LEXINGTON-FAYETTE URBAN COUNTY AIRPORT BOARD

REQUEST FOR PROPOSALS

for

AGRICULTURAL SERVICES

at

BLUE GRASS AIRPORT

DATED: August 21st, 2018
Table of Contents

I. NOTICE AND REQUEST FOR PROPOSALS ........................................................................................................... 1
II. BACKGROUND ................................................................................................................................................ 2
III. INSTRUCTIONS TO PROPOSERS & PROPOSAL REQUIREMENTS ............................................................ 2
LEXINGTON-FAYETTE URBAN COUNTY AIRPORT BOARD
REQUEST FOR PROPOSALS
For
AGRICULTURAL SERVICES
at
BLUE GRASS AIRPORT

I. NOTICE AND REQUEST FOR PROPOSALS
Notice is hereby given that the Lexington-Fayette Urban County Airport Board, hereinafter referred to as “Board,” pursuant to this Request For Proposals (“RFP”) will accept sealed Proposals from interested and qualified parties (“Proposer”) wishing to lease or maintain the Blue Grass Airport (“Airport”) property shown in Exhibit A for agricultural purposes.

Sealed Proposals to provide services (“Proposed Services”) in compliance with the Board’s rules and regulations, will be received at the Blue Grass Airport Administration Offices, 4000 Terminal Drive, Suite 206, Lexington, Kentucky 40510, until 2:00 p.m. local time on October 15, 2018.

After completion of the review process, the Board intends to enter into an Agreement with the Proposer who, in the judgment of the Board, is best qualified to provide such Proposed Services on the Airport and who has demonstrated to the satisfaction of the Board, in its absolute and sole discretion, that the Proposer has thorough knowledge of best practices for agricultural production and land stewardship.

The Board reserves the right to reject any and all Proposals, or to accept any Proposal or any combination of Proposals, which it deems to be more advantageous to the public and to the Board. If the Board accepts any Proposal(s) pursuant to this RFP, an Agreement will be tendered to the selected Proposer(s) for execution.

It is the intent and obligation of the Board to ensure that Disadvantaged Business Enterprises (“DBEs”), as defined in 49 CFR Part 26, shall have the opportunity to participate in business opportunities at the Airport as required by 49 CFR Part 26.

All Proposals shall become the property of the Board and will not be returned to Proposers.

BY ORDER OF THE LEXINGTON-FAYETTE URBAN COUNTY AIRPORT BOARD
II. BACKGROUND

2.1 Airport Information
The Board is the owner and operator of the Blue Grass Airport. The Airport is located on and includes nearly 1,076 acres located 6 miles west of the City of Lexington and adjacent to US Highway 60, a major 6 lane east-west highway. It is the only primary commercial service airport located in the central part of the Commonwealth of Kentucky.

There are approximately 300 acres of land available for agricultural purposes. The Proposer must propose on all of the area. The Proposal may be for any of the following:

- Raising livestock
- Haying and Baling of the area
- Crop Production
- Mowing and general maintenance of the area

The Airport is governed by federal, state, and local regulations which include regulations regarding agricultural production, wildlife hazards, and land stewardship. The Proposer should review the current list of prohibited crops that are specified in Exhibit B. All proposed crops and other agricultural activities must be approved by the Board and is at the Board’s sole discretion.

The Airport intends to enter into an Agreement of not less than 1 year and not more than 10 years with the Successful Proposer.

III. INSTRUCTIONS TO PROPOSERS & PROPOSAL REQUIREMENTS
An Agreement may be awarded, and Proposers shall submit Proposals, subject to the following guidelines, limitations, terms and conditions:

3.1 Important Dates
a. Public Advertisement August 21, 2018
b. Pre-Proposal Conference 3:00 P.M. Local Time September 5, 2018
c. Proposal Closing Time 2:00 P.M. Local Time October 15, 2018
d. Anticipated Award Date November 30, 2018
e. Anticipated Commencement Date March 1, 2019

3.2 Selection Criterion
An award will be made by the Board to the Proposer who, in the sole discretion of the Board, demonstrates that they have the best qualifications to provide the Proposed Services for agriculture in a commercial airport environment.

The Board reserves the right, in its sole discretion, to reject any or all Proposals and to negotiate
with any Proposer to the extent it deems appropriate.

The following criteria, among others, will be used by the Board, in its sole discretion, in evaluating the Proposals submitted:

- Proposed usage of area.
- Demonstrated experience relevant to proposed agricultural services.
- Farming plan including proposed equipment, personnel, and estimated schedule.
- Proposed land improvements and capital expenditures.
- Proposed compensation or cost to the airport.

3.3 **Proposal Requirements**
Each Proposer must address the following items in their Proposal:

- Agricultural Use of Area: Proposed usage of area including intended crops, types of livestock, haying and/or cultivation of crops, pest management practices, soil treatment practices, and any runoff and irrigation management plans.
- Maintenance: Planned maintenance and upkeep of area to ensure it is in line with Board standards.
- Related Experience: Provide examples of work performed relevant to the proposed services.
- Compensation: Provide detailed compensation plan, including proposed method and schedule of payment, as applicable, and/or estimated cost to the Airport for Proposer to improve and/or maintain the area.

3.4 **Agreement for Proposed Services**
- The Successful Proposer will be required to enter into an Agreement to provide the Proposed Services at the Airport for the specified proposed term.
- The Successful Proposer will be required to provide a certificate of insurance, including General Liability greater than $5,000,000, a hold harmless agreement and Worker’s Compensation coverage as specified in the Agreement.
- The Successful Proposer will be required to meet any background screening requirements that may be necessary as part of the Airport Security Plan.
- The Successful Proposer will be responsible for acquiring and maintaining all required permits.

3.5 **Time and Place to Submit Proposals**
A complete Proposal must be received at the Blue Grass Airport Administration Office, 4000 Terminal Drive, Suite 206, Lexington, Kentucky 40510, no later than 2:00 p.m. local time on the Proposal Closing Time.
3.6 Pre-Proposal Meeting
A Pre-Proposal Meeting will be held in the office of the Lexington-Fayette Urban County Airport Board at 3:00 p.m. local time on September 5, 2018. The Pre-Proposal Meeting will include a review of the RFP documents, a question and answer period, and a site visit. Parties interested in submitting Proposals are required to attend this meeting.

3.7 Proposal Scope and Form
Proposals submitted pursuant to this RFP shall be sealed, with the envelope or cover marked “PROPOSAL FOR AGRICULTURAL SERVICES”, together with Proposer’s name and return address. All Proposals will become the property of the Lexington-Fayette Urban County Airport Board and shall not be returned.

Submission of a Proposal shall constitute authorization for the Board and its representatives and agents to make such copies of the Proposal or portions thereof and to distribute such copies as may be necessary or desirable to carry out the Board’s objectives.

3.8 Acknowledgment
Proposer shall thoroughly examine and become familiar with this RFP and all related documents. Submission of a Proposal shall constitute an acknowledgment that the Proposer has thoroughly examined and is familiar with all RFP documents. The failure or the neglect of a Proposer to receive or examine any RFP documents shall in no way relieve Proposer from any obligation with respect to the Proposal or the obligations that result from making a successful Proposal. No claim based upon lack of knowledge or understanding of any RFP documents or its contents shall be allowed.

3.9 Addenda
Every request for interpretation as to the meaning of any provision of any of the RFP documents shall be made (i) either at the Pre-Proposal Meeting described in Section 3.6 hereof, or (ii) via email sent to mday@bluegrassairport.com, and must be received by September 21, 2018 no later than 4:00 p.m. local time. Every interpretation made to Proposers will be made in the form of a written Addendum which, if issued, will be sent electronically by October 1, 2018. If any Proposer fails to acknowledge receipt of any such Addendum indicated in the Proposal Form, the Proposal will nevertheless be construed as though the Addendum had been received and acknowledged and submission of a Proposal shall constitute acknowledgment of receipt of the same. Only an interpretation or correction stated in a written Addendum shall be official. THE BOARD WILL NOT BE RESPONSIBLE FOR ANY ORAL ADDENDA OR REPRESENTATIONS.

3.10 Award of an Agreement
The Board may award the successful Proposer an Agreement to provide the Proposed Services. Until the Agreement has been so executed and delivered, no Proposer shall have a vested right to be awarded an Agreement and the Board shall have no obligations hereunder but shall be entitled
to amend or abandon any relationship contemplated by any of the RFP documents. The Board reserves the right to cancel the award of any Agreement without liability to the Board at any time before the aforesaid execution and delivery of the Agreement.

3.11 Annulment of Award
Failure on the part of any Successful Proposer to comply with the requirements of the foregoing within the time specified shall, in the sole discretion of the Board, be just cause for the annulment of any award to such Proposer. In such event the Board may elect either to accept another Proposal or to reject all other pending Proposals with respect to which an Agreement has not been then awarded.

3.12 Disqualification of Proposals
Without in any way limiting the Board’s right in its discretion to reject any or all Proposals, Proposers are advised that any of the following may be considered as sufficient cause for the disqualification of a Proposer and the rejection of a Proposal:

- Submission of more than one Proposal hereunder by an individual, joint venture, partnership, limited liability company or a corporation under the same or different names. For the purposes of this subparagraph, firms, partnerships or corporations under common control may be considered to be the same entity.
- Evidence of collusion among Proposers.
- Proposer being in arrears on any existing contract with the Board.
- Proposer being in litigation with the Board.
- Proposer having defaulted on a previous contract with the Board.
- Any other cause which, in the Board’s judgment and sole discretion, is sufficient to justify disqualification of Proposer or the rejection of its Proposal.

3.13 Irregularities
Proposals will be considered irregular and may be rejected for omission, alterations of form, additions not called for, conditions, limitations, unauthorized alternate Proposals or other irregularities of any kind.

3.14 Waiver
The Board in its sole discretion reserves the right to waive any informalities or irregularities of Proposals, to request clarification of information submitted in any Proposal, to request additional information from any Proposer, or to further negotiate any Proposal.

3.15 Attachments
- Exhibit A - Map of property
- Exhibit B – List of prohibited crops
- Sample agricultural agreement
Eastside 1 = ~46 Acres with 8,212 ft perimeter
Westside 1 = ~184 Acres with 15,270 ft perimeter
Westside 2 = ~12 Acres with 1,700 ft perimeter
Westside 3 = ~58 Acres with 6,100 ft perimeter

BGA Property Line

Security Fence

Exhibit A
EXHIBIT B

Prohibited Crops
Wheat
Oats
Corn
Sunflowers
Seeded and Berried Plants
Cattle
Alfalfa hay
SAMPLE AGRICULTURAL AGREEMENT

This Agricultural Agreement ("Agreement") is entered into this 1st day of March 2019, by and between the Lexington Fayette Urban County Airport Board, hereinafter referred to as the “Airport Board” and ________________________________, hereinafter referred to as the “Contractor”.

In consideration of the mutual promises contained herein, Airport Board and Contractor agree as follows:

1. DESCRIPTION OF PREMISES. Airport Board is the owner and operator of the Blue Grass Airport ("Airport"). The Airport is located on and includes nearly 1,076 acres located 6 miles west of the City of Lexington and adjacent to US Highway 60, a major 6 lane east-west highway. Airport Board submitted to the public a Request for Proposals ("RFP") for the maintenance and/or agricultural use of approximately 300 acres of land at the Airport, which area is more particularly shown on the attached Exhibit A ("Property").

2. TERM OF AGREEMENT. The Initial Term of this Agreement shall be for one (1) year(s), commencing on __________ and terminating on __________. Thereinafter, upon the mutual agreement of the Airport Board and Contractor, provided Contractor is not in default under any of the terms and conditions of the Agreement, the term of this Agreement may be extended for two (2) additional terms of (1) year each. Unless either party notifies the other, in writing, at least 30 days prior to the end of the each term, of its election not to exercise its option for the additional term, such option shall be deemed to have been exercised and the terms of this Agreement shall continue for the Additional Term.

3. (“Term”). Any holding over after the expiration of this Agreement shall not serve to renew the Term of this Agreement but shall constitute at sufferance only, terminable by either party upon thirty (30) days advance written notice.

4. OBLIGATIONS. Permitted activities include maintaining area in Exhibit A through mowing and/or haying and/or cultivation of approved crops using best practices and adhering to all Board standards.

5. COMPENSATION. The agreed upon price for the Initial Term is $________ annually, to include all services specified in the Contractor’s Proposal. This shall be payable to the Contractor/Airport monthly in the amount of $________ from May 2019 through November 2019.

6. USE AND CONSERVATION PRACTICES.

(a) Contractor’s use of the Premises shall be for the solely for the purposes set forth in the above Section 4 ("Permitted Activities") and for no other purpose without the prior written consent of Airport Board. This Agreement does not include any
mineral, limestone or timber rights or the right to remove soil from the Premises or change the topography of the Premises except as reasonably necessary for ordinary crop tillage, planting and harvesting, if a Permitted Activity.

(b) Contractor agrees to engage in land management practices (including, without limitation, soil erosion control and the use of chemicals and fertilizer) so as not to damage or reduce the productivity of soil on the Premises and that are consistent with customary, reasonable and prudent land management practices in Fayette County, Kentucky. Contractor’s use of the Premises shall comply with all federal, state, and local rules, regulations, and practices as well as applicable rules and regulations governing the Airport. Contractor also agrees to keep in good repair any and all terraces, open ditches, inlets and outlets of tile drains; preserve all established watercourses or ditches including grassed waterways, and refrain from any operations or practice that will injure such structures. Contractor agrees not to intentionally disturb any natural habitat, aquatic life or wildlife in the Premises except as may be necessary in connection with the above described Permitted Activity.

(c) Contractor shall keep and make available to the Airport Board for inspection and/or photocopying all books, records and other pertinent data pertaining to its use of the Premises, including, but not limited to, crops planted, acreages, yields, tillage practices, and soil treatments, as may be applicable.

7. **LAND MANAGEMENT COSTS.** Contractor shall be solely responsible for providing all power, labor, equipment, seeds, fertilizer, water and other items necessary for the management of the Premises and the costs associated therewith.

8. **CONTRACTOR’S EMPLOYEES AND CONTRACTORS.** Any person employed, hired or contracted with by the Contractor shall be the sole responsibility of Contractor and shall for no purposes be considered an employee of Airport Board.

9. **AS IS CONDITION.** AIRPORT BOARD MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PREMISES WHICH IS TAKEN IN AN "AS IS-WHERE IS" CONDITION WITH ALL FAULTS. By acceptance of the Premises, Contractor affirms that it has not relied on Airport Board’s skill or judgment to select or furnish the Premises for any particular purpose and that AIRPORT BOARD MAKES NO WARRANTY OF HABITABILITY, MERCHANTABILITY, OR THAT THE PREMISES ARE FIT FOR ANY PARTICULAR PURPOSE AND THAT THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, THAT EXTEND BEYOND THE EXPRESS TERMS OF THIS AGREEMENT.

10. **CONTRACTOR’S PERSONAL PROPERTY.** All personal property upon the Premises shall be at the risk of Contractor only, and Airport Board shall not be liable for any loss or damage thereto or theft thereto.

11. **INSURANCE.** Contractor, at its sole cost and expense, shall insure its activities in connection with this Agreement and obtain, keep in force and maintain insurance as follows:
(a) Commercial General Liability Insurance covering the Premises with coverage for premises/operations, contractual liability, and bodily injury with combined single limits of not less than $1,000,000.00 per occurrence and $1,000,000.00 aggregate for death, bodily injury or property damage, which policy shall list Airport Board as an additional insured and shall provide coverage for Airport Board’s directors, officers, agents, employees, contractors, affiliates, successors and assigns, as their interests may appear; and

(b) Workers’ Compensation as required by Kentucky law.

Each policy shall expressly provide that it shall not be subject to cancellation, modification or change without at least thirty (30) days' prior written notice to Airport Board, that the coverage provided by such policy shall be deemed primary insurance and that any insurance provided by or on behalf of Airport Board shall be in excess of any insurance provided by such policy. Contractor shall furnish Airport Board, or cause to be furnished to Airport Board, currently with the execution of this Agreement, insurance certificates evidencing the insurance required to be maintained hereunder listing Airport Board as an additional insured thereunder. Each policy shall be maintained with a reputable insurance company acceptable to Airport Board. The coverages required herein shall not limit the liability of Contractor.

12. INDEMNITY. Contractor shall keep, save, hold harmless, indemnify and defend Airport Board, its successors and assigns and any director, officer, employee, agent or contractor, of and from any and all loss, claims, suits, actions, legal or administrative proceedings, damages, expenses, costs (including, without limitation, reasonable attorneys’ fees) and liability for anything and everything whatsoever arising during the Term from (i) the use or occupancy of the Premises by Contractor, its employees or invitees, or (ii) any failure by Contractor to perform any obligation of Contractor under of the terms or conditions of this Agreement, (iii) failure by Contractor to comply with any statute, regulation, ordinance or order of any governmental authority, or (iv) any accident, death, personal injury or property damage, loss or theft whatsoever caused to any person or property in or about the Premises except if caused by the gross negligence or willful misconduct of Airport Board. The rights and obligations of Airport Board and Contractor under this Section shall survive the expiration or earlier termination of this Agreement.

13. NO LIENS. Contractor shall keep the Premises free and clear from any and all liens, encumbrances, claims or demands for work performed, materials furnished or operations conducted at the request of Contractor. Contractor shall be responsible for any taxes levied on the crops planted on the Premises or Contractor’s activities on the Premises.

14. ROADS. Airport Board reserves the right to use all roads and access ways located on the Premises.

15. RIGHT OF ENTRY. Airport Board shall have the right to enter the Premises at any reasonable time for purposes of (a) inspection; (b) making repairs or improvements;
(c) showing the Premises to prospective lessees or purchasers and (d) after notice of termination of the Agreement is given, for purposes of plowing, seeding, fertilizing, and such customary seasonal work, none of which is to unreasonably interfere with the Contractor in carrying out the Permitted Activity. Nothing herein shall obligate the Airport Board to make any repairs or improvements to the Premises.

16. **ASSIGNMENT AND SUBLEASE.** Contractor may not assign this Agreement or sublet the Premises, in whole or part, without the prior written consent of Airport Board.

17. **ADDITIONS AND IMPROVEMENTS.** Contractor shall construct no additions, improvements or other structures on the Premises without the prior written consent of the Airport Board.

18. **DEFAULT.** This Agreement may be terminated by either the Contractor or the Airport Board in the event of an uncured material breach by the other. A party believing such a material breach has occurred must first give the other party thirty (30) days advance written notice of the alleged breach and the opportunity to cure the breach within the thirty (30) day period.

19. **NOTICES.**

All written notices shall be addressed to Airport Board as follows:

Blue Grass Airport  
4000 Terminal Drive  
Suite 206  
Lexington, KY 40510  
Attn: Payroll and Properties Management Administrator

All written notices shall be addressed to Contractor as follows:

________________________________
________________________________
________________________________

20. **AVIGATION RIGHTS.**

   (a) Contractor understands and acknowledges that the Premises are located adjacent to an active airport runway, that the Premises are subject to over flights of aircraft taking off or landing at the Airport, and that the Premises is currently, and will in the future, be subject to aircraft noise levels of DNL 65dB or greater, as well as vibration, air pollution, and other effects from the flight of aircraft near or over the Premises.
(b) Airport Board reserves the right of flight for the passage of aircraft above the surface of the Premises, and the right of flight shall include the right to cause in the airspace over the Premises such noises as may be inherent to the operation of aircraft now known or hereafter used for navigation of or flight in the air; and that Airport Board reserves the right to use the airspace over the Premises for landing at, taking off from or operating aircraft on or over said Airport.

(c) Contractor agrees that Airport Board shall not be liable for any damage to the Premises or crops arising out of the operation of aircraft in air space above the Premises or other property in the vicinity of the Premises.

21. NONDISCRIMINATION.

(a) Contractor for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

   In the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which an Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Contractor shall maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

(b) Contractor for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Contractor shall use the Hanger in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.

(c) During the performance of this Agreement, Contractor, for itself, its assignees and successor interest, agrees as follows:

   (i) Compliance With Regulations. Contractor (hereinafter includes consultants) shall comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
(ii) **Nondiscrimination.** Contractor, with regard to the work performed by it during the Agreement, shall 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. Contractor shall not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.

(iii) **Solicitations for Subcontractors, including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding, or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor’s obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

(iv) **Information and Reports.** Contractor shall provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Airport Board or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor shall so certify to the Airport Board or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

(v) **Sanctions for Noncompliance.** In the event of Contractor’s noncompliance with the nondiscrimination provisions of this Agreement, the Airport Board shall impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to: (i) Withholding of payments to Contractor under this Agreement until Contractor complies, and/or (ii) Cancellation, termination, or suspension of this Agreement, in whole or in part.

(vi) **Incorporation of Provisions.** Contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor shall take action with respect to any subcontract or procurement as the Airport Board or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the Airport Board to enter into any litigation to protect the interests of the Airport Board. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.
(d) **General Civil Rights Provision.** Contractor agrees that it shall 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 handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds Contractor from the bid solicitation period (if applicable) through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates Contractor or its transferee for the period during which Federal assistance is extended to the Airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

(i) the period during which the property is used by the Airport Board or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(ii) the period during which the Airport Board or any transferee retains ownership or possession of the property.

(e) **Title VI List of Pertinent Nondiscrimination Authorities.** During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor” in this Section) agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:

(i) **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);

(ii) **49 C.F.R. part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);**

(iii) **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);

(iv) **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 C.F.R. part 27;**
(v) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

(vi) Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

(vii) 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);

(viii) 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 C.F.R. parts 37 and 38;

(ix) 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);

(x) 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;

(xi) 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);

(xii) 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.).

22. DISADVANTAGED BUSINESS ENTERPRISES.

It is the policy of the Airport Board to encourage contractors to take all reasonable and necessary steps to ensure that Disadvantaged Business Enterprises, as defined by the U.S. Department of Transportation in 49 C.F.R. § 26.5, have the maximum opportunity to compete for and perform all levels of subcontracts under agreements with the Airport Board. Consequently, Contractor shall not discriminate on
the basis of race, color, religion, sex, creed, handicap or national origin in the
performance of this Agreement or award of subcontracts hereunder.

23. SUBORDINATION TO BOND INDENTURE.

(a) This Agreement and all rights granted to Contractor hereunder are
expressly subordinated and subject to the lien and provisions of the pledges, transfer,
hypothecation or assignment made by Airport Board in any Trust Indenture executed by
the Airport Board to issue Bonds, including without limitation that certain Trust Indenture
dated November 1, 2008 ("2008 Indenture"), as the same may be amended from time
to time. Airport Board expressly reserves the right to make such pledges and grant
such liens and enter into covenants as it may deem necessary or desirable to secure
and provide for the payment of Bonds, including the creation of reserves therefor.
Contractor understands that Airport Board is and will be the issuer of Bonds.

(b) With respect to Bonds on which the interest is intended to be excludable
from gross income for Federal income tax purposes under the Internal Revenue Code
of 1986 as amended or superseded, Contractor shall:

(i) not use, without the prior written consent of Airport Board, any
portion of the Premises for any purpose other than for the Permitted Activity in
accordance with the above Section 6; and

(ii) immediately cease and desist from any action, other than as
expressly permitted in this Section 18 to the extent such action is described in a written
notice delivered by Airport Board as an action that, pursuant to the written advice of
Airport Board’s bond counsel or the Internal Revenue Service, may adversely affect the
treatment of interest on any Bond as excludable from gross income for federal income
tax purposes.

(c) In connection with any issuance of Bonds by the Airport Board, upon not
less than twenty (20) days’ prior written request by the Airport Board, Contractor shall
deliver to the Airport Board a statement in writing certifying, to the extent correct and
accurate:

(i) that this Agreement is unmodified and in full force and effect (or if
there have been modifications, a description of such modifications and that the
Agreement as modified is in full force and effect);

(ii) that the Airport Board is not in default under any provision of this
Agreement, or if in default, the nature thereof in detail; and

(iii) such further matters as may be reasonably requested by the Airport
Board, it being intended that the parties may rely upon such statements involved in such
issuance of Bonds.
(d) This Agreement is expressly subject and subordinate to Section 5.02 of the 2008 Indenture, as the same is now in effect and may from time to time hereafter be amended.

24. GRANT ASSURANCE. This Agreement is subject to the provisions of any agreement heretofore made between Airport Board and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to Airport Board for Airport purposes, or the expenditure of federal funds for the development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the FAA’s Airport Improvement Program (or its successors), or in order to impose or use passenger facilities charges under 49 U.S.C. § 40117.

25. NATIONAL EMERGENCIES. This Agreement shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during a time of war or national emergency. If any such action dispossesses the Contractor from any material portion of the Premises for a period greater than thirty (30) days, then the Contractor shall have the right to terminate this Agreement by written notice delivered to the Airport Board within sixty (60) days after the date on which the Contractor is first dispossessed from any material portion of the Premises.

26. LIGHTING AND ELECTRICAL INTERFERENCE. Contractor shall not permit or create any electrical or other interference with radio communications between the Airport and aircraft. Contractor may not install any lighting on the Premises that would make it difficult for pilots to distinguish between Airport lights and those of Contractor, impair visibility in the vicinity of the Airport, or otherwise endanger landing, taking off, or maneuvering of aircraft.

27. AIRPORT DEVELOPMENT. The use of a portion of Airport property for operation of the Premises is subordinate to the use of Airport property for aviation purposes. Airport Board reserves the right to develop and improve the Airport and all roadways, terminal facilities, land areas, and taxiways and any other facilities at the Airport as it may see fit.

28. AMENDMENT. In the event that the FAA or other Governmental Authority shall require any modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or to impose or use passenger facilities charges under 49 U.S.C. § 40117, or if it is necessary to modify this Agreement to comply with the requirements of Applicable Law, orders and decisions of a Court, the FAA or other Governmental Authority, Airport Board may unilaterally modify this Agreement, upon advice of its legal counsel, as may reasonably be required to obtain such funds or comply with law. Nothing herein shall preclude Contractor from contesting such orders or decisions, but Contractor shall abide by the unilateral modification by the Airport Board, until or unless rescinded, overturned, or if stayed, for
the duration of the stay. In no event will Contractor be required, pursuant to this paragraph, to pay rent greater than specified herein. If a unilateral modification by the Airport Board has a material adverse effect upon the profitability of the Contractor’s operations under this Agreement taken as a whole, and the Airport Board fails to offer alternatives that reasonably mitigate such material adverse effect, then the Contractor shall have the right to terminate this Agreement by written notice delivered to the Airport Board delivered within sixty (60) days after the Airport Board notifies the Contractor of the unilateral modifications.

29. NO PARTNERSHIP OR JOINT VENTURE INTENDED. This Agreement does not give rise to a partnership or a joint venture. Neither party shall have the authority to bind the other without written consent. Neither party shall be liable for debts or obligations incurred by the other without written consent.

30. BINDING AGREEMENT. This Agreement shall be binding upon and inure to the benefit of Airport Board and Contractor and their respective heirs, executors, administrators, successors and assigns.

31. NON-WAIVER. No failure, forbearance or delay of any kind on the part of Airport Board in connection with the enforcement or the exercise of any rights under this Agreement shall affect or diminish Airport Board’s rights to enforce each provision of this Agreement at any time.

32. COUNTERPARTS AND ELECTRONIC OR FACSIMILE COPIES. This Agreement may be executed by the parties in counterparts and electronic or facsimile copies shall be treated as originals.

33. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding and agreement of the parties concerning the Agreement of the Premises and supersedes all prior and contemporaneous understandings and agreements of the parties, whether oral or written, pertaining the lease of the Premises. Any provision herein that may prove to be limited or unenforceable under the applicable laws shall not affect the validity or enforcement of the remainder of such provision or any other provisions.

34. TIME IS OF THE ESSENCE. Time shall be of the essence in all terms of this Agreement.

35. AMENDMENT. This Agreement may not be modified or amended except in writing executed by all parties or pursuant to Section 25 hereof.

36. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

AIRPORT BOARD:

LEXINGTON-FAYETTE URBAN COUNTY AIRPORT BOARD

By: ___________________________
Its: ___________________________

CONTRACTOR:

________________________________________

By: ___________________________
Its: ___________________________

Approved for the Lexington-Fayette Urban County Airport Board as to legality of form and content:

____________________________
STITES & HARBISON, PLLC
250 West Main St., Ste. 2300
Lexington, Kentucky 40507