



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	2A
COUNCIL MEETING	1/17/2013
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

January 17, 2013

**FROM:** KEVIN R. MEIKLE  
Interim Director of Aviation

**SUBJECT:** AUTHORIZE THE INTERIM DIRECTOR OF AVIATION TO EXECUTE A MILITARY CONSTRUCTION COOPERATIVE AGREEMENT FOR THE CONSTRUCTION OF AN ARM/DE-ARM PAD AT FRESNO YOSEMITE INTERNATIONAL AIRPORT IN THE AMOUNT OF \$1,065,466.

**RECOMMENDATION**

Staff recommends that the City Council authorize the Interim Director of Aviation to execute a Military Construction Cooperative Agreement (MCCA) for the construction of an Arm/De-arm Pad on Taxiway C12 at Fresno Yosemite International Airport (FYI) in the amount of \$1,065,466.

**EXECUTIVE SUMMARY**

This agreement will allow the National Guard Bureau (NGB) to reimburse the Airports Department (Department) for construction of an Arm/De-arm Pad on Taxiway C12 at FYI (NGB Project). The NGB Project was designed by the NGB and incorporated as an additive alternate into bid documents for the Department's planned Runway 11L-29R Runway Safety Area (RSA) Improvement Project at FYI. The MCCA will also provide for reimbursement of construction administration, inspection, testing and approval of the NGB Project.

**BACKGROUND**

Military Arm/De-arm activities take place on an aircraft holding area (referred to as a hold pad) located near the end of the runway on Taxiway C12. The military refers to a hold pad as an Arm/De-arm pad and their standards require, (i) a larger hold pad as compared to civilian operations; and, (ii) that the hold pad be constructed of concrete instead of asphalt. The use of concrete is important to FYI because asphalt is not conducive to military use of hold pads. The MCCA details the responsibility of each signatory and the amounts to be reimbursed to the Department. The City Attorney has reviewed and approved the MCCA as to form.

Council may elect not to authorize execution of the MCCA. If the MCCA is not executed, the Arm/De-arm pad will not be installed at FYI. If the Arm/De-arm pad is not constructed, then the military will not have a fully compliant space to perform their end-of-runway activities and accelerated wear on the (asphalt) C12 hold pad will occur.

CEQA/NEPA FINDING

An Initial Study and Mitigated Negative Declaration was prepared and adopted on August 30, 2012, for Phase 2 of the RSA Improvement Project associated with Runway 11L/29R. This action is to authorize execution of the MCCA obligating NGB to reimburse the Department for the work being performed on the Project. An analysis has been performed pursuant CEQA Guidelines § 15162 to determine whether subsequent environmental review is required for the project. Based upon this analysis the following findings are made to support the determination that no subsequent environmental review is required:

1. No substantial changes are proposed in the project which will require major revisions of the previous Mitigated Negative Declaration due to the involvement of new significant environmental effects, or a substantial increase in the severity of previously identified significant effects. In this case, there are no changes.
2. No substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous Mitigated Negative Declaration due to the involvement of new significant environmental effects, or a substantial increase in the severity of previously identified significant effects. In this case, there is no change to the project; this is simply a funding approval.
3. There is no new information, which was not known and could not have been known at the time of the previous Mitigated Negative Declaration that the project will have significant effect not discussed in the Mitigated Negative Declaration.

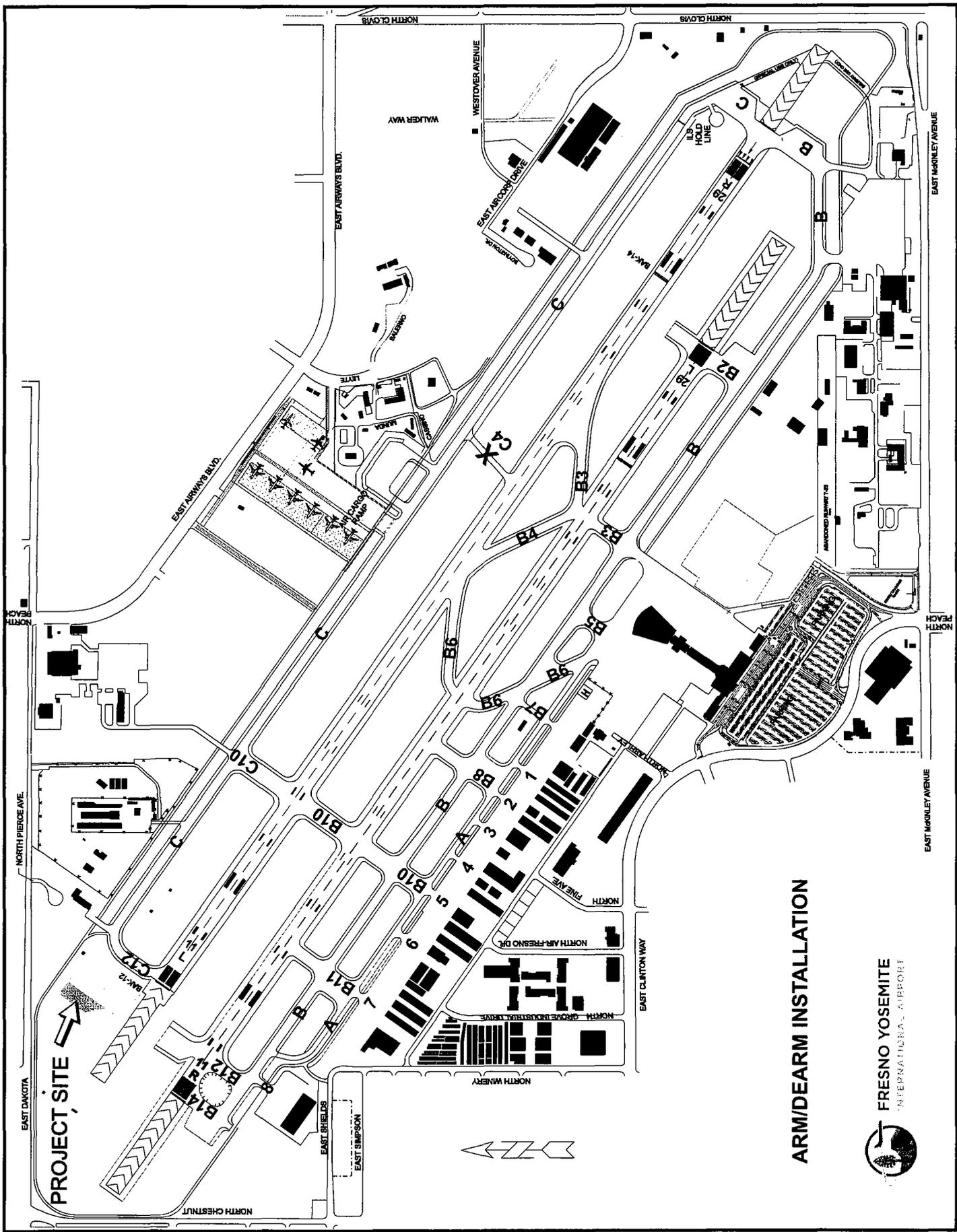
Furthermore, since a Negative Declaration was previously adopted for this project, the considerations set forth in CEQA Guidelines § 15162(a)(3)(C) and (D), related to the adequacy and feasibility of previously adopted mitigation measures, are not applicable. Based upon these findings, it has been determined that no further environmental documentation is required for this project. The project was also environmentally assessed under the National Environmental Policy Act (NEPA).

#### **FISCAL IMPACT**

Funding for work associated with the MCCA will be provided by the NGB. There will be no City funds expended on the NGB Project, and there will be no impact to the General Fund from this action.

#### **Attachments:**

- Site Plan
- Draft Military Construction Cooperative Agreement (MCCA)



**ARM/DEARM INSTALLATION**



**MILITARY CONSTRUCTION COOPERATIVE AGREEMENT [ANG]**

AGREEMENT NO. \_\_\_\_\_

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BETWEEN NATIONAL GUARD BUREAU AND THE CITY OF FRESNO, AIRPORTS DEPARTMENT

**PROJECT TITLE:** HAYW129084 DESIGN/CONSTRUCT ARM/DEARM PAD

**PROJECT LOCATION:** Fresno Yosemite International Airport, Fresno California

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**EXECUTION**

By executing this cooperative agreement, the parties agree to terms and conditions contained herein, including attachments.

In WITNESS WHEREOF, the parties hereto have executed this Cooperative Agreement

<p><b>CITY OF FRESNO-AIRPORTS DEPARTMENT</b></p> <p>BY: _____                  Name: KEVIN MEIKLE, Interim Director of Aviation</p> <p>Date: _____</p>	<p><b>NATIONAL GUARD BUREAU</b></p> <p>BY: _____                  Terence P. Sullivan, Col                  USPFO for California</p> <p>Date: _____</p>
<p>APPROVED AS TO LEGAL FORM:                  FRANCINE M. KANNE, Interim City Attorney</p> <p>BY: _____                  Senior/Deputy</p> <p>Date: _____</p>	<p>APPROVED AS TO LEGAL FORM:</p> <p>BY: _____                  Matthew L. Dana, Col                  Staff Judge Advocate</p> <p>Date: _____</p>
<p><b>IN ACKNOWLEDGEMENT</b></p> <p>BY: _____                  David S. Baldwin, Maj Gen                  The Adjutant General California</p> <p>Date: _____</p>	

## **ARTICLE I – SCOPE, PURPOSE AND AUTHORITY**

### **Section 101. General.**

a. The National Guard Bureau (NGB) and the City of Fresno (Grantee) have entered into this Military construction Cooperative Agreement (MCCA) to establish the terms and conditions applicable to the contribution of NGB funds or in-kind assistance for this Project. NGB and the Grantee desire to design, construct, sustain, restore or modernize as applicable, this Project using this single MCCA.

b. The attached Appendix/Appendices are integral to this MCCA.

### **Section 102. Property and Improvements.**

a. The Grantee has submitted, (or will submit prior to construction of the Project), satisfactory evidence of the necessary property interest to the real estate upon which the Project is to be constructed. The real estate is of a nature and located in an area that is appropriate for the intended construction and for the use intended under local laws and ordinances.

b. Title to real property improvements, including real property installed equipment, except for ANG Intrusion Detection System (IDS) or Joint-Services Interior Intrusion Detection System (J-SIIDS) equipment, constructed under this MCCA, shall be held in the Grantee.

### **Section 103. Scope of Activities.**

The Scope of activities is contained in the Appendix/Appendices.

### **Section 104. Performance Specifications.**

The Grantee's performance specifications are contained in the Appendix/Appendices.

a. Title 10 U.S.C. Chapter 1803 authorizes the NGB [as the Federal Agent for the U.S.] to contribute funds necessary for design and construction of the Project. Contribution of funds by NGB and the construction of the Project are necessary to accomplish Federal and State missions of the State Air National Guard.

b. The Project will be used by the California Air National Guard and other military aircraft landing at Fresno Yosemite International Airport.

c. This MCCA is a Cooperative Agreement within the meaning of 31 U.S.C. §§ 6301-6308.

## **ARTICLE II – OBLIGATIONS OF THE PARTIES**

### **Section 201. Obligations of the Grantee.**

a. The Grantee will exercise its best efforts to supervise, manage, operate and maintain all

activities or projects within the scope of this MCCA according to sound, efficient, commercial practice and the terms, conditions and specifications of this MCCA.

b. The Grantee will obligate sufficient funds to pay its share of costs of this MCCA.

c. Once the Project is completed, the Grantee may not permit any use or disposition of the facility constructed which will interfere with its use for the administration and training of units of the reserve Forces of the United States, or in time of war or national emergency, by other units of the armed Forces of the United States or any other use by the Federal Government.

d. In the event the Grantee desires to place the facility(ies) under some use other than the training or administration of the reserve forces of the United States, the Grantee upon the approval of the USPFO, may place the facilities in such other use provided that:

(1) If the facility is still adequate for its original purpose and still required for the use of any Reserve Component of the United States, the Grantee replaces the facility in-kind without further Federal contribution; and,

(2) Executes a modification to this MCCA recognizing all terms and conditions as applying to the replacement facility for the remaining term of this MCCA. Determination of whether the replacement facility is adequate for use as is, in fact "in-kind" shall be within the sole discretion of the USPFO.

#### Section 202. Obligations of NGB.

a. NGB shall reimburse the Grantee for the allowable costs incurred in performance of this MCCA according to the terms and conditions for such reimbursement set forth herein.

b. Whenever the terms of this MCCA provide for approval by NGB, such approval will not be unreasonable withheld. Any request for such approval shall be considered and acted upon by NGB in a timely fashion.

c. The obligations of NGB are subject to the availability of federal funds for the MCCA and the Grantee's funding contribution for its share of this MCCA.

### **ARTICLE III – COSTS**

#### Section 301. General.

NGB shall reimburse the Grantee for allowable costs incurred in performance of this MCCA.

#### Section 302. Estimated Cost.

a. Total estimated costs of this MCCA are specified in Appendix/Appendices.

b. The Grantee shall share in costs of this MCCA performance as provided for in approved budgets of the Appendices.

#### Section 303. Cost Sharing.

a. Wherever any item of cost for performance of this MCCA, as listed in a budget in the Appendices, is identified to be funded in part by NGB reimbursement, NGB shall be obligated to reimburse the Grantee only for its percentage share of total costs that would otherwise be allowable under this MCCA.

b. Cost Share Percentage. For the purposes of liquidating the Grantee's obligation to pay for its share of costs, the percentage share of allowable costs for design or construction of the facility to be reimbursed to the Grantee shall be identified in Appendices.

#### Section 304. Allowability of Costs.

a. Except as otherwise stated in this article or elsewhere in this MCCA, allowability of costs incurred by the Grantee in performance of this MCCA shall be determined according to 2 CFR Part 225, as amended, and 32 CFR Part 33, as amended, at the time the cost is incurred.

b. Costs for acquisition of real property for purposes of this MCCA are unallowable.

c. Costs of Grantee Improvements are unallowable. These unallowable improvements are facility components in excess of authorized criteria, which will not qualify for federal reimbursement.

d. The allowability of costs has no effect on the maximum funding level of this cooperative agreement. NGB has no liability to reimburse any cost over and above the maximum amount of funding obligated in this cooperative agreement, even if such cost would otherwise be allowable.

#### Section 305. Advance Agreements on Allowability of Costs.

a. No cost incurred by the Grantee that is contrary to any restriction, limitation, or instruction contained in any Budget and/or Financial Plan under this MCCA shall be allowable.

b. Indirect costs, as such costs are defined in Title 2 Code of Federal Regulations (CFR) Part 225, shall be unallowable, except for costs listed in paragraph c. below.

c. The costs of compensation for personnel services, including fringe benefits, but not limited to, the costs of workmen's compensation, unemployment compensation, State sponsored life/health insurance, and retirement benefits, shall be allowable as specified in NGR 5-1, Chapter 5.

d. Other specific agreement on costs, such as Pre-Agreement Costs. NONE

### **ARTICLE IV - FUNDING LIMITATIONS**

#### Section 401. Funding Limitation.

a. NGB funding limitations for design and construction are separately specified in Appendices.

b. Within its discretion, NGB may unilaterally increase maximum funding limitations reflected in Appendices at any time.

c. Project Appropriation Limitation. Notwithstanding any other funding limitation in this MCCA, the NGB funding limitation for project construction shall not exceed the lesser of 125 percent of the project construction appropriation or the project construction appropriation amount plus \$2,000,000.

#### Section 402. Method of Funding.

This MCCA shall be funded for each phase, according to Appendices.

#### Section 403. Grantee Advance Funding of Design Option.

a. Within its discretion, the Grantee may contract, and fund the payment of costs, for preparation of project design documents in order to fulfill its obligation to provide project design documents. To the extent that "federally-reimbursed" costs are required, the Grantee's incurrence of costs shall be made on behalf of NGB; NGB shall reimburse the Grantee for these costs.

b. Limitations in this article relate to funds necessary for reimbursement to the Grantee for its design costs. The fact that federal funds may not be available for obligation, or obligated to this MCCA, or available for reimbursement of Grantee costs until completion of project design documents by the Grantee or the beginning of construction of the project, shall not be grounds for claim by either party that this MCCA is unenforceable because of failure of consideration.

c. Design costs associated with this project incurred by the Grantee in advance of this MCCA may not exceed the amounts identified in Appendices and may be reimbursed in accordance with Section 403.d. below.

d. Obligation of NGB for federal reimbursement of Grantee costs for design is contingent upon one or more of the following conditions being met:

(1) Congressional appropriation of project MILCON construction funds, or

(2) Congressional language directing Project Design, or

(3) Inclusion of Project in the Future Year Defense Plan, and, the design meets all NGB design criteria as set forth in the appropriate NGB design guides and regulations.

### ARTICLE V – PAYMENT

Section 501. General.

There are only two payment methods authorized in the execution of this MCCA, the reimbursement method and the advance method.

Section 502. Payment by the Reimbursement Method.

Reimbursement method payments shall be according to procedures established by the Defense Finance and Accounting Service (DFAS), DoD Financial Management Regulation 7000.14R Volumes 11A and 11B and NGR 5-1, Chapter 11.

Section 503. Payment by Advance Method.

NGB may reimburse the Grantee in advance. The advance payment method shall be according to procedures established by the Defense Finance and Accounting Service and NGR 5-1, Chapter 11.

Section 504. Direct Federal Payment of Grantee Obligations.

In no event, shall the USPFQ make direct payment to a Grantee contractor, state employee, contractor employee, or Grantee vendor for any costs incurred by the Grantee under this MCCA.

Section 505. Interest.

The amount of interest due the United States on funds advanced to the Grantee or interest due the Grantee shall be determined and paid in accordance with 31 U.S.C. § 6503 and the items of the Cash Management Improvement Act Agreement in effect between the State and U.S. Treasury and regulations as issued by the U.S. Department of Treasury and the Department of Defense, as amended. For interest on advance payments see 31 U.S.C. 6503, 32 C.F.R. § 33.21.

## **ARTICLE VI – DEFINITIONS**

Section 601. Air National Guard Military Construction Cooperative Agreement.

Air National Guard (ARNG) Military Construction Cooperative Agreement (MCCA) means any agreement entered into by the Grantee and the Department of Defense, National Guard Bureau, reimbursed by Department of Defense appropriations for construction, sustainment, restoration or modernization of the Air National Guard and for other programs authorized and directed by Congress or the Department of Defense to be performed by the Grantee and the National Guard Bureau.

Section 602. Air National Guard.

Air National Guard means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that—\

- a. Is an Air Force;
- b. Is trained, and has its officers appointed, under the sixteenth clause of section 8, article I of the Constitution;
- c. Is organized, armed, and equipped wholly or partly at Federal expense; and
- d. Is federally recognized (32 U.S.C. § 101).

Section 603. Airport Authority.

A Public Agency controlling a Public Airport. A Public Agency means a State or any agency of a State, a municipality or other political subdivision of a State, a tax supported organization, or an Indian tribe or pueblo. Public Airport means an airport which is used for or to be used for public purposes, under the control of a public agency, and the landing area of which is publicly owned. [Extracted from Public Law 97 248].

Section 604. Chief, National Guard Bureau. (CNGB)

Chief, National Guard Bureau, means the head of the National Guard Bureau, or his or her designee.

Section 605. Construction.

Construction means the erection, installation, or assembly of a new facility; the relocation of a facility; the complete replacement of an existing facility; or the expansion, extension, alteration/conversion (to a new type use) of an existing facility. This includes equipment (not furniture) installed and made a part of the facility, related site preparation, excavation, backfilling, landscaping, or other land improvements. It also includes increases in components of facilities for functional reasons and the extension of utilities to areas not previously served. The federal reimbursement of project costs cannot exceed the statutory ceiling in 10 U.S.C. 18236(b).

Section 606. Design Services.

Design services mean any service necessary, or reasonably related to, investigation of a construction site for suitability, layout, engineering requirements, or development of plans and specifications for construction, preparation of construction estimates, reproduction of construction contract bid documents, or supervision and inspection of construction.

Section 607. Estimated Construction Costs.

For purposes of this MCCA, estimated construction costs shall be the NGB approved DD Forms 1390/91 construction amount. It shall not include the five percent (5%) contingency allowance nor the Title II/Type "C" SUPERVISION AND INSPECTION Services (SIOH) amount separately identified on DD Forms 1390/91 approval documents.

Section 608. Fiscal Year.

Fiscal Year (FY) means the Federal FY that runs from October 1 through September 30.

Section 609. Grantee.

The State or local government (2 CFR Part 225, Appendix A) responsible for the performance and administration of this award.

Section 610. Grants Officer.

Grants Officer (or the Grantor) shall mean an individual appointed by the NGB Head of Contracting Activity (HCA) or designee, authorized to provide approvals, receive reports, modify or change terms of this MCCA, provide funds under this MCCA, or take any other action for NGB under this MCCA except for deciding any appeal of a dispute under this MCCA as provided in Section 1203 and any other action delegated to a specific person by this MCCA or an appendix.

Section 611. Grants Officer Representative.

Grants Officer Representative (GOR) means a representative of the Grants Officer acting within the limits of his or her authority as delegated, in writing, by the Grants Officer. If the Grants Officer designates a GOR, the Grantee will receive a copy of the written designation. It will specify the extent of the GOR's authority to act on behalf of the Grants Officer. The GOR is not authorized to make commitments or changes that will affect terms or conditions of the MCCA or an appendix.

Section 612. In-Kind Assistance.

In-Kind Assistance (IKA) is the act of providing services or technical support to the Grantee by the federal government to include the provision of federal procurement and contracting services for supplies, services or construction. IKA will be the fair market value at the time of the contribution.

Section 613. National Guard Bureau.

The National Guard Bureau (NGB) is a joint activity of the Department of Defense pursuant to Section 10501, Title 10 United States Code (U.S.C.). The Chief, NGB, is under the authority, direction, and control of the Secretary of Defense. The Secretary normally exercises authority, direction, and control through the Secretaries of the Army and the Air Force for matters pertaining to their responsibilities in law or DoD policy. The Chief, NGB, is a principal advisor to the Secretary of Defense through the Chairman of the Joint Chiefs of Staff on matters involving non-federalized National Guard forces and through other DoD officials on matters as in DoD Directive 5105.77, May 21, 2008, or as determined by the Secretary of Defense.

Section 614. Operation and Maintenance Activities.

Operation and maintenance (O&M) activities mean and include (but are not limited to) actions by the Grantee, through employment, by contract or hire, of sufficient personnel, or of acquisition by contract of supplies and services, or other necessary actions to perform services, tasks, or activities within the scope of this MCCA which are properly charged to an O&M account.

Section 615. State.

Any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a state exclusive of local governments. (32 C.F.R. § 33.3)

Section 616. Grantee Improvements.

Grantee improvements is other work to facilities or portions of facilities included within the scope of the project, as identified in appendices to this MCCA, which are desired by the Grantee and for which NGB will make no reimbursement of funds for either design or construction.

Section 617. Territory.

Territory means any territory. However, for purposes of laws relating to the militia, the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States, "Territory" includes Guam and the U.S. Virgin Islands (32 U.S.C. § 101).

Section 618. The Adjutant General.

a. The Adjutant General (TAG) is the head of the State [Commonwealth, or Territory] Military Department, appointed by the Governor of the State [Commonwealth, or Territory], according to the respective State's [Commonwealth's, or Territory's] constitution, or statute.

b. TAG receives funds and property and accounts for all expenditures and property acquired through this MCCA; and makes returns and reports concerning those expenditures and that property, as required by this MCCA.

Section 619. United States Property and Fiscal Officer. (Grantor)

a. The United States Property and Fiscal Officer (USPFO) is the qualified commissioned officer of the Army National Guard or the Air National Guard, as the case may be, designated by the Chief, National Guard Bureau, to be the United States Property and Fiscal Officer of a State or territory.

b. The USPFO receives and accounts for all funds and property of the United States in the possession of the National Guard for which he/she is the property and fiscal officer; and makes returns and reports concerning those funds and that property, as required by the Secretary concerned. (32 U.S.C. § 708).

## **ARTICLE VII - GENERAL PROVISIONS**

### **Section 701. Term of Agreement.**

a. This section, 701, applies only to projects supported with ANG Military Construction Program (MCP) funding as indicated in the attached Technical Appendix Statement of Work. This section does not apply to projects supported with ANG Sustainment, Restoration, or Modernization (SRM) program funding.

b. Unless sooner terminated by its terms, this MCCA shall terminate 25 years after the date of NGB's acceptance of the construction project, according to the attached Statement of Work for Grantee Construction. Nonetheless, this term in no way implies that NGB will reimburse the Grantee for any costs beyond those authorized in the appendices and their approved budgets.

### **Section 702. Sole Benefit.**

This MCCA is intended for the sole benefit of NGB and the Grantee and is not intended to create any other beneficiaries.

### **Section 703. Modification.**

This MCCA may be modified only by a written instrument signed by the parties hereto. See NGR 5-1, Chapter 3, for Military Construction Cooperative Agreement Modification procedures.

### **Section 704. Successors and Assigns.**

This MCCA may not be assigned by a party without the express written consent of the other party. All covenants made under this MCCA shall bind and take effect to the benefit of any successors and assigns of the parties whether or not expressly assumed or acknowledged by such successors or assigns.

### **Section 705. Entire Agreement.**

This MCCA forms the entire agreement between the parties as to scope and subject matter of this MCCA. All prior discussions and understandings concerning such scope and subject matter are superseded and incorporated by this MCCA.

### **Section 706. Severability.**

If any provision of this MCCA is held judicially invalid, the remainder of this MCCA shall continue in force and effect to the extent not inconsistent with such holding.

### **Section 707. Waiver of Breach.**

If a party waives enforcement of any provision of this MCCA (or appendices) upon any event of breach by the other party, such waiver shall not automatically extend to any other or future

events of breach.

Section 708. Notices.

Any notice, transmittal, approval, or other official communication made under this MCCA shall be in writing and shall be delivered by hand, email, facsimile (FAX) transmission, or by mail to the other party at the address or facsimile transmission telephone number set forth below or at such other address(es) as may be later designated:

NGB: COL Terence Sullivan, USPFO for California, PO Box 8104, San Luis Obispo, CA 93403-8104

Grantee: KEVIN MEIKLE, Director of Aviation-Interim, City of Fresno - Airports Department, 4995 E. Clinton Way, Fresno, CA 93727 FAX (559) 251-4825

Section 709. Execution.

This MCCA may be executed in several counterparts, each of which shall be deemed an original. Subsequent execution of any or all attached Appendices shall not affect the legality or enforceability of this MCCA.

Section 710. Conflict of Interest.

The Grantee shall insure that its employees are prohibited from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others.

Section 711. Access to and Retention of Records.

The Grantee shall afford any authorized representative of NGB, the Department of Defense, or the Comptroller General access to and the right to examine all records, books, papers, and documents ("Records") that are within the Grantee's custody or control and that relate to its performance under this MCCA. The Grantee shall retain all such records intact in such form, if not original documents, as may be approved by NGB for at least three (3) years following project, completion or termination.

Section 712. Change of Circumstances.

Each party shall promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such party's ability to carry out any of its obligations under this MCCA.

Section 713. Liability and Indemnity.

Nothing in this MCCA shall be construed as an indemnification by one party or the other for liabilities of a party or third persons for property loss or damage or for death or personal injury

arising out of and during performance of this MCCA. Any liabilities or claims for property loss or damage, or for death or personal injury, by a party or its agents, employees, contractors or assigns or by third persons, arising out of and during the performance of this MCCA, shall be determined according to applicable law.

#### Section 714 Reports.

In addition to any financial or other reports required by terms of this MCCA, NGB may require the Grantee to prepare reports or provide information relating to this MCCA. The Grantee agrees to provide such reports within a reasonable time of request and in such detail as may be required.

#### Section 715. Special State Requirements.

Changes to established requirements of this MCCA made necessary by governing State statutes will be processed in accordance with NGR 5-1, Chapter 3. Upon approval, a statement of alterations or changes, along with justification, shall be attached to this MCCA and will be considered a part thereof. NONE

#### Section 716. Government Furnished Equipment (GFE).

In addition to the Liability and Indemnity provisions in Section 713, nothing in this MCCA shall be construed as an indemnification by the United States of the State, its employees, agents, or third persons, for liability with respect to any and all claims, including, but not limited to: (1) claims for damages; and (2) claims for reimbursement arising from property loss, personal injury or accident damage related to the use, care, or operation of GFE. The Grantee's liability for lost or damaged GFE will be in accordance with applicable State laws. (NGR 5-1, Chapter 8). The Grantee is liable for loss and damage. In the event that State law does not authorize indemnification, GFE should not be provided.

### **ARTICLE VIII – APPLICABLE LAWS AND REGULATIONS**

#### Section 801. Applicable Law.

This MCCA is incidental to implementation of a Federal program. Accordingly, this MCCA shall be governed by and construed according to Federal law as it may affect rights, remedies, and obligations of the United States.

#### Section 802. Governing Regulations.

To the extent not inconsistent with express terms of this Agreement, the provisions of 32 CFR Part 33, Uniform Administrative Requirements for Grants and Cooperative Agreements, DoD Grant and Agreement Regulations (DoDGARS) (DoD 3210.6R) as amended, Title 2 Code of Federal Regulations (CFR) Part 225, and NGR 5-1, are hereby incorporated into this MCCA by reference as if fully set forth herein, shall govern this Agreement.

#### Section 803. Officials Not to Benefit.

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

#### Section 804. Nondiscrimination.

The Grantee covenants and agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Grantee's performance under this MCCA. Accordingly, and to the extent applicable, the Grantee covenants and agrees to comply with the following national policies prohibiting discrimination:

- a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.), as implemented by DoD regulations at 32 CFR Part 195.
- b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246, as implemented by Department of Labor regulations at 41 CFR Chapter 60.
- c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR Part 196.
- d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR Part 90.
- e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR Part 41 and DoD regulations at 32 CFR Part 56.

#### Section 805. Lobbying.

a. The Grantee covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency or a member of Congress in connection with any of the following covered federal actions: The awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or Cooperative Agreement.

b. New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement provisions of Section 319 of Public Law 102-121 (31 U.S.C. § 1352) is incorporated by reference and the Grantee agrees to comply with provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

#### Section 806. Drug-Free Work Place.

The Grantee covenants and agrees to comply with the requirements regarding drug-free workplace in Subpart B of 32 CFR Part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

Section 807. Environmental Standards.

a. The Grantee covenants and agrees that its performance under this Agreement shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Solid Waste Disposal Act (SWDA);
- (7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;
- (8) To identify any impact this award may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

b. In accordance with the EPA rules, the parties further agree that the Grantee shall also identify to the awarding agency (NGB) any impact this award may have on:

(1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

(5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

#### Section 808. Preference for U.S. Flag Air Carriers.

(Any agreement under which international air travel may be supported by U.S. Government funds)

Travel supported by U.S. Government funds under this agreement shall use U.S flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

#### Section 809. Debarment and Suspension.

The Grantee covenants and agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR Part 180, as implemented by the DoD in 2 CFR Part 1125. The Grantee agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom it enters into transactions that are "covered transactions" under Subpart B of 2 CFR Part 180 and the DoD implementation in 2 CFR Part 1125.

#### Section 810. Buy American Act.

The Grantee covenants and agrees that it will not expend any funds appropriated by Congress without complying with the Buy American Act (41 U.S.C. 10a, et seq.). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community (EEC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

Section 811. Relocation Assistance and Real Property Acquisition.

The Grantee covenants and assures that it will comply with 49 CFR Part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.

Section 812. Copeland "Anti-Kickback" Act. (All contracts and sub-grants for construction or repair.)

The Grantee covenants and agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this MCCA, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

Section 813. Contract Work Hours and Safety Standards Act.

The Grantee covenants and agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this Agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this Agreement on a contract for an amount greater than \$100,000 shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

Section 814. Davis-Bacon Act.

The Grantee covenants and agrees that it will comply with the Davis-Bacon Act (40 U.S.C. Sections 3141-3148) as supplemented by U.S. Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by federal grant program legislation). All rulings and interpretations of the Davis-Bacon Act contained in 29 CFR Part 5 are incorporated by reference in this MCCA. As applied to this MCCA, the Davis-Bacon Act (40 U.S.C. Sections 3141-3148) provides that contracts in excess of \$2,000 to which the federal Government provides assistance funding for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States, shall contain a provision that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the U.S. Secretary of Labor.

Section 815. National Historic Preservation.

(Any construction, acquisition, modernization, or other activity that may impact a historic property.)

The Grantee covenants and agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR Part 800 and Executive Order 11593.

(36 CFR Part 800 requires Grants Officers to get comments from the Advisory Council on Historic Preservation before proceeding with Federally assisted projects that may affect properties listed on or eligible for listing on the National Register of Historic Places.)

Section 816. Hatch Act.

The Grantee covenants and agrees to comply with the Hatch Act (5 U.S.C. 1501 - 1508 and 7324 - 7326), as implemented by the Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officers of state or local governments whose employment is connected to an activity financed in whole or part with federal funds.

Section 817. Equal Employment Opportunity.

(All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees.)

The Grantee covenants and agrees to comply with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60).

Section 818. Cargo Preference. (Any agreement under which international air travel may be supported by U.S. Government funds.)

The Grantee covenants and agrees that it will comply with the Cargo Preference Act of 1954 (46 USC Chapter 553), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this Agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S. flag commercial vessels, if available.

Section 819. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

The Grantee covenants and agrees that it will comply with Executive Order 13202 of February 17, 2001, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, as amended on April 6, 2001.

Section 820. Central Contractor Registration and Universal Identifier Requirements.

The Grantee covenants and agrees to comply with the Central Contractor Registration and Universal Identifier Requirements as indicated below:

a. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

b. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

(1) Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

(2) May not make a subaward to an entity unless the entity has provided its DUNS number to you.

c. Definitions

For purposes of this award term:

(1) Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

(2) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

(3) Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- (a) A Governmental organization, which is a State, local government, or Indian Tribe;
- (b) A foreign public entity;
- (c) A domestic or foreign nonprofit organization;

(d) A domestic or foreign for-profit organization; and

(e) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

(4) Subaward:

(a) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

(b) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ----.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

(c) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

(5) Subrecipient means an entity that:

(a) Receives a subaward from you under this award; and

(b) Is accountable to you for the use of the Federal funds provided by the subaward.

## Section 821. Reporting Subawards and Executive Compensation

The Grantee covenants and agrees to comply with the Reporting Subawards and Executive Compensation requirements indicated below:

a. Reporting of first-tier subawards.

(1) Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

(2) Where and when to report.

(a) You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

(b) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

(3) What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

(a) Reporting Total Compensation of Recipient Executives.

1 Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if--

2 The total Federal funding authorized to date under this award is \$25,000 or more;

3 In the preceding fiscal year, you received--

a 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

b \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

c The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

4 Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

a As part of your registration profile at <http://www.ccr.gov>.

b By the end of the month following the month in which this award is made, and annually thereafter.

(4) Reporting of Total Compensation of Subrecipient Executives.

(a) Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year if, in the subrecipient's preceding fiscal year, the subrecipient received--

1 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

2 \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ---- .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## **ARTICLE IX – PROCUREMENT**

### **Section 901. Grantee Contracts.**

The Grantee's acquisition of goods and services by the State in performance of this MCCA shall be according to applicable state contracting procedures, standards and procedures contained in 32 CFR § 33.36 and this MCCA.

### **Section 902. Grantee Contract Flow-down.**

Subject to existing contracts, the Grantee is required to insert the substance of provisions of Article VIII in contracts issued under this MCCA, unless state laws or regulations offer more protection.

## **ARTICLE X - PROPERTY**

### **Section 1001. Equipment.**

- a. Equipment purchased by the Grantee under the terms of this agreement becomes the property of the Grantee and will be managed, used and disposed of IAW 32 CFR 33.32 and Chapter 8, NGR 5-1.
- b. Equipment purchased by the Federal government, including equipment acquired specifically for a National Guard Cooperative Agreement, vests in the Federal Government. This equipment shall be managed, used and accounted for as provided in 32 CFR § 33.32(f) and Chapter 8, NGR 5-1.
- c. Equipment purchased by the federal government and issued to the Grantee is Government Furnished Equipment (GFE). The title of GFE vests in the Federal government and cannot be transferred to the Grantee and therefore cannot be considered as In-Kind Assistance (IKA).

### **Section 1002. Operating Materials and Supplies.**

- a. Items to be consumed in normal operations purchased by the Grantee under the terms of this agreement become the property of the Grantee and will be managed and disposed of IAW 32 CFR 33.32 and NGR 5-1, Chapter 8.
- b. Supplies purchased by the federal government shall be managed, used, and accounted for as provided in 32 CFR § 33.33 and NGR 5-1, Chapter 8. Grantee use of federal supplies and materials may be considered as IKA.

## **ARTICLE XI - LEGAL AUTHORITY**

### **Section 1101. Legal Authority.**

The Grantee represents and warrants that it is under no existing or foreseeable legal disability that would prevent or hinder it from fulfilling terms and conditions of this MCCA. The state shall promptly notify NGB of any legal impediment that arises during the term of this MCCA that may prevent or hinder the state's fulfillment of its obligations under this MCCA.

### **Section 1102. Opinion of Counsel.**

Concurrent with its execution of this MCCA, the Grantee's highest legal officer, or his or her designee, certifies by signature approval as to legal form of this MCCA, that:

- a. The Grantee has the requisite authority to enter into this MCCA.
- b. The Grantee can make the warranty set forth in Section 1101 above;
- c. The Grantee is empowered to assume responsibilities and obligations the Grantee proposes to undertake under this MCCA;
- d. The provisions of this MCCA intended to secure NGB interests are enforceable according to their terms;
- e. The execution of this MCCA has been duly authorized by the state; and
- f. That the individual signing this MCCA on behalf of the Grantee has the requisite legal authority to bind and obligate the Grantee to terms and conditions of this MCCA.

## **ARTICLE XII - TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION**

### **Section 1201. Termination.**

This MCCA may be terminated by either party according to terms and conditions of 32 CFR § 33.44.

### **Section 1202. Enforcement.**

a. NGB may take such actions to enforce terms of this MCCA as may be provided for in and under terms of 32 CFR § 33.43.

b. Circumstances under which NGB may take actions provided in Section 1202.a. above includes, but shall not be limited to, the following:

- (1) Failure by the Grantee to appropriate funds sufficient for its share of project costs;

(2) Unreasonable failure by the Grantee to begin, prosecute, or complete construction of the Project;

(3) Failure by the Grantee to substantially complete construction in accordance with Project Design Documents, approved and accepted in accordance with terms of this MCCA.

### Section 1203. Claims, Disputes Resolution and Appeals.

a. Any claim made by the Grantee arising out of this MCCA shall be presented in writing to the Grants Officer. The claim shall include: the amount of monetary relief claimed or the nature of other relief requested, the basis for relief, and the documents or other evidence pertinent to the claim.

b. Claims shall be made within 60 days after the basis of the claim is known or should have been known, whichever is earlier. It is the Grantee's duty to include in its claim all information needed to demonstrate its timeliness.

c. Upon receipt of a claim, the Grants Officer shall provide a written decision denying or sustaining the claim, in whole or part, which decision shall include the reason for the action, within 60 days of the date of the receipt of a claim. The determination shall be final unless appealed by the Grantee pursuant to the provisions of this section.

#### d. Alternative Dispute Resolution (ADR).

(1) Policy. It is NGB policy to try to resolve all issues concerning cooperative agreements at the Grants Officer's level. Grant Officers are encouraged to use ADR procedures to the maximum extent practicable.

(2) Procedures. If a Grantee decides to appeal a Grants Officer's decision, the Grants Officer shall encourage the State to enter into ADR procedures. The ADR procedures to be used shall be agreed to at the time the parties determine to employ them.

#### e. Appeals.

(1) Grant Appeal Authority. The CNGB shall designate a Grants Appeal Authority at the time of receipt of appeal.

(2) Right of Appeal. The Grantee has the right to appeal a Grants Officer's decision to the Grant Appeal Authority.

#### (3) Appeal Procedures.

a Notice of appeal. The TAG may appeal a decision of the Grants Officer within 90 days of receiving that decision, by filing a written notice of appeal to the Grant Appeal Authority and to the Grants Officer.

**b** Appeal file. Within 30 days of receiving the notice of appeal, the Grants Officer shall forward to the Grant Appeal Authority and the Grantee the appeal file, which shall include copies of all documents relevant to the appeal.

**c** Decision. Any fact-finding or hearing shall be conducted using procedures that the Grant Appeal Authority deems appropriate.

**f** Final Appeal. If the Grantee is not satisfied with the opinion/decision of the CNGB, the Grantee can take the case to Federal Court. Nothing in this section is intended to limit a Grantee's right to any remedy under the law.

### **ARTICLE XIII - Agreement Particulars.**

The information below shall be recorded by the Grants Officer's Representative (GOR) for the compliance with the reporting requirements of the DoD Assistance Award Action Report System (DAADS) and the Federal Funding Accountability and Transparency Act of 2006.

- a. Grantee/Recipient Category: Government
- b. Grantee/Recipient Type: Municipal Government
- c. Grantee/Recipient DUNS: 17-678-5079
- d. Primary Place of Performance (Project Location): Fresno Yosemite International Airport
- e. Grantee/Recipient County (Primary Place of Performance): Fresno County
- f. Grantee/Recipient Congressional District (Primary Place of Performance): 21st
- g. Major Agency: DOD
- h. Agency Code: 2100
- i. Funding Agency: Air
- j. Program Source Agency: 57
- k. Transaction Type: Cooperative Agreement
- l. CFDA: \_\_\_\_\_
- m. CFDA Program Title: \_\_\_\_\_
- n. Program Source Account-Funding: 52276F

o. Treasury Appropriation Code: \_\_\_\_\_

p. Award/Obligation/Action Date: \_\_\_\_\_

q. Starting Date: February 2013

r. Ending Date: November 2013

s. Record Type: Individual Action

t. Fiscal Year/Quarter: 2013/3rd

DRAFT

## **Attachment 1**

### **TECHNICAL APPENDIX STATEMENT OF WORK**

#### **GRANTEE DESIGN AND CONSTRUCTION**

##### **1. Purpose.**

This Statement of Work defines the NGB and Grantee obligations in providing design, construction, administration, testing and inspection for a construction project on City of Fresno property.

##### **2. Description.**

The City of Fresno is undertaking a project to extend RWY 11L/29R and installing an aircraft run-up pad at the NW end of the airfield. The NGB desires to provide funding to modify design of this pad and construct a dual use run-up /ARM-DEARM pad to support munitions configured fighter aircraft. This will consist of changing the proposed pavement from AC to PCC and increasing the size of the pad from 80,000 SF to 120665 SF. The ARM/DEARM Pad will include 25400 SF of asphalt shoulder pavement, 120665 SF of full strength PCC pavement and painted runway markings, site improvements and site utilities. The primary purpose of the ARM/DEARM pad is to allow for safe arming and disarming of munitions configured aircraft. The arm/disarm pad is used for arming aircraft immediately before takeoff and for disarming (safing) weapons retained or not expended upon their return.

##### **3. Scope of Responsibilities and Administration.**

a. The City of Fresno will furnish all design, design administration, construction, construction administration, testing and inspection services necessary and reasonably associated with the design and construction of a new ARM/DEARM pad at the North West end of RWY 11L/29R. Scope requires coordination with the 144<sup>th</sup> CES Base Civil Engineer, the ANG Civil Engineering Technical Services Center (CETSC), and the USPFO as necessary to facilitate their review and project observation.

b. By contract and/or in-house tasking, the City of Fresno will provide the Architect-Engineer (A-E) services necessary to develop plans, specifications, cost estimates, the construction schedule, and any applicable phasing or sequencing requirements required for construction of the project. (referred to as the Project Design Documents)

c. ANG shall not issue directions to the Grantee's design A-E and shall communicate with the Grantee's design A-E only through, or with the permission of, an authorized representative of the Grantee.

d. Upon acceptance of the Project Design Documents, the City of Fresno will contract for the construction of the project according to this MCCA.

e. The City of Fresno shall carry out the construction of the Project in strict accordance with the Project Design Documents.

f. NGB Approval of Construction Documents. Unless authority is delegated, the City of Fresno shall provide any proposed contract(s) for construction of the Project to NGB for its review, comment and approval prior to the City's execution of the contract. By formal written notice, NGB shall provide the City with its comments, approval or disapproval within 5 days of its receipt of the proposed City contract(s). NGB may disapprove the contract(s) only for the following reasons:

(1) The contract price exceeds the amount in the finance plan for construction in this appendix.

(2) The proposed contractor has been debarred or suspended from performing Federal contracts or performing contracts under Grants or Cooperative Agreements with the Federal Government.

g. Inspection and Acceptance of Construction

(1) The City of Fresno shall be responsible for inspection and acceptance of the work by its construction contractor(s). ANG shall not issue directions to any City contractor and shall communicate with a City contractor only through, or with the permission of, an authorized City representative.

(2) Upon the USPFO's concurrence with final acceptance, the project shall be considered complete.

(3) Final payment shall be after the Project Final Inspection Report (Attachment 2) has been completed and then approved by the USPFO.

h. Project Finance Plan

(1) The NGB will reimburse the City of Fresno for the costs of design, design administration, construction, construction administration, testing and inspection of the ARM/Dearm Pad per the attached Project Finance Plan (Attachment 3).

(2) The project finance plan is the maximum amount for which NGB is obligated to reimburse the City of Fresno for the costs of performance of this MCCA. The amount of any project finance plan line item cost shall not be exceeded.

(3) Unless otherwise provided for in the project finance plan, any line item therein may be changed only by amendment of this MCCA. Either party may propose a change to this finance plan by submitting such proposal in writing to the other party. Use NGR 5-1/ANGI 63-101, Appendix E, Cooperative Agreement Modification Form or Standard Form 30.

i. Project Schedule. The project design and construction schedule will match the schedule for the Grantee's Runway 11L-29 R Extension Project.

**Attachment 2**

**PROJECT FINAL INSPECTION REPORT**

PROJECT: HAYW129084, Design and Construct Arm/Dearm Pad

1. State: CA City: Fresno
2. Date: [day, month, year] Percent Complete: [xx%]
3. Contracting Officer: Terence P. Sullivan, USPFO for California
4. Contractor: [Name of Company]
5. Contract No: [Complete Contract Number] Amount: Total Contract Cost]
6. Base: Fresno Yosemite IAP

This is to certify that [Company], contractor, complete on [date], all work under Contract No. [contract number] dated [contract date] for Project [project number and project title] at Fresno Yosemite IAP; that final inspection of the work was accomplished by the undersigned on [date]; that the materials and labor were furnished in accordance with the terms of the specifications and the contract; that all required guarantees have been furnished; that the work was performed in accordance with approved specifications and/or contract drawings as modified by approved change orders and supplemental agreements with no exceptions; and that all work under this contract was completed on [date].

\_\_\_\_\_  
[Project Inspector]

The work completed under this contract is hereby accepted for the government as of [date].

\_\_\_\_\_  
[Contracting Officer]

**Attachment 3**

**PROJECT FINANCE PLAN**

HAYW129084, Design and Construct ARM/DEARM Pad

ESTIMATED TOTAL COST OF PROJECT: \$1,065,466

Activity	Estimated ANG Share	Estimated City Share	Estimated Other Share	Estimated Total
Site Investigation	0	0	0	0
Design of Cost Shared Improvements	0	0	0	0
Design of ANG Improvements	\$147,535	0	0	\$147,535
Design of Grantee Improvements	0	0	0	0
Construction of Cost Shared Improvement	0	0	0	0
Construction of ANG Improvements	\$888,678	0	0	\$888,678
Construction of City Improvements	0	0	0	0
Construction Supervision	\$29,253	0	0	\$29,253
Totals	\$1,065,466	0	0	\$1,065,466