

CITY OF ATLANTA

HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT

CONTRACT

PROJECT NUMBER FC-6151-C

NOISE INSULATION PROGRAM – MISCELLANEOUS PROPERTIES



KASIM REED

MAYOR

CITY OF ATLANTA

LOUIS E. MILLER

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DEPARTMENT OF AVIATION

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DEPARTMENT OF PROCUREMENT

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AGREEMENT

This **CONTRACT NO. FC-6151-C; NOISE INSULATION PROGRAM; MISCELLANEOUS PROPERTIES** ("Contract") between City of Atlanta ("City") and J.E. Dunn Construction Company ("Contractor") is entered into effective _____, 2013 ("Effective Date"). This Contract is authorized by Resolution attached as **Exhibit A** adopted by City effective June 3, 2013.

**ARTICLE 1
INTENT AND EXTENT OF AGREEMENT, SCOPE OF SERVICES, TERM**

1.1 The Intent of the Agreement

1.1.1 Contractor accepts the relationship of trust and confidence established between it and City by this Contract. Contractor covenants with City to furnish its best skill and judgment and to cooperate with City. Contractor agrees to furnish efficient business administration and superintendence and to complete any Projects assigned to it by Task Order under this Contract in the most efficient, expeditious and economical manner consistent with the Contract Documents and the interest of City.

1.1.2 For any Project under this Contract, Contractor may be issued a Task Order that describes the scope of Work to be performed by Contractor, the delivery method to be used and the method of payment. The Task Order may direct Contractor to perform the Work using the design-build method, the construction manager at risk delivery method, the design-bid-build method or any other industry accepted delivery method. Contractor may be compensated for the work on a cost plus a fee basis, unit price basis, lump sum basis or a combination of any of these bases. A Task Order will contain the drawings, specifications, and other documents necessary to describe the work to be performed. The Task Order will contain the date by which the Work must be completed or a performance period (which may include milestones) during which the Work must be commenced and completed. The Task Order will also contain the specific terms and conditions pursuant to which the Work will be performed.

1.1.3 The City will reward Task Order(s) as set forth in Article 6 of this Contract.

1.2 Scope of Services

It is understood and agreed by the Contractor that the Scope of Services performed under this Contract may include, but are not be limited to, replacement of doors and windows with acoustic grade doors and windows including hardware, select demolition, new cellulose attic insulation, new restroom fans, HVAC work, electrical, concrete, rough carpentry, finish carpentry, composite siding, roofing, gypsum wallboard work, potential abatement of lead paint and asbestos. Work is proposed to take place at separate properties which includes single family residences, small multi-

family properties and single multi-family property. The City engages the Contractor to provide the full range of construction services for the Department of Aviation as broadly described in the Scope of Services and as may be more fully described in a task order.

1.3 Term

1.3.1 Initial Term. The initial Term of this Contract is for three (3) years. This initial term of the Contract and any renewal term(s) are collectively referred to as the "Term". Any Task Order issued under this Contract may have a term that extends beyond the applicable expiration date of this Contract as long as such Task Order was issued prior to that expiration date.

1.3.2 Renewal Terms. City shall have the right in its sole discretion to renew this Contract for one (1) additional two (2) year term according to the following procedure:

1.3.2.1 If City desires to exercise its option to renew, it will submit legislation authorizing such renewal for consideration by City's Council and Mayor prior to the expiration of the initial Term of this Contract. The legislation will establish that the date of such renewal will be the day immediately following the expiration day of the Initial Term;

1.3.2.2 If such legislation is enacted, within 10 days of such enactment, City will notify Contractor in writing of such renewal, at which time Contractor will shall be bound to perform under the Contract during such renewal Term and parties will execute a Renewal Agreement in accordance with such legislation, it being acknowledged by Contractor that its initial execution of this Contract is deemed its agreement to continue to perform under it during any renewal Term.

ARTICLE 2 CONTRACTOR'S SERVICES

2.1 **Harmony.** Contractor agrees that it will exert every reasonable and diligent effort to assure that all labor employed by Contractor and its Subcontractors/Suppliers for the Work on any Project shall work in harmony with and be compatible with all other labor being used by other contractors now or in the future on the site of the Project. Contractor further agrees that this provision will be included in all Subcontracts/Supply Agreements.

2.2 **Task Orders.** The Work that Contractor will provide for a particular Project will be defined in the Task Order issued to Contractor for that Project.

- 2.3 **Bonds** – If Contractor is issued a Task Order, Contractor shall provide Bonds to City, on forms furnished by City, which are attached collectively as **Exhibit B**, each in an amount equal to 100 percent of the amount of the applicable Task Order prior to the Task Order being issued and prior to entering into any Subcontracts or Supply Agreements for Work contained in the Task Order. The Bonds must be issued according to the requirements set forth in **Exhibit D**.
- 2.4 **Disadvantaged Business Enterprise** – If Contractor is issued a Task Order, Contractor shall comply with the applicable disadvantaged business enterprise requirements attached as **Appendix A**.
- 2.5 **Insurance** – If Contractor is issued a Task Order, Contractor shall provide insurance in accordance with **Exhibit D**.
- 2.6 **Construction Health and Safety Plan** – If Contractor is issued a Task Order, Contractor shall comply with the requirements of City's Construction Health and Safety Requirements attached hereto as **Exhibit D**.
- 2.7 **General Conditions** – The Work shall be performed in accordance with the General Conditions which are attached hereto as **Exhibit F**.
- 2.8 **Supplemental General Conditions** – The Work shall be performed in accordance with the Supplemental General Conditions which are attached hereto as **Exhibit G**.
- 2.9 **Special Provisions for FAA Reimbursement Contracts** – The Work shall be performed in accordance with the Special Provisions for FAA Reimbursable Contracts which are attached hereto as **Exhibit H** and **Exhibit I**.
- 2.10 **Illegal Immigration Reform and Enforcement Act**. Pursuant to O.C.G.A. 13-10-91, et seq., as amended, CONTRACTOR is required to execute the Contractor Affidavit attached hereto as **Form 1**. Pursuant to the Act, CONTRACTOR must ensure that it and each Subcontractor provides proof of its registration with and continuing and future participation in the E-Verify Program established by the United States Department of Homeland Security. A completed Affidavit must be on file for CONTRACTOR and any Subcontractor providing services to CONTRACTOR. All Subcontractors intending to do business with CONTRACTOR are responsible for independently apprising themselves of and complying with the requirements of the Act. For additional information on the E-Verify program or to enroll in the program, go to: <https://e-verify.uscis.gov/enroll>. Compliance with this state law requirement is a material term of the Contract.
- 2.11 **Systematic Alien Verification of Entitlements**. Pursuant to O.C.G.A. 50-36-1 et seq., Contractor is required to execute the SAVE Affidavit attached hereto as **Form 2** and by this reference incorporated herein. Compliance with this state law requirement is a material term of this contract.

**ARTICLE 3
CITY'S RESPONSIBILITIES**

- 3.1 Construction Documents** – Unless Contractor is issued a design-build Task Order, Contractor will be furnished two (2) print copies of all specifications, one (1) full size and two (2) half-size prints of drawings and when available an electronic copy of all Construction Documents, at no cost to Contractor, during and at the completion of their development reasonably necessary for Contractor to perform the Work for the Project.
- 3.2 Permitting & Code Inspections** - Contractor shall apply for, secure and pay for all permits and governmental fees, licenses, inspections and bonds necessary for the proper construction, execution and completion of the Project, and so as to permit City to occupy and use the Project. City shall cooperate with, and provide assistance, as necessary, to Contractor so as to enable it to obtain such permits and licenses. Contractor shall give all notices and comply with all Applicable Laws.

**ARTICLE 4
SUBCONTRACTS**

- 4.1** Contractor will procure goods and services for each Task Order in accordance with Contractor's accepted Procurement Plan and Disadvantaged Business Enterprise (DBE) Plan which shall be submitted by Contractor and attached to this Agreement as **Exhibit C** when approved by City. To the extent possible, Contractor will procure the goods and services in an open competition, public invitation to bid manner, published in electronic and/or print media identifying opportunities Subcontractors and Suppliers to provide goods and services to Contractor.
- 4.2** Contractor shall perform all trade Work using Subcontractors and not self-perform the Work, unless authorized by City in writing. If the City authorizes Contractor to self-perform trade Work, Contractor may not self-perform more than 20% of the Work.

**ARTICLE 5
SCHEDULE, TIME OF COMMENCEMENT,
AND SUBSTANTIAL COMPLETION**

- 5.1** If City requests Contractor to submit a Task Order Proposal, it must include a Schedule, including the required date(s) for Substantial Completion, Final Completion and City occupancy. Contractor agrees to complete the construction of the Project set forth in the applicable Task Order in accordance with the agreed upon Substantial Completion date, Final Completion date and City occupancy date. Contractor acknowledges that failure to complete the Task Order Work within the times set forth in the approved schedule and applicable Task Order shall result in substantial damages to City sufficient to justify the imposition of liquidated damages. The amount of liquidated damages for a specific Project will be set forth in the applicable Task Order.

**ARTICLE 6
TASK ORDER PROPOSALS**

- 6.1** Appropriate solicitation documentation will be prepared by City for projects anticipated to be awarded pursuant to a Task Order and competitively bid in accordance with Code Section 2-1188(k), amongst the selected four (4) successful Proponents awarded a Contract pursuant to FC-6151. However, the City reserves the right to competitively bid a Task Order to only two (2) or three (3) of the four (4) selected Proponents if at the time the Task Order is bid:
- 6.1.1 One or more of the Contractors is currently assigned a Task Order or a combination of Task Orders, valued at or above \$20 million dollars; and/or
- 6.1.2 One or more of the Contractors has failed to perform a prior Task Order in accordance with Code Section 2-1188(k) 4.
- 6.2** The selected Contractors will develop a cost proposal using the method and compensation basis directed by City for the project based on the requirements and criteria set forth in the Task Order. The City will award a Task Order to the most responsible and responsive Proponent in accordance with Code Section 2-1188(k), whose bid meets the requirement and criteria set forth in the Task Order.
- 6.3** The City is not required to equitably distribute work amongst the four (4) Contractors awarded a Contract.
- 6.4** When Contractor submits the Task Order Proposal for approval, it shall send three copies of its Task Order Proposal to City clearly identifying the Construction Documents, if provided, upon which it is based. City will review and analyze the Task Order Proposal and meet with Contractor, if necessary, to discuss it before determining whether to accept the Task Order Proposal. City will determine whether to accept the Task Order Proposal within thirty (30) calendar days after receipt of it. If accepted, City shall prepare and issue a Task Order to Contractor. The Task Order proposal shall include the following sections:
- Section One: Summary of Work, including a List of all programming documents or Construction Documents
- Section Two: The proposed cost using the basis and delivery method specified by City
- Section Three: Prime Contractor Personnel and Fully Burdened Rates, if applicable
- Section Four: Construction Schedule
- Section Five: DBE Goal Requirement
- Section Six: Insurance Requirements, i.e. bonding capacity / insurance endorsement

- 6.5 City may remove the Task Order from consideration for award to Contractor and construct the Project using another Noise General Contractor or procure the services of another individual or entity through a competitive procurement authorized by City's Procurement and Real Estate Code or any other method of procurement authorized by Applicable Law.

ARTICLE 7 DISCOUNTS AND PENALTIES

All discounts for prompt payment shall accrue to City to the extent the Cost of the Work is paid directly by City or from a fund made available by City to Contractor for such payments. To the extent the Cost of the Work is paid with funds of Contractor, all cash discounts shall accrue to Contractor. All trade discounts, rebates, refunds, and all returns from sales of surplus materials and equipment, shall be credited to the Cost of the Work. All penalties incurred due to Contractor's fault for late payments of Cost of the Work will be paid by Contractor.

ARTICLE 8 PAYMENTS TO CONTRACTOR

- 8.1 **Monthly Applications for Payment** - Contractor shall submit on a monthly basis to City a sworn Application for Payment, along with cost reports, showing in detail the percent of Work completed, and if a GMP, all monies paid out, costs accumulated, or costs incurred on account of the Cost of the Work during the previous month.
- 8.2 **Final Payment** - Final Payment for a Task Order, constituting the unpaid balance of the Task Order's lump sum amount or the Cost of the Work and applicable Fee, shall be due and payable in accordance with the Clause entitled "Payment Terms".
- 8.3 **Payments to Subcontractors** - Contractor shall pay promptly, within five (5) business days after receipt of payment from City, all amounts due Subcontractors less a retainage of ten percent (10%) of the amounts due under the Subcontract. At the Owner's discretion, once a Project is fifty percent (50%) complete, and based on Contractor's evaluation of the Subcontractor's acceptable performance, City may approve a reduction in retainage on future amounts earned from ten percent (10%) to five percent (5%), providing for retainage of approximately seven and one-half percent (7.5%) at Substantial Completion. Once a Subcontractor claims to have fully and satisfactorily completed its Work, Contractor and Architect or Engineer shall inspect the Work and list those items required for completion. At that time and at City's discretion, Contractor may release the Retainage held for the Subcontractor's Work except for an amount equal to two hundred percent (200%) of the estimated cost of completing or correcting any unfinished or non-conforming items, provided that the unfinished or non-conforming items and cost of completing them are listed separately. Thereafter, Contractor shall pay to the Subcontractor, monthly, the amount retained for each incomplete item after each item is completed. Before issuance of final

payment to the Subcontractor without any retainage, the Subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project and the Subcontract have been paid or otherwise satisfied, warranty information is complete, "As-Built" markups have been submitted, and instructions for City's operating and maintenance personnel is complete. Final Payment may be made to a Subcontractor whose Work is satisfactorily completed prior to the Project's Final Completion, but only upon City prior written approval.

8.4 Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the Work but delivered and suitably stored at the site or another location subject to prior written approval and acceptance by City on each occasion.

8.5 Withholding Payments To Subcontractors - Contractor shall not withhold payments amounts due and owing to Subcontractors if such payments have been made to Contractor. Should this occur for any reason, Contractor shall immediately return such monies to City, adjusting Applications for Payment and Project bookkeeping as required.

8.6 Payment Terms

8.6.1 Unless otherwise provided in a Task Order, on or before the twenty-fifth (25th) day of each month, Contractor shall prepare and submit to City for its review and approval an Application for Payment in accordance with the requirements of the Task Order. Within fourteen (14) days of City's timely receipt of an Application for Payment from Contractor, City shall approve payment of it or notify Contractor in writing of its reasons for withholding approval. City may withhold payment on account of Contractor's failure to provide information it is required to provide, or on account of any ground, which permits the withholding of payments under this Contract. City shall not withhold payment of undisputed amounts owed.

8.6.2 Subject to its right to withhold payments under this Contract or Applicable Law, City shall pay to Contractor the approved amount of any Application for Payment. All Applications for Payment shall be subject to adjustment on account of any prior overpayments.

8.6.3 City is entitled to retain from interim payments made pursuant to this Article the amount of ten percent (10%) of the amounts properly billed by Contractor as Retainage. Once the Project reaches fifty percent (50%) completion, City, at its sole discretion, may reduce Retainage on subsequent self performed work, general conditions and Contractor's Fee to five percent (5%) of the Cost of the Work. Retainage on Work performed by Subcontractors shall be in accordance with the Clause entitled "Payments to Subcontractors". Therefore, the Retainage at Substantial Completion may be approximately seven and one-half (7.5%). At City's sole discretion, it may reinstate Retainage of ten percent

(10%) if it believes it is necessary to protect its rights. At City's sole discretion, prior to Final Completion of the Project, upon request of Contractor, City may release the Retainage being withheld for a Subcontractor's or Supplier's work when all of that Subcontractor's or Supplier's work has been satisfactorily performed and City has determined that the release of the Retainage would not be detrimental to the Project.

- 8.6.4 Upon (1) City's issuance of a Certificate of Substantial Completion for a Project; (2) a proper submission of an Application for Payment by Contractor (including but not limited to properly executed waivers and releases from Contractor and all Subcontractors and Suppliers in the forms approved by City and included in the Project Manual); (3) satisfactory evidence that all payrolls, Subcontractors, Suppliers, material bills and other indebtedness connected to the Project have been paid or otherwise satisfied; (4) all warranties are in place and the information to be provided to City has been provided; (5) all required instructions and training of City's operating and maintenance personnel is complete; and (6) all "As-Built" markups have been submitted to City, City shall pay to Contractor an amount (including any retained amounts) equal to the sum of the unpaid balance owed Contractor as Cost of the Work, so long as the sum of such Cost of the Work does not exceed the GMP for the Project, less (i) an amount equal to two hundred percent (200%) of the estimated cost of completing or correcting any unfinished or non-conforming work ("Final Payment Retainage"); (ii) an amount sufficient to pay all unpaid claims against Contractor as may be provided by the Contract Documents or by Applicable Law; (iii) an amount equal to all liquidated damages due but not recovered from Contractor; and (iv) an amount equal to any claims against City or its property for any labor, materials, supplies, services, or equipment claimed to have been furnished to or incorporated into the Project, or for any other alleged contribution to such amounts, unless and until such has been discharged. Notwithstanding the foregoing, City may withhold any amounts otherwise payable under this Article if grounds exist for such withholding under any provision of this Contract, Applicable Law or equity.

If City is withholding Final Payment Retainage, Contractor, City and the Architect or Engineer shall list those incomplete or non-conforming items prior to receiving Final Payment, and the items and costs of completing or correcting shall be listed separately. Thereafter, City shall pay to Contractor, monthly, the amount retained for each incomplete item after each is completed by it. City will provide seven (7) days prior written notice if City contends that Contractor has failed to promptly correct any deficiency. If after seven (7) days Contractor has failed to correct the deficiency or complete the item, Contractor waives its rights to payment for such items and will be responsible to City for all costs incurred to correct or complete such item.

- 8.6.5 Contractor's acceptance of Final Payment for all of the Work shall constitute a waiver of all claims by Contractor with respect to the Project not expressly reserved by Contractor in its Application for Payment for the Final Payment.
- 8.6.6 This Contract does not create any contractual relationship between City and any Subcontractor or Supplier under contract with Contractor, or any duty by City to any such Subcontractor or Supplier. City shall have no obligation to pay or to see that payment of money owed to Subcontractors or Suppliers is made by Contractor.
- 8.6.7 In addition to other grounds set forth in this Contract, City may withhold the whole or part of any payment due Contractor to such extent necessary to protect City from loss on account of any of the following circumstances (regardless of when discovered):
- (a) Defective work not remedied.
 - (b) Claims filed or reasonable evidence indicating probable filing of claims.
 - (c) Failure of Contractor to make payments properly to Subcontractors or Suppliers.
 - (d) A reasonable doubt that the Project can be completed for the balance then unpaid under the Task Order.
 - (e) Damage to another Contractor or to some third party.
 - (f) Failure to maintain an adequate rate of progress in accordance with the Project Schedule.
 - (g) Failure to supply enough skilled workmen or proper materials.
 - (h) Any material breach of this Contract.
 - (i) Any material failure to perform under this Contract.
 - (j) Any failure to provide information required to be provided by Contractor to City.

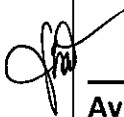
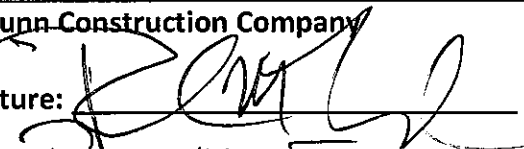
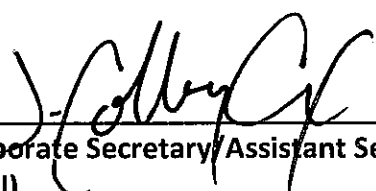
When any ground for non-payment by City is removed, payment shall be made for amounts withheld. No omission on the part of City to exercise the option to withhold payment shall be construed to be a waiver of any breach or acquiescence to it, and City may exercise this option from time to time and as often as may be necessary.

- 8.6.8 By paying Contractor's Application for Payment or by making any other payments to Contractor (including the final payment of retainage), City shall not be deemed to have examined, inspected or reviewed in any way the quality or quantity of the Work or to have reviewed the construction means, methods, techniques, sequences or procedures, or to have made any examination to ascertain how or for what purpose Contractor has used the monies previously paid.
- 8.6.9 Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to City either by incorporation in the

construction or upon the receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by Contractor, or by any other person performing work at the site or furnishing materials and equipment for the Project.

- 8.6.10 If City shall determine, by audit or otherwise, that it has made an overpayment to Contractor on the Contract and it makes written demand for repayment of the overpayment, Contractor shall, within five (5) days of receipt of such written demand for repayment, tender the amount of such overpayment to City or otherwise resolve the demand for repayment to City's satisfaction. At all times during the term of this Contract and for a period of six (6) years after the final acceptance of all of the Work, by City, or, if there is no such final acceptance, for six (6) years from the termination of this Contract, Contractor shall afford City, its auditors or its other authorized representatives access at reasonable times to any books, work papers, estimates, Subcontractor/Suppliers files, and accounting records of Contractor relative to the Work in order to verify compliance by Contractor with the Contract.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Contract on the respective dates under each signature. This Contract is executed under seal.

<p>City of Atlanta</p> <hr/> <p>Mayor</p> <hr/> <p>Municipal Clerk (Seal)</p> <p>Approved:</p>  <hr/> <p>Aviation General Manager</p> <hr/> <p>Chief Procurement Officer</p> <p>Approved as to form:</p> <hr/> <p>Senior Assistant City Attorney</p>	<p>J.E. Dunn Construction Company</p> <p>Signature: </p> <p>Name: <u>Paul M. Fearze</u></p> <p>Title: <u>Vice President</u></p> <p></p> <p>Corporate Secretary/Assistant Secretary (Seal)</p>
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