

File No. 101110

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: September 15, 2010

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126 <i>NA-RFP</i> |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER

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Completed by: Victor Young

Date: September 10, 2010

Completed by: Victor Young

Date: _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Accept and Expend Grant - U.S. Federal Aviation Administration Grant - Not to Exceed
2 \$79,982,500]

3 **Resolution authorizing the Airport Commission to execute an Other Transaction**
4 **Agreement with the Federal Aviation Administration (FAA) for the Replacement Airport**
5 **Traffic Control Tower and FAA Offices in the amount not-to-exceed \$79,982,500 and**
6 **retroactively accept and expend federal funds.**

7
8 WHEREAS, In 2008, it was concluded that the existing Airport Traffic Control
9 Tower (ATCT) at the Airport required replacement due to not meeting current seismic
10 standards; and

11 WHEREAS, The Federal Aviation Administration (FAA), with the support of the Airport,
12 performed a siting study and determined that the preferred site for the Replacement ATCT
13 was Courtyard 2; and

14 WHEREAS, The Airport and the FAA are in agreement that the agencies should
15 develop a partnership which provides for FAA oversight of the project and assigns project
16 management, design and construction responsibilities of the Replacement ATCT and
17 integrated FAA Offices (FAA Facilities) to the Airport; and

18 WHEREAS, The Airport proposes to negotiate and execute an Other Transaction
19 Agreement (OTA) with the FAA to define roles and responsibilities for the implementation, and
20 develop a budget and funding plan for proceeding with the work; and

21 WHEREAS, The FAA will reimburse the Airport for 100% of the estimated cost of the
22 FAA Facilities, either in advance with the existing appropriations or as reimbursement from
23 future appropriations, in an amount not to exceed \$79,982,500; and

1 WHEREAS, The Airport will prepare an Environmental Assessment (EA) on FAA's
2 behalf to ensure compliance with requirements set forth in the Council on Environmental
3 Quality regulation for implementing the National Environmental Policy Act (NEPA); and

4 WHEREAS, It is anticipated that EA will result in a Finding of No Significant Impact
5 (FONSI), and the EA will be approved by the FAA; and

6 WHEREAS, The OTA will remain in effect for five years or when the Airport's design-
7 build contractor has completed the design and construction of the FAA Facilities, and the FAA
8 has approved the facility; and

9 WHEREAS, The ATCT and FAA Facilities will be solely owned by the Airport which will
10 be responsible for the maintenance, repair, and upkeep for the life of the building; and

11 WHEREAS, The OTA requires the Airport and the FAA at the conclusion of this
12 Agreement to have a separate lease agreement which will contain the FAA and Airport
13 specific operational responsibilities; and

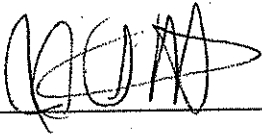
14 WHEREAS, The OTA does not require an ASO amendment; and

15 WHEREAS, The Board of Supervisors hereby waives inclusion of indirect costs in the
16 project budget; now, therefore be it:

17 RESOLVED, That the San Francisco Board of Supervisors authorizes the Airport to
18 execute an Other Transaction Agreement with the Federal Aviation Administration for 100%
19 reimbursement of the Replacement Airport Traffic Control Tower and integrated FAA Offices
20 in the amount not-to-exceed Seventy Nine Million Nine Hundred Eighty Two Thousand Five
21 Hundred Dollars (\$79,982,500) and retroactively accept and expend federal funds.

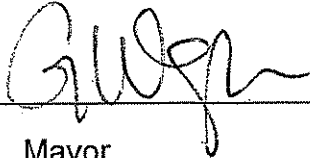
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Recommended:




Department Head

Approved:



For Mayor

Approved:



Controller



TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *for* Mayor Gavin Newsom *ST*
RE: Accept-Expend - U.S. Federal Aviation Administration Grant -
\$79,982,500
DATE: August 10, 2010

Dear Madame Clerk:

Attached for introduction to the Board of Supervisors is the resolution authorizing the Airport to execute an Other Transaction Agreement with the Federal Aviation Administration for the Replacement Airport Traffic Control Tower and FAA Offices in the amount not-to-exceed Seventy Nine Million, Nine Hundred Eighty Two Thousand, Five Hundred Dollars (\$79,982,500) and accept and expend federal funds.

I request that this item be calendared in Budget and Finance Committee.

Should you have any questions, please contact Starr Terrell (415) 554-5262.

10/110



San Francisco International Airport

P.O. Box 8097
San Francisco, CA 94128
Tel 650.821.5000
Fax 650.821.5005
www.flysfo.com

August 3, 2010

Ms. Angela Calvillo
Clerk of the Board
Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Dear Ms. Calvillo:

AIRPORT
COMMISSION
CITY AND COUNTY
OF SAN FRANCISCO

GAVIN NEWSOM
MAYOR

LARRY MAZZOLA
PRESIDENT

LINDA S. CRAYTON
VICE PRESIDENT

CARYL ITO

ELEANOR JOHNS
RICHARD J. GUGGENHIME

JOHN L. MARTIN
AIRPORT DIRECTOR

Enclosed please find a resolution authorizing the Airport to execute an Other Transaction Agreement with the Federal Aviation Administration for the replacement of the Airport Traffic Control Tower and FAA Offices in the amount not-to-exceed Seventy Nine Million, Nine Hundred Eighty Two Thousand, Five Hundred Dollars (\$79,982,500) and accept and expend federal funds.

If approved by the Board of Supervisors, the Other Transaction Agreement will remain in effect for five years and will cover 100% of the airport's cost for the replacement tower and offices. The FAA has agreed to allow the airport to design and construct the new federal facilities in order to ensure the proper integration of the FAA facilities with the future Terminal 1 Redevelopment Program.

The Department of City Planning, Office of Major Environmental Analysis (MEA) has determined that the ATCT Replacement Project and Integrated Facilities are within the scope of the San Francisco International Airport's Master Plan Program approved by the Airport commission on November 3, 1992. The MEA approved the Master Plan Program EIR Addendum for the ATCT and Integrated Facilities Project which concluded that no additional environmental review is required under the California Environmental Quality Act.

Enclosed please find a copy of the proposed Other Transaction Agreement and the Board of Supervisors' Grant Information form

If you have any questions, please contact Cathy Widener, Governmental Affairs Administrator, at 650-821-5023.

Very truly yours,

John L. Martin
Airport Director

Enclosure

File Number: 101110
(Provided by Clerk of Board of Supervisors)

Grant Information Form
(Effective March 2005)

Purpose: Accompanies proposed Board of Supervisors resolutions authorizing a Department to accept and expend grant funds.

The following describes the grant referred to in the accompanying resolution:

1. Grant Title: Replacement Airport Traffic Control Tower and FAA Offices
2. Department: Airport Commission
3. Contact Person: Cathy Widener Telephone: (650) 821-5023
4. Grant Approval Status (check one):
 Approved by funding agency Not yet approved
5. Amount of Grant Funding Approved or Applied for: \$79,982,500
- 6a. Matching Funds Required: \$0
- b. Source(s) of matching funds (if applicable):
- 7a. Grant Source Agency: Federal Aviation Administration (FAA)
- b. Grant Pass-Through Agency (if applicable):
8. Proposed Grant Project Summary:
The Airport proposes to negotiate and execute an Other Transaction Agreement (OTA) with the FAA to reimburse the Airport for 100% of the estimated cost of the Replacement Airport Traffic Control Tower and FAA Offices. The FAA and Airport would develop a partnership which provides for FAA oversight of the project, and assigns project management, design and construction responsibilities to the Airport.
9. Grant Project Schedule, as allowed in approval documents, or as proposed:
The OTA will remain in effect for five years.
10. Number of new positions created and funded: 0
11. If new positions are created, explain the disposition of employees once the grant ends?
- 12a. Amount budgeted for contractual services: \$79,982,500
- b. Will contractual services be put out to bid?
RFP process for design and construction management services.
RFP process for design-build services (65% based on lowest cost)
- c. If so, will contract services help to further the goals of the department's MBE/WBE requirements?
No. To be eligible for reimbursement, federal DBE requirements are mandatory.

d. Is this likely to be a one-time or ongoing request for contracting out? One time.

13a. Does the budget include indirect costs? Yes No

b1. If yes, how much? \$

b2. How was the amount calculated?

c. If no, why are indirect costs not included?

Not allowed by granting agency

To maximize use of grant funds on direct services

Other (please explain):

According to the Lease and Use Agreement between the City of San Francisco and major airlines using San Francisco International Airport, the Annual Service Payment made to the City shall constitute full satisfaction of all obligations of the Airport.

c2. If no indirect costs are included, what would have been the indirect costs?

14. Any other significant grant requirements or comments:

****Disability Access Checklist****

15. This Grant is intended for activities at (check all that apply):

Existing Site(s)

Existing Structure(s)

Existing Program(s) or Service(s)

Rehabilitated Site(s)

Rehabilitated Structure(s)

New Program(s) or Service(s)

New Site(s)

New Structure(s)

16. The Departmental ADA Coordinator and/or the Mayor's Office on Disability have reviewed the proposal and concluded that the project as proposed will be in compliance with the Americans with Disabilities Act and all other Federal, State and local access laws and regulations and will allow the full inclusion of persons with disabilities, or will require unreasonable hardship exceptions, as described in the comments section:

Comments: The FAA has an ADA compliance waiver for the ATCT cab.

ADA Coordinator approval is based on compliance with CBC and ADAAG requirements and final tower design, including FAA's reference guidelines and ADA scoping requirements which excludes air control tower cabs and floor immediately below.

Departmental Disability Reviewer: Jorge Garcia
(Name)

Date Reviewed: 7/30/10

Department Approval: Jorge Garcia SFO ADA Coordinator
(Name) (Title)

(Signature)

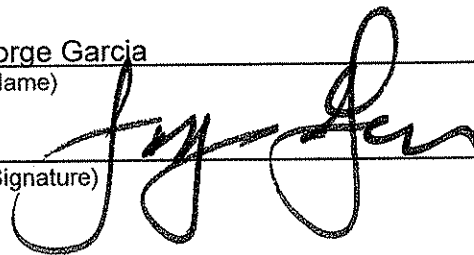




EXHIBIT 9

AMERICANS WITH DISABILITIES ACT GUIDANCE

Advisory 206.2.1 Site Arrival Points Exception 2. Access from site arrival points may include vehicular ways. Where a vehicular way, or a portion of a vehicular way, is provided for pedestrian travel, such as within a shopping center or shopping mall parking lot, this exception does not apply.

206.2.2 Within a Site. At least one *accessible route* shall connect *accessible buildings*, *accessible facilities*, *accessible elements*, and *accessible spaces* that are on the same *site*.

EXCEPTION: An *accessible route* shall not be required between *accessible buildings*, *accessible facilities*, *accessible elements*, and *accessible spaces* if the only means of access between them is a *vehicular way* not providing pedestrian access.

Advisory 206.2.2 Within a Site. An *accessible route* is required to connect to the boundary of each area of sport activity. Examples of areas of sport activity include: soccer fields, basketball courts, baseball fields, running tracks, skating rinks, and the area surrounding a piece of gymnastic equipment. While the size of an area of sport activity may vary from sport to sport, each includes only the space needed to play. Where multiple sports fields or courts are provided, an *accessible route* is required to each field or area of sport activity.

206.2.3 Multi-Story Buildings and Facilities. At least one *accessible route* shall connect each *story* and *mezzanine* in multi-story buildings and facilities.

EXCEPTIONS: 1. In *private buildings or facilities* that are less than three *stories* or that have less than 3000 square feet (279 m²) per *story*, an *accessible route* shall not be required to connect *stories* provided that the *building or facility* is not a shopping center, a shopping mall, the professional office of a health care provider, a terminal, depot or other station used for specified public transportation, an airport passenger terminal, or another type of *facility* as determined by the Attorney General.

2. Where a two *story public building or facility* has one *story* with an *occupant load* of five or fewer persons that does not contain *public use space*, that *story* shall not be required to be connected to the *story* above or below.

3. In detention and correctional *facilities*, an *accessible route* shall not be required to connect *stories* where cells with mobility features required to comply with 807.2, all *common use* areas serving cells with mobility features required to comply with 807.2, and all *public use* areas are on an *accessible route*.

4. In residential *facilities*, an *accessible route* shall not be required to connect *stories* where *residential dwelling units* with mobility features required to comply with 809.2 through 809.4, all *common use* areas serving *residential dwelling units* with mobility features required to comply with 809.2 through 809.4, and *public use* areas serving *residential dwelling units* are on an *accessible route*.

5. Within multi-story *transient lodging* guest rooms with mobility features required to comply with 806.2, an *accessible route* shall not be required to connect *stories* provided that *spaces* complying with 806.2 are on an *accessible route* and sleeping accommodations for two persons minimum are provided on a *story* served by an *accessible route*.

6. In air traffic control towers, an *accessible route* shall not be required to serve the cab and the floor immediately below the cab.

RD and OTA Cost Estimates

ELEMENT	OTA Cost (\$M)
Facility Design	2.51
Facility Blast Design	0.20
Construction Contract	56.14
ATCT	27.00
Base Building	20.14
Site Work	8.70
Road	0.30
Change Proposals	0.00
Construction Management/ Eng Support	2.11
As-builts	0.26
FTI Special Construction	1.00
Admin Furniture	0.37
LAN/WAN; PBX; Phone	0.38
Admin A/V and Video Conference	0.03
Facility Security Equipment	0.60
Power System	2.10
Equipment Racks	0.12
SubTotal	65.82
Planning	0.27
Materials, Test & Inspection	0.73
LEEDS	0.50
Utilities Extension	0.50
FAA Tie In	0.30
Subtotal	68.13
Contingency / Change Orders	11.85
TOTAL	79.98

**OTHER TRANSACTION AGREEMENT (OTA) BETWEEN
FEDERAL AVIATION ADMINISTRATION (FAA)**

AND

City and County of San Francisco International Airport (Airport)

FOR

San Francisco International Airport Traffic Control Tower (ATCT)

San Francisco Airport Traffic Control Tower (ATCT) was commissioned in August 1984, is sponsor owned and 190 feet tall. The tower is integrated with the original terminal building which is being seismically upgraded. Studies conducted in 2005 and 2006 concluded it was impractical and cost prohibitive to upgrade the tower structure to today's earthquake code.

WHEREAS, in order to replace the ATCT, and due to its integration with the terminal, the FAA has determined to execute the replacement by means of an Other Transaction Agreement (OTA) to allow SFO to manage the project with FAA oversight. The proposed activity benefits the Airport who currently owns and maintains the existing tower while helping to advance the FAA's mission by providing a seismically upgraded facility at an Operational Evolution Partnership (OEP) airport which is controlled and staffed by the FAA.

NOW THEREFORE, the FAA and the City and County of San Francisco mutually agree as follows:

ARTICLE 1. PARTIES

The parties to this Agreement are the Federal Aviation Administration (FAA) and the City and County of San Francisco, acting by and through its Airport Commission, hereafter known as the "Airport."

ARTICLE 2. SCOPE

1. The purpose of this Agreement between the FAA and the Airport is to provide funds, as set forth in this Agreement, for the Airport to obtain permits, design, and construct, a replacement Airport Traffic Control Tower (ATCT) at San Francisco International Airport, which will be operated as an FAA Tower. The replacement ATCT will meet the requirements of:
 1. SFO Airport Traffic Control Tower Site Survey Final Report and FAA Safety Risk Management Document Comparative Safety Assessment for Airport Traffic Control Tower Siting.
 2. FAA Order 6480.7E Airport Traffic Control Towers (ATCTs) and Terminal Radar Approach Control (TRACONS) Facility Design Guidelines.

3. FAA Order 6950.2D, Change 1. Electrical Power Policy Implementation at National Airspace System Facilities.
4. FAA-STD-19e, Lightning, Surge Protection, Grounding, Bonding and Shielding.
5. San Francisco, CA Airport Traffic Control Tower (ATCT) Requirements Document/Requirements Document Workbook (Attachment A).
6. Terminal Facilities Standard Designs A/E Project Manual (Attachment B)
7. Design and construct the building to the greatest extent possible to the goals and requirements of the Federal Government Sustainable building initiatives, including Executive Order 13514) (Attachment C) and the Energy Independence and Security Act (EISA) of 2007.
8. FAA Security Order 1600.69B for facility at Security Level 2.
9. FAA Order 6950.27 – Short Circuit Analysis and Protective Device Coordination Study.
10. FAA Specification FAA-C-1217f, Electrical Work, Interior

2. Specific Goals and Objectives to be accomplished:

1. The FAA will provide the Airport with funds, as funds become available, as specified in Article 8 to complete the Environmental Assessment (EA), design and construction of an ATCT facility that will be used as an FAA ATCT.
2. The ATCT building will be solely owned by the Airport who is responsible for the maintenance, repair, and upkeep at no cost to FAA for the life of the building. Standard FAA ATCT technical equipment, as identified within the RDWB, will be installed, maintained, refurbished, and replaced by FAA at no cost to the Airport.
3. The Airport has critical current and long-term terminal elements which are to be integrated into the ATCT facility at Levels 1 and 2. These elements will be designed and constructed as an integral part of the ATCT facility and will share various systems including, but not limited to, foundations, structure, mechanical, electrical, plumbing, and special systems. The Airport will pay for all terminal-related costs and will allocate costs for the various shared systems. Costs for shared systems between the terminal and the tower will be based on the percent of the estimated cost attributed to each party, in comparison to the total cost estimate of the integrated facility.
4. Pursuant to the parties' negotiation, the Airport agrees to provide the ATCT and associated administrative space, as well as a minimum of 75 ATCT parking permits and 37 Technical Operations parking permits for FAA personnel at the rate of \$1.00 per year for the life of the ATCT. This below-market rate has been negotiated by the parties in light of the consideration previously provided by the FAA (as provided in Article 8) to establish an Airport owned ATCT.

5. The OTA requires the Airport and the FAA at the conclusion of this Agreement to have a lease agreement which will contain the FAA and Airport specific operational responsibilities mutually agreed to by the parties and signed prior to commissioning of the replacement ATCT. The lease agreement contains its own terms and conditions and is separate and distinct from the OTA.

3. Management of the Project:

1. The Airport has provided funding through a separate agreement for the siting of the ATCT (Site 13A in the SFO ATCT Siting Report). The Airport will manage the design, and construction in accordance with FAA policies and guidelines as provided in Article 2. The Airport will conduct formal design reviews at the 15%, 45%, 70%, and 100% design development levels at which time the FAA will participate and provide guidance and written comments. In the event a disagreement arises in these reviews, FAA Orders and Policies will prevail to arrive at a final decision.
2. The Airport will manage, own, and maintain the ATCT facility and any building support equipment they install, in accordance with the applicable portions of *FAA Order 6480.8A, Change 2, Maintenance of Airport Traffic Control Towers*. The Fire/Life Safety systems shall be maintained in accordance with NFPA 25, NFPA 72, and NFPA 92A.
3. The FAA will be provided keys, key cards, badges, etc. in order to have complete access to the site. The FAA will provide oversight of work performed by the Airport or its contractors to ensure compatibility with planned equipment and FAA employee access, safety, security and adherence to FAA Orders and Policies.
4. The FAA will manage the installation of all technical equipment used to support FAA Air Traffic Control activities.

4. Roles and Responsibilities

1. Roles and Responsibilities for the Airport

- a. The Airport is responsible to provide and maintain access, parking, building upkeep and other facilities as necessary as provided in this or subsequent agreements.
- b. The Airport shall provide an Integrated Design method of project delivery that incorporates a model of collaborative design and allows for requirements definition through the design phase of the project.

- c. The Airport, will prepare an Environmental Assessment (EA) according to *FAA Order 1050.1E, Chg 1, Environmental Impacts: Policies and Procedures* to ensure compliance with requirements set forth in the Council on Environmental Quality regulation for implementing the National Environmental Policy Act (NEPA). The Airport shall allow the FAA 30 calendar days to review and comment on both the draft and final EA. If the EA results in a Finding of No Significant Impact (FONSI), it will be drafted by the Airport and the FAA will review and approve.
- d. The Airport shall grant FAA requests to participate in the source selection process for the contractors responsible for design and construction of the facility and to review technical qualifications of contractors, cost proposals and other documentation related to contractor solicitation and selection. The FAA shall not have authority to make final the contract decisions and the Airport retains full responsibility for the selection decision of the design and construction contractors.
- e. The Airport will work closely with the FAA to ensure that all requirements are met. At a minimum, the Airport will submit the 15%, 45%, 70%, and 100% designs to the FAA for written review and approval to ensure that the provisions and requirements of the ATCT are adequately addressed. The review and approval cycle will be 30 calendar days from when the FAA receives the document.
- f. The Airport will advise the FAA of contractor or sub-contractor acceptance inspections and allow the FAA to witness each inspection.
- g. The Airport is responsible to configure and design the ATCT with floor space and clearances that allow for ATCT activities such as the installation and/or removal of equipment and furniture.
- h. The Airport is responsible for removing the existing, Airport-owned, ATCT structure. Any part of the existing ATCT that restricts controller visibility of airport movement areas, as identified within the *SFO Airport Traffic Control Tower Site Survey Final Report*, shall be removed within 60 days after equipment removal is complete.
- i. The Airport will provide administrative furniture, fixtures and equipment for the ATCT administrative spaces.

2. Roles and Responsibilities for the FAA

- a. The FAA shall participate in the planning, design, and construction phases of the project in support of a collaborative project delivery.
- b. The FAA will provide written comments on design deliverables submitted by the Airport at each 15%, 45%, 70%, and 100% review cycle. The review cycle will be 30 calendar days (from receiving the designs) and the FAA will make every effort to return comments sooner, if possible.

- c. The FAA is responsible for the selection, purchase, installation, testing, cut-over, maintenance of all National Airspace System (NAS) related electronic equipment and systems required for operating the ATCT. FAA shall provide an itemized list of such equipment.
- d. The FAA will be responsible for providing all ATCT cab furniture and non-administrative furnishings such as work benches, tools and NAS equipment related furniture.
- e. The FAA will be responsible for removing all electronic equipment from the existing ATCT, in accordance with the integrated schedule as determined by the FAA and the Airport, after cutover to the new facility.
- f. The FAA shall participate in the design, procurement, delivery, installation and/or testing of any equipment associated with but not limited to the building power system and facility security system.

3. Roles and Responsibilities for Both the FAA and the Airport

- a. The parties shall agree to the final configuration of the building floor plans. Subsequent change(s), by either party, shall be agreed to in writing by both parties before moving forward with the change(s). Costs for changes related to the FAA facilities will be tracked and expensed against the FAA budget for the tower project as stated in Article 2 of this agreement. Costs for changes related to the Airport's facilities will be tracked against the Airport's budget and not expensed against the project budget for the tower by this agreement. Other costs for changes will be allocated as appropriate, and agreed to by both parties in writing.
- b. The parties shall adhere to the Requirements for the new ATCT as outlined and included in the *San Francisco, CA Airport Traffic Control Tower (ATCT) Requirements Document/Requirements Document Workbook (Attachment A)*. These Requirements include but are not limited to:
 - i. Design and construction of a base building of approximately 18,000 square feet with attached ATCT structure 228 feet above ground level as specified in *SFO Airport Traffic Control Tower Site Survey Final Report* at designated site, 13A.
 - ii. Creating a non-standard 650 square feet tower cab identified at AFTIL and shown as Attachment D in the final Requirements Document.
 - iii. Establishing field connectivity between the existing ATCT and new ATCT to facilitate continuous operations and cutover.
 - iv. Meeting all FAA/OSHA Alternate Standard and International Building Code requirements, including, but not limited to, establishing two means of egress (two stairs), due to planned occupancy of more than 25 persons at any one time.

- v. Conducting a wind tunnel analysis of the facility to economize the structural design and ensure limited movement at the cab level of the ATCT.
- vi. Meeting the requirements of *FAA Order 1600.69B, FAA Facilities Security Management Program* for all security requirements. The facility is a security level 2. The design will require enhanced security measures due to the proximity of public access to the facility, including mitigation for progressive collapse through blast hardening of the building. Specific security measures will be further defined during design of the building.
- vii. Providing Fire Alarm and Detection System - Class A, addressable, selective coverage fire detection and alarm system as defined by NFPA 72 and in compliance with requirements of NFPA 13, 14, 20, 70, 72, 75, 92A, and 101 throughout the ATCT and Base Building. Selective coverage to include all areas of the ATCT and Base Building specified in NFPA 72 under Total Coverage with the exception of areas above suspended ceilings which do not contain combustibles and inaccessible non-combustible constructed space in the building structure. Fire detection and alarm system to be UL listed for releasing/operation of suppression systems and operation of smoke control systems.
- viii. Meeting all local and national requirements for Occupational Health and Safety Elements.

5. The Parties are bound by a duty of good faith and best effort in achieving the goals of this Agreement.

ARTICLE 3. EFFECTIVE DATE and TERM

The effective date of this Agreement is the date on which it is signed by the FAA or Airport, whichever is later. This Agreement will remain in effect for five (5) years or when the Airport's design-build contractor(s) has completed the design and construction of the ATCT facility, and the FAA has approved said facility, whichever comes sooner, unless earlier terminated by the parties as provided herein.

ARTICLE 4. SCHEDULE

- 1. The Airport agrees to complete the development of specifications and design for the ATCT facility to a minimum 45% within 12 months from the effective date of this Agreement. A comprehensive integrated schedule for the project will be established by the parties. The schedule will include, at a minimum, projected dates for all review cycles, payment milestones, payment disbursement schedules and SFO procurement processes for the new tower.
 - 1. The 45% design documents will be the basis for "bridging documents" to be issued in an RFQ/RFP process to hire a design-build team to complete the design and to construct the facility in accordance with the Airport's proposal for utilizing the design-build delivery method of project delivery.

2. The Airport agrees that Beneficial Occupancy shall not be taken from the General Contractor until the FAA Fire/Life Safety Specialist has inspected, tested, and accepted all fire/life safety systems including, but not limited to egress, suppression, detection, lighting, signage, and other special protections systems (such as stair pressurization). FAA Fire/Life Safety Specialist shall participate in the review and approval of the design documents, including the final construction documents and shall be on-site during critical stage of construction so as to eliminate last-minute comments/corrections.
3. The Airport agrees to allow for additional days required by the FAA for engineering, installation, testing, training, operational demonstration, and cut-over activities in the overall schedule. The time period for these activities will be for a minimum of one (1) year. The transition of air traffic control operations to the new ATCT will be on a date that is mutually agreed to by the parties.
4. The Airport agrees to have the tower ready for equipment installation within five (5) years after the effective date of this Agreement subject to obtaining timely approval by:
 - a. The FAA of its Airport Layout Plan, and applicable air space determinations.
 - b. Other federal agencies permits and plans as required for construction of the ATCT.
 - c. State agencies permits and plans as required for design and construction of the ATCT.
 - d. Applicable environmental documents.
5. The Airport agrees to use its best efforts to obtain timely Federal, including FAA, State, and County approvals as required. However, unreasonable or unforeseen failure or delay by Federal agencies to issue approvals or permits will be considered an excusable delay. Further, delays caused by events such as litigation, bid protests fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, acts of terrorism or the public enemy, or unusually severe weather will be considered an excusable delay. Such an excusable delay will entitle the Airport to an extension of the 5-year completion schedule and will not be considered a breach of this Agreement.
6. Air traffic operations will not be transferred to or initiated at the new ATCT until all deliverables are accepted by the FAA and all punch-list exceptions have been cleared or have a planned resolution agreeable to both parties.

ARTICLE 5. REPORTING REQUIREMENTS

1. The Airport will provide the FAA with written progress reports every three months, or sooner as needed, regarding:
 1. The progress of the Airport in obtaining all necessary funding to complete the construction of the ATCT.
 2. Status of the design, construction, and environmental efforts.
 3. Efforts of the Airport in the award of the ATCT design-build construction contract.
 4. Status of FAA funds received, spent, and remaining.
 5. Estimated date the ATCT will be available for installation of equipment to be installed by the FAA.
2. Progress reports will be sent to the FAA Contracting Officer, and all other parties identified and as set forth in ARTICLE 7 – Points of Contact.

ARTICLE 6. LEGAL AUTHORITY

This Agreement is entered into under the Authority of 49 U.S.C. 106(1) and (m), which authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary.

ARTICLE 7. POINTS OF CONTACT

FAA Parties

For the FAA regarding this Agreement:

Name: David L. Reynolds
Contract Specialist
Terminal & En Route Contracts Group
Phone: 202-385-8658
Email Address: David.L.Reynolds@faa.gov

Address: Federal Aviation Administration
600 Independence Avenue, S.W.
FOB10B, Fourth Floor
Washington, DC 20591

Name: Robert Valdes, AJA-46
Contracting Officer
Terminal & En Route Contracts Group
Phone: (202) 385-6157
Email Address: Robert.Valdes@faa.gov

Address: Federal Aviation Administration
600 Independence Avenue, S.W.
FOB10B, Fourth Floor # 4W41JS
Washington, DC 20591

For the FAA regarding overall project lead:

Name: Thembi Ndlovu-Hickey
Terminal Planning Account Manager
Phone: (202) 385-8546
Email Address: Thembi.Ndlovu-Hickey@faa.gov

Address: Federal Aviation Administration
600 Independence Avenue, SW
Washington, DC 20591

Name: Lawrence Mathis
Project Lead
Terminal Facilities, Program Operations
Phone: (202) 385-8825
Email Address: Lawrence.Mathis@faa.gov

Address: Federal Aviation Administration
600 Independence Avenue, SW
Washington, DC 20591

For the FAA regarding technical and project implementation:

Name: Mark Brandewie
Systems Engineer
Western Service Area
Engineering Services, Seattle terminal A
Phone: (425) 227-2484
Email Address: Mark.Brandewie@faa.gov

Address: Federal Aviation Administration
Northwest Mountain Regional Office
1601 Lind Avenue, SW
Renton, WA 98057

For the FAA regarding Air Traffic and requirements:

Name: Andy Richards
District Manager
San Francisco – Bay Area Air Traffic
Phone: (650) 876-2883
Email Address: *Andy.Richards@faa.gov*
Address: Federal Aviation Administration
San Francisco Airport Traffic Control Tower
San Francisco International Airport
Terminal 2, Room 630
San Francisco, CA 94128

Non-FAA Party

For the Airport:

Name: John Martin
Airport Director
Phone: (650) 821-5004
Email Address: *John.Martin@flysfo.com*
Address: San Francisco International Airport
P. O. Box 8097
San Francisco, CA 94128

Name: Ivar Satero
Airport Deputy Director
Phone: (650) 821-7719
Email Address: *Ivar.Satero@flysfo.com*
Address: San Francisco International Airport
Bureau of Design & Construction
P. O. Box 8097
San Francisco, CA 94128

ARTICLE 8. FUNDING AND PAYMENT

1. As of the effective date of this agreement, funds in the amount of \$21,970,000 are available for the project. The total estimated cost for the Environmental Assessment, design and construction of the San Francisco ATCT is \$69,550,000. The Airport recognizes that all FAA contributions are subject to the availability of funds, and periodic payments may be paid, in arrears, as funds become available to FAA. The FAA will make best efforts to fund the remainder of the project (\$47,580,000) in order to meet the design/build schedule.
2. \$2,500,000 will be disbursed to the Airport within 90 days after the effective date of this Agreement for the environmental assessment, 45% design and, specifications, permits, and related work. The Airport is required to complete Attachment F (Vendor/Miscellaneous Payment Information Form) when this Agreement is signed by the Airport.

3. The parties understand that \$69,550,000 represents the total estimated cost for the design-build contract portion of this agreement, and the build-up of the costs under the design-build contract, including cost of contractor general conditions, design fee (45% to 100% documents), mark-up on subcontracted scope, competitively bid subcontracted trade bid packages, and a contractor's contingency, per the Airport's proposed design-build delivery method (Progressive Guaranteed Maximum Price), will determine the final, not-to-exceed Guaranteed Maximum Price (GMP). The parties further understand that the funds disbursed will cover the actual construction costs and overhead, and any under-run of the GMP will be returned to the FAA. Funds for the design-build contract will be disbursed incrementally as funding is available to cover construction complete.
 1. \$19,470,000 will be disbursed to the Airport within 60 days after the Airport has received and accepted a proposal for the design-build services for the ATCT, associated structures and related facilities, and the FAA has received notice of the same.
 2. Subject to the availability of funds, an agreed amount will be disbursed to the Airport when construction is 40% complete (Foundation and Structural Steel Complete) and the FAA has received notice and confirmation of the same.
 3. Subject to the availability of funds, and review and concurrence from the FAA on the estimated cost for the remaining design-build contract costs, an amount equal to the as-yet undisbursed final cost estimate will be disbursed to the Airport within 60 days when construction is 80% complete (Building Envelope Complete), and the FAA has received notice and confirmation of the same.
4. Subject to the limitations prescribed by paragraphs 6 and 7 below and the availability of funds, if determined to be appropriate by the FAA and the Airport, a final payment in an amount to be agreed to by the FAA and the Airport under this Agreement may be made to the Airport to cover design-build contract cost shortfalls or for closing out contract actions if determined necessary by the parties.
5. In no event will the FAA's total contribution for the Airport costs under this agreement exceed the amount stated in Article 9, without prior mutual and written agreements by both parties and attached as a Supplemental Agreement to this document.
6. The FAA will not be responsible for any costs of any kind whatsoever, including, but not limited to, cost overruns for the design and construction of the aforementioned ATCT, unless agreements as stated in paragraph 5 above are executed.
7. With the funds provided under this Agreement, the Airport will design and construct the ATCT at the Airport. All funds provided by the FAA under this Agreement will be used by the Airport only for the purposes agreed to in Article 2.
8. Nothing contained herein will prevent this Agreement from being amended or modified. Such amendments and/or modifications shall be in writing and signed by the parties.

9. In the event of termination or expiration of this Agreement, any FAA funds which have not been spent or obligated for allowable expenses prior to the date of termination, and are not reasonably necessary as determined by the FAA to cover termination expenses will be returned to the FAA. The Airport will not be required to return funds that were expended on allowable expenses. In the event of the termination or expiration of the Agreement, any allowable expenses incurred by the Airport within the FAA's limitation of funds as stated in Article 9, will be funded by the FAA. If the allowable expenses, in the event of a termination, exceed that which has been obligated to the project by the FAA, FAA will make best efforts to obtain funding.

10. Formal requests for payment should be submitted to the FAA at:

Billing Address:

Federal Aviation Administration
Terminal Services Branch
600 Independence Avenue, S.W.
FOB-I0B, Fourth Floor
Washington, DC 20591

ARTICLE 9. LIMITATION OF FUNDS

The Federal Government's liability to the Airport is limited to \$21,970,000 without a separate modification to this Agreement in the form of a Supplemental Agreement signed by the FAA contracting officer. If or when additional funds are appropriated for this project, this limitation of funds is anticipated to increase to a total construction amount not to exceed \$79,982,500 to include contingencies and/or change orders.

ARTICLE 10. COMPETITION FOR CONSTRUCTION

The contract for the design-build services for the aforementioned facility shall be awarded through a "best value" competitive procurement procedure. All subcontracted work shall be competitively bid in accordance with the design-build ordinance set forth in the City of San Francisco's Administrative Code, Chapter 6, section 6.6.1, except that, pursuant to the ordinance, the design-build contractor is allowed to negotiate subcontract work up to 7.5% of the construction cost to achieve accelerated schedules and to engage key subcontractors. This provision shall not apply if the Airport can demonstrate that single-source contracting is more advantageous, cost and other factors considered.

ARTICLE 11. AUDITS

The Federal Government has the right to examine and/or audit relevant financial records relating to this agreement including design and construction of the ATCT for a period not to exceed three years after expiration of the term of this Agreement. The Airport and contractors/subcontractors must maintain an accounting system that complies with acceptable accounting standards.

ARTICLE 12. CHANGES, MODIFICATIONS

Changes and/or modifications to this Agreement will be in the form of a Supplemental Agreement to the OTA and signed by the FAA Contracting Officer and the Airport. Modifications will cite this Agreement and will state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement.

ARTICLE 13. TERMINATION

1. This Agreement will be concluded after five (5) years or when the Airport's design-build contractor(s) has completed the design and construction of the ATCT facility, and the FAA has approved said facility; however, the Airport's responsibilities for maintenance and upkeep of the building will continue for the life of the building and shall commence upon FAA acceptance of the building.
2. In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party, other than payment of amounts due and owing and performance of obligations accrued on or prior to the termination date, by giving the other party at least six (6) months prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations that might require payment.

ARTICLE 14. ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of the Agreement, the inconsistency will be resolved by giving preference in the following order:

Supplemental Agreement

This Agreement and/or included Attachments

ARTICLE 15. CONSTRUCTION OF THE AGREEMENT

1. This Agreement is an "Other Transaction" issued under 49 U.S.C. 106 and is not a procurement contract, grant or cooperative agreement. Nothing in this Agreement will be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.
2. Each party acknowledges that all parties hereto participated equally in the negotiation and drafting of this Agreement and any amendments thereto, and that, accordingly, this Agreement will not be construed more stringently against one party than against the other.

ARTICLE 16. DISPUTES

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved by alternative dispute resolution using a method to be agreed upon by the parties. The outcome of the alternative dispute resolution will be final unless it is timely appealed to the Administrator, whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding (see 49 USC 46110).

ARTICLE 17. WARRANTIES

The FAA makes no express or implied warranties as to any matter arising under this Agreement, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this Agreement.

ARTICLE 18. INSURANCE

The Airport will arrange by insurance or otherwise for the full protection of the Airport from and against all liability to third parties arising out of, or related to, its performance of this Agreement. The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by Airport, its employees, or contractors, or any third party acting on its behalf. The Airport agrees to hold the United States harmless against any claim by third persons for injury, death or property damage arising out of or in connection with the Airport's performance under this Agreement.

ARTICLE 19. LIMITATION OF LIABILITY

1. Each party expressly agrees that it shall be solely and exclusively liable for the negligence of its own agents and or employees in cases where they are performing their regular job duties, in accordance with applicable laws, including but not limited to the Federal Tort Claim Act, and that neither party looks to the other to save or hold it harmless for the consequences of any negligence on the part of one of its own agents or employees.
2. Claims for damages of any nature whatsoever pursued under this Agreement will be limited to direct damages only up to the aggregate amount of funding obligated under this Agreement at the time the dispute arises. In no event will either party be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

ARTICLE 20. LOWER TIER AGREEMENTS

1. The Airport hereby certifies to the FAA that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, requirements, State and local ordinances and regulations as they relate to the application, acceptance and use of Federal funds for this project. In addition, the following specific Federal statutes and guidelines will be complied with by the Airport :

1. Davis-Bacon Act – 40 U.S.C. 276(a), et. Seq.
 2. Drug Free Workplace Act of 1988 - 41 U.S.C. 702 through 706
 3. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et. seq., amendment 70 FR 45308, August 5, 2005, Appendix B - Americans with Disabilities Act, Appendix D - Technical
2. "The Architectural Barriers Act (ABA) was amended in 2005 and applies to all federal government buildings. The ABA requires that facilities designed, built, altered, or leased with federal funds be accessible to persons with disabilities. The ABA is enforced by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board). The current implementing standard under the ABA is the Architectural Barriers Act Accessibility Standard (ABAAS).
1. ABAAS applies to facilities designed, constructed, altered, or leased with Federal funds under the Architectural Barriers Act (ABA) except postal facilities, housing, and military facilities. The General Services Administration (GSA) adopted these standards and the standards became effective May 8, 2006 (February 6, 2007 for leased facilities) and replace the Uniform Federal Accessibility Standards (UFAS). ABAAS is available at: <http://www.access-board.gov/ada-aba/aba-standards-gsa.cfm>."

ARTICLE 21. CIVIL RIGHTS ACT

Airport will comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in Federally-assisted programs and provide a certification to that effect.

ARTICLE 22. OFFICIALS NOT TO BENEFIT

FAA Acquisition Management System (AMS) Clause 3.2.5-1, "Officials Not to Benefit" (Attachment D) and Clause 3.2.5-7, "Disclosure Regarding Payments to Influence Certain Federal Transactions" (Attachment E) are attached hereto and incorporated by reference into this Agreement.

ARTICLE 23. PROTECTION OF INFORMATION

The parties agree that they will take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

AGREED:

City and County of San Francisco
A municipal corporation
Acting by and through the Airport Commission

Federal Aviation Administration

John L. Martin
Airport Director

Robert Valdes, AJA-46
Contracting Officer

Date: _____

Date: _____

Witness: _____

Authorized By Airport
Commission

Resolution No. _____

Adopted: _____

Attest: _____
Jean Caramatti
Secretary, Airport Commission

Approved As to Form
Dennis J. Herrera, City Attorney
By: _____
Deputy City Attorney

**Attachment A: Requirements Document/
Requirements Document
Workbook**

**Attachment B: Standard Designs
A/E Project Manual**

Attachment C: Executive Order 13514

Attachment D:

3.2.5-1 Officials Not to Benefit (April 1996)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

Attachment E:

3.2.5-7 Disclosure Regarding Payments to Influence Certain Federal Transactions (June 1999)

(a) Definitions.

- (1) "The Act," as used in this clause, means section 1352, title 31, United States Code.
- (2) "Agency," as used in this clause, means executive agency, within the meaning of 5 U.S.C. 101, 102, and 104(l), and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101..
- (3) "Covered Federal action," as used in this clause, means any of the following Federal actions:
 - (i) The awarding of any Federal contract.
 - (ii) The making of any Federal grant.
 - (iii) The making of any Federal loan.
 - (iv) The entering into of any cooperative agreement.
 - (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (4) "Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.
- (5) "Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
- (6) "Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
- (7) "Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:
 - (i) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
 - (ii) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
 - (iii) A special Government employee, as defined in section 202, title 18, United States Code.
 - (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.
- (8) 'Person,' as used in this clause, means an individual, corporation, company, association, authority,

firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(9) 'Reasonable compensation,' as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(10) 'Reasonable payment,' as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(11) 'Recipient,' as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(12) 'Regularly employed,' as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(13) 'State,' as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions. The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:

(1) No 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 on his or her behalf 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 (including profit or fee received under a covered Federal action) 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 on his or her behalf in connection with the screening information request (SIR), the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this clause in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall disclose accordingly.

(4) This certification and disclosure is a prerequisite for making or entering into this contract imposed by the Act. Any person who makes a prohibited expenditure or fails to file or amend a disclosure form, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000, for each such failure.

(c) The prohibitions of the Act do not apply under the following conditions:

(1) Agency and legislative liaison by own employees.

(i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(ii) For purposes of subdivision (c)(1)(i) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(A) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(B) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(iv) The following agency and legislative liaison activities are permitted where they are prior to Screening Information Request (SIR) of any covered Federal action:

(A) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(B) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(C) Capability presentations by persons seeking awards from an agency pursuant to the provisions of a law authorizing such actions;

(v) Only those services expressly authorized by subdivision (c)(1)(i) of this clause are permitted under this clause.

(2) Professional and technical services.

(i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of:

(A) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of submittal/offer or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(B) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any submittal/offer or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(ii) For purposes of subdivision (c)(2)(i) of this clause, 'professional and technical services' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a submittal/offer by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence

made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's submittal/offer, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a submittal/offer are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(iv) Only those services expressly authorized by subdivisions (c)(2)(i) and (ii) of this clause are permitted under this clause.

(v) The reporting requirements herein shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(d) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (e)(1) of this clause. An event that materially affects the accuracy of the information reported includes:

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the certification, and if required, a disclosure form by any person who requests or receives any subcontractor exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor.

(e) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(f) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or fails to file or amend the disclosure form to be filed or amended by paragraph (b) shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from

seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representations made by their subcontractors in the certification and in the disclosure form.

(g) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

Attachment F:

VENDOR / MISCELLANEOUS PAYMENT INFORMATION FORM

This form is used for both Taxpayer Identification Number (TIN) notification and Automated Clearing House (ACH) payments with an addendum record that contains payment-related information processed through the Vendor Express Program. Recipients of these payments should bring this information to the attention of their financial institution when presenting this form for completion.

PRIVACY ACT STATEMENT

The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579) and the Debt Collection Improvement Act of 1996 (P.L. 104-134, Ch. 10). All information collected on this form is required under the provisions of 31 U.S.C. 3322 and 7701, 31 CFR 210, and Internal Revenue Code 6109. This information will be used by the Treasury Department to transmit payment data, by electronic means to vendor's financial institution. The FAA will use the TIN information for purposes of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government. Failure to provide the information may delay or prevent the receipt of payments through the Automated Clearing House Payment System.

AGENCY INFORMATION		
FEDERAL PROGRAM AGENCY: Federal Aviation Administration		
AGENCY IDENTIFIER: FAA	AGENCY LOCATION CODE (ALC): 69-00-1104	ACH FORMAT: <input checked="" type="checkbox"/> CCD+ <input type="checkbox"/> CTX <input type="checkbox"/> CTP
ADDRESS: 800 Independence Avenue, SW Washington, DC 20591		
CONTACT PERSON NAME: Ralph Noble, AFM-220	TELEPHONE NUMBER: (202) 267-8986	
ADDITIONAL INFORMATION (Assigned payee vendor number, etc.):		
PAYEE/COMPANY INFORMATION		
BUSINESS NAME:	SSN or TAXPAYER ID NO.	
SOLE PROPRIETOR NAME (if different from above):	BUSINESS STATUS: (Check here if previously provided <input type="checkbox"/>) <input type="checkbox"/> Individual/Sole Proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____ (please specify)	
ADDRESS:		
CONTACT PERSON NAME:	TELEPHONE NUMBER: () ()	
Are you subject to "backup withholding" per Internal Revenue Code Sec. 6041 or 6041A(a)? Please check one box below: <input type="checkbox"/> I am Exempt from Backup withholding <input type="checkbox"/> I have not been notified by IRS that I am subject to Backup Withholding as a result of failure to report all interest or dividends <input type="checkbox"/> the IRS has notified me that I am no longer subject to backup withholding.		
TIN Certification. Under penalties of perjury, I certify that the number shown above is my correct TIN (or I am waiting for a number to be issued to me), and the backup withholding status as marked above is correct. Signature ▶ _____ Date ▶ _____		
FINANCIAL INSTITUTION INFORMATION		
NAME:	If previously enrolled in the ACH Program at this site, please check this box <input type="checkbox"/>	
ADDRESS:		
ACH COORDINATOR NAME:	TELEPHONE NUMBER: () ()	
NINE-DIGIT ROUTING TRANSIT NUMBER:		
DEPOSITOR ACCOUNT TITLE:		
DEPOSITOR ACCOUNT NUMBER		
TYPE OF ACCOUNT: <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS <input type="checkbox"/> LOCKBOX		
SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL: (Could be same as ACH Coordinator)	TELEPHONE NUMBER: () ()	

Substitute Form 3881 and W-9 Form (Combined) Created by the Federal Aviation Administration (FAA)