorsed to provide that the insurance company will give the Client at least thirty (30) days written notice of cancellation or material change prior to such cancellation or modification.

Prior to commencement of Lochner's Scope of Services hereunder, Lochner shall provide the Client with certificates of insurance evidencing the requirements set forth herein.

12. Indemnification by Lochner. Lochner agrees to indemnify the Client and its officers, directors, members, managers, and employees and assigns (the "Indemnitees") from and against liability, claims, damages, losses and expenses (including, but not limited to, reasonable attorneys' fees, expert witness costs, other litigation costs, judgments, settlements and economic losses to the extent caused by negligent performance of any Services or duties under this Agreement by Lochner, its subcontractors, or sub-subcontractors, provided, however, that in the event of a Loss arising out of damages to persons or property, the foregoing obligation (1) shall not require Lochner to indemnify any Indemnitee for Losses other than to the extent caused by the act, omission or default of Lochner, its contractors, subcontractors, or sub-subcontractors, where such is prohibited by law, and (2) shall not require Lochner to indemnify any Indemnitee for Losses caused in whole or in part by any act, omission, or default of the Indemnitee. If the obligation to indemnify set forth in this Section is broader than that allowed by applicable law, this Section should be interpreted as providing the broadest indemnification obligation permitted and should be limited only to the extent necessary to comply with that law.

Lochner shall reimburse the Client for its reasonable attorneys' fees, expert witness costs and other litigation costs to enforce this Section 12. Section 12 shall survive the termination or full performance of this Agreement by either or both Lochner and/or the Client. Section 12 is to be read separately and independently of Section 11 and the additional insured obligations therein contained.

13. Waiver of Immunity. In claims against any person or entity indemnified under Section 12 by an employee of Lochner, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable (a "Claimant"), the indemnification obligation under Section 12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Claimant's employer under workers' compensation acts, disability benefit acts or other employee benefit acts.

14. Ownership of Documents. If the Agreement requires that any of the Client's documents, drawings, plans, specifications or other work product are, or shall become, the property of another person, Lochner shall, at the Client's request, assign all rights of ownership of any like document prepared by Lochner to the same person.

15. Claims. Lochner shall make any claim for additional time or additional money or otherwise, regardless of the reason therefore (the "Claim") within ten days of Lochner's knowledge of the circumstances giving rise to the Claim. Lochner shall continue diligent, timely and proper performance of its Services despite any pending Claim, and the fact that a Claim is pending shall not be grounds for Lochner to suspend or cease performance of its Services.

Claims arising under this Agreement shall be decided in the state or federal courts located in Kansas.

16. Confidentiality. Lochner acknowledges, that as part of the Lochner's relationship with the Client, it will have access to information that is not publicly available ("Confidential Information"). Lochner agrees that it will maintain strict confidentiality with respect to such Confidential Information and will not, directly or indirectly, disseminate it or use it for any purpose unrelated to Lochner's obligations under this Agreement. Lochner shall not, without the prior written consent of the Client, make any public statement, announcement or release concerning the Project or the Confidential Information to trade publications, the press, or any other individual, corporation, partnership, or entity except as may be

necessary to comply with the requirements of any applicable law, governmental order or regulation. In the event Lochner believes it is required to disclose any Confidential Information in order to comply with any applicable law, governmental order or regulation, Lochner shall promptly notify the Client of same with sufficient time to allow the Client to object or otherwise take actions to prevent the disclosure of such Confidential Information.

17. Quality Control/Quality Assurance. Lochner shall perform Quality Control/Quality Assurance (QC/QA) commensurate with the Standard of Care throughout the provision of all Services by Lochner pursuant to the terms of this Agreement.

18. Miscellaneous Provisions.

1. Assignment. Lochner shall not assign this Agreement or the benefits arising therefrom without the prior written consent of the Client.

2. Integration. This Agreement represents the entire and integrated Agreement between Lochner and Client and supersedes all prior negotiations, representations or agreements, either written or oral.

3. Third Parties. There are no third party beneficiaries to this Agreement other than as expressly indicated in Paragraph 11 (Insurance) and Paragraph 12 (Indemnity).

4. Mutually Negotiated. The Parties acknowledge that the terms and conditions of this Agreement have been the subject of mutual negotiation, and that this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

5. Survival. Notwithstanding anything herein to the contrary, the provisions of this Agreement providing for limitation of or protection against liabilities between the Parties, shall survive termination of the Agreement and/or completion of the Scope of Services hereunder.

6. Limitation of Liability. Lochner's liability for any claim or breach of Standard of Care shall be limited to the amount of its Compensation as defined in paragraph 6.

7. Mutual Waiver of Consequential Damages. In no event shall either Party, their members, managers, affiliates, officers, directors, employees, agents, or shareholders be liable to the other Party for any incidental or consequential damages, direct or indirect, including, but not limited to, lost revenue, lost profits, financing costs, overhead, penalties, fines, liquidated damages and lost opportunities, whether incurred by a Party or by third parties to that Party may be liable, whether sounding in breach of contract, warranty, tort (including negligence), strict or statutory liability or otherwise, arising from or relating Sub consultant's services under this Agreement.

8. Notices. Unless otherwise provided herein, all notices, requests, consents, approvals, demands and other communications to be given hereunder shall be in writing and shall be deemed given upon (a) the date of delivery when hand delivered to the respective Parties as set forth below, or (b) actual receipt as evidenced by proof of delivery by a national courier service or the United States Postal Service, addressed to the respective Parties at the following addresses:

9. Electronically Produced Documents. Electronically produced documents will be submitted in data files compatible with AutoCAD Release 2020. Lochner makes no warranty as to the compatibility of the data files beyond the above specified hardware and release or version of the stated software.

Because data stored on electronic media can deteriorate undetected or be modified without Lochner's knowledge, the electronic data files submitted to the Sponsor or other Agencies will have an acceptance period of thirty (30) days. If during that period the Sponsor or other Agencies find any errors or omissions in the files, Lochner will correct the errors or omissions as a part of the basic Agreement. Lochner will not be responsible for maintaining copies of the submitted electronic data files after the acceptance period.

10. Engineer's Opinion of Probable Project Cost and Construction Cost. Since Lochner has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s) methods of determining prices, or over competitive bidding or market conditions, Lochner's opinions of probable Project Cost and Construction Cost provided for herein are to be made on the basis of Lochner's experience and qualifications and represent its best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Lochner cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinions of probable cost prepared by Lochner. However, Lochner represents that it will use reasonable engineering care and judgment commonly exercised by an engineer in the same or similar circumstances in making and transmitting such cost estimates to the Client.

11. Force Majeure. Any delay or failure of Lochner in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God, war, riot, strike, fire, storm, flood, windstorm, discovery or uncovering of hazardous or toxic materials or causes beyond the reasonable control of Lochner, provided that prompt written notice of such delay or suspension be given by Lochner to the Client. Upon receipt of said notice, if necessary, the time for performing shall be extended for a period of time reasonably necessary to overcome the effect of such delays and Lochner shall be reimbursed for the cost of such delays.

12. Client's Responsibilities.

- 1) Arrange for access to and make all provisions for Lochner to enter upon public and private property as required for it to perform his/her services.
- 2) Assist in approvals and permits from all governmental entities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project.
- 3) Designate in writing a person to act as Client representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define Sponsor policies and decisions.
- 4) Give prompt written notice to Lochner whenever Client observes or knows of any development that affects the scope or timing of Lochner's services.
- 5) Pay publishing cost for advertisements of notices, public hearings, request for bids, and other similar items. The Sponsor shall pay for all permits and licenses that may be required by local, state or federal authorities; and shall secure the necessary land, easements and rights-of-way required for the project.
- 6) Available information relating to environmental conditions at the property, including any permits, clearances, investigations, and remediation required for federal, state, and local agencies identified by environmental consultants for the Sponsor in currently available reports.

13. Mandatory Federal Contract Provisions. (Reference Attachment B)

Notice to Lochner:


Ryan M. DaMetz, PE
Project Manager, Aviation
H.W. Lochner, Inc.
16105 W. 113th Street, Suite 107
Lenexa, KS 66219

Notice to Client:

Branden Dross
City Manager
City of Herington
17 N. Broadway
Herington, KS 67449

H.W. LOCHNER, INC.

CITY OF HERINGTON, KANSAS

By: 
Title: Vice President
Date: 12/20/2021

By: _____
Title: _____
Date: _____

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**ARTICLE I
SCOPE OF SERVICES**

WHEREAS, the Owner has agreed to employ the Consultant to provide the engineering services required for performing site investigations, and for preparing engineer's design report, designs, construction plans, contract documents/technical specifications, tabulation of construction quantities, engineer's opinion of probable construction cost and project budget. The Consultant shall also assist the Owner with bidding and administrative services including DBE goal calculation and administration. The Owner may enter into a separate Agreement for the additional services of providing construction administration, construction observation, and materials acceptance testing services for the proposed Project upon completion of the Design Phase services.

All services will be performed in accordance with good engineering practice and applicable published design criteria of the FAA, primarily FAA Advisory Circulars and Central Region Guidance publications.

- AC 150/5300-13A "Airport Design", with Change 1 dated 02/26/2014
- AC 150/5340-1M "Standards for Airport Markings"
- AC 150/5370-2G "Operational Safety on Airports During Construction"
- AC 150/5370-10H "Standard Specifications for Construction of Airports"
- AIP Guide 900, "Project Design Development Projects"
- AIP Guide 1000, "Construction Phase"

The following is a detailed description of the specific engineering services that are a duty of this Agreement.

A. BASIC SERVICES

1. Preliminary Phase

- a. Coordinate with the Owner and FAA regarding Project scope, schedule, and budget and conduct predesign teleconference.
- b. Conduct site visit to assess condition of existing aircraft parking apron and connecting taxiway pavement.
- c. Prepare Sponsor Certification for Selection of Consultants for Owner review and submittal to the FAA.
- d. Prepare Disadvantaged Business Enterprise (DBE) Program and DBE goal calculation Scope of Services Vendor Agreement.

2. Design Phase – Engineer's Design Report and CSPP Report

- a. Prepare Preliminary Engineer's Design Report: The Design Report will include a narrative regarding the proposed construction project, construction safety and phasing, proposed pavement repair methods, pavement marking design, engineer's opinion of probable construction cost, Project budget and identification of deviation from FAA design criteria.

- b. Prepare Construction Safety and Phasing Plan (CSPP) Report: The CSPP Report will be prepared in accordance with the guidelines included in Chapter 2, “*Construction Safety and Phasing Plans*” and Chapter 3, “*Guidelines for Writing a CSPP*” of Advisory Circular (AC) 150/5370-2G. The CSPP document will also include the Phasing Plans prepared for the Project that are applicable to all phases of construction.
 - c. Submit CSPP Report and Preliminary Engineer’s Design Report, including engineer's opinion of probable construction cost and Project budget, to the Owner and the FAA for review and comment. PDF copies will be submitted electronically with hard copies provided upon request. (This submittal shall be considered the 30% complete project submittal.)
 - d. Finalize Engineer’s Design Report and CSPP Report with consideration of preliminary review comments and submit Final Engineer’s Design Report and CSPP Report to the Owner and the FAA for final approval and authorization to advertise. PDF copies will be submitted electronically with hard copies provided upon request. Final Engineer’s Design Report and CSPP Report will be submitted with final Construction Plans and Contract Documents/Technical Specifications.
3. Design Phase – Plans and Specifications
- a. Prepare Construction Plans and Contract Documents/Technical Specifications for the Project.
 - 1) Prepare Construction Plans for the Project. The Construction Plans will generally include the following:
 - Title Sheet
 - General Airport Layout Plan and General Notes
 - Safety Plan and Details
 - Summary of Quantities
 - Existing Pavement Condition Photos
 - Demolition Plan
 - Aircraft Parking Apron Rehabilitation Plan
 - Connecting Taxiway Rehabilitation Plan
 - Pavement Rehabilitation Details
 - Pavement Marking Plan and Details
 - 2) Prepare Contract Documents/Technical Specifications that are in accordance with FAA criteria and satisfy project specific needs. The specifications shall be developed using FAA Advisory Circular 150/5370-10H.
 - 3) Submit preliminary (90% completion) Construction Plans, Contract Documents/Technical Specifications, updated engineer's opinion of probable construction cost, and Project budget to the Owner and the FAA for review and comment. PDF copies will be submitted electronically with hard copies provided upon request.

- 4) Finalize Engineer's Design Report, Construction Plans, and Contract Documents/Technical Specifications with consideration of preliminary review comments.
- 5) Submit Final Construction Plans and Contract Documents/Technical Specifications along with Final Engineer's Design and CSPP Reports to the Owner and the FAA for final approval and authorization to advertise. PDF copies will be submitted electronically with hard copies provided upon request.

4. Bidding Phase

- a. Assist the Owner with advertisement for bids. The Consultant shall prepare the advertisement and send the "Notice to Bidders" to prospective Contractors. (The Owner shall place the advertisement in the appropriate media.)
- b. Print and distribute Construction Plans and Contract Documents/Technical Specifications to plan holding houses and prospective Bidders.
- c. Answer questions, clarify points, and issue addenda as necessary pertaining to the Construction Plans and Contract Documents/Technical Specifications during the Bidding Phase.
- d. A prebid conference will not be conducted for this project.
- e. The Consultant will attend the bid opening in Herington, Kansas and assist the Sponsor with one (1) receipt of bids.
- f. Tabulate and analyze bid results, prepare Project budget, review Contractor's qualifications and DBE subcontractor's list provided by the Contractor, and make recommendation of contract award.

B. SPECIAL SERVICES

1. Administrative Assistance

- a. Prepare and submit FAA Form 7460 for project limits identified in the CSPP.
- b. Assist the Owner in preparation of FAA Grant Application for federal funding for submittal to the FAA Airports Division.
- c. Assist the Owner in preparation of required Sponsor Certifications for submittal to the FAA Airports Division.
- d. Assist the Owner in preparation of Invoice Summary forms as required for requests for reimbursement and SF Forms 271 and 425.
- e. Assist the Owner in preparation of Quarterly Performance Reports for submittal to the FAA Airports Division on a quarterly basis for the duration of the Project.

2. DBE Program and Goal Calculation

- a. Prepare DBE Program and Goal Update for FFY 2022-2024 per guidelines acceptable by the Civil Rights Division of the FAA.
- b. Develop a schedule for development of the DBE Program Update for delivery to the Civil Rights Division of the FAA.
- c. Provide the Owner with one (1) copy of the completed DBE Program Update. An electronic copy will be submitted to the Civil Rights Division of the FAA, as this is their preferred method of receipt.
- d. Provide a sample copy of required legal announcements to the Owner.
- e. Provide assistance to aid the Owner in understanding their responsibilities in the administration of the DBE Program.

C. **CONSTRUCTION SERVICES**

- 1. The Scope of Services required for construction administration, construction observation, and materials acceptance testing for the Project may be added by separate Agreement.

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**ARTICLE II
TIME SCHEDULE**

The Consultant agrees to proceed with the services immediately upon receipt of a written Notice to Proceed (NTP) by the Owner, and to employ such personnel as required to complete the Scope of Services in accordance with the following time schedule:

SCHEDULED PERFORMANCE IN CALENDAR DAYS

A. **BASIC SERVICES**

- 1. Preliminary PhaseAs Required
- 2. Design Phase – Engineer’s Design Report and CSPP Report
 - c. Submit Preliminary Engineer’s Design Report and CSPP Report45 Calendar Days After Receipt of NTP
 - d. Submit Final Engineer’s Design Report and CSPP Report30 Calendar Days After Receipt of Review Comments for Item A.3.a.3)
- 3. Design Phase – Plans and Specifications
 - a.3) Submit Preliminary Plans and Specifications.....21 Calendar Days After Receipt of Review Comments for Item A.2.c.

- a.5) Submit Final Plans and Specifications30 Calendar Days After
Receipt of Review Comments for Item A.3.a.3)
- 4. Bidding PhaseAs Required

B. SPECIAL SERVICES

- 1. Administrative AssistanceAs Required
- 2. DBE Program and Goal Calculation.....60 Calendar Days After
Receipt of Notice to Proceed

C. CONSTRUCTION SERVICES

- 1. Construction ServicesMay be Added by Separate Agreement

The schedule presented above does not include review time by the Owner, FAA or other interested agencies.

**ARTICLE III
COMPENSATION**

The Owner agrees to compensate the Consultant for performing engineering services as described herein on the following basis:

COMPENSATION SCHEDULE

A. BASIC SERVICES

- 1. Preliminary Phase\$5,800.00 Lump Sum
- 2. Design Phase – Engineer’s Design Report and CSPP Report\$9,000.00 Lump Sum
- 3. Design Phase – Plans and Specifications.....\$18,600.00 Lump Sum
- 4. Bidding Phase\$5,700.00 Lump Sum
- Subtotal Basic Services\$39,100.00 Lump Sum

B. SPECIAL SERVICES

- 1. Administrative Assistance\$4,100.00 Lump Sum
- 2. DBE Program and Goal Calculation.....\$11,600.00 Lump Sum
- Subtotal Special Services\$15,700.00 Lump Sum
- Total Basic and Special Services\$54,800.00 Lump Sum**

C. CONSTRUCTION SERVICES

- 1. Construction ServicesMay be Added by Separate Agreement

The Consultant shall not proceed with the services described herein until written authorization in the form of a Notice to Proceed is received from the Owner.

For Item A. Basic Services, and Item B. Special Services, partial payment shall be made to the Consultant for those portions of the services completed. The Consultant shall submit to the Owner a monthly statement showing an estimate of completion, and the portion of compensation requested for each element and phase of the services. The request for partial payments will not be in excess of the value of the services completed at the time the statement is rendered.

DRAFT

DERIVATION OF CONSULTANT PROJECT COSTS

BASE BID

REHABILITATE AIRCRAFT PARKING APRON AND CONNECTING TAXIWAY

FAA PROJECT NO. TBD

HERINGTON REGIONAL AIRPORT (HRU)

HERINGTON, KANSAS

BASIC AND SPECIAL SERVICES

November 17, 2021

1. DIRECT SALARY COSTS:

<u>TITLE</u>	<u>HOURS</u>	<u>RATE/HOUR</u>	<u>COST (\$)</u>
Principal	0	\$65.00	\$ -
Project Manager	47	\$60.00	\$ 2,820.00
Design Engineer II	20	\$45.00	\$ 900.00
Design Engineer I	141	\$38.00	\$ 5,358.00
Senior Electrical Engineer	0	\$52.00	\$ -
Senior Airport Planner	0	\$43.00	\$ -
Environmental Scientist	0	\$40.00	\$ -
Technician	110	\$30.00	\$ 3,300.00
Administrative Asst.	97	\$25.00	\$ 2,425.00
Total Direct Salary Costs			= \$ 14,803.00

2. LABOR AND GENERAL ADMINISTRATIVE OVERHEAD:

Percentage of Direct Salary Costs @ 152.85% = \$ 22,626.39

3. SUBTOTAL:

Items 1 and 2 = \$ 37,429.39

4. PROFIT:

15% of Item 3 Subtotal = \$ 5,614.41

Subtotal of Items 3 and 4 = \$ 43,043.80

5. OUT-OF-POCKET EXPENSES:

a. Mileage 580 miles @ \$0.56/mile = \$ 324.80
b. Meals 3 @ \$59.00/day = \$ 177.00
c. Motel 0 days @ \$96.00/day = \$ -
d. Mailing & Misc. Expenses = \$ 254.40

Total Out-of-Pocket Expenses = \$ 756.20

6. SUBCONTRACT COST:

a. DBE Plans & Goals Preparation Services (DBE Program and Goal) = \$ 11,000.00

7. TOTAL FEE:

Items 4, 5 and 6 = \$ 54,800.00

ENGINEERING BASIC AND SPECIAL SERVICES - COST BREAKDOWN
BASE BID
REHABILITATE AIRCRAFT PARKING APRON AND CONNECTING TAXIWAY
HERINGTON REGIONAL AIRPORT (HRU)
HERINGTON, KANSAS
November 17, 2021

Classification:	Principal	Project Manager	Design Engineer II	Design Engineer I	Senior Elec. Engineer	Senior Airport Planner	Environ. Scientist	Technician	Admin. Assistant	Other Costs
Hourly Rate:	\$189.01	\$174.47	\$130.85	\$110.50	\$151.20	\$125.03	\$116.31	\$87.23	\$72.69	
A. BASIC SERVICES										
1. Preliminary Phase:	0	15	0	20	0	0	0	0	9	(1,2)
Labor Subtotal =	\$5,481.16	\$2,617.00	\$0.00	\$2,209.91	\$0.00	\$0.00	\$0.00	\$0.00	\$654.25	
Expense Subtotal =	\$ 318.84									\$ 318.84
Subconsultant Subtotal =	\$ -									\$ -
Total Fee =	\$ 5,800.00									
2. Design Phase - Engineer's Design Report and CSPP Report:	0	4	3	40	0	0	0	14	30	(2)
Labor Subtotal =	\$8,912.33	\$697.87	\$392.55	\$4,419.82	\$0.00	\$0.00	\$0.00	\$1,221.27	\$2,180.83	
Expense Subtotal =	\$ 87.67									\$ 87.67
Subconsultant Subtotal =	\$ -									\$ -
Total Fee =	\$ 9,000.00									
3. Design Phase - Plans and Specs:	0	9	10	53	0	0	0	87	30	(2)
Labor Subtotal =	\$18,505.08	\$1,570.20	\$1,308.50	\$5,856.26	\$0.00	\$0.00	\$0.00	\$7,589.29	\$2,180.83	
Expense Subtotal =	\$ 94.92									\$ 94.92
Subconsultant Subtotal =	\$ -									\$ -
Total Fee =	\$ 18,600.00									
4. Bidding Phase:	0	10	4	16	0	0	0	9	9	(1,2)
Labor Subtotal =	\$5,475.34	\$1,744.67	\$523.40	\$1,767.93	\$0.00	\$0.00	\$0.00	\$785.10	\$654.25	
Expense Subtotal =	\$ 224.66									\$ 224.66
Subconsultant Subtotal =	\$ -									\$ -
Total Fee =	\$ 5,700.00									
PART A SUBTOTAL =	\$ 39,100.00									
B. SPECIAL SERVICES										
1. Administrative Assistance:	0	9	3	8	0	0	0	0	17	(2)
Labor Subtotal =	\$4,082.52	\$1,570.20	\$392.55	\$883.96	\$0.00	\$0.00	\$0.00	\$0.00	\$1,235.80	
Expense Subtotal =	\$ 17.48									\$ 17.48
Subconsultant Subtotal =	\$ -									\$ -
Total Fee =	\$ 4,100.00									
2. DBE Program and Goal for FFY 2022 - 2024	0	0	0	4	0	0	0	0	2	(2,3)
Labor Subtotal =	\$587.37	\$0.00	\$0.00	\$441.98	\$0.00	\$0.00	\$0.00	\$0.00	\$145.39	
Expense Subtotal =	\$ 12.63									\$ 12.63
Subconsultant Subtotal =	\$ 11,000.00									\$ 11,000.00
Total Fee =	\$ 11,600.00									
PART B SUBTOTAL =	\$ 15,700.00									
GRAND TOTAL =	\$ 54,800.00									

- (1) Mileage, Motel and Meals
- (2) Equipment, Materials and Supplies
- (3) Vendor Services

FEDERAL CONTRACT PROVISIONS FOR A/E AGREEMENTS

ALL REFERENCES MADE HEREIN TO “CONTRACTOR”, “PRIME CONTRACTOR”, “BIDDER”, “OFFEROR”, AND “APPLICANT” SHALL PERTAIN TO THE ARCHITECT/ENGINEER (A/E).

ALL REFERENCES MADE HEREIN TO “SUBCONTRACTOR”, “SUB-TIER CONTRACTOR” OR “LOWER TIER CONTRACTOR” SHALL PERTAIN TO ANY SUBCONSULTANT UNDER CONTRACT WITH THE A/E.

ALL REFERENCES MADE HEREIN TO “SPONSOR” AND “OWNER” SHALL PERTAIN TO THE STATE, CITY, AIRPORT AUTHORITY OR OTHER PUBLIC ENTITY EXECUTING CONTRACTS WITH THE A/E.

ACCESS TO RECORDS AND REPORTS

Reference: 2 CFR § 200.333, 2 CFR § 200.336, and FAA Order 5100.38

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

CIVIL RIGHTS – GENERAL

Reference: 49 USC § 47123

The contractor agrees that it will 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 sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

CIVIL RIGHTS – TITLE VI ASSURANCE

Reference: 49 USC § 47123 and FAA Order 1400.11

A) Title VI Solicitation Notice

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises 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.

B) Title VI Clauses for 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) **Non-discrimination:** 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 Nondiscrimination Acts and Authorities, 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 Nondiscrimination Acts and Authorities, 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.

C) Title VI List of Pertinent Nondiscrimination 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 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 non-discrimination 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 U.S.C. 1681 et seq).

DISADVANTAGED BUSINESS ENTERPRISE

Reference: 49 CFR part 26

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

Prompt Payment (§26.29) - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) calendar days from the receipt of each payment the prime contractor receives from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) calendar 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 Sponsor. This clause applies to both DBE and non-DBE subcontractors.

ENERGY CONSERVATION REQUIREMENTS

Reference: 2 CFR § 200, Appendix II (H)

Contractor and each subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq).

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

Reference: 29 USC § 201, et seq.

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

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Reference: 20 CFR part 1910

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. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor 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). Contractor 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.

RIGHT TO INVENTIONS

Reference: 2 CFR § 200 Appendix II (F) and 37 CFR §401

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 in the 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

SEISMIC SAFETY

Reference: 49 CFR part 41

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

TAX DELINQUENCY AND FELONY CONVICTION

Reference: Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76) and DOT Order 4200.6

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

Certification - The applicant represents that it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months. A felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

TRADE RESTRICTION CERTIFICATION

Reference: 49 USC § 50104 and 49 CFR part 30

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

- a) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- 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 included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.; and
- c) has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

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.

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

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

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

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

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Offeror has knowledge that the certification is erroneous.

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

VETERAN'S PREFERENCE

Reference: 49 USC § 47112(c)

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

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$3,500**DISTRACTED DRIVING**

Reference: Executive Order 13513 and DOT Order 3902.10

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

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$10,000**TERMINATION OF CONTRACT**

Reference: 2 CFR § 200 Appendix II (B)

Termination for Convenience

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 by Default

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;
 - 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.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$25,000**DEBARMENT AND SUSPENSION**

Reference: 2 CFR part 180 (Subpart C), 2 CFR part 1200, and DOT Order 4200.5

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

- 1) Checking the System for Award Management at website: <https://www.sam.gov>.
- 2) Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
- 3) Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$100,000**CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

Reference: 2 CFR § 200 Appendix II (E)

- 1) Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- 2) Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor 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 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

- 3) Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any

other Federal contract with the same 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 above.

4) Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The 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 section.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

Reference: 31 U.S.C. § 1352 – Byrd Anti-Lobbying Amendment; 2 CFR part 200, Appendix II (J); and 49 CFR part 20, Appendix A

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, sub-grants, 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.

P

ROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$150,000**BREACH OF CONTRACT TERMS**

Reference: 2 CFR § 200 Appendix II (A)

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.

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.

CLEAN AIR AND WATER POLLUTION CONTROL

Reference: 2 CFR § 200 Appendix II (G)

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 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.

DRAFT

RECORD OF NEGOTIATIONS AND FEE ANALYSIS FOR ENGINEERING DESIGN SERVICES

[Insert Date]

Mr. Todd Rastorfer
Federal Aviation Administration
Airports Division, ACE-600, Room 364
901 Locust
Kansas City, MO 64106-2325

RE: Herington Regional Airport (HRU)
Rehabilitate Aircraft Parking Apron
FAA AIP No. 3-20-0029-013-2022

- a. After completing the consultant selection process in June 2021 and informing Lochner of their selection, Lochner was advised to proceed with preparing an Engineering Agreement for the aircraft parking apron rehabilitation project for the Herington Regional Airport.
- b. A teleconference was conducted on November 8, 2021 between Lochner, the FAA, and the City to discuss the details of the project and proposed scope of services. Minutes of the teleconference were distributed to all parties.
- c. The City and FAA received a draft copy of the proposed Agreement from Lochner for scope and fees for Design Services for the subject project on November 23, 2021. The fee proposal was broken down as follows:

BASIC SERVICES =	\$ 39,100
SPECIAL SERVICES =	<u>\$ 15,700</u>
TOTAL =	\$ 54,800

- d. FAA and City staff reviewed the scope and fee proposal provided by Lochner and evaluated the estimated hours for each respective task. It was determined that the proposed fees were fair and reasonable based on the scope of services provided in the Agreement. Therefore, the Herington City Commission approved and signed the Agreement for Services with Lochner for the subject project.
- e. The executed Engineering Agreement has been submitted to the FAA Project Manager for concurrence in contract acceptance.
- f. Negotiations were conducted in good faith to ensure the fees are fair and reasonable. The procedures outlined in AC 150/5100-14 have been followed.

[Insert Name]
[Insert Title]
City of Herington

Date

Table 16 - User Statistics

Customer or Rate Class, or Meter Size	Volume Range Bottom (in Gallons)	Volume Range Top (in Gallons)	Avg. Use in Each Volume Range in 1,000 Gallons	Total Annual Use in Each Volume Range in Gallons	Customers Within This Volume Range	% Users	% Usage	Cumulative Use in This Class From Low to High Volume	Cumulative Use in This Class From High to Low Volume	% Revenue at Current Rates	% Revenue at Modeled Rates
	0	999	1.000	12,000.0	0.0	0.0%	0.0%	0.1%	100.0%	0.0%	0.0%
	1,000	1,999	1.000	12,000.0	0.0	0.0%	0.0%	0.2%	99.9%	0.0%	0.0%
	2,000	2,999	1.000	12,000.0	0.0	0.0%	0.0%	0.3%	99.8%	0.0%	0.0%
	3,000	3,999	1.000	12,000.0	0.0	0.0%	0.0%	0.4%	99.7%	0.0%	0.0%
	4,000	4,999	1.000	12,000.0	0.0	0.0%	0.0%	0.5%	99.6%	0.0%	0.0%
	5,000	5,999	1.000	12,000.0	0.0	0.0%	0.0%	0.7%	99.5%	0.0%	0.0%
	6,000	6,999	1.000	12,000.0	0.0	0.0%	0.0%	0.8%	99.3%	0.0%	0.0%
	7,000	7,999	1.000	12,000.0	0.0	0.0%	0.0%	0.9%	99.2%	0.0%	0.0%
	8,000	8,999	1.000	12,000.0	0.0	0.0%	0.0%	1.0%	99.1%	0.0%	0.0%
	9,000	9,999	1.000	12,000.0	0.0	0.0%	0.0%	1.1%	99.0%	0.0%	0.0%
	10,000	14,999	5.000	60,000.0	0.0	0.0%	0.1%	1.6%	98.9%	0.0%	0.0%
	15,000	19,999	5.000	60,000.0	0.0	0.0%	0.1%	2.2%	98.4%	0.0%	0.0%
Hope	20,000	24,999	5.000	60,000.0	0.0	0.0%	0.1%	2.7%	97.8%	0.0%	0.0%
	25,000	29,999	5.000	60,000.0	0.0	0.0%	0.1%	3.3%	97.3%	0.0%	0.0%
	30,000	34,999	5.000	60,000.0	0.0	0.0%	0.1%	3.8%	96.7%	0.0%	0.0%
	35,000	44,999	10.000	120,000.0	0.0	0.0%	0.2%	4.9%	96.2%	0.1%	0.1%
	45,000	54,999	10.000	120,000.0	0.0	0.0%	0.2%	6.0%	95.1%	0.1%	0.1%
	55,000	64,999	10.000	120,000.0	0.0	0.0%	0.2%	7.1%	94.0%	0.1%	0.1%
	65,000	74,999	10.000	120,000.0	0.0	0.0%	0.2%	8.2%	92.9%	0.1%	0.1%
	75,000	84,999	10.000	120,000.0	0.0	0.0%	0.2%	9.3%	91.8%	0.1%	0.1%
	85,000	94,999	10.000	120,000.0	0.0	0.0%	0.2%	10.4%	90.7%	0.1%	0.1%
	95,000	104,999	10.000	120,000.0	0.0	0.0%	0.2%	11.5%	89.6%	0.1%	0.1%
	105,000	114,999	10.000	120,000.0	0.0	0.0%	0.2%	12.6%	88.5%	0.1%	0.1%
	115,000	124,999	10.000	120,000.0	0.0	0.0%	0.2%	13.6%	87.4%	0.1%	0.1%
	125,000	134,999	10.000	120,000.0	0.0	0.0%	0.2%	14.7%	86.4%	0.1%	0.1%
	135,000	144,999	10.000	120,000.0	0.0	0.0%	0.2%	15.8%	85.3%	0.1%	0.1%
	145,000	1,413,200	770.917	9,251,000.0	1.0	0.1%	12.4%	100.0%	84.2%	5.6%	5.3%
	Totals for Class			10,991,000.0	1.0	0.1%	14.7%			6.7%	6.3%
	0	999	1.000	12,000.0	0.0	0.0%	0.0%	0.3%	100.0%	0.0%	0.0%
	1,000	1,999	1.000	12,000.0	0.0	0.0%	0.0%	0.7%	99.7%	0.0%	0.0%
	2,000	2,999	1.000	12,000.0	0.0	0.0%	0.0%	1.0%	99.3%	0.0%	0.0%
	3,000	3,999	1.000	12,000.0	0.0	0.0%	0.0%	1.4%	99.0%	0.0%	0.0%
	4,000	4,999	1.000	12,000.0	0.0	0.0%	0.0%	1.7%	98.6%	0.0%	0.0%
	5,000	5,999	1.000	12,000.0	0.0	0.0%	0.0%	2.1%	98.3%	0.0%	0.0%
	6,000	6,999	1.000	12,000.0	0.0	0.0%	0.0%	2.4%	97.9%	0.0%	0.0%
	7,000	7,999	1.000	12,000.0	0.0	0.0%	0.0%	2.8%	97.6%	0.0%	0.0%
	8,000	8,999	1.000	12,000.0	0.0	0.0%	0.0%	3.1%	97.2%	0.0%	0.0%
	9,000	9,999	1.000	12,000.0	0.0	0.0%	0.0%	3.4%	96.9%	0.0%	0.0%
	10,000	14,999	5.000	60,000.0	0.0	0.0%	0.1%	5.2%	96.6%	0.0%	0.0%
	15,000	19,999	5.000	60,000.0	0.0	0.0%	0.1%	6.9%	94.8%	0.0%	0.0%
	20,000	24,999	5.000	60,000.0	0.0	0.0%	0.1%	8.6%	93.1%	0.0%	0.0%
Woodbine	25,000	29,999	5.000	60,000.0	0.0	0.0%	0.1%	10.3%	91.4%	0.0%	0.0%
	30,000	34,999	5.000	60,000.0	0.0	0.0%	0.1%	12.0%	89.7%	0.0%	0.0%
	35,000	44,999	10.000	120,000.0	0.0	0.0%	0.2%	15.5%	88.0%	0.1%	0.1%
	45,000	54,999	10.000	120,000.0	0.0	0.0%	0.2%	18.9%	84.5%	0.1%	0.1%
	55,000	64,999	10.000	120,000.0	0.0	0.0%	0.2%	22.4%	81.1%	0.1%	0.1%
	65,000	74,999	10.000	120,000.0	0.0	0.0%	0.2%	25.8%	77.6%	0.1%	0.1%
	75,000	84,999	10.000	120,000.0	0.0	0.0%	0.2%	29.2%	74.2%	0.1%	0.1%
	85,000	94,999	10.000	120,000.0	0.0	0.0%	0.2%	32.7%	70.8%	0.1%	0.1%
	95,000	104,999	10.000	120,000.0	0.0	0.0%	0.2%	36.1%	67.3%	0.1%	0.1%
	105,000	114,999	10.000	120,000.0	0.0	0.0%	0.2%	39.5%	63.9%	0.1%	0.1%
	115,000	124,999	10.000	120,000.0	0.0	0.0%	0.2%	43.0%	60.5%	0.1%	0.1%
	125,000	134,999	10.000	120,000.0	0.0	0.0%	0.2%	46.4%	57.0%	0.1%	0.1%
	135,000	144,999	10.000	120,000.0	0.0	0.0%	0.2%	49.9%	53.6%	0.1%	0.1%
	145,000	336,200	145.792	1,749,500.0	1.0	0.1%	2.3%	100.0%	50.1%	1.1%	1.0%
	Totals for Class			3,489,500.0	1.0	0.1%	4.7%			2.1%	2.0%
	Grand Totals			74,838,900.0		100.00%	100.00%			100.00%	100.00%