



REQUEST FOR PROPOSAL

(#22-69RFP)

INVESTMENT ADVISORY SERVICES

ATTENTION: This is not an order. Read all instructions, terms, and conditions carefully.

IMPORTANT: Proposals must be received no later than 2:00 p.m. Eastern Time (ET) on Thursday, **September 22, 2022**

RFP # **22-69RFP** **DATE ISSUED:** **September 1, 2022**

**KENTON COUNTY AIRPORT BOARD
REQUEST FOR PROPOSAL
INVESTMENT ADVISORY SERVICES (#22-69RFP)**

Pursuant to the provisions of KRS 424.260, the Kenton County Airport Board ("KCAB") will receive proposals for **Investment Advisory Services** at the Cincinnati/Northern Kentucky Int'l Airport ("CVG"). Proposals must be received by September 22, 2022 at 2:00 p.m. ET. No proposals will be accepted after that time unless such date or time is extended pursuant to an addendum issued by KCAB.

KCAB reserves the right to waive any informality or irregularity in any proposal or bid guaranty, to reject any or all proposals, to award or refrain from awarding a contract for the work, and to negotiate with the apparent qualified responsible proposer to such extent as may be beneficial to KCAB.

Preference for Kentucky resident bidders will be applied in accordance with Kentucky law.

KCAB in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Further information and copies of the Request for Proposal (RFP) may be downloaded from <http://www.cvgairport.com/bids> - PlanetBids & New Vendor Registration.

**KENTON COUNTY AIRPORT BOARD
Candace S. McGraw, Chief Executive Officer
CINCINNATI/NORTHERN KENTUCKY INTERNATIONAL AIRPORT
Hebron, Kentucky 41048**

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SCHEDULE OF EVENTS

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| • September 13, 2022 | Deadline for questions to be submitted. |
| • September 15, 2022 | Answers to questions issued. |
| • September 22, 2022 @ 2:00 p.m. | Proposals due. |
| • November, 2022 | Anticipated Board Approval. |
| • February 1, 2023 | Anticipated Contract implementation. |

KCAB reserves the right to modify or alter the schedule of events to such extent as may be beneficial to KCAB.

SECTION A - GENERAL INFORMATION & PROPOSAL INSTRUCTIONS

A.1 BACKGROUND AND SCOPE

The Kenton County Airport Board ("KCAB") is soliciting proposals relating to Investment Advisory Services at the Cincinnati/Northern Kentucky International Airport ("CVG").

A.2 SUBMISSION OF PROPOSALS

Responses to this RFP must be submitted electronically through KCAB's online bidding system which can be accessed at <http://www.cvgairport.com/bids> under "PlanetBids & New Vendor Registration". Select the project titled **Investment Advisory Services (Invitation #22-69RFP)** and follow the instructions for submittal. The completed and signed proposal (together with all required attachments) must be transmitted and received in the system no later than September 22, 2022 at 2:00 p.m. Eastern Time (ET). Proposers should allow for sufficient time to upload and transmit all required information. Proposer is solely responsible to ensure its submission is transmitted prior to the due date and time. KCAB will not accept submissions after the due date and time and is not responsible for any error in transmission including but not limited to power outage, internet connectivity, unauthorized access, etc.

Individual submittals will not be read in public or available for public inspection until after an award determination has been made.

A.3 RFP QUESTIONS

KCAB is not bound by and proposers may not request or rely on any oral interpretation or clarification of this RFP. Therefore any questions regarding this RFP are encouraged and should be submitted electronically using the Q&A tab of this RFP on KCAB's online bidding system, which can be accessed at <http://www.cvgairport.com/bids> under "PlanetBids & New Vendor Registration".

Questions received on or before the Deadline to Submit Questions in the Schedule of Events will be posted on the Q&A tab of this RFP on the bidding system per the Schedule of Events. Answers to questions from any proposer will be available to all proposers.

All communications regarding this solicitation must only be through the Contract and Procurement Administration Department. No communication is to be directed to any other KCAB personnel unless otherwise instructed by the Contract and Procurement Administration Department. Failure to comply may result in the disqualification of proposer's submittal.

A.4 ADDENDA

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In the event it becomes necessary to revise, change, modify or cancel this RFP or to provide additional information, addenda will be issued to all recipients of this RFP.

A.5 SCOPE OF SERVICES/GENERAL REQUIREMENTS/MINIMUM QUALIFICATIONS

KCAB is seeking proposals from qualified firms to provide Investment Advisory Services. The successful proposer ("Consultant") will be responsible for managing and directing the investment of funds in the Board's \$300 million dollar portfolio. The Consultant must also provide investment research for KCAB's portfolio and conduct a continuous program of investment evaluation.

A.5.1 Consultant must provide the following services, at a minimum:

- A.** Provide ongoing investment advisory services for KCAB's investment portfolio,
- B.** Provide information regarding current and forecasted market and economic conditions as needed,
- C.** Review cash flow requirements prepared by KCAB staff and work with KCAB staff to develop an investment strategy which is in accordance with the Kentucky Revised Statutes, KCAB's Investment Policy, and other governing documents or regulations (e.g. bond resolutions and Internal Revenue Code) and which reflects current market conditions
- D.** Maintain a list of approved broker/dealers that meet KCAB's approved criteria and furnish evidence of compliance with these criteria to KCAB staff,
- E.** Solicit competitive quotes from authorized financial institutions and broker/dealers for permitted investment securities and maintain documentation of such quotes in accordance with the KCAB's Investment Policy for review by KCAB upon request,
- F.** Execute investment trades on KCAB's behalf in accordance with the KCAB's Investment Policy and all applicable governing documents/regulations,
- G.** Interface with KCAB's staff and investment custodian to assure coordination of investments, delivery of securities and availability of funds as needed. The amount of discretion given to execute investment trades will be determined by the Secretary / Treasurer,
- H.** Monitor and assess the credit worthiness of financial institutions and investments in the portfolio,
- I.** Provide input and advice regarding an appropriate measurement of portfolio performance and benchmarks,
- J.** Provide monthly / quarterly / annual reports on investment activity, earnings, the market value of the portfolio, projected cash flows, the portfolio's rate of return and appropriate indices against which performance can be measured. Reports must give sufficient detail for accounting (recording & management reporting) and financial statement (auditing) purposes. Provide other reports at KCAB's request,
- K.** Ensure all investment decisions comply with KCAB investment policy and applicable documents/regulations,
- L.** Review and evaluate KCAB's Investment Policy, provide comments, and recommend changes,
- M.** Provide investment advisor services for the proceeds of tax-exempt bond issues in compliance with arbitrage and rebate requirement of the U.S. Treasury and related Code of Federal Regulations,
- N.** Be available to attend on-site meetings at KCAB's offices, if requested, to discuss investment strategy, to present the status or results of the Board's investment program, etc., and
- O.** Other special, related requests as needed.

A.5.2 Minimum Qualifications

Firms / institutions must meet the following minimum qualifications to provide investment advisory services to KCAB:

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- Registered with the Securities and Exchange Commission (SEC) under the Investment Advisor's Act of 1940 (as amended), or shall be exempt from registration requirements, and shall be properly registered to provide investment management services in the Commonwealth of Kentucky,
- Have a minimum of five years' experience in managing fixed income assets for state and local governments including experience in managing portfolios exceeding \$150 million,
- Assign an account manager to the Board's accounts who has a minimum of five years' experience in providing investment and cash management services to large public entities,
- Be financially solvent and appropriately capitalized to be able to service the Board for the duration of the contract, and
- Have Errors and Omissions and Fiduciary and Liability Insurance coverage of at least fifteen (15) million dollars per claim.

A.5.3 Restrictions on Scope of Services

- Consultant will not provide custodial services or security safekeeping nor take possession of securities or funds of the KCAB,
- All transactions will settle on a delivery-versus-payment basis,
- All securities will be held in KCAB's name by its third-party custodian,
- The firm selected as the investment advisor and its affiliates will be prohibited from selling to the KCAB, or buying from KCAB, any securities to or from the firm's own inventory or account. The investment advisor will also be restricted from placing into the KCAB's portfolio any securities for which it, or an affiliate, is the issuer (i.e. CD's, commercial paper, etc.) The investment advisor shall act solely in a fiduciary capacity and shall not receive a fee or compensation related to the purchase or sale of securities or other investments but rather will only be compensated pursuant to the provision of its contract with KCAB.
- An investment officer who is related within the second degree by affinity or consanguinity to an individual seeking to sell an investment to KCAB shall file a statement disclosing the relationship.

A.6 PROPOSAL REQUIREMENTS

Proposals must include the information identified in this section and be presented in the order provided. Proposals must not exceed 15 single sided pages and must be typewritten, using a 10 point font (minimum), on a standard 8 ½ inch by 11 inch page format with consecutive page numbers on each page. Relevant project experience, team member resumes and references may be provided in three (3) appendices attached to the proposal (Appendix A – Project Profiles, Appendix B – References, and Appendix C –Resumes) and do not count toward the page limit. Section dividers, tabs, and cover sheets do not count toward the page limit.

A.6.1 Information Requested

- A. Provide a copy of your firm's most recent two years of audited financial statements.
- B. Describe the organization, date founded and ownership structure of your firm and any subsidiaries and affiliates relevant to an agreement / business relationship with the Board. If your firm has experienced a significant change in organizational structure, ownership or management during the past three years, please describe.

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- C. Describe any other business affiliations (e.g., subsidiaries, joint ventures, “soft dollar” arrangements) that would affect investment performance of the Board’s account, including payment of a finder’s fee to any third party business related to this account.
- D. Describe your firm’s policy on soft dollars.
- E. Is your firm a registered investment advisory under the Investment Advisor’s Act of 1940, including amendments? If not, indicate why you are exempt from registration.
- F. Describe in detail any SEC, NASD or any other regulatory, federal or state censure or litigation involving your firm or its employees during the past five years.
- G. Summarize fidelity bond coverage, error and omissions, employee dishonesty, fiduciary liability insurance or other fiduciary coverage your firm carries.
- H. Describe your firm’s primary revenue sources and comment on your firm’s financial condition, including if your organization provides trust, investment management or securities brokerage services (including commission recapture).

A.6.1b Fees / cost

- A. Provide the complete fee schedule that would apply to this account. Are fees charged in arrears?
- B. What additional expenses not covered through the fee structure will be expected in order to implement your investment advisory services?
- C. KCAB’s preference is for hard-dollar fees, either as a basis point calculation or as flat fees.

A.6.1c Firm experience

- A. Describe your firm’s experience in managing fixed-income portfolios for public funds and governmental entities.
- B. Summarize your fixed-income assets under management (institutional only) over the last five years by the following categories: short-term operating funds, medium-term operating funds, long-term operating funds, capital/bond proceeds funds and bond reserve funds. Categorize the assets by type of issuer (Federal government institutions / agencies, state government I institutions / agencies, other institutions.)
- C. Describe your firm’s experience in developing investment policies and portfolio management guidelines for government clients / public funds.
- D. Describe your firm’s experience in developing and implementing investment strategies for tax exempt bond proceeds including ensuring compliance with Internal Revenue Service regulations and guidelines.

A.6.1d References

Provide five (5) client references (preferably public sector and / or airport) for whom you provide similar services including client name, contact information, email address, phone number, and length of time you have managed their assets.

A.6.1e Staff Experience

- A. Identify the number of professionals employed by your firm by classification (portfolio managers, analysts and researchers) and provide the average number of accounts handled by portfolio managers.
- B. Identify the key personnel who will be assigned to this account. Describe the roles of each person and indicate who will be the primary contact. Also provide detailed resumes and biographical information for all identified key personnel who will be assigned to this account. Include the following information: title, number of years at your firm, total number of years’ experience (specify the public funds experience), professional designations or licenses, education, etc.

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- C. Describe your firm's activities to keep portfolio managers informed of developments relevant to the management of public sector investment portfolios.
- D. Describe your firm's policy to address employee turnover, including a statement that key personnel proposed will be available to perform the proposed services for the duration of the contract acknowledging that no person designated as "key" to the proposed service shall be removed or replaced without the prior written concurrence of KCAB.

- A.6.2 A separate section that states in writing all exceptions to this RFP or sample contract attached. Exceptions should list referencing page and paragraph numbers. If no exceptions are taken, the proposal must include a statement that the bidder takes "No Exceptions".
- A.6.3 Copy of proposer's certificate(s) of insurance showing proof of required coverages and limits listed in this RFP and attached proposed agreement.
- A.6.4 Completed applicable proposer residence form.

A.7 KENTUCKY OPEN RECORDS ACT

Each proposer must specifically identify any portion of its proposal which it deems confidential, or which contains proprietary information, patents, copyrights or trade secrets. Proposer should provide justification of what material should not be disclosed, upon request, by KCAB to a third party. All documents received by KCAB are subject to general inspection under the provisions of Kentucky Revised Statutes Chapter 61.870 et seq, the "Kentucky Open Records Act", subject to very narrow exceptions. These statutes may require disclosure of documents a proposer deems confidential. KCAB may otherwise use or disclose the data submitted by each proposer for any purpose, unless such data is so identified as confidential or proprietary by the proposer. The proposer's opinion of proprietary information is not binding upon KCAB.

A.8 EVALUATION CRITERIA

The selection of the investment advisor will be based on a judgment evaluation of several key elements in the proposals submitted. In alphabetical order, these include but are not limited to:

- Approach and philosophy
- Fees / cost
- Firm experience
- References
- Staff experience

Following review of the proposals, KCAB may invite certain proposers to formally meet with KCAB representatives the week of October 10, 2022 if necessary.

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A.9 ACCEPTANCE PERIOD

Proposals in response to this RFP must indicate it is valid for a period no less than ninety (90) days from the closing date.

A.10 AWARD

- A.10.1 KCAB intends to award a contract or contracts resulting from this solicitation to the responsible proposer(s) whose proposal represents the best value after evaluation in accordance with the criteria included in this RFP.
- A.10.2 KCAB reserves the right to waive any informality or irregularity in any proposal or bid guaranty, to reject any or all proposals, to award or refrain from awarding a contract for the work, and to negotiate with the apparent qualified responsible proposer to such extent as may be beneficial to KCAB.
- A.10.3 KCAB intends to evaluate proposals and may award a contract without discussions with proposers. Therefore, the proposer's initial proposal should contain the proposer's best terms from a cost or price and technical standpoint.
- A.10.4 KCAB reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered.
- A.10.5 KCAB reserves the right to make multiple awards if, after considering the proposals submitted, it is in KCAB's best interest to do so.
- A.10.6 The successful proposer will be required to enter into a contract substantially in the form of the contract attached to this RFP and incorporated by reference. **All proposers are required to note any exception(s) to the attached contract and are required to specifically state the exception(s) and the reason(s) for the exception(s).** No exceptions will be recognized to the Government Clauses section of the proposed contract. If no exceptions to the contract are included in the proposer's response, the proposer is expected to execute the contract in the form set forth herein. Final acceptance of a proposal and contract is contingent upon reaching a mutually satisfactory agreement regarding noted exceptions. If an acceptable and timely agreement is not reached, KCAB reserves the right to disqualify the proposer and to reevaluate the remaining proposals. KCAB reserves the right to refuse to negotiate with a successful proposer on any item not specifically excepted in its submittal.
- A.10.7 KCAB will have the right, at its sole election, to alter the specifications and/or frequencies of services required and tailor the contract price to said change (increase or decrease).
- A.10.8 The term of the agreement will be for three (3) years with an option to renew for 2 additional one-year periods.

A.11 PERFORMANCE AND PAYMENT

- A.11.1 The successful proposer shall issue an invoice on a monthly basis for work performed the previous month along with supporting data. KCAB will pay submitted invoices on a net 30 basis subject to the terms of the attached agreement.

A.12 BADGES AND KEYS

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- A.12.1 Contractor shall badge a sufficient number of employees to satisfactorily complete its obligations under this contract regardless of circumstances. This will require a background check made through a fingerprint process. When determining the number of employees to badge, Contractor must consider absent employees due to illness, vacation, employment termination, or other reasons, emergency/on call situations, and supervisors who need access for inspection/supervision visits.
- A.12.2 Contractor is responsible for the cost of badging. The current fee for identification badges is \$44.00 per badge for the badge, security threat assessment, and for fingerprinting.
- A.12.3 Contractor shall return all badges upon expiration or termination of the contract whichever is earlier. Additionally, Contractor shall immediately return an employee's badge when that employee is no longer employed by Contractor. Contractor shall pay \$100.00 per badge for each badge not returned within ninety (90) days from the date the Contractor is required to return the badge(s).
- A.12.4 Contractor is responsible for all keys or badges issued to Contractor's employees. Such keys or badges may not be duplicated. Contractor shall return any or all keys or access cards to KCAB when requested by KCAB. If the loss of keys or access cards requires changing the combination of locks or changing other access equipment, the cost of such labor and material may be charged to Contractor at the discretion of KCAB. Replacement of lost or damaged keys or badges will be provided at Contractor's expense. Any fines or civil penalties assessed to KCAB caused by Contractor negligence is the responsibility of Contractor.
- A.12.5 Badge replacement is at the sole discretion of KCAB. A \$100.00 fee will be assessed per lost badge. In the event a Contractor's employee loses a second badge, the Contractor shall pay \$200.00. If a third badge is lost, the badge will only be renewed with permission of the Airport Security Coordinator and the Contractor shall pay \$300.00.
- A.12.6 If necessary, KCAB will provide initial supply of keys after receipt of a \$500.00 deposit from Contractor. In the event Contractor loses or duplicates a key(s), KCAB will charge the cost of rekeying the lock(s) of the corresponding area against the \$500.00 deposit. Contractor shall be responsible for the full cost of rekeying if Contractor loses or duplicates a key. Any funds remaining of this \$500.00 deposit upon termination of the contract will be returned to contractor upon KCAB's receipt of all keys.

A.13 RECORDS/FINANCIALS

In submitting proposals on any item to be purchased by KCAB, the proposer hereby agrees to make available any and all records, books of account, correspondence, or other information reasonably necessary to enable KCAB or its designated agents to investigate the responsibility of the proposer in terms of its financial status, capacity to produce, sources of supply, performance record in the business or industry, and any other matter reasonably related to the proposer's probable ability to perform adequately under a contract if it is awarded to the proposer.

A.14 GRATUITIES AND KICKBACKS

It is a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request,

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influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding of application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime vendor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

In the event that any gratuities or kickbacks are offered or tendered to any KCAB employee, the proposal shall be disqualified and shall not be reinstated.

A.15 NON-COLLUSIVE VENDOR CERTIFICATION

By the submission of this proposal, the proposer certifies that:

- A.15.1 The proposal has been arrived at by the proposer independently and has been submitted without collusion with any other vendor.
- A.15.2 The contents of the proposal have not been communicated by the proposer, or, to its best knowledge and belief, by any of its employees or agents, to any person not an employee or agent of the proposer or its surety on any bond furnished herewith, and will not be communicated to any such person prior to the official opening of the proposal.
- A.15.3 No proposer may submit more than one proposal for this purchase. It shall be the responsibility of each proposer to obtain the prior written permission of KCAB before proposal opening in every situation in which the proposer, due to corporate association or other affiliation, may be found to be impermissibly associated with another vendor. Failure to observe this requirement could result in all such affiliated proposals being rejected.

A.16 RFP CONDITIONS AND PROVISIONS

The terms and conditions of this request for proposal (RFP) include all general and special conditions as enumerated herein.

All participating proposers agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. Any alteration, erasure or interlineation by the proposer in this proposal constitutes cause for rejection by KCAB. Should KCAB omit anything from this RFP which is necessary to a clear understanding of the work, or should it appear that various instructions are in conflict, then the proposer shall notify the Contract and Procurement Administration Department prior to the deadline for question submissions as per the time and date shown in the Schedule of Events.

Typographical errors in entering quotations on this proposal may result in the disqualification of this proposal.

All proposers are required to complete all information requested in this proposal. Failure to do so may result in the disqualification of proposal.

Unit price for each item must be shown for the unit of measurement indicated. In case of error in extension of prices, the unit price governs.

Each proposer shall fully acquaint and familiarize themselves with the conditions as they exist and the character of the operations to be carried on under the proposed contract, and make such investigations as the proposer may see fit so that the proposer shall fully understand the facilities, physical conditions and restrictions associated with the services.

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The successful proposer shall comply with all of the specifications, terms and conditions of this RFP.

KCAB is not liable for any costs incurred by proposer in the preparation of proposals or for any work performed in connection therein.

A.17 ELECTRONIC SIGNATURES

By submitting a proposal, the proposer consents to its use and acceptance of electronic signatures to execute any awarded contract and associated agreements. Proposer agrees to be bound by electronic signatures to the same legal effect and extent as if manually signed. KCAB expects the successful proposer will execute any awarded contract using KCAB's electronic signature service unless the proposer includes an exception with its proposal signifying its desire to sign manually. Included with the proposal, proposers must identify the following information regarding the person with full authority to legally bind proposer and sign agreements on its behalf:

1. Full Name;
2. Position Title; and
3. Email Address.

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PROPOSED AGREEMENT

**CONTRACT BETWEEN
KENTON COUNTY AIRPORT BOARD
AND**

This contract ("Contract") is between the Kenton County Airport Board ("KCAB"), owner and operator of the Cincinnati/Northern Kentucky International Airport ("CVG"), located in Boone County, Kentucky and _____ ("Consultant"), a [home state] [limited liability company / corporation / partnership / etc] authorized to do business in the Commonwealth of Kentucky, with business offices located at _____.

1. SCOPE OF SERVICES

Consultant must furnish work and services as specifically assigned by KCAB including the furnishing of labor, material, equipment, personnel, supervision, tools, and all other items and facilities necessary to provide consulting services pertaining to Investment Advisory Services at CVG. The work and services are described further in the Request for Proposals (#_____) and the Consultant's response to same which are incorporated in their entirety by reference, and portions of both are attached as Exhibit A. Consultant must provide the work and services consistent with this Contract and the provisions set forth on Exhibit A. When there is a conflict in the terms of the Contract and Exhibit A, the terms of this Contract prevail.

2. TERM

This Contract is effective as of _____, 202_, and continues until _____, 202_, unless terminated earlier pursuant to this Contract. KCAB in its sole discretion may renew the agreement for _____ one-year periods.

3. PAYMENT AND REIMBURSEMENT

- A. KCAB agrees to pay Consultant for the work and services performed by Consultant on a [time and materials / lump sum] basis an amount not to exceed \$_____, based on the [rates / fee] in Exhibit A. This amount is payable by KCAB upon satisfactory completion of the work and services by Consultant.
- B. Allowable reimbursable expenses include: 1) the actual amount expended in inter-city transportation as may be required in the performance of services, except for expenses for travel between Consultant's office in the Northern Kentucky/Greater Cincinnati area and CVG; and 2) the actual amount of out-of-town transportation and lodging away from Consultant's office where Consultant's personnel are based as may be required in the performance of services.
- C. Consultant must submit an invoice to KCAB no more than once per month for payment for the services completed the previous month. The invoice must contain a detailed description of the work and services performed by Consultant including the [name and hourly rate of the person(s) performing the service including the amount of time spent on the services by each person / percentage complete]. The invoice must also contain a breakdown of any reimbursable expenses claimed by Consultant along with supporting documentation and receipts.
- D. Subject to the provisions set forth in this Contract, KCAB must pay Consultant the amount in Consultant's invoice on or before 30 days from the receipt of the invoice by KCAB. If KCAB does not approve the Consultant's invoice, KCAB must pay an amount it deems owing to Consultant and give Consultant written notice of why the approval is not given.
- E. In addition to any other rights and remedies available to KCAB, in the event the Consultant has incurred any liability to KCAB, whether Consultant's liability is liquidated or unliquidated, present or future, accrued or contingent, whether arising from or under this Contract or otherwise, and whether liability is based in contract, tort or otherwise, KCAB may without notice to Consultant set off any amount of liability against any liability of KCAB to Consultant arising from or under this Contract.

4. LAWS AND ORDINANCES

This Contract is governed by and interpreted according to the laws of the Commonwealth of Kentucky. Consultant must comply with all present and future laws, regulations, advisory circulars, and Rules and Regulations of KCAB. KCAB and Consultant agree that any legal or equitable action for claims, debts or obligations arising out of or related to this Contract must be brought solely in the Circuit Court of Boone County, Kentucky or United States District Court for the Eastern District of Kentucky, Covington Division, and that either Court has personal jurisdiction over the parties and venue of the action is appropriate and proper in each Court.

5. ASSIGNMENT

Consultant may not sublet, subcontract, assign or transfer any work under this Contract without the express written consent of KCAB. Any subletting, subcontracting, assignment or transfer of any work under this Contract is expressly made subject to all terms, conditions, or provisions of this Contract. In the event a subcontractor is approved, Consultant is responsible for payment directly to the subcontractor(s) for the work performed by the approved subcontractor(s) unless otherwise specifically approved in writing by KCAB.

6. TERMINATION

- A. KCAB may immediately terminate this Contract upon written notice at any time, without forfeiture, waiver or release of any rights of KCAB, (i) upon default or breach by the Consultant; ii) for Consultant's non-observance or non-compliance with any of the terms and conditions of this Contract; or, iii) if KCAB determines, in KCAB's reasonable discretion, the services rendered or work performed by Consultant is unsatisfactory in any way. Upon notice of the termination, Consultant must immediately cease or cause to be ceased all services or work under this Contract.

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- B. For any cause, or for no cause, KCAB may terminate this Contract at any time upon thirty (30) days' written notice to Consultant of the termination. Consultant must cease or cause to be ceased all services or work under this Contract on the date of termination.
- C. Consultant must invoice and be paid for only those services rendered and work performed through the date of termination, which are reasonably satisfactory to KCAB. Consultant is not relieved of liability to KCAB for damages sustained by KCAB by reason of any breach or default by Consultant and KCAB may withhold any payments to Consultant to set off damages sustained by KCAB.
- D. Consultant has the right to terminate this Contract only for substantial failure of KCAB to perform in accordance with the terms of this Contract.

7. LIABILITY, INDEMNITY AND INSURANCE

- A. **Notice:** Each party must give prompt and timely written notice to the other party of any claim made or suit instituted coming to its knowledge which in any way directly or indirectly, contingently or otherwise, affects or might affect either, and each has the right to participate in the defense of the same to the extent of its own interest.
- B. **Professional Liability:** To the fullest extent permitted by law, Consultant agrees to indemnify and hold KCAB, its Board of Directors, officers and employees harmless from and against any and all liabilities, demands, suits, claims, losses, fines or judgments, including all reasonable costs of investigation and defense thereof (including, but not limited to, attorney's fees, court costs and expert fees) arising by reason of or resulting from the negligent acts, errors or omissions of Consultant, its directors, officers, agents or employees in the performance and furnishing of its professional services under this Contract. KCAB must give Consultant reasonable notice of any such claim or action. Consultant in carrying out its obligations under this paragraph must use counsel reasonably acceptable to KCAB. The provisions of this paragraph survive the expiration or earlier termination of this Contract.
- C. **Hold Harmless:** Consultant must protect, defend, indemnify and hold KCAB and its directors, officers, employees, agents, servants, and representatives harmless from and against any and all liabilities, demands, suits, claims, losses, fines, causes of action, costs, damages, expenses, or judgments arising by reason of the injury or death of any person or damage to any property, or other damages, including all reasonable costs of investigation and defense thereof (including, but not limited to, attorney's fees, court costs and expert fees) arising out of the acts or omissions of Consultant, Consultant's officers, employees, agents, contractors, subcontractors, suppliers, licensees or invitees regardless of where the injury, death or damage may occur; unless the injury, death or damage is caused by the sole negligence of KCAB, its directors, officers or employees. Upon the filing of any claim with KCAB for damages arising out of incidents for which Consultant is required to hold KCAB harmless, then and in that event, KCAB or its agents or representatives must give Consultant written notice of the claim. Upon receipt of notice, Consultant is responsible for settling, compromising, or defending against the claim. Consultant must acknowledge receipt of the claim in writing notifying KCAB and the agent or representative giving the written notice of Consultant's intent to handle the claim within 10 days of delivery of the notice. If Consultant does not respond within the 10-day period, then the Consultant is responsible for, and must promptly pay all costs and fees, including reasonable attorney's fees and expert's fees incurred by KCAB because of Consultant's failure to respond and handle the claim in accordance with the terms in this Contract. KCAB has the right to defend against any claim and if KCAB elects to do so, Consultant is responsible for KCAB's legal fees, costs, and expenses in addition to any resulting liability. Any final judgment rendered against KCAB for any cause for which Consultant is liable in this Contract is conclusive against Consultant as to liability and amount, where the time for appeal has expired. The provisions of this paragraph survive the expiration or termination of this Contract.
- D. In addition to Consultant's undertaking, as stated above, and as a means of further protecting KCAB, its directors, officers, agents, servants, representatives, and employees, Consultant must at all times during the term of this Contract carry the following insurance coverage.
 - 1. **Professional Liability Insurance:** Consultant, at its expense, must procure and maintain professional liability insurance (errors and omissions) in an amount of not less than \$15,000,000 protecting Consultant from and against liability which may occur by reason of any errors, omissions, or negligent acts of its directors, officers, employees and agents in the performance of professional services under this Contract. Consultant must maintain this coverage for five (5) years after all services and work required under this Contract is completed by Consultant, or after the Consultant has left the job site, whichever occurs last.
 - 2. **Commercial General Liability and Umbrella Liability Insurance:**
 - a. Consultant, at its expense, must procure and maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If the CGL insurance contains a general aggregate limit, it must apply separately to operations under this Contract.
 - b. If Consultant performs work or services under this Contract on the aircraft ramps, taxiways, or runways of CVG, Consultant, at its expense, must procure and maintain CGL and, if necessary, commercial umbrella insurance with a limit of not less than \$10,000,000 each occurrence. If the CGL insurance contains a general aggregate limit, it must apply separately to operations under this Contract.
 - c. If Consultant operates motor vehicles or mobile equipment unescorted on the aircraft ramps, taxiways, or runways of CVG, Consultant, at its expense, must procure and maintain CGL and, if necessary, commercial umbrella insurance with a limit of not less than \$10,000,000 each occurrence. If the CGL insurance contains a general aggregate limit, it must apply separately to operations under this Contract.
 - d. CGL insurance must be written on Insurance Services Office ("ISO") occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and include coverage arising from, but not limited to: premises, operations, contractors, subcontractors, consultants, products, completed operations, property damage, personal injury, death, advertising injury, and liability assumed under an insured contract.
 - 3. **Automobile and Umbrella Liability Insurance:**

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- a. If Consultant uses motor vehicles at CVG, Consultant must, at its expense, procure and maintain automobile liability insurance and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each accident. This insurance must cover liability arising out of any auto (including owned, hired and non-owned autos) while at CVG. Automobile liability insurance must be written on ISO form CA 00 01, CA 00 12, CA 00 20 (or a substitute form providing equivalent coverage).
 - b. If Consultant performs work or services under this Contract on the aircraft ramps, taxiways, or runways of CVG, Consultant, at its expense, must procure and maintain automobile liability insurance and, if necessary, commercial umbrella insurance with a limit of not less than \$10,000,000 each accident. If necessary, the policy must be endorsed to provide contractual liability coverage equivalent to that provided in CA 00 01.
 - c. If Consultant operates motor vehicles unescorted on the aircraft ramps, taxiways, or runways of CVG, Consultant, at its expense, must procure and maintain automobile liability insurance and, if necessary, commercial umbrella insurance with a limit of not less than \$10,000,000 each accident. If necessary, the policy must be endorsed to provide contractual liability coverage equivalent to that provided in CA 00 01.
4. Workers' Compensation and Employer's Liability Coverage: Consultant must, at its expense, procure and maintain a Kentucky workers' compensation insurance policy. Consultant must, at its expense, procure and maintain an employer's liability insurance policy if required under the laws of the Commonwealth of Kentucky and if required the commercial umbrella and/or employer's liability limits must not be less than \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for bodily injury by disease.
 5. Unemployment Insurance: Consultant, at its expense, must procure and maintain statutory unemployment insurance protection for all its employees.
 6. Consultant agrees that the required insurance is not intended to limit the Consultant's liability in the event the Consultant is deemed to be negligent in causing bodily injury or property damage during the course of its operation.
- E. Additional Insured: Consultant must include the Kenton County Airport Board as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or substitute form providing equivalent coverage, and under the commercial umbrella, if any. This insurance applies as primary insurance with respect to any other insurance or self-insurance programs afforded to the Kenton County Airport Board. There may be no endorsements or modifications of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro-rata, that policy must be endorsed to be primary with respect to the Kenton County Airport Board as additional insured. Consultant must also include the Kenton County Airport Board as an insured under the commercial auto policy, using ISO designated insured endorsement CA 20 48. KCAB is not liable for any premiums charged for this coverage, and the inclusion of KCAB as additional insured is not intended to and does not make KCAB a partner or joint venture with Consultant in Consultant's operations at CVG.
- F. Cross Liability Coverage: Consultant agrees that all insurance policies contain cross liability coverage as provided under standard ISO forms' separation of insured clause.
- G. Subcontractors: Consultant must cause each subcontractor to purchase and maintain insurance of the type specified under this Contract and cause each subcontractor to include the KCAB as an insured according to section 7.D. When requested by KCAB, Consultant must furnish copies of certificates of insurance coverage for each subcontractor.
- H. Right to Amend Insurance: KCAB has the right to change the insurance coverage and the insurance limits required of the Consultant when it is determined to be necessary by KCAB; provided that KCAB must provide Consultant with thirty (30) days advance notice. KCAB is not responsible for any increased costs associated with a change.
- I. Proof of Insurance: Prior to execution of the Contract, Consultant must furnish KCAB with certificates evidencing existence of valid policies of insurance with the coverages specified, including evidence of Kentucky worker's compensation insurance, and naming KCAB additional insured. These certificates must state that the coverages may not be amended so as to decrease the protection below the limits specified or be subject to cancellation without at least thirty (30) calendar days' advance written notice to KCAB. A renewal policy or renewal certificate must be delivered to KCAB's Risk Manager at least thirty (30) calendar days prior to a policy's expiration date, except for any policy expiring on or after the expiration date of this Contract.
- J. Failure to Maintain Insurance: If at any time Consultant fails to have in effect the insurance required under the provisions of this Contract, upon written notice to the Consultant of its intention to do so, KCAB has the right (but not the obligation) to secure the insurance required at the cost and expense of the Consultant. If at any time the Consultant fails to furnish KCAB with the certificate or certificates required in this Contract, KCAB may, at any time, after fifteen (15) calendar days' written notice to Consultant of its intention to do so, secure the required certificate or certificates at the cost of the Consultant. Consultant agrees to reimburse KCAB for the costs to secure the insurance or certificates. This is without prejudice to any other right KCAB may have in law or equity, including the right to terminate this Contract.
- K. Primary Insurance: Consultant's insurance must be primary and non-contributory with respect to any other insurance available to or for the benefit of KCAB. Any KCAB insurance or self-insured retention is considered excess insurance only. Consultant's insurance policies must contain a severability of interest clause.
- L. Review of Insurance: All policies required must be satisfactory to KCAB including the quality of the insurer, deductible, or retentions. By requiring insurance, KCAB does not represent that coverage and limits will necessarily be adequate to protect Consultant, and the coverage limits are not a limitation on Consultant's liability under the indemnities granted to KCAB under this Contract. Failure of KCAB to demand certificates or other evidence of full compliance with these insurance requirements or failure of KCAB to identify a deficiency from evidence that is provided is not considered to be a waiver of Consultant's or its subcontractors' obligation to maintain such insurance.
- M. Prohibiting Consultant's Access: KCAB has the right, but not the obligation, of prohibiting Consultant from entering the project site until the certificates or other evidence of insurance are in complete compliance with these requirements and approved by KCAB.

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8. AUDITS

KCAB has the right, at reasonable times, to examine, copy, and audit all Consultant books and records related to this Contract. The Consultant must make its books and records available at reasonable times for audit by KCAB or its authorized agent or representative, and the Consultant must cooperate with any KCAB audit of these records. If requested by KCAB, inspection, copying, or audit of the necessary books or records will take place at a location determined by KCAB. Consultant agrees to retain all books and records of business conducted under this Contract for three (3) years after the end of the contract year to which the books and records pertain.

9. CLAIMS FOR CHANGED CONDITIONS

During the term of this Contract, the facts, conditions and/or data relating to the work and services provided in this Contract may dictate a change which may alter the scope of the services in this Contract. In the event there are changes that would decrease the need for services required of the Consultant under this Contract, KCAB and Consultant must adjust the terms of this Contract as mutually agreed by the parties. Claims for additional compensation which may arise from changes or any revision to the services proposed by Consultant must be presented in writing to KCAB before work commences under any changed condition. In any case, where Consultant deems any extra compensation is due it for any work not covered in this Contract, Consultant must notify KCAB in writing of its intention to make claim for extra work before Consultant begins the work on which the claim is based. If notification is not given and KCAB is not afforded a strict accounting of actual cost, then Consultant waive any claim for its extra compensation. Notice by Consultant to KCAB and the fact that KCAB has kept account of the costs may not be construed as proving the validity of any claim for additional compensation. Consultant is not required to undertake work under changed conditions without prior written Contract or authorization by KCAB for extra compensation attributable to the changed conditions.

10. INTEREST OF KCAB

No director, officer, or employee of KCAB who exercises any function or responsibilities in review of or approval of the work or services to be provided by Consultant may (i) participate in any decision relating to this Contract which affects the individual's personal interest or the interest of any corporation, partnership, or association in which the individual is, directly or indirectly, interested; or (ii) have any interest, directly or indirectly, in this Contract or its proceeds.

11. INTEREST OF CONSULTANT

Consultant covenants that it presently has no financial interest and will not acquire any financial interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Contract. Consultant further covenants that in the performance of this Contract no person having a financial interest may be employed.

12. OWNERSHIP OF DOCUMENTS & WORK PRODUCT

All reports, work papers, exhibits, data and other documents prepared under this Contract by Consultant is the exclusive property of KCAB. If this Contract is terminated, Consultant must deliver all documents and data used in connection to the services of this Contract to KCAB within thirty (30) business days of the termination.

13. CONFIDENTIAL INFORMATION

Any documents provided to the Consultant by KCAB pursuant to this Contract, including but not limited to personal information reports, surveys, calculations, plans, maps, estimates, and other work product including any exhibits, and any information, reports or data which may be given to or assembled by Consultant pursuant to the terms of this Contract, must be kept strictly confidential, and may not use, make available, or disclose to any individual or organization by Consultant without the prior written approval of KCAB. Consultant must protect all KCAB's confidential information with the same degree of care as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event less than a reasonable degree of care.

14. USE OF LOGO/MARKS

Consultant may not use the name, logo, or design, of the Cincinnati/Northern Kentucky International Airport, the Kenton County Airport Board, CVG, the CVG Airport Authority, or any trademark or service mark utilized by KCAB; or use any photograph or video of the Cincinnati/Northern Kentucky International Airport, its property, or its facilities without the express written consent of KCAB. Consultant must submit any proposed use of the above media material to KCAB for approval prior to the publication or public use of the material. KCAB, in its sole discretion, may grant or withhold consent to use the above media material and must provide a response granting or withholding consent to the Consultant within thirty (30) days of receiving the proposed media material from the Consultant. The provisions of this paragraph survive the expiration or earlier termination of this Contract.

15. GOVERNMENT CLAUSES

A. Equal Employment Opportunity. During the performance of this Contract, Consultant agrees to comply with all Federal, state and local laws respecting discrimination in employment and non-segregation of facilities including, but not limited to, requirements set out at 41 CFR 60-1.4, 60-250.4, 60-300.5(a), 60-741.4, and 60.741.5(a), which equal opportunity clauses are hereby incorporated by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. Notification is hereby given that compliance with these clauses may require you to file annually certain reports (e.g., the EEO-1 Report, and the VETS-100 Report) with the Federal government and may require you to develop written Affirmative Action Programs for Women and Minorities, Covered Veterans and/or Persons with Disabilities.

B. Airport and Airway Improvement Act of 1982, Section 520, General Civil Rights Provisions. Consultant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds Consultant and

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subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

C. Civil Rights Act of 1964, Title VI-49 CFR Part 21. During the performance of this contract, Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

1. Compliance with Regulations. Consultant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract
2. Nondiscrimination. Consultant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Consultant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontractors, including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier must be notified by Consultant of its obligations under this Contract and the Regulations relative to non-discrimination on the grounds of race, gender, color or national origin.
4. Information and Reports. Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish the information, Consultant will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Consultant's noncompliance with the non-discrimination provisions of this Contract, KCAB must impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to Consultant under the Contract until Consultant complies, and/or
 - b. cancellation, termination or suspension of the Contract in whole or in part.
6. Incorporation of provisions. Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Consultant will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Consultant may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Consultant may request the United States to enter into the litigation to protect the interests of the United States.

D. Title VI List of Pertinent Nondiscrimination Authorities

During the performance of this contract, Consultant, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

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- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

- E. Federal Fair Labor Standards Act (Federal Minimum Wage). This Contract incorporates by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Consultant has full responsibility to monitor compliance to the referenced statute or regulation. Consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.
- F. Occupational Safety and Health Act of 1970. This Contract incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Consultant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Consultant retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Consultant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

16. MISCELLANEOUS

- A. Notices. All notices, requests, demands, or other communications in this Contract must be in writing unless otherwise noted and is deemed given if delivered in person, or deposited in the United States mail, postage prepaid, certified, with return receipt requested to KCAB at Cincinnati/Northern Kentucky International Airport, Attn.: Chief Executive Officer, P. O. Box 752000, Cincinnati, Ohio, 45275-2000 or to Consultant at the address first set forth above. Either party may change the address at which it receives written notice by notifying the other party in writing.
- B. Captions. The headings of the several paragraphs of this Contract are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Contract and should not be construed to affect the interpretation of the terms and provisions of this Contract.
- C. Severability. If any covenant, condition, or provision in this Contract is held to be invalid by any Court of competent jurisdiction, the invalidity of the covenant, condition, or provision will not affect the validity of any other covenant, condition, or provision; provided that the invalidity of the covenant, condition, or provision does not materially prejudice either party in its prospective rights and obligations contained in the valid covenants, conditions, or provisions of this Contract.
- D. Agent for Service of Process. It is expressly understood and agreed that if Consultant is not a resident of the Commonwealth of Kentucky, is an association or partnership without a member who is a resident of the Commonwealth, or is a foreign corporation, then Consultant must appoint an agent for service of process in Kentucky. In case of any failure on the part of the agent, the agent's inability to perform, or Consultant's failure to appoint an agent when required, Consultant designates the Secretary of State, Commonwealth of Kentucky, as its agent for the purpose of service of process in any court action between it and KCAB arising out of or based upon this Contract. The service must be made as provided by the laws of Kentucky for service upon a non-resident.
- E. Incorporation of Attachments. All attachments referred to in this Contract are intended to be and are specifically made a part of this Contract.
- F. Incorporation of Required Provisions. Consultant agrees to incorporate into the Contract, all provisions, assurances, statutes, rules and regulations which may now or during the term of this Contract be required by the Federal Aviation Administration ("FAA") or other governmental agency as a prerequisite to or a condition of KCAB and/or Consultant receiving any federal or state grant or loan or other governmental assistance. Consultant further agrees to execute all certifications and/or documents required by the FAA, or other governmental agency, to assure compliance with the foregoing. If the FAA or its successors requires modifications or changes in this Contract as a condition precedent to the granting of the funds for the improvement of CVG, or otherwise, Consultant agrees to modify this Contract as may be reasonably required.
- G. Relationship of Parties. The parties intend to create the relationship of independent consultant. Nothing in this Contract or any act of the parties may be deemed or construed by the parties, or by any third party, as creating a relationship of principal and agent, partners, joint venturers, or any other similar relationship between the parties.
- H. Amendment. This Contract may not be amended and/or modified unless the amendment and/or modification is in writing and signed by both parties to this Contract.
- I. Non-waiver. The failure by KCAB to insist upon prompt and strict performance of any of the terms or conditions of this Agreement, or to exercise any right in any one or more instances, will not be interpreted as a waiver of the same or any other term, condition, right, or option.
- J. Successors and Assigns Bound. This Contract is binding upon and inures to the benefit of the successors and assigns of the parties where permitted by this Contract.
- K. No Personal Liability. No director, officer, or employee of KCAB may be charged personally or held contractually liable by or to the other party under any term or provision of this Contract.

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- L. Representative of KCAB: The Chief Executive Officer, or his/her designee, is designated as the official representative of KCAB in all matters pertaining to this Contract and has the right and authority to act on behalf of KCAB with respect to all action required of KCAB in this Contract.
- M. Personnel. Except for any legally prohibited reasons, KCAB has the right to require Consultant to remove and/or replace any personnel working on KCAB's property.
- N. Contract Construction. The parties acknowledge that this Contract was reached through informed negotiation and that each party was represented by, or had access to, legal counsel. The parties agree that neither KCAB nor Consultant are entitled to any preference in the construction of this Contract as both are deemed to be authors of this Contract.
- O. Electronic Signatures and Delivery. The Parties consent to the use of both manual and electronic signatures to execute this Contract, and any subsequent amendments, extensions, change orders, or other agreements, to the same legal effect and extent as if entirely manually signed. Electronic delivery of any counterpart of this Contract is as effective and legally binding as physical delivery with all counterparts constituting one agreement.

17. ENTIRE AGREEMENT

The drafting, execution and delivery of this Contract by the parties have been induced by no representations, statements, warranties, or contracts other than those expressed in this Contract. This Contract including all attachments and exhibits embodies the entire understanding of the parties and there are no further contracts or understandings, written or oral, in effect between the parties relating to this subject matter unless expressly referred to in this Contract.

KENTON COUNTY AIRPORT BOARD

[CONSULTANT]

By:_____
Its: Chief Executive Officer

By:_____

Attest:

Its:

Secretary/Treasurer