

**OCTOBER 19, 2022
CITY COUNCIL MEETING
ADDITIONAL MATERIAL/REVISIONS**

REQUESTED ADDITIONS TO THE PACKET:

<u>ACTION</u>	<u>ITEM</u>	<u>REQUESTED BY</u>
Add to item F.1	Resolution No. 2022-64 <ul style="list-style-type: none">• Amendment Memo• Draft Lease	City Attorney City Attorney



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members
FROM: Scott Bloom, City Attorney
DATE: October 19, 2022
SUBJECT: Resolution No. 2022-64 – FAA Building Lease Requested Amendment

The purpose of this memo is to request an amendment to Resolution No. 2022-64. The original Resolution contemplated a lease renewal, however, a new lease is required, as a renewal could not be accomplished prior to the end date of the initial lease. This will necessitate a change to the title. However, public notice based on the original title provides sufficient legal public notice of the matter to move forward at tonight's meeting. Secondly, the City has not received final approval of the lease form from the FAA, so some minor adjustments may need to be made after approval. The second amendment below will allow for this. Finally, the attached lease to the Resolution needs to be replaced with the lease attached to this memo.

The following amendments are respectfully requested:

Motions:

1. Amend the title as follows by deleting "the renewal of" in the title so the new title will read:

A RESOLUTION APPROVING A LEASE UTILIZING A NON-STANDARD LEASE FORM OF AIRPORT RESERVE LANDS BETWEEN THE CITY OF KENAI AND THE FEDERAL AVIATION ADMINISTRATION FOR THE AUTOMATED FLIGHT SERVICE STATION AND SATELLITE COMMUNICATION NETWORK FACILITIES ON LOT 7A-1 FBO SUBDIVISION NO. 5.
2. Amend Section 1. to read (new language underlined):

Section 1. The Council of the City of Kenai approves the attached, or a materially similar, non-standard space lease form for the lease of Lot 7A-1, Block 2, FBO Subdivision, located within the Airport Reserve, to the FAA for the use of an automated flight service station and satellite communication network facilities, for the beginning lease rate of \$13,540/ month.
3. Amend by substitution the lease previously included in the packet attached to Resolution 2022-64, with the lease attached to this memorandum.

Thank you for your consideration.

STANDARD SPACE LEASE
Between
THE UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
And
City of Kenai

FAA CONTRACT NO: [XXXXXX-XX-X-XXXXX]
ATID/FACILITY TYPE: ENA-AFSS
LOCATION: Kenai, AK

1. **Preamble (09/2021) 6.1.1** This **Lease** for real property is hereby entered into by and between the City of Kenai, hereinafter referred to as the **Lessor or City**, and the United States of America, acting by and through the Federal Aviation Administration, hereinafter referred to as the FAA.

2. **Definitions (09/2021) 6.1.1-1** For purposes of this document, the following definitions apply;

Contract- refers to this legal instrument used to acquire an interest in real property for the direct benefit or use by the FAA. As used herein, contract denotes the document (for example- lease, easement, memorandum of agreement, or other legally binding agreement) used to implement an agreement between a customer (buyer) and a seller (supplier).

Contractor- refers to the party(ies) receiving a direct procurement contract from the FAA and who is(are) responsible for performance of contract requirements. For purposes of this document, the contractor may also be called the Lessor, Permitter, Licensor, Grantor, Airport, or Offeror depending on the type of contract or the provision within the contract.

Government- refers to the United States of America acting by and through the Federal Aviation Administration (FAA). For purposes of this document, Government and FAA are interchangeable.

Real Estate Contracting Officer (RECO) - is a trained and warranted official who contracts for real property on behalf of the FAA. For purposes of this agreement, RECO is interchangeable with Contracting Officer (CO).

3. **Succeeding Contract (09/2021) 6.1.2** This contract succeeds DTFAWN-13-L-00002 and all other previous agreements between the parties for the property described in this document.

4. **Lease Witnesseth (09/2021) 6.1.3** Witnesseth: The parties hereto, for the consideration hereinafter mentioned, covenant and agree as follows:

5. **Leased Space Description (09/2021) 6.1.4** The Lessor hereby leases to the Government the following described premises;

470 N Willow St, Kenai, AK, further described as;

Lot 7A-1, FBO Subdivision No. 5, according to Plat No. 92-60.

A 150,084 SF or 3.45 acre lot, consisting of a 10,812 square foot office building with a 729 square foot detached shop for a gross building area of 11,541 square feet, with a rentable area of 10,500 RSF

As shown on <Insert drawing no. XX>, dated XX/XXXX, marked as <Insert Attachment/Exhibit No>, which is attached hereto and made a part hereof.

The Lessor shall provide 90 reserved off-street parking spaces at no additional cost to the Government. With respect to compliant accessible parking spaces, see the “Accessibility” clause.

6. **Purpose (09/2021) 6.1.5** It is understood and agreed that the use of the herein described premises shall be related to FAA’s activities in support of the National Airspace System (NAS).
7. **Legal Authority (09/2021) 6.2.1** This contract is entered into under the authority of 49 U.S.C. 106(l)(6) and (n), which authorizes the Administrator of the FAA to enter into contracts, acquisitions of interests in real property, agreements, and other transactions on such terms and conditions as the Administrator determines necessary.
8. **Term (09/2021) 6.2.3** To have and to hold, for the term commencing on October 1, 2022 and continuing through September 30, 2042 inclusive, provided that adequate appropriations are available from year to year for the consideration herein.
9. **Consideration (Standard Space) (09/2021) 6.2.4-1**

A. The Government shall pay annual rent for the premises, payable in monthly installments in arrears, at the following rate(s)(monthly installments may vary based on rounding):

Initial Term DATES: 10/01/2022 through 09/30/2042		Rent Amount
	Annual Rental Rate	\$15.48/ RSF
	Monthly Rent	\$13,545.00
	Total Annual Rent	\$162,540.00

B. Payment shall be made in arrears, without the submission of invoices or vouchers. Payments are due on the first business day following the end of the payment period and are subject to available appropriations. The payments shall be directly deposited in accordance with the “Payment by Electronic Funds Transfer” clause in this contract. Payments shall be considered paid on the day an electronic funds transfer is made.

C. Payment shall be made in full to: City of Kenai, 210 Fidalgo Ave, Kenai, AK 99611-7750

Termination for Convenience (09/2021) 6.2.5-1 The Government may terminate this contract at any

time, in whole or in part, if the Contracting Officer (CO) determines that a termination is in the best interest of the Government. The CO shall terminate by delivering to the contractor a written notice specifying the effective date of the termination. The termination notice shall be issued 60 days before the effective termination date.

After termination, the Contractor may submit a final termination settlement proposal to the CO in the form and with the certification prescribed by the CO. The proposal must include all documentation necessary to validate the proposal.

The contractor must submit the proposal no later than one (1) year from the effective date of termination unless the submission deadline is extended in writing by the CO upon written request of the contractor within this one (1) year period. However, if the CO determines that the facts justify it, a termination settlement proposal may be received and acted on after one (1) year or any extension. If the contractor fails to submit the proposal within the time allowed, the CO may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount so determined.

After submission of final termination settlement proposal, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination.

If the contractor and the CO fail to agree, the Government will pay the contractor the amounts determined by the CO as follows:

- 1) The contract price for any unpaid rents;
- 2) The remaining principle balance of Tenant Improvement allowance as described in the clause titled "Lessor's Recovery of Tenant Improvement Allowance in the Event of Termination" within this contract; and
- 3) Reasonable costs associated with termination.

If the termination is partial, the contractor may file a proposal with the CO for an equitable adjustment of the price(s) of the continued portion of the contract. If agreed upon, the CO may make the equitable adjustment. Any proposal by the contractor for an equitable adjustment under this clause must be requested within 90 days from the effective date of termination unless extended in writing by the CO.

The contractor may file a claim with the Federal Aviation Administration Office of Dispute Resolution for Acquisition based on any determination made by the CO pursuant to this clause. Nothing in this clause will obligate the government to spend in excess of available appropriations.

10. Termination for Default (09/2021) 6.2.5-2

A. Subject to the provision of notice of default to the Lessor, and the provision of reasonable opportunity for the Lessor to cure the default, the following conditions constitute default by the Lessor:

- i. Prior to Acceptance of the Premises. Failure by the Lessor to perform all obligations required for acceptance of the space, to include, but are not limited to, all obligations included within the statement of work and lease clauses, within the times specified, without such failure in performance being affirmatively excused, in writing, by the RECO.
- ii. After Acceptance of the Premises. Failure by the Lessor to perform any service, or to make progress in the work so as to endanger performance; the failure to make any item; or the failure to

satisfy any requirement of this Lease, without such failure being affirmatively excused, in writing, by the RECO.

B. Grounds for Termination. The Government may terminate the Lease, in whole or in part, if:

- i. after given notice and reasonable opportunity to cure by the Government, the Lessor's default persists; or
- ii. the Lessor fails to take such actions as necessary to prevent the recurrence of default conditions, and such conditions substantially impair the Government's use or occupancy of the Premises, as determined by the Government.

C. The rights and remedies specified in this clause are in addition to all remedies to which the Government may be entitled to as a matter of law.

11. **Excuse (09/2021) 6.2.5-3**

A. The Lessor will not be in default because of any failure to perform the requirements of this Lease under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Lessor.

B. Permissible causes for excuse are:

- i. acts of God (e.g., fires, floods, pandemics, epidemics, unusually severe weather, etc.),
- ii. acts of the public enemy,
- iii. acts of the Government in either its sovereign or contractual capacity,
- iv. pandemic, epidemic, or quarantine restrictions,
- v. strikes, and
- vi. freight embargoes. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Lessor.

C. Excuse will not be granted when:

- i. the Lessor had actual or constructive knowledge prior to the Lease Award Date that he/she could not perform in accordance with the requirements of the Lease contract;
- ii. the conditions of the property prevent performance;
- iii. the Lessor, its employees, agents or contractors, by error or omission, fails to perform; or
- iv. the Lessor is unable to obtain sufficient financial resources to perform its obligations.

D. The RECO will ascertain the facts and extent of the failure. If the RECO determines that any failure to perform is excusable, the RECO will revise the delivery schedule subject to the rights of the Government under the default and termination clauses of this contract.

12. **Binding Effect (09/2021) 6.2.6** The provisions of this contract and the conditions herein shall be binding upon, and for the benefit of, the parties and their successors and assigns. In the event of any sale or transfer of ownership of the property or any portion thereof, the Government will be deemed to have attorned to any purchaser, successor, assign, or transferee. The succeeding owner will be deemed to have assumed all rights and obligations of the contractor under this contract establishing direct privity of estate and contract between the Government and said succeeding owner, with the same force, effect, and relative priority in time and right as if the contract had initially been entered into between such succeeding owner and the Government.

13. **Holdover (09/2021) 6.2.12** If after the expiration of the Lease, the Government shall retain possession of the premises, the Lease shall continue in full force and effect on a month-to-month basis. Payment shall be made in accordance with the Consideration clause of the Lease at the rate

paid during the Lease term. This period shall continue until the Government shall have signed a new lease with the Lessor, acquired the property in fee, or vacated the premises.

14. **RE Clauses Incorporated by Reference (09/2021) 6.3.0** This solicitation or contract, as applicable, incorporates by reference the provisions or clauses listed below with the same force and effect as if they were given in full text. Upon request, the RECO will make the full text available, or the full text may be obtained via internet at https://fast.faa.gov/RPF_Real_Property_Clauses.cfm.
- A. **Interest (09/2021) 6.3.0-1**
 - B. **Officials Not To Benefit (09/2021) 6.3.0-2**
 - C. **Assignment of Claims (09/2021) 6.3.0-3**
 - D. **Contracting Officer's Representative (09/2021) 6.3.0-4**
 - E. **Contingent Fees (09/2021) 6.3.0-5**
 - F. **Anti-Kickback Procedures (09/2021) 6.3.0-6**
 - G. **Equal Opportunity (09/2021) 6.3.0-7**
 - H. **Equal Opportunity for Veterans (04/2022) 6.3.0-8**
 - I. **Equal Opportunity for Workers with Disabilities (04/2022) 6.3.0-9**
 - J. **Davis Bacon Act (01/2022) 6.3.0-10**
 - K. **Minimum Wages for Contractor Workers Under Executive Order 14026 (01/2022) 6.3.0-11**
15. **Funding Responsibility for FAA Facilities (09/2021) 6.3.6** The Contractor agrees that all Contractor requested relocation(s), replacement(s), or modification(s) of any existing or future FAA navigational aid or communication system(s) necessitated by Contractor improvements or changes will be at the expense of the Contractor. In the event that the Contractor requested changes or improvements interferes with the technical and/or operational characteristics of the FAA's facility, the Contractor will immediately correct the interference issues at the Contractor's expense. Any FAA requested relocation, replacement, or modifications shall be at the FAA's expense. In the event such relocations, replacements, or modifications are necessary due to causes not attributable to either the Contractor or the FAA, funding responsibility shall be determined by mutual agreement between the parties, and memorialized in a Supplemental Agreement.
16. **Accessibility (09/2021) 6.3.7** The building and the leased premises must be accessible to persons with disabilities pursuant to the Architectural Barriers Act and Rehabilitation Act as detailed in the Architectural Barriers Act Accessibility Standards (ABAAS) 41 CFR Parts 102-71, 102-72, et al, and all applicable state and local accessibility laws and regulations. ABAAS is available at www.access-board.gov.

Subject to the exception set forth herein, separate ABAAS compliant restroom facilities for men and women must be provided on each floor where the Government leases space. Separate ABAAS compliant restroom facilities must not be required if due to the age of the building, design layout, or other structural requirements, it is technically infeasible to do so. In the event the Lessor determines that it is technically infeasible to provide separate ABAAS compliant restroom facilities, the Lessor must provide the basis for the determination of technical infeasibility in writing to the RECO, together with all supporting documentation.

With respect to all restrooms, water closets, and urinals, they must not be visible when the exterior door is open. Each restroom must contain toilet paper dispensers, soap dispensers, paper towel

dispensers, waste receptacles, a sanitary napkin dispenser, and receptacle for each toilet in the women's restroom, disposable toilet seat cover dispensers, a convenience outlet, and hot and cold water. Two or more drinking fountains must be provided. One drinking fountain shall be a low unit commonly called a wheelchair unit and one drinking fountain shall comply with standing persons' requirements, unless sufficient space is not available to provide both a wheelchair unit and a unit for standing persons. In such instance, and subject to the approval of the RECO, a single unit able to accommodate both disabled and non-disabled persons must be provided.

In addition, compliant accessible parking spaces must be provided in accordance with the ABAAS requirements as detailed in 42 U.S.C. 4151 and as set forth in the ABAAS Scoping Requirements.

17. Changes (09/2021) 6.3.8 (MODIFIED)

A. The RECO may at any time, by written order via Supplemental Agreement *agreed to by the City*, make changes within the general scope of this Lease in any one or more of the following:

- i. Work or services;
- ii. Facilities or space layout;
- iii. Amount of space/land;
- iv. Any other change made within the scope of this lease.

B. If any such change causes an increase or decrease in the Lessor's cost or time required for performance under this lease, the RECO will modify this Lease to provide one or more of the following:

- i. An equitable adjustment in the rental rate;
- ii. A lump sum equitable adjustment;
- iii. An equitable adjustment of the annual operating costs per rentable square foot; or
- iv. An adjustment to the delivery date.

C. The Lessor must assert its right to an adjustment by written proposal under this clause within thirty (30) days from the date of receipt of the change order. Lessor's request must include all documentation necessary to validate his/her right to an adjustment. Failure to reach agreement on any adjustment constitutes grounds for dispute under the Contract Disputes clause.

D. Nothing in this clause excuses the Lessor from proceeding with the change as directed.

E. Absent written supplemental agreement the Government is not liable to the Lessor under this clause.

18. Failure in Performance (09/2021) 6.3.16 In the event the Contractor fails to perform a service, provide an item, or satisfy a requirement under this Contract, the Government may:

- A. perform the service, provide the item, or satisfy the requirement itself, and abate the rent by its actual costs (including administrative costs) incurred in doing so,
- B. not correct the Contractor's performance and abate the rent by an amount reasonably calculated to approximate the decreased value of the Contract arising from the Contractor's failure to perform, or
- C. pursue termination of the contract under the "Termination" clause(s) in this Contract.

19. No Waiver (09/2021) 6.3.17 (MODIFIED) No failure by the Government *or the City* to insist upon strict performance of any provision of this Contract or failure to exercise any right, or remedy consequent to a breach thereof, will constitute a waiver of any such breach in the future.

20. **Non-Restoration (09/2021) 6.3.18 (MODIFIED)** It is hereby agreed between the parties that, upon termination of its occupancy, including any holdover period, the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property that is the subject of this contract. It is further agreed that the Government may abandon in place any or all of the structures and equipment installed in or located upon said property by the Government during its tenure. Such abandoned equipment may become the property of the contractor at its election.
21. **Quiet Enjoyment (09/2021) 6.3.25** The Contractor warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.
22. **Damage by Fire or Other Casualty or Environmental Hazards (09/2021) 6.3.26** If the premises is partially or totally destroyed or damaged by fire or other casualty or if environmentally hazardous conditions are found to exist so that the premises is untenable as determined by the Government, the Government may agree to allow restoration/reconstruction, or may elect to terminate the contract, in whole or in part, immediately by giving written notice to the contractor and no further rental will be due. The Government shall have no duty to pay rent while the premises are unoccupied.
23. **Delivery and Condition (09/2021) 6.3.27** Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit by the agreed upon occupancy date. The Government reserves the right to determine when the space is ready to occupy, and to assess damages in the event the occupancy date is not met.
24. **Occupancy Permit (09/2021) 6.3.27-1** The premises offered must have a valid Occupancy Permit, issued by the local jurisdiction, for the intended use of the Government, or the Lessor will complete and provide a certified copy of the "Checklist: FAA Safety & Environmental Certification" form, in lieu of an occupancy permit, at the RECO's discretion.
25. **Interference (09/2021) 6.3.28** In the event that FAA operations interfere with the Contractor's facility, the Contractor must immediately notify the RECO. The FAA will begin assessment of interference immediately upon notification.
If the Contractor or its facility interferes with the FAA's equipment and the Contractor either knows of, or is notified by the FAA, of the interference, the Contractor will immediately remediate the interference at its own cost.
Notification under this clause must include the following information, if known:
A. type of interference,
B. the commencement date of the interference, and
C. the root cause of the interference.
26. **Alterations (09/2021) 6.3.29 (MODIFIED)** The Government *upon 30 days notice to the City*, shall have the right during the term of this Lease, including any extensions thereof, to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, alterations or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. The parties hereto mutually agree and understand, that no restoration rights shall accrue to the Lessor for any alterations or removal of alterations to the leased premises under this Lease, and that the Government shall have the option of abandoning alterations in place, when terminating the Lease, at no additional cost.

27. **Hold Harmless (09/2021) 6.3.30** In accordance with and subject to the conditions, limitations and exceptions set forth in the Federal Tort Claims Act, 28 U.S.C. Ch. 17, the Government will be liable to persons damaged by any personal injury, death or injury to or loss of property, which is caused by a negligent or wrongful act or omission of an employee of the Government while acting within the scope of his office or employment under circumstances where a private person would be liable in accordance with the law of the place where the act or omission occurred. The foregoing shall not be deemed to extend the Government's liability beyond that existing under the Act at the time of such act or omission or to preclude the Government from using any defense available in law or equity.
28. **Compliance with Applicable Laws (09/2021) 6.3.31** The Lessor shall comply with all federal, state and local laws applicable to the Lessor as owner or Lessor, or both, of building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. This Lease shall be governed by federal law.
The Government will comply with all federal, state, and local laws applicable to and enforceable against it as a tenant under this lease, provided that nothing in this lease shall be construed as a waiver of the sovereign immunity of the Government.
29. **Examination of Records (09/2021) 6.3.32** The Comptroller General of the United States, the Administrator of FAA or a duly authorized representative of either shall, until three (3) years after final payment under this contract, have access to and the right to examine any of the Lessor's directly pertinent books, documents, paper, or other records involving transactions related to this contract.
30. **Subordination, Nondisturbance and Attornment (09/2021) 6.3.33**
- A. The Government agrees, in consideration of the warranties and conditions set forth in this clause, that this contract is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this contract. Based on a written demand received by the RECO, the Government will review and, if acceptable, execute such instruments as the contractor may reasonably request to evidence further the subordination of this contract to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by the contractor if such easement does not interfere with the full enjoyment of any right granted the Government under this contract.
- B. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this contract so long as the Government is not in default under this contract. Contractor will include in any future mortgage, deed of trust or other security instrument to which this contract becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Contractor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the RECO promptly upon demand.
- C. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of

foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the contractor under this contract, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the contract had initially been entered into between such purchasers or transferees and the Government; provided, further, that the RECO and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this contract, or other writings, as shall be necessary to document the foregoing relationship.

D. None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

31. Notification of Change in Ownership or Control of Land (09/2021) 6.3.34 If the Contractor sells, dies or becomes incapacitated, or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting the premises, the Government shall be notified in writing, of any such transfer or conveyance within 30 calendar days after completion of the change in property rights. Concurrent with the written notification, the Contractor or Contractor's heirs, representatives, assignees, or trustees shall provide the Government copies of the associated legal document(s) (acceptable to local authorities) for transferring and/or conveying the property rights.

32. Change of Ownership/Novation (09/2021) 6.3.34-1

A. If during the term of the Lease, title to the Property is transferred or the Lessor changes its legal name, the Lessor shall notify the Government within five days of the transfer of title/change of name.

B. The Government and the Lessor must execute a Supplemental Agreement acknowledging the transfer of title or name change.

C. If title to the Property is transferred, the Government, the original Lessor (Transferor), and the new owner or assignee (Transferee) shall execute a Novation Agreement providing for the transfer of Transferor's rights and obligations under the Lease to the Transferee. When executed on behalf of the Government, a Novation Agreement will be made part of the Lease via Supplemental Agreement.

D. The RECO may request additional information (e.g., copy of the deed, bill of sale, certificate of merger, contract, court decree, articles of incorporation, operation agreement, partnership certificate of good standing, etc.) from the Transferor or Transferee to verify the parties' representations regarding the transfer.

E. If the RECO determines that recognizing the Transferee as the Lessor will not be in the Government's interest, the Transferor shall remain fully liable to the Government for the Transferee's performance of obligations under the Lease, notwithstanding the transfer. Under no condition shall the Government be obligated to release the Transferor of obligations prior to (a) the rent commencement date; and (b) any amounts due and owing to the Government under the Lease that have been paid in full or completely set off against the rental payments due under the Lease.

F. As a condition for being recognized as the Lessor and entitlement to receiving rent, the Transferee must register in the System for Award Management (SAM) for purposes of "All Awards", and complete all required representations and certifications within SAM and the "Representation

Regarding Certain Telecommunications and Video Surveillance Services or Equipment” in this contract.

G. If title to the Property is transferred, rent shall continue to be paid to the original Lessor, subject to the Government's rights as provided for in this Lease. The Government's obligation to pay rent to the Transferee shall commence on the effective date of the Lease Amendment incorporating the Novation Agreement. The Lease Amendment will not be issued until the Government has received all information reasonably required by the RECO, the Government has determined that recognizing the Transferee as the Lessor is in the Government's interest (which determination will be prompt and not unreasonably withheld), and the Transferee has met all conditions specified in sub-paragraph F.

33. **Sublease (09/2021) 6.3.35 (MODIFIED)** The Government *may* sublease the space covered under this Lease to another agency or private party, *with the City’s consent*. In subleasing this space to another party, the Government is not relieved from its responsibilities under the terms of this Lease unless otherwise agreed upon with the Lessor.
34. **Integrated Agreement (09/2021) 6.3.36** This Contract, upon execution, contains the entire agreement of the parties, and no prior written or oral agreement, express or implied shall be admissible to contradict the provisions of this Contract.
35. **Unauthorized Negotiating (09/2021) 6.3.37** In no event shall the Contractor enter into negotiations concerning the premises with anyone other than the RECO or his/her designee.
36. **Inspection of Leased Premises (09/2021) 6.3.38** To ensure a safe and healthy work environment for government employees, agents, and assigns, and to ensure the Contractor’s performance under this contract, the Government at all times and places during the term of the contract has the right to:
- A. inspect the leased premises and all other areas of the building to which access is necessary,
 - B. test all performance requirements under the contract, and
 - C. perform any necessary sampling and evaluation to ensure contract compliance.
- If inspection reveals a contractual non-conformance, then the Government may require the Contractor to perform in accordance with the contract requirements at no increase in contract amount or the Government, in its sole discretion, may perform the work itself in accordance with the “Failure in Performance” clause of this Contract.

The presence or absence of a government inspection does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the contract without the RECO’s written authorization.

37. Contract Disputes (09/2021) 6.3.39

- A. All contract disputes arising under or related to this contract shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A contractor may seek review of a final FAA decision only after its administrative remedies have been exhausted.
- B. The filing of a contract dispute with the ODRA may be accomplished by mail, overnight delivery, hand delivery, or by facsimile, or if permitted by Order of the ODRA, by electronic filing. A contract dispute is considered to be filed on the date it is received by the ODRA during normal business hours. The ODRA's normal business hours are from 8:30 am to 5:00 pm Eastern Time.

C. Contract disputes are to be in writing and shall contain:

- i. The contractor's name, address, telephone and fax numbers and the name, address, telephone and fax numbers of the contractor's legal representative(s) (if any) for the contract dispute;
- ii. The contract number and the name of the Contracting Officer;
- iii. A detailed chronological statement of the facts and of the legal grounds for the contractor's positions regarding each element or count of the contract dispute (i.e., broken down by individual claim item), citing to relevant contract provisions and documents and attaching copies of those provisions and documents;
- iv. All information establishing that the contract dispute was timely filed;
- v. A request for a specific remedy, and if a monetary remedy is requested, a sum certain must be specified and pertinent cost information and documentation (e.g., invoices and terminated checks) attached, broken down by individual claim item and summarized; and
- vi. The signature of a duly authorized representative of the initiating party

D. Contract disputes shall be filed at the following address:

- i. For filing by hand delivery, courier or other form of in-person delivery:

Office of Dispute Resolution for Acquisition
Federal Aviation Administration
600 Independence Avenue SW., Room 2W100
Washington, DC 20591; or

For filing by U.S. Mail:

Office of Dispute Resolution for Acquisition
Federal Aviation Administration
800 Independence Avenue SW
Washington, DC 20591
[Attention: AGC-70, Wilbur Wright Bldg. Room 2W100]; or

Telephone: (202) 267-3290

Facsimile: (202) 267-3720

Alternate Facsimile: (202) 267-1293; or

- ii. Other address as specified in 14 CFR Part 17.

E. A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the contract claim involved. A contract dispute by the FAA against a contractor (excluding contract disputes alleging warranty issues, fraud or latent defects) likewise shall be filed within two (2) years after the accrual of the contract claim. If an underlying contract entered into prior to the effective date of this part provides for time limitations for filing of contract disputes with the ODRA which differ from the aforesaid two (2) year period, the limitation periods in the contract shall control over the limitation period of this section. In no event will either party be permitted to file with the ODRA a contract dispute seeking an equitable adjustment or other damages after the contractor has accepted final contract payment, with the exception of FAA claims related to warranty issues, gross mistakes amounting to fraud or latent defects. FAA claims against the contractor based on warranty issues must be filed within the time specified under applicable contract warranty provisions. Any FAA claims against the contractor based on gross mistakes amounting to fraud or latent defects shall be filed with the ODRA within two (2) years of the date on which the

FAA knew or should have known of the presence of the fraud or latent defect.

F. A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is to be received by the ODRA.

G. After filing the contract dispute, the contractor should seek informal resolution with the Contracting Officer.

H. The FAA requires continued performance with respect to contract disputes arising under this contract, in accordance with the provisions of the contract, pending a final FAA decision.

I. The FAA will pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the contract dispute, or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on contract disputes shall be paid at the rate fixed by the Secretary of the Treasury that is applicable on the date the Contracting Officer receives the contract dispute and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary until payment is made. Interest will not accrue for more than one year.

J. Additional information and guidance about the ODRA dispute resolution process for contract disputes can be found on the ODRA website at <http://www.faa.gov>.

38. System for Award Management - Real Property (04/2022) 6.4.1-1

(a) Definitions. As used in this clause:

"Registered in the SAM database" means that the Contractor has entered all mandatory information, including the Unique Entity Identifier (UEI) or the Electronic Funds Transfer indicator, into the SAM database.

"System for Award Management (SAM) Database" means the primary Government repository for Contractor information required for the conduct of business with the Government.

"Unique Entity Identifier (UEI)" (also known as the Unique Entity ID) means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing Unique Entity Identifiers.

"Electronic Funds Transfer indicator" means a 4-character suffix to the Unique Entity Identifier. This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts for the same parent concern.

"Contractor" is synonymous with "Offeror" "Lessor" or "Grantor" for real property leases, easements, or other contracts.

(b)(1) By submission of an offer, the Contractor acknowledges the requirement that a prospective awardee will be registered in the SAM database prior to award, during performance, and through final payment of any contract.

(2) The Contractor must enter, in the space below, the contractor's UEI that identifies the Contractor's name and address exactly as stated in the offer. The UEI will be used by the RECO to verify that the Contractor is registered in the SAM database.

UEI: _____

(c) If the Contractor does not have a UEI, it should contact www.sam.gov directly to obtain one. The Contractor should be prepared to provide the following information:

(1) Company* legal business name.

(2) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(3) Company Physical Street Address, City, State, and Zip Code.

- (4) Company Mailing Address, City, State and Zip Code (if separate from physical).
- (5) Company Telephone Number.
- (6) Date the company was started.
- (7) Number of employees at your location.
- (8) Chief executive officer/key manager.
- (9) Line of business (industry).
- (10) Company Headquarters name and address (reporting relationship within your entity).

* Individual (non-corporate) lessors/grantors of real property that are not normally in the business of leasing real property should consider leasing to the Government as a separate business (usually a sole proprietorship) then provide the pertinent ownership information as a sole proprietor when providing this information to www.sam.gov.

(d) If the offeror does not become registered in the SAM database in the time prescribed by the RECO, the RECO may proceed to award to the next otherwise successful registered offeror.

(e) Processing time should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of the solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after initial registration, the Contractor is required to review and update, on an annual basis from the date of initial registration or subsequent updates, its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in AMS Procurement Guidance, the Contractor must provide the responsible RECO a minimum of one business day's written notification of its intention to:

- (A) Change the name in the SAM database;
- (B) Comply with the requirements of AMS regarding novation and change-of-name agreements; and
- (C) Agree in writing to the timeline and procedures specified by the RECO. The Contractor must provide the RECO notification and sufficient documentation to support the legally changed name and then execute the appropriate supplemental agreement provided by the RECO to document the name change.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement/supplemental agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the Payment by Electronic Funds Transfer- System for Award Management clause of

this contract.

(2) The Contractor must not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims. Assignees must be separately registered in the SAM database. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the Payment by Electronic Funds Transfer-System for Award Management clause of this contract.

(h) Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.sam.gov> or by calling 866-606-8220.

PRESCRIPTION: Insert in all leases or easements or supplemental agreements to existing leases or easements unless the FAA has granted a waiver from the use of SAM. Must be used in conjunction with 6.4.2-1 Payment by Electronic Funds Transfer- System for Award Management. NOTE: If the FAA has granted a waiver from the use of SAM, use clause 6.4.1 "System for Award Management (SAM Waiver)" and REMOVE this clause.

39. Payment by Electronic Funds Transfer- System for Award Management (09/2021) 6.4.2-1

A. Method of payment.

i. Unless waived by the RECO, all payments by the Government under this contract will be made by electronic funds transfer (EFT), except as provided in paragraph (A)(ii) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

ii. In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either:

- a. Accept payment by check or some other mutually agreeable method of payment; or
- b. Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (D) of this clause).

B. Contractor's EFT information. The Government will make payment to the Contractor using the EFT information contained in the System for Award Management (SAM) database. In the event that the EFT information changes, the Contractor must be responsible for providing the updated information to the SAM database.

C. Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.

D. Suspension of payment. If the Contractor's EFT information in the SAM database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the SAM database; and any invoice or contract financing request will be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

E. Liability for uncompleted or erroneous transfers.

i. If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for

- a. Making a correct payment;

- b. Paying any prompt payment penalty due; and
- c. Recovering any erroneously directed funds.
- ii. If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and
 - a. If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
 - b. If the funds remain under the control of the payment office, the Government will not make payment, and the provisions of paragraph (D) of this clause will apply.
- F. EFT and prompt payment. A payment will be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- G. EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor must require as a condition of any such assignment, that the assignee must register separately in the SAM database and will be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims, is not permitted. In all respects, the requirements of this clause will apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.
- H. Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.
- I. Payment information. The payment or disbursing office will forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (A) of this clause, the Government will mail the payment information to the remittance address contained in the SAM database.

40. Tenant Improvements (09/2021) 6.5.1

A. TENANT IMPROVEMENTS

- i. Tenant improvements are the components, finishes, and fixtures that typically take space from the “shell” to a finished, useable condition.
- ii. The building “shell” is the complete enveloping structure, the base building systems, and the finished common areas of a building that adjoin the tenant areas. Unless an item is specifically identified as a tenant improvement, it is considered a shell item.
- iii. All tenant improvements must be approved by the RECO. Unauthorized work is performed at

the Lessor's risk.

B. TENANT IMPROVEMENT ALLOWANCE.

- i. The total tenant improvement allowance is \$<insert dollar amount> which shall be paid entirely by the Lessor, including any instance where the Government accepts fixtures and/or other tenant improvements already in place.
- ii. The tenant improvement allowance covers [RECO CHOOSE: all/a portion] of the cost of the design and build-out of the Government's demised area in accordance with the Government's approved Design Intent Drawings.
- iii. All tenant improvements required by the Government for occupancy will be constructed and paid for by the Lessor as a part of the rental consideration, and all improvements must meet the quality standards and requirements of this Lease.
- iv. At no additional cost to the Government, the Lessor agrees to pay and disburse all of the tenant improvement payments, and to provide the Government with all of the costs associated with the tenant improvements including, but not limited to, construction costs and costs related to preparation of construction plans, construction management fees, city fees and permit costs or penalties, certificate of occupancy and applicable taxes and engineering fees.
- v. The Government, at its sole discretion, will make all decisions as to the usage of the tenant improvement allowance. The Government may:
 - a. use all or part of the tenant improvement allowance; or
 - b. return to the Lessor any unused portion of the tenant improvement allowance in exchange for a decrease in rent.

If the Government build-out costs are in excess of the tenant improvement allowance, the Lessor may recover such costs by making a request for equitable adjustment as described elsewhere in this contract.

vi. The tenant improvement allowance must include all of the Lessor's administrative costs, general contractor fees, subcontractor's profit and overhead costs, Lessor's profit and overhead, design costs, and other associated project fees necessary to prepare construction documents and to complete the tenant improvements. It is the Lessor's responsibility to prepare all documentation (construction drawings, etc.) required to receive construction permits. No costs associated with the building shell shall be included in the tenant improvement price proposal.

C. DISCLOSURE OF TENANT IMPROVEMENT COSTS. The Lessor shall make a disclosure of all tenant improvement costs to the Government after all tenant improvement costs have been accounted for, such disclosure shall include a monthly payment schedule of said tenant improvement costs and balance remaining each month in accordance with the schedule detailed in the "Consideration" clause.

41. Work Performance (09/2021) 6.5.2 All work in performance of this Lease shall be done by skilled workers or mechanics and shall be acceptable to the RECO. The RECO retains the right to reject the Lessor's workers 1) if such are either unlicensed, unskilled, or otherwise incompetent, or 2) if such have demonstrated unacceptable performance in connection with work carried out in conjunction with this Lease. In the event of such rejection, the Lessor shall offer substitute/replacement workers, subject to the approval of the RECO.

42. Responsibility of the Lessor and Lessor's Architect/Engineer (09/2021) 6.5.3

A. The Lessor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Lessor

under this contract. The Lessor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications or other services.

B. The Lessor remains solely responsible for designing, constructing, operating, and maintaining the leased premises in full accordance with the requirements of the lease. The Government retains the right to review and approve many aspects of the Lessor's design, including without limitation, review of the Lessor's design and construction drawings, shop drawings, product data, finish samples, and completed base building and tenant improvement construction. The Government shall work closely with the Lessor, in an integrated manner, to identify potential design flaws, to minimize costly misdirection of effort, and to assist the Lessor in its effort to monitor whether such design and construction comply with applicable laws and satisfy all lease requirements.

C. Neither the Government's review, approval or acceptance of, nor payment through rent of the services required under this lease, shall be construed to operate as a waiver of any rights under this Lease or of any cause of action arising out of the performance of this Lease, and the Lessor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Lessor's negligent performance of any of the services required under this Lease.

D. Design and construction and performance information is contained throughout several of the solicitation documents which shall comprise a resulting lease. The Lessor shall provide to space planners, architects, engineers, construction contractors, etc., all design and performance information required whether it is found in the submitted solicitation, the lease, price lists, or Design Intent Drawings. Reliance upon one of these documents to the exclusion of any other may result in an incomplete understanding of the scope of the work to be performed and/or services to be provided.

43. **Wiring for Telephones (09/2021) 6.5.17** The Government reserves the right to provide its own telephone service in the space to be leased. It may have inside wiring and telephone equipment installed by the local telephone company or a private contractor. Alternately, the Government may consider using inside wiring installed by the Lessor, if available. However, the final decision will be made by the Government.
44. **Installation of Antennas, Cables & Other Appurtenances (09/2021) 6.5.18** The Government shall have the right to install, operate and maintain antennas, wires and supporting structures, including any linking wires, connecting cables and conduits atop and within buildings and structures, or at other locations, as deemed necessary by the Government. The Government will coordinate with the Lessor when installing antennas, cables, and other appurtenances.
45. **Doors (09/2021) 6.6.1** Exterior doors must be weather tight, equipped with cylinder locks and door checks, automatic door closures and open outward. The Lessor must furnish the Government at least two master keys and two keys for each lock. Interior doors must be solid cored and at least 32 by 80 inches with a minimum opening of 32 inches and be of sturdy construction. Fire doors must conform to NFPA Standard No. 80. As designated by the Government, doors must be equipped with non-removable hinge pins, and locks with 7-pin removable cores. The Government shall provide cores. Locks, locking arrangements and latches must be in accordance with local building and fire codes, as well as OSHA 29 CFR 1910.
46. **Lighting (09/2021) 6.6.2** Modern, diffused, energy efficient fixtures must be provided that maintain a uniform lighting level of 50 foot candles at working surfaces. Emergency lighting must provide at

least 0.5 foot candles of illumination throughout the exit path, including exit access routes, exit stairways, or other routes such as passageways to the outside of the building. Additionally, normal and emergency egress lighting must comply with the requirements of local building and fire codes, as well as, the Life Safety Code NFPA 101.

47. **Adhesives and Sealants (09/2021) 6.6.3** The Lessor shall use adhesives and sealants that contain no formaldehyde, asbestos, polychlorinated biphenyls (PCBs), or heavy metals.
48. **Ceilings (09/2021) 6.6.4** Ceilings must have acoustical treatment with a flame spread of 25 or less and smoke development rating of 50 or less.
49. **Floor Load (09/2021) 6.6.5** All adjoining floor areas shall be:

- A. Of a common level not varying more than 1/4 inch over a 10-foot, 0-inch horizontal run in accordance with the American Concrete Institute standards,
- B. Non-slip, and
- C. Accepted by the RECO.

Under floor surfaces shall be smooth and level. Office areas shall have a minimum live load capacity of 50 pounds per square foot plus 20 pounds per square foot for moveable partitions. Storage areas shall have a minimum live load capacity of 100 pounds per square foot including moveable partitions. A report showing the floor load capacity, at no cost to the Government, by a registered professional engineer may be required by the RECO. Calculations and structural drawings may also be required.

50. **Painting (09/2021) 6.6.6** All surfaces must be newly painted with low-VOC, non-lead based paints in colors acceptable to the Government. All surfaces must be repainted after working hours at Lessor's expense at least once every five (5) years. Such repainting includes the moving and returning of the furniture, including dismantling, moving and re-assembling the Government's systems furniture, if directed by the Government, at the Lessor's expense. Any existing lead based paint must be properly maintained and managed per existing federal, state, and local regulatory requirements. If there is chipping, flaking, or peeling paint in the leased premises during the period of Government occupancy, it must be sampled for lead at the Lessor's expense. If the paint contains lead, it must be abated at the Lessor's expense. This could be performed either by removal or sealing with an encapsulating material.
51. **Display Advertising (09/2021) 6.6.7** If the leased premises are solely for Government use, no advertising matter shall be constructed on or over the premises, unless authorized by the RECO.
52. **Erection of Signs (09/2021) 6.6.8** The Government shall have the right to erect on or attach to the Lessor's premises such signs as may be required to clearly identify the Government's facility. Said signs so erected will remain the property of the Government and shall be removed from the premises upon termination of the lease.

53. **Window and Floor Covering (09/2021) 6.6.9 (IN DISCUSSION)** All exterior windows shall be equipped with window covering. Floors will be carpeted with a commercial grade of carpet acceptable (carpet tiles or carpet broadloom) to the Government. Existing floor and window coverings may be accepted at the discretion of the RECO; however, prior to occupancy all carpeting and window coverings shall be cleaned.

At no additional cost to the Government, the Lessor shall replace carpeting at least every <insert # of years> years during Government occupancy or any time during the lease when:

A. Backing or underlayment is exposed,

B. There are noticeable variations in surface color or texture, and/or

C. The condition of the carpet is such that it presents a clear and present danger to pedestrians.

Replacement includes moving and return of furniture including dismantling, moving and re-assembling the Government's systems furniture if directed by the Government.

54. Seismic Safety for Existing Building (09/2021) 6.6.10 All existing buildings leased by the Government under this contract must meet the minimum acceptable performance seismic standard of 'Life Safety' as specified in Section 2.2 of Standards of Seismic Safety for Existing Federally Owned or Leased Buildings and Commentary issued by the Interagency Committee on Seismic Safety in Construction as ICSSC Recommended Practice (RP-8), Seismic Standards for Existing Federally Owned and Leased Buildings, Dec 2011. RP-8 is available online and in print from the National Institute of Standards and Technology as NISTIR GCR 11-917-12.

Compliance with Life Safety: The Lessor shall provide proof of compliance in the form of a written certification by an independent licensed structural engineer that the building was designed, built and maintained to the requirements of RP-8. The structural engineer certification shall be in the format of the Government-provided "Life Safety Compliance/Seismic Certification" form. If the building cannot be certified in accordance with RP-8, the structural engineer must evaluate the building using the American Society for Civil Engineers ASCE/SEI 41-13, Seismic Evaluation and Retrofit of Existing Buildings and attach the evaluation to the "Life Safety Compliance/Seismic Certification" form. Buildings meeting the requirements of ASCE/SEI 41-13 using a safety objective of 'Life Safety' are considered to meet the Government's requirement. Alternatively, if the building qualifies as a Benchmark Building in accordance with RP-8 and as certified on the "Life Safety Compliance/Seismic Certification" form, it will be deemed to meet minimum seismic requirements. In the event a building with a certification of seismic compliance is occupied by the Government and is later determined to not meet the standard indicated on the "Life Safety Compliance/Seismic Certification" form, the Government at its discretion may require the Lessor to meet the agreed upon standard or may terminate this Lease upon giving written notice, with no cost accruing to the Government, notwithstanding any other agreements contained in this Lease.

55.

56. Seismic Safety for Equipment (09/2021) 6.6.12 All Lessor-installed equipment, either Government provided or Lessor provided, shall be installed in strict accordance with the latest available edition of the International Building Code (IBC) at the time of execution of this contract and the DOT Specification FAA-G-2100H to ensure proper anchoring to protect personnel during a seismic event.

57. Construction Waste Management (09/2021) 6.6.13

A. The Lessor shall reuse or recycle construction and demolition waste to the maximum extent practicable and economically feasible. Items that shall be considered for recycling include: asphalt, bricks, concrete and masonry, metals, wood, cardboard, carpet, gypsum drywall, and ceiling tiles.

B. If any waste materials encountered during the demolition or construction phase are found to contain lead, asbestos, polychlorinated biphenyls (PCBs) (such as fluorescent lamp ballasts), or other

harmful substances, they shall be handled, removed, transported, and disposed of in accordance with federal and state laws and requirements concerning hazardous waste.

C. The Lessor agrees, upon request, to provide the Government with additional information concerning the execution of construction waste recycling activities.

58. Green Label Certification for Sustainability Verification (09/2021) 6.6.14 Following award of this Lease, the Lessor shall submit the information set forth herein to the facility manager, to be maintained on site, within the designated time frames.

A. Product Data Sheets for floor coverings, paints and wall coverings, ceiling materials, all adhesives, wood products, suite and interior doors, subdividing partitions, wall base, door hardware finishes, window coverings, millwork substrate and millwork finishes, lighting and lighting controls, and insulation to be used within the leased space. This information must be submitted no later than the date of submission of the final Design Intent Drawings for the leased space, as outlined in the “Design Intent Drawings” clause of this Contract.

B. Any waiver required by the failure or inability of the Lessor to use materials from the CPG and Recovered Materials Advisory Notice (RMAN) lists of acceptable products are due within 60 business days to the facility manager and copy to the RECO.

C. Radon test results as may be required in accordance with the “Radon Air Levels” clause.

D. Construction Waste Management Plan - Prior to issuance of the notice to proceed with construction, a proposed plan to recycle construction waste that follows industry standards must be submitted by the Lessor. The construction waste management plan shall at a minimum, include:

- i. The Lessor's Waste Management Diversion goal;
- ii. A statement of the relevant construction debris and materials to be diverted;
- iii. Lessor's implementation protocols; and
- iv. The names and contact information of the parties responsible for implementing the plan. The Lessor must provide documentation of the actual percentage of material diverted from the applicable landfill. If the quantity of material to be diverted is small, the waste disposal method is determined to be extraordinarily complex, or the cost of such diversion and recycling efforts would be cost-prohibitive and, consequently, would represent a genuine hardship, the Government, upon written request of the Lessor and approval of the facility manager and copy to the RECO, may permit an alternative means of disposal.

E. Building Recycling Service Plan - A building recycling service plan with floor plans annotating recycling area(s) shall be submitted as part of the Design Intent Drawings to be reflected on the Construction Drawing submission.

F. The Lessor shall provide to the RECO a signed statement explaining how all HVAC systems serving the leased space shall achieve the desired ventilation of the space during the flush-out period.

G. Prior to the submission by the Lessor of the completed Design Intent Drawings, the Lessor shall submit to the RECO a written commissioning plan that includes:

- i. A schedule of systems commissioning dates (revised as needed during all construction phases of the project, subject to the review and approval of the RECO in accordance with the “Changes” clause of this Contract; and
- ii. A description of how commissioning requirements shall be met and confirmed.

59. Services, Utilities, and Maintenance of Premises (09/2021) 6.7.1 The Lessor must maintain the demised premises, including but not limited to, the building grounds, all equipment, fixtures and appurtenances furnished by the Lessor under this Lease, in a good, clean and tenantable condition. The Lessor shall maintain landscape plants, lawns, walkways, and parking areas. The Lessor shall

also remove snow, ice, and any other obstructions from the entrances, walkways, and parking areas around the premises, prior to and during normal business hours set forth below.

The Lessor must provide the labor, materials, equipment and supervision necessary to ensure good repair and tenantable condition.

Services, utilities, and maintenance will be provided daily, extending from <INSERT TIME> to <INSERT TIME> except Saturday, Sunday and federal holidays.

Utility and maintenance services supplied to space that houses technical equipment will be supplied twenty-four (24) hours per day, seven (7) days per week.

The Government will have unlimited access to the leased premises 24 hours per day, seven days per week, including, as applicable, the use of electrical services, toilets, lights, elevators, and Government office machines at no additional cost. Such access will allow the Government to service Government-owned technical equipment, or to perform other mission-critical related duties, as it determines necessary in its sole and absolute discretion.

In addition to such other services as are set forth elsewhere in this Contract, the Contractor must provide the following:

- A. Electricity,
- B. Water (hot and cold) and sewer
- C. Potable water (see “Drinking Water” clause)

60. HVAC (09/2021) 6.7.3 All heating, ventilation and air-conditioning systems that service the leased space must maintain a temperature range of 68-72 degrees Fahrenheit year-round or as dictated in the most recent version of ASHRAE Standard 62, “Ventilation for Acceptable Indoor Air Quality” and ASHRAE Standard 55, “Thermal Environmental Conditions for Human Occupancy”. These temperatures must be maintained during hours of operation (as dictated by the lease) throughout the leased premises and service areas regardless of outside temperatures. An automatic control system will be provided to ensure compliance with heating and air conditioning provisions included in this contract.

In order to ensure that there is no degradation of air quality or air flow in the leased premises during the term of the lease, Lessor agrees to perform preventative maintenance on all HVAC units in accordance with the corresponding manufacturers operations and maintenance manuals (e.g. check for defects, lubricate, make adjustments, change the filters, cleaned and make other necessary service requirements). Lessor also agrees to service the VAV boxes annually (on or before each lease anniversary date) and provide the service date to the RECO and FAA facility manager. Such service will include checking the temperature ranges, checking all speeds on each fan, cleaning the fans and other components, replacing defective parts and completing other necessary repairs and maintenance.

61. Landscaping (09/2021) 6.7.4

A. Where conditions permit, the site shall be landscaped for low maintenance and water conservation with plants that are either native or well-adapted to local growing conditions.

B. Landscape management practices shall prevent or minimize pollution and storm water runoff by:

- i. Employing practices which avoid or minimize the need for fertilizers and pesticides;
- ii. Prohibiting the use of the 2,4-Dichlorophenoxyacetic Acid (2,4-D) herbicide and organophosphates; and
- iii. Composting/recycling all yard waste.

C. The Lessor shall use landscaping products with recycled content required by Environmental Protection Agency's (EPA's) Comprehensive Procurement Guidelines (CPG) for landscaping products. Refer to EPA's CPG web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

62. Pest Control (09/2021) 6.7.5 Pesticide application to exterminate and control pests within the leased premises can be performed per periodic schedule for preventative maintenance and according to need with 24-hour notification to the FAA facility management. Prior to any addition/change in type of pesticides or other chemical pest control, Lessor must provide 48-hour written notice with applicable Safety Data Sheet(s) (SDS) to be provided to the FAA facility management. Herbicides/pesticides are not to be applied near the outside air intakes of the building when the HVAC system is in operation, nor within the leased premises during normal working hours or when the HVAC system is in operation.

63. Fire and Life Safety Requirements (09/2021) 6.8.3 The facility, its systems and appurtenances must be in compliance with the following fire and life safety (FLS) requirements:

A. Construction features of the building must comply with state and local building codes in effect at the time of construction or most recent alteration.

B. Maintenance and operations of the building must comply with the current edition of state and local fire safety and fire prevention codes.

C. Construction features, maintenance and operations of the building must meet or exceed the minimum level of fire and life safety specified by OSHA 29 CFR 1910.

Where compliance with the literal requirements of these standards has not been achieved, the Lessor must document, in writing to the Government, the specific deviation(s) from these standards and the equivalencies or alternative methods used by the Lessor as alternative methods of compliance. Each approach used as an alternative method of compliance must be documented in accordance with the Equivalency and Technical Documentation requirements of NFPA 101, signed by a Fire Protection Engineer, licensed in the subject property's state, and a copy must be provided to the RECO.

As provided in this section, all codes, standards, orders and directives refer to the current edition in place at the signing of this contract. If construction or alterations to the premises are undertaken at any time during the term of this contract, fire protection and life safety systems must be brought into compliance where required by applicable codes and standards according to the then-current edition of local codes and standards and all requirements of OSHA 29 CFR 1910. The party initiating the construction or alterations is responsible for funding the upgrade of fire and life safety systems, construction or alteration to the facility must never decrease the level of fire and life safety provided.

Regardless of local code requirements, when the premises (including garage areas under contract by the Government) is on the 6th floor or above, or below grade, automatic sprinklers are required. All Airport Traffic Control Towers must meet the requirements of OSHA's Alternate Standard for Fire Safety in Airport Traffic Control Towers and the NFPA 101. Furthermore, buildings serving National Airspace System (NAS) air traffic control operations and constructed after June 2012, must be fully protected with an automatic, electrically supervised sprinkler system designed and installed in accordance with the requirements of NFPA 13.

When space is located in multi-tenant buildings, the Lessor is responsible for the following:

- i. Development of a building Emergency Action Plan (EAP) and Fire Prevention Plan.
- ii. Publishing and making copies of the EAP and Fire Prevention Plan, and making them available to all FAA occupants.
- iii. Conducting fire or other emergency evacuation drills, at least annually.
- iv. Conducting review and modification of the EAP and Fire Prevention Plan at least annually.
- v. Inviting FAA representation to develop, review and modify the EAP and Fire Prevention Plan.

64. Fall Protection (09/2021) 6.8.4 The Contractor must ensure proper fall protection safety systems are in place for all work areas where Government personnel are required to perform work at four feet or more above the next lowest level on fixed ladders and within access points to elevated work areas in accordance with FAA Order 3900.19, FAA Occupational Safety and Health Policy, 29 CFR 1910, Occupational Safety and Health Standards (General Industry), 29 CFR 1926 Subpart M, Safety and Health Regulations for Construction, and applicable regulatory required American National Standard Institute (ANSI) Standards. All such elevated work surfaces (platforms, catwalks, roofs, etc.) must have OSHA compliant guardrails, railings, toe boards and/or parapets where applicable to meet OSHA and ANSI requirements as referenced herein.

65. Environmental and Occupational Safety and Health (EOSH) Requirements (09/2021) 6.8.5 The Contractor must provide space, services, equipment, and conditions that comply with the following EOSH standards:

- A. 29 CFR 1910, Occupational Safety and Health Administration (OSHA) Standards (General Industry)
- B. 29 CFR 1926, Safety and Health Standards (Construction)
- C. National Fire Protection Association (NFPA) 101, Life Safety Code
- D. FAA Order 3900.19, FAA Occupational and Health Policy
- E. FAA Standard HF-STD-001, Human Factors Design Standard
- F. National Fire Protection Association (NFPA) 70, National Electrical Code, and NFPA 70E, Electrical Safety in the Workplace
- G. Local and state EOSH regulations
- H. Local and state fire codes and building codes.

Federal, state and local EOSH (OSHA and EPA) standards and building codes must be complied with when accomplishing any cleaning, construction, renovation, remodeling, maintenance activities or testing done in or on the leased premises and areas connected to or integrated with the premises. Additionally, whenever FAA standards require work processes or precautions to be provided, the

Contractor will coordinate with the FAA before and during the work so that the proper requirements are met.

Any equipment designed, installed, or used that presents a potential safety hazard shall be marked with appropriate warning labels or placards, in accordance with 29 CFR 1910.145, Specifications for Accident Prevention Signs and Tags, FAA HF-STD-001, Human Factors Design Standard, Chapter 12.16, Safety Labels and Placards, American National Standards Institute (ANSI) Standard Z535.4, Product Safety Signs and Labels, and FAA-G-2100H, Electronic Equipment, General Requirements, Section 3.3.5.4.

66. Recycling (09/2021) 6.8.6 Where state or local law, code, or ordinance requires recycling programs (including those for mercury containing lamps) for the space, the Contractor shall comply with state and/or local law, code, or ordinance. In all other cases, the Contractor must establish a recycling program for paper, corrugated cardboard, glass, plastics, and metals to the extent practicable and where local markets for those recovered materials exist. The Contractor agrees, upon request, to provide the Government with additional information concerning recycling programs maintained in the building and in the space after lease execution.

67. Indoor Air Quality (09/2021) 6.8.7 The Contractor must control contaminants at the source and/or operate the space in such a manner that the indicator levels are not exceeded for carbon monoxide (CO), carbon dioxide (CO₂), and formaldehyde (CH₂O). The indicator levels for office area are as follows: CO less than 5 parts per million (PPM); CO₂ - 700 PPM above outdoor air; CH₂O - 0.027 PPM. All indoor air contaminant levels in the space must be kept below appropriate OSHA regulations or OSHA required consensus standards. Air quality systems cleaning is required to prevent the growth of mold, mildew and bacteria. Any visual evidence of these will require immediate sampling and remediation. Moisture/standing water must be controlled to prevent the growth of these.

During working hours, ventilation must be provided in accordance with the latest edition of ANSI/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 62, Ventilation for Acceptable Indoor Air Quality and ASHRAE Standard 55, Thermal Environmental Conditions for Human Occupancy.

The Contractor must investigate indoor air quality (IAQ) complaints immediately and must implement controls including alteration of building operating procedures (e.g., adjusting air intakes, adjusting air distribution, cleaning and maintaining heating, ventilation and air conditioning (HVAC) systems, etc.). The Government is responsible for addressing IAQ problems resulting from its own activities.

The Contractor must provide SDS to FAA facility management for all chemicals and cleaning solutions at least 72 hours prior to their use in the FAA spaces or other areas of the buildings that might affect air quality in the FAA space(s). Materials should contain low or no Volatile Organic Compounds (VOC) and additional ventilation may be required when using chemicals and cleaning solutions.

68. Mold Growth Identification and Control (09/2021) 6.8.8 The contractor must prevent mold growth and excessive levels of moisture and humidity. Adequate air quality, moisture control and facility cleaning are required to prevent the growth of mold, mildew, and bacteria. Any visual

evidence of mold requires immediate sampling and remediation by the contractor.

Following a water-intrusion event, the contractor must identify the water source and immediately implement water extraction and drying efforts. Once the water source is identified, the contractor must take action to prevent additional water damage and ensure that permanent fixes are in place prior to build-back and restoring building materials. Within 24-48 hours of water damage from clean water sources (e.g., water supply lines, rainwater, and snowmelt from rooftops), all building materials must be dried to a moisture level that will prevent mold growth.

All porous materials contaminated with sewage or other Category 2 (e.g., washing machine overflows, toilet overflows, and non-feces waters) or Category 3 (sewage backups and overflows from beyond toilet traps, feces, floodwaters, and groundwater intrusion) water sources must be discarded. All non-porous material must be cleaned and disinfected.

Mold remediation and cleaning must be conducted using recognized industry methods and practices (e.g. Institute of Inspection, Cleaning and Restoration Certification (IICRC) S500 Standard and Reference Guide for Professional Water Damage Restoration, IICRC-S520 Standard and Reference Guide for Professional Mold Remediation, 2008, and National Air Duct Cleaners Association (NADCA): Assessment, Cleaning and Restoration of HVAC Systems, ACR 2006). State requirements concerning mold remediation, contractors training and licensing must be followed.

The contractor must coordinate with the FAA facility management and RECO regarding all mold remediation operations. The FAA must be afforded the opportunity to provide input in the mold remediation process. Biocides must be used cautiously and in accordance with EPA requirements. A Certified Industrial Hygienist (CIH) must pre-approve the use of EPA-approved biocides in air conveyance systems.

- 69. Drinking Water (09/2021) 6.8.9** The contractor must provide drinking water in the space that meets the standards prescribed in the Safe Drinking Water Act, 42 U.S.C. 300. Acceptable potable water must meet EPA's primary drinking water standards with contaminants being less than established Maximum Contaminant Levels (MCLs) and action levels. In cases where state and/or local authorities have their own standards, potable water must meet those or federal standards, whichever is more stringent.

The contractor must test the sources of drinking water in the space (faucets, drinking water fountains, ice machines, etc.) on a periodic basis, but no less than every three (3) years, to ensure water quality (e.g., lead, copper, total coliforms). If the contractor performs plumbing and/or renovation work in the space that impacts the drinking water (i.e., replacement of water lines), the contractor must test the drinking water in the system affected by the plumbing and/or renovation work. If at any time, the FAA or contractor's drinking water test results are not acceptable under the EPA's primary drinking water, and/or state and local authorities' standards as described above, the Lessor must immediately correct the deficiencies. The contractor must notify the Government prior to performing all tests and provide a copy of any test report to the RECO and facility management or their designee.

- 70. Halon (09/2021) 6.8.10** Halon may not be used in any FAA space.

71. **Radon Air Levels (09/2021) 6.8.11** Contractor must provide the FAA with a Radon Evaluation Report for the facility when requested. Radon air levels in FAA premises must not exceed the level of 4.0 picocuries per liter (pCi/L). If radon levels are found to be at or above 4.0 pCi/L, the contractor must immediately notify the RECO and FAA facility management of its finding and its plan of corrective action, including testing, to ensure radon air levels are maintained below 4.0 pCi/L at all times. Radon testing shall be done by a radon professional certified according to state and local requirements using US EPA approved testing methods.
72. **Asbestos (09/2021) 6.8.12** The contractor must ensure that FAA personnel are protected from asbestos hazards, in accordance with:
- A. 29 CFR 1910.1001, Asbestos (General Industry)
 - B. 29 CFR 1926.1101, Asbestos (Construction)
 - C. 40 CFR 763, Subpart E, Asbestos Containing Materials in Schools, Asbestos Hazard Emergency Response Act (AHERA)
 - D. 40 CFR 61, Subpart M, National Emissions Standards for Hazardous Air Pollutants (NESHAP)
 - E. State and local asbestos regulations

The contractor warrants that, notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, all space under this contract, including, but not limited to; space above suspended ceilings in the leased space, air plenums elsewhere in the building that service the leased space, engineering spaces in the same ventilation zone as the leased space, public spaces in the same ventilation zone as the leased space, and public spaces and common use spaces (e.g., lobbies, hallways) will, at the time of acceptance and during the term of this Lease, including all extensions thereof, comply with asbestos regulatory requirements.

All facilities are required to have a current asbestos building survey or an asbestos free certification (in accordance with federal, state or local regulations, and including sampling of all materials that have the potential to contain asbestos) conducted by a qualified inspector, including a visual examination and sampling of building materials. All asbestos identification survey reports must be sent to the RECO and FAA facility management.

The RECO must notify the contractor in writing of any failure to comply with asbestos requirements, within five (5) days after the discovery thereof. If Asbestos Containing Materials (ACMs) are found to be in the leased space, either prior to acceptance or during the course of the lease agreement, the Government reserves the right to require the contractor, at no cost to the Government, to take corrective action as required by OSHA, EPA, state and local requirements. In accordance with these regulations, the contractor must post asbestos warning labels and signs in accordance with OSHA regulations.

In addition, all construction by the contractor is required to comply with OSHA, EPA, state and local requirements for asbestos. Prior to the start of any construction, renovation or maintenance activities that impact the building, the contractor must determine whether ACM will or could be released as part of the work. If ACM will or could be released, the contractor must notify the FAA and take corrective actions to prevent FAA employees from exposure to asbestos fibers. Corrective actions must be coordinated with the FAA at least 30 days prior to the start of any construction, renovation or maintenance activities that impact the building.

After ACM remediation is performed, the contractor must adhere to regulatory required post-asbestos abatement air monitoring requirements. As a part of this process, the contractor must provide the RECO and the FAA facility manager with an asbestos re-inspection report indicating the location and condition of all remaining ACM in the FAA leased areas and common areas of the facility. If the contractor supplies the janitorial or maintenance contracts, those employees must also be informed of the presence and location of asbestos at the facility.

“Corrective Action“, as used in this clause, means the removal, encapsulation or enclosure of ACM. All corrective actions must be conducted by licensed asbestos abatement contractors in accordance with OSHA, EPA, state, local and FAA requirements.

73. **Warranty of Space (09/2021) 6.8.13** The contractor warrants that all space leased to the Government under this contract complies with federal, state, and local regulations. The space is not limited to that set forth in this contract, but also includes space above suspended ceilings in the leased space, air plenums elsewhere in the building that service the leased space, engineering spaces in the same ventilation zone as the leased space, public spaces in the same ventilation zone as the leased space, and public spaces and common use spaces (e.g., lobbies, hallways).
74. **Electrical Safety (09/2021) 6.8.14** The contractor must ensure electrical safety requirements are met, including grounding, bonding, shielding, control of electrostatic discharge (ESD), and lightning protection requirements, in accordance with:
- A. 29 CFR 1910, Subpart S, Electrical
 - B. FAA Standard HF-STD-001, Human Factors Design Standard, Chapter 12.4, Electrical Hazards
 - C. DOT Specification FAA-G-2100H, Electronic Equipment, General Requirements
 - D. National Fire Protection Association (NFPA) 70, National Electrical Code
 - E. NFPA 70E, Electrical Safety in the Workplace
 - F. American National Standards Institute/Institute of Electrical and Electronics Engineers (ANSI/IEEE) Standard 1100-2005, Recommended Practice for Powering and Grounding Electrical Equipment
 - G. DOT Standard FAA-STD-019F, Lightning and Surge Protection, Grounding, Bonding and Shielding Requirements for Facilities and Equipment

The contractor must ensure that electrical equipment and infrastructure meets minimum clear working space requirements in accordance with 29 CFR 1910.303 and NFPA 70 Article 110.26, and is maintained and documented in accordance with NFPA 70E. Any change in the electrical equipment requires review of the current arc flash warning labels to determine if the arc flash warning labels posted meet the current safety requirements.

75. **Facility Security (09/2021) 6.9.1** Security requirements for Government occupied space must meet minimum-security accreditation standards for the type of facility covered by this Lease. The FAA Facility Security Management Program defines facility security accreditation standard levels. The security requirements identified below are tailored specifically for the type of facility covered by this Lease. The Lessor shall provide or make accommodation to provide for all the security requirements listed herein for the leased premises covered by this Lease agreement:

None

The local Servicing Security Element (SSE) will determine any additional security upgrades that are required to meet accreditation and shall conduct a final security assessment of the building. If that assessment indicates that additional upgrades are required to the Premises, those upgrades shall be contracted and paid for under separate contract at the Government's expense and subject to the availability of funds. The Lessor shall provide maintenance services to the security upgrades installed by the Lessor within the leased premises and covered under this Lease.

76. Foreign Nationals as Contractor Employees (04/2022) 6.9.2

a) Definition. "Foreign National" is any citizen or national of a country other than the United States who has not immigrated to the United States and is not a Legal Permanent Resident (LPR) of the United States.

b) Each contractor or subcontractor employee under this contract, having access to FAA facilities, sensitive information, or resources must be a citizen of the United States, or a foreign national who has been lawfully admitted for permanent residence as evidenced by a Permanent Resident Card I-551, or who presents other evidence from the U.S. Citizenship and Immigration Service that employment must not affect his/her immigration status.

c) Foreign Nationals proposed under this contract must meet the following conditions in accordance with FAA Order 1600.1F, chapter 8, paragraph 10:

(1) Must have resided within the United States for a minimum of the last three (3) years unless a waiver of this requirement is requested and approved in accordance with the requirements stated in FAA Order 1600.1F, chapter 8, paragraph 10;

(2) A risk or sensitivity level designation can be made for the position; and

(3) The appropriate security-related background investigation can be adequately conducted, as determined by the Office of Security and Hazardous Materials (ASH) Office of Personnel Security (AXP).

d) Foreign Nationals proposed under this contract must meet the following additional conditions:

(1) Provide a current unexpired passport and their place of birth in order to begin the background investigation process in accordance with FAA Order 1600.1F, Personnel Security Program; and,

(2) Successfully pass an export control review as outlined in FAA Order 1240.13 FAA Export Control Compliance.

e) Interim suitability requirements may not be applied unless the position is low/moderate in risk, and/or temporary, and/or is not in a critical area position.

77. Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (04/2022) 6.9.5

(a) Definitions. As used in this clause--

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—
 - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - (ii) For reasons relating to regional stability or surreptitious listening.
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4 A.17.e.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4A.17.e. This prohibition applies to an entity that uses covered telecommunications equipment or services, including use not in support of the Government.

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor must report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information. For indefinite delivery contracts, the Contractor must report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.

(2) The Contractor must report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known);

supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor must describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor must insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

78. Covered Telecommunications Equipment or Services- Representations (09/2021) 6.9.5-1

a) Definitions. As used in this provision, “covered telecommunications equipment or services” has the meaning per the "Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment” clause in this contract.

(b) Procedures. The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for covered telecommunications equipment or services.

(c) Representations.

1. The offeror represents that it _____ **does**, _____ **does not provide** covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.
2. After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it _____ **does**, _____ **does not use** covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services.

79. Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (09/2021) 6.9.5-2

NOTE: The offeror must not complete the representation at paragraph (d)(1) in this provision if the offeror has represented that it does not provide covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument in the provision "Covered Telecommunications Equipment or Services – Representation" (c)(1). Additionally, The offeror must not complete the representation at paragraph (d)(2) in this provision if the offeror has represented that it does not use covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services in the provision "Covered Telecommunications Equipment or Services – Representation" (c)(2).

PROVISION/CLAUSE:

(a) Definitions. As used in this provision--

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the

meanings provided in the clause AMS clause 6.9.5, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibitions.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Nothing in this prohibition will be construed to—

- (i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential part of any system or as critical technology as part of any system. This prohibition applies to any entity that uses covered telecommunications equipment or services, including uses not in support of the Government.

Nothing in this prohibition will be construed to-

- (i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures: The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from Federal awards for covered telecommunications equipment or services.

(d) Representations.

(1) The Offeror represents that it will, will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(2) After conducting a reasonable inquiry for purposes of this representation, the Offeror represents that it does does not USE covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror must provide the additional disclosure information required at paragraph (e) if the Offeror indicates “does”.

(e) Disclosures. Disclosure for the representation in paragraph (d) (1) of this provision-
If the Offeror has responded “will” in the representation in paragraph (d) (1) of this provision, the Offeror must provide the following information as part of the offer—

(1) For covered equipment

(i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known;

(ii) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(iii) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (1) of this provision;

(2) For covered services-

(i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable; or

(ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

Disclosure for representation in paragraph (d) (2) of this provision. If the Offeror has responded “does” to paragraph (d)(2) of this provision, the offeror must provide the following information as part of the offer—

(3) For covered equipment

(i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known;

(ii) A description of all covered telecommunications equipment offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(iii) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (2) of this provision.

(4) For covered services-

(i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

80. Notices (09/2021) 6.10.1 All notices/correspondence must be in writing, reference the Contract number, and be addressed as follows:

TO THE CONTRACTOR:

<Insert Contractor's Name>
<Insert correspondence address>
<Insert City, State, Zip code>

TO THE GOVERNMENT:

<Real Estate Contracting Division>, <routing symbol>
<insert address>
<Insert City, State, Zip code>

81. Signature Block (09/2021) 6.10.3

This Contract shall become binding when it is fully executed by both parties. In witness whereof, the parties hereto have subscribed their names as of the date shown below.

<ENTER CONTRACTOR'S LEGAL NAME>

By: _____
Print Name: _____
Title: _____
Date: _____

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

By: _____
Print Name: _____
Title: Real Estate Contracting Officer
Date: _____

ATTACHMENTS/EXHIBITS:

Number	Title	Date	Number of Pages
1			
2			
3			
4			
5			