



Indianapolis Airport Authority

Contract for Consultant Services

Agreement made as of the _____ day of _____ in the year of 2009.

BETWEEN the Owner:

Indianapolis Airport Authority
7800 Col H. Weir Cook Memorial Drive
Indianapolis, IN 46241

and the Consultant:

INSERT NAME (Include designation- Inc., LLC, etc.)
INSERT ADDRESS
INSERT CITY, STATE, ZIP

for the following Project:

INSERT NAME OF PROJECT

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CONTRACT FOR INSERT DESCRIPTION CONSULTING SERVICES

This is an Agreement by and between the Indianapolis Airport Authority (hereafter referred to as the "Authority") and INSERT COMPANY'S LEGAL NAME (hereafter referred to as "INSERT NAME or ABBREVIATION" and/or where appropriate "Consultant"), referred to hereinafter as "Party" or collectively as "Parties."

Whereas, the Authority seeks the assistance of a Consultant to INSERT DESCRIPTION OF WORK TO BE PERFORMED;

Whereas, the Consultant possesses independent qualifications and abilities to perform such efforts; and,

Whereas, the Consultant is willing to provide such services in accordance with the terms and conditions set forth herein.

Now, therefore, the above named parties enter into this contract upon the following terms and conditions:

I. Statement of Work

The Consultant shall report to, and act under the direction of, the INSERT STAFF TITLE or her/his designee in providing the services under this contract as outlined in Exhibit A – Scope of Work attached hereto and incorporated by reference.

II. Consideration

For all services rendered under this Agreement, the Authority agrees to pay the Consultant for fees and expenses as described in Exhibit "A" and incorporated by reference in an amount not to exceed \$TOTAL AMOUNT OF AGREEMENT (fees and expenses). The Consultant shall be paid promptly upon receipt of an invoice showing a detailed recitation of the work performed from the previous month and the Consultant shall be paid no more frequently than once per month. The Consultant will be paid only after the INSERT STAFF TITLE or her/his designee has received and reviewed the Consultant's itemized detailed statement for services rendered. The Consultant shall pay its SubConsultants within ten (10) days of receipt from Owner of the payment of any request for payment that included billings for the services of the SubConsultants.

III. Term

This contract shall be in effect for the period beginning INSERT DATE and ending INSERT DATE.

IV. Assignment

The Consultant binds its successors and assignees to all the terms and conditions of this Agreement.

The Consultant may assign its right to receive payments to such third parties as the Consultant may desire without the prior written consent of the Authority, provided that the Consultant gives written notice (including evidence of such assignment) to the Authority thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one (1) party.

Notwithstanding the foregoing, the Consultant shall not assign or sub-contract the whole or any part of this Agreement to any other person or entity without the prior written consent of the Authority.

V. Attorney's Fees and Penalties

The Authority will in good faith perform its obligations required hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law.

VI. Audit

The Consultant agrees to permit the Authority, the Federal Aviation Administration (FAA), the Comptroller General of the United States, or any of their duly authorized representatives, to enter upon the Consultant's premises in order to audit the Consultant's books and records to verify any and all fees and charges claimed pursuant to this Contract. The Consultant agrees to keep books and records in satisfactory form and content to permit such audit and verification for such period of time as required and defined in FAA Advisory Circular No. 150/5100-10A, dated April 13, 1976. All payments made to the Consultant pursuant to this Contract shall be subject to final audit.

VII. Changes in the Work

In the event that the Authority requires a change in scope, character, or complexity of the work after the work has progressed, adjustments in compensation to the Consultant shall be determined by the Authority in the exercise of its honest and reasonable judgment, and the Consultant shall not commence the additional work or the change of scope until authorized in writing by the Authority. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

VIII. Compliance with Laws

- A. The Consultant specifically agrees that in the performance of the Services by it or an approved subConsultant or anyone acting in behalf of either, that it or they will comply with any and all applicable state, federal, and local statutes, ordinances, and regulations. The enactment of any state or federal statute or the promulgation of regulations there under, after execution of this contract shall be reviewed by the Authority or its designee and the Consultant to determine whether the provisions of this contract require formal amendment.
- B. The Consultant shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1979.
- C. If the Consultant is a foreign (out of State) entity, it shall be required to furnish a certificate from the Secretary of the State of Indiana showing that the corporation is registered and authorized to transact business in the State of Indiana.

IX. Condition of Payment

All services provided by the Consultant under this Agreement must be performed to the Authority's satisfaction, as determined at the sole discretion of the Authority and in accordance with all applicable rules, regulations, federal, state and local laws. The Authority shall not be required to pay for work found to be unsatisfactory, inconsistent with this Agreement or performed in violation of federal, state or local statute, ordinance, rule or regulation.

X. Confidentiality of Authority Information

The Consultant agrees and understands that all data, materials, information disclosed to or discovered by the Consultant in the course of performance of this contract shall be considered as confidential and protected data. Therefore, the Consultant agrees that any such data, material or information gathered based upon or disclosed to the Consultant for the purpose of this Contract will not be disclosed to others or discussed with other parties without the prior written consent of the Authority .

XI. Disadvantaged Business Enterprise (DBE) Assurances

A. Policy

It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises, as defined in 49 CFR Parts 23 and 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Parts 23 and 26 apply to this Agreement.

B. DBE Obligation

The Consultant agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR Parts 23 and 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Parts 23 and 26 as appropriate. Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

XII. Dispute Resolution Provisions

Should any dispute arise with respect to this Contract, the Consultant and the Authority agree to act immediately to attempt to resolve any such disputes. Time is of the essence in the resolution of disputes.

A. Claims

Claims, disputes or other matters in question between the parties to this Agreement ("Claims") arising out of or relating to this Agreement or breach thereof shall be subject to and decided by a Private Judge pursuant to Ind. Code 33-38-10, Indiana's Alternative Dispute Resolution Rule 6 and the Agreement of the parties contained herein.

B. Waiving Rights

The parties hereto waive all rights to trial by jury and agree that a Private Judge will hear and decide all claims, disputes or other matters in question arising out of or relating to the Project, this Agreement or the breach thereof. Such action shall be filed in the Marion County, Indiana, Circuit/Superior Court, which shall be the exclusive venue for litigating Claims (other than Third-Party Claims as defined in Paragraph C below) and the parties agree to promptly file, pursuant to Rule 6.1 of the Indiana Alternative Dispute Resolution Rules, a written petition assigning the Claim to the Private Judge, with the obligation to file the written petition to be subject to judicial enforcement should any party refuse or delay in signing such petition. The procedure that shall govern litigation heard by the Private Judge, and any appeal there from, shall be in accordance with the provisions of Ind. Code 33-38-10, Indiana's Alternative Dispute Resolution Rule 6, Indiana Rules of Trial Procedure and Indiana Rules of Appellate Procedure.

1) Selection of Private Judge

If all the parties who are involved with the Claim mutually agree to select from the most current list of Private Judges as then maintained by the Indiana Supreme Court Division of State Court Administration, then that individual will be appointed to serve as Private Judge. In the event that such parties cannot agree, a Private Judge shall be selected through a striking process as follows:

- a) The parties who are involved with the Claim shall participate in the striking process of the Private Judges;
- b) The order of striking shall be determined by a blind draw to be conducted by the Owner, after providing notice to the parties who are involved with the Claim and such parties shall be permitted to observe and monitor the blind draw;
- c) Once the order of striking is established, the parties who are involved with the Claim shall proceed with the striking process until only one Private Judge remains on the most current list of Private Judges maintained by the Indiana Supreme Court Division of Administration; and
- d) In the event that a Private Judge so selected does not agree to serve, then the Private Judge whose name was stricken immediately before shall be selected and this procedure shall be repeated, if necessary, until a Private Judge who agrees to serve is selected.
- e) If a Private Judge selected in the first instance resigns, disqualifies himself/herself or is unable to hear and resolve claims by reason of death, mental incapacity or physical incapacity and the parties involved with the claim are unable to agree on a replacement Private Judge, the striking process shall be repeated.

2) Compensation of Private Judge

The compensation and expenses of the Private Judge shall be shared equally by the parties during the course of the proceedings. The prevailing party shall be entitled to recover its share of the Private Judge's compensation and expenses from the non-prevailing parties as the Private Judge may order.

C. Third Party Claims

For purposes of this paragraph C the provisions of this Article XII, and their substantial equivalent contained in other agreements relating to the Project, are referred to collectively as the "Dispute Resolution Provisions." In the event a person who is not bound by the Dispute Resolution Provision sues a person who is bound by the Dispute Resolution Provisions then, for purposes of that suit only (referred to for purposes of this paragraph C as a "Third-Party Claim"), any and all claims between or among the parties bound by the Dispute Resolution Provisions (including claims for indemnity or contribution) that arise out of and specifically relate to the Third Party Claim shall be resolved in the State or Federal Court having jurisdiction over the Third-Party Claim. In such event and for purposes of the Third Party Claim only, the provisions of this Article XII shall be suspended. In all other cases, the provisions of this Article XII shall remain in full force and effect.

D. Alternative Dispute Resolution/Mediation

Before resorting to litigation before the Private Judge, the parties hereto shall use their best efforts to settle any claim, dispute or other matter in question. To this effect, they shall consult and negotiate in good faith with each other, recognizing their mutual interests in an attempt to reach a just and equitable solution satisfactory to all parties. If they do not reach such a solution within ten (10) days of either party requesting, in writing, a meeting to discuss the Claim, dispute or other matter in question, then upon notice by either party the

Claim, dispute or other matter in question shall be submitted to non-binding mediation. The parties involved in the Claim, dispute or other matter in question shall, in good faith, seek to mutually agree upon the selection of the Mediator. In the event that the parties cannot agree upon such selection, the parties shall select the mediator using a striking process. Each party shall submit the name of two (2) mediators. The order of striking shall be determined by a blind draw to be conducted by the Owner, after providing notice to the parties who are involved with the Claim and such parties shall be permitted to observe and monitor the blind draw. Once the order of striking is established, the parties who are involved with the Claim shall proceed with the striking process until only one Mediator remains on the list. All parties to the mediation agree that they will, in good faith, try to settle the matter before resorting to litigation. If they do not reach a resolution within sixty (60) days of mediation being requested in writing, then either party is free to file a lawsuit. The litigation shall proceed concurrently with the mediation proceeding, although the litigation proceeding shall not be subject to delay as a result of mediation, unless the parties so agree or the Court so orders.

1) Consultants Bound

The Consultant shall include in its contracts with its consultants and subConsultants provisions that bind the Consultant and subConsultant to the Dispute Resolution Procedures of this Article XII.

XIII. Governing Laws

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and any legal action must be brought in Marion County, Indiana.

XIV. Independent Consultant

Both parties hereto will be acting in an individual capacity in the performance of this contract and not be acting as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Neither party will assume any liability for any injury (including death) to any persons, nor damage to any property, arising out of the acts or omissions of the agents, employees, or subConsultants of the other party. The Consultant shall be responsible for providing all necessary Unemployment and Workers Compensation Insurance for its employees.

XV. No Third Party Rights

Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the Owner or the Consultant.

XVI. Non-discrimination and Other Assurances

During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest agrees as follows:

A. Compliance with Regulations

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

B. Nondiscrimination

The Consultant, with regard to the work performed by it under this Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subConsultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Indiana Code Section 22-9-1-10 or Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations. Breach of this covenant may be regarded as material breach of contract.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations, either by competitive bidding or negotiation, made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports

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

E. Sanctions for Noncompliance

In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Authority shall impose such sanctions as it or the FAA may determine to be appropriate, including but not limited to:

- 1) withholding of payments to the Consultant under this Agreement until the Consultant complies, and/or
- 2) cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions

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

XVII. Non-Waiver

No right conferred on either party under this Contract shall be deemed waived and no breach of this Contract excused unless such a waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

XVIII. Overhead

Overhead, as defined in Title 48, Code of Federal Regulations shall be calculated by the Consultant's auditing firm based on the most recent audit and pursuant to the Federal Procurement Regulations. Said audit, having occurred within the last six (6) months, shall be submitted to the appropriate Authority personnel, for her/his review and acceptance. Overhead as defined shall be subject to audit by the Authority and/or agency of the federal government in order to confirm any overhead factor submitted or claimed by the Consultant.

XIX. Ownership of Documents

- A. All documents, drawings, including design information, concepts, cost information, estimates, specifications, reports, etc., prepared by Consultant or its subConsultants or agents under this Agreement are to be the property of the Authority. During the performance of the Services, the Consultant shall be responsible for all original documents while they are in its possession and any such loss or damage shall be restored at its expense. The Authority will allow the Consultant to retain copies of the work and to publicize the project with the exception that proprietary information regarding business and financial information shall be kept confidential and will remain the property of the Authority in all cases.
- B. The Consultant hereby represents that it is the owner of and hereby assigns to the Authority all right, title and interest, including all copyrights, copyright registrations, copyright applications, renewals, extensions and all other proprietary or ownership rights, in all drawings, images, renderings, models, specifications, and other documents and things created by the Consultant in whole or in part, or hereafter to be created by the Consultant in connection with this agreement, including but not limited to, all works based upon, derived from, or incorporating the drawings, images, renderings, models, specifications, and other documents and things created by the Consultant in connection with this agreement.

In the event of the termination of Consultant under the provisions of this Agreement, the Consultant shall deliver to the Authority within seven (7) days all drawings, images, renderings, models, specifications and other documents created by the Consultant in connection with the agreement and not previously delivered to the Authority during the course of the work. The Authority, as the holder of all rights, title and interest, including all copyrights, in all drawings, images, renderings, models, specifications and other documents created by the Consultant, as provided above, shall have the right to use or reuse any and all such drawings, images, renderings, models, specifications and other documents for any purpose, including, but not limited to, its completion, at the Authority's sole discretion and at no additional cost to the Authority.

The Consultant agrees that its contracts with any of its consultants will contain language which will assign to the Authority ownership of all drawings, images, renderings, models, specifications, and other documents and things created by such consultants to the Owner on the same terms and conditions as set forth herein.

XX. Performance

This Contract shall be deemed to have been substantially performed, only when fully performed according to its terms and conditions and any modifications thereof.

XXI. Responsibility for Claims and Liabilities

- A. The Consultant shall be responsible for all personal injury, wrongful death or property damage resulting from the negligent acts or omissions of the Consultant or the Consultant's approved subConsultants or agents in connection with the Services, and shall be responsible for all parts of their work, both temporary and permanent.
- B. The Consultant shall indemnify and save harmless the Authority, from all claims, suits, damages, causes of action, costs of defense, including reasonable attorney fees, and judgments that result from the negligent acts, errors, mistakes, or omissions of the Consultant or the Consultant's approved subConsultants or agents under this Agreement and such indemnity shall not be limited by any insurance coverage.

XXII. Special Provisions

- A. The Consultant will not be responsible for the performance of any contract, work or products or any effects resulting there from, of any other Consultant, subConsultants, manufacturer, supplier, fabricator, or engineer retained by the Authority.
- B. The remedies provided in this Agreement shall be cumulative and no one shall be construed as exclusive of any other or of any remedy provided by law and failure of any party to exercise any remedy at any time shall not operate as a waiver of the right of such party to exercise any remedy for the same or subsequent default at any time thereafter.
- C. Consultant must provide the Authority, FAA, Comptroller General of the United States, or any of the duly authorized representatives of the aforementioned parties, with access to any books, documents, papers, and records that relate to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions. Consultant must maintain and provide access to all of the required records for a period of three (3) years after final payment for Services is made by the Authority.
- D. Consultant shall execute this Agreement before the same shall be acted upon by the Authority.

XXIII. Successors and Assignees

The Consultant binds his successors and assignees to all covenants of this Contract. Except as may be set forth above, the Consultant shall not assign or transfer its interest in this Contract without the prior written consent of the Authority.

XXIV. Suspension and Termination

In the event that either party is unable to perform any of its obligations under this Contract, or to enjoy any of its benefits because of natural disasters, actions or decrees of government bodies, the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract are suspended. If the period of non-performance exceeds thirty days from the receipt of notice, the party whose ability to perform has not been so affected may, by giving written notice, terminate this contract.

XXV. Taxes

The Authority will not be responsible for any taxes levied on the Consultant as a result of this Contract.

XXVI. Termination for Convenience

This Contract may be terminated in whole or in part by the Authority whenever, for any reason, the Authority determines that such termination is in the best interest of the Authority. Termination of services shall be affected by delivery to the Consultant of a termination notice at least ten (10) days prior to the effective date of the termination, specifying the extent to which services are to be performed until the termination becomes effective. The Consultant shall be compensated for services rendered prior to the effective date of termination. The Consultant shall be compensated for services herein provided, but in no case shall total payment made to Consultant exceed the original price due on the Contract.

XXVII. Worker's Compensation and Liability Insurance

The Consultant shall procure and maintain at its expense insurance of the kind and in the amount hereinafter provided, by companies authorized to do such business in the State of Indiana, covering all operations under this Agreement whether performed by the Consultant or by an approved subConsultant.

Before commencing the work, the Consultant shall furnish to the Authority a certificate, or certificates, in a form satisfactory to the Authority, showing that they have complied with this paragraph, which certificate or certificates, shall designate the Authority as an additional named insured with regard to the insurance required hereof. The policies shall not be changed or canceled until thirty (30) days written notice has been given to the Authority.

The kinds and amounts of insurance required are as follows:

1. Policy covering the obligations of the Consultant in accordance with the provision of Indiana's Worker's Compensation Law. This Agreement shall be void and of no effect unless the Consultant procures such a policy and maintains it until the acceptance of the Services provided under this Agreement are declared accepted.
2. Consultant shall provide general liability insurance with financially responsible underwriter of not less than One Million Dollars (\$1,000,000) per occurrence, ensuring Consultant from liability from bodily injury (including wrongful death), personal injury, and damage to property resulting from Consultant's performance of this Agreement.
3. Umbrella liability coverage with the limit of not less than Two Million Dollars (\$2,000,000).

XXVIII. Work Standards

The Consultant agrees to execute its responsibilities by following and applying at all times that high degree of care expected from the Consultant practicing at the same time in the United States, providing similar services such as those required under this Contract.

XXIX. Integration

This document incorporates the entire agreement of the Parties and supersedes all prior discussions or agreements concerning any subject matter related hereto. This Agreement may not be amended except by a writing executed by the Parties hereto. The Parties having read and understood the foregoing terms of the attached Agreement do by their respective signatures dated below, hereby agree to the terms hereof.

I hereby certify that I am the duly authorized representative of the Contractor and that neither I nor any other member, employee, representative, agent or officer of the Contractor has directly or indirectly, to the best of his/her knowledge:

- A.) Entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration to any firm or person other than a bona fide employee working solely for me or the Contractor, to solicit or secure this Agreement other than that which appears on the face of this Agreement; or
- B.) Agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement, the day and year above referenced.

CONSULTANT NAME:

Date _____

By _____

Printed Name

Title

INDIANAPOLIS AIRPORT AUTHORITY:

Date _____

By _____

INSERT APPROPRIATE SIGNATURE BLOCK FOR THIS AGREEMENT

Exhibit A-Scope of Work and Budget