

**REQUEST FOR PROPOSALS (RFP)**  
**TO PROVIDE BANKING & CUSTODIAL SERVICES FOR THE**  
**Des Moines Airport Authority**

All proposals are due on or before 5:00 pm, August 30, 2023, and shall be valid for 120 days from the RFP due date.

One original and (2) copies of the proposal shall be submitted to the Director of Finance at:

Des Moines Airport Authority  
5800 Fleur Drive  
Des Moines, IA 50321  
Attn: Ni Wagner  
515-256-5012

Requests for clarification regarding this RFP are due to Ni Wagner at [nwagner@dsmairport.com](mailto:nwagner@dsmairport.com) no later than 3:00 p.m., August 17, 2023. Electronic answers to requests for clarification will be posted to the Authority's website at the address below no later than 5:00 pm on August 21, 2023.

<https://www.flydsm.com/airport-business/bid-procurement-rfps>

## **I. OBJECTIVE**

The Des Moines Airport Authority is seeking bids for banking and custodial services. The Authority currently conducts the majority of transactions online and expects to continue that practice.

## **II. BACKGROUND INFORMATION**

### **A. Main Accounts**

The Des Moines Airport Authority currently has one main checking account (the general operating account) and one zero-balance controlled disbursement account (accounts payable account). The general operating account is the main account to receive revenues and disburse payments. The zero balance account is used to disburse accounts payable checks. On a monthly basis, approximately 200 vendor checks are processed and approximately 100 ACH payments are originated. The Authority uses an armored car deliver service for deposits on a daily basis.

### **B. Parking Account**

The Authority currently has one deposit account for the parking operations. The deposits average \$1,300,000 per month between daily credit card ACH and cash deposits.

### **C. Food and Beverage Account**

The food and beverage operations at the Des Moines International Airport are operated through a management agreement. The revenue from all food and beverage sales will be deposited to an Authority deposit account. We anticipate one deposit from each of the seven restaurants each business day, as well as ACH payments from credit card transactions, totaling approximately \$750,000 per month.

### **D. Additional Accounts**

The Authority also maintains additional deposit accounts for

- Passenger Facility Charges (PFC). The PFC account averages \$400,000 in deposits each month with approximately 20 paper deposits and 10 ACH deposits.
- Staff Medical Benefit Account. Newly created expense checking account, unknown the number of transactions at this time.
- Municipal Contribution Account. Newly created revenue money market account, unknown the number of transactions at this time.

## **III. TERM OF CONTRACT**

The selected bank will be designated as the Authority's depository for a five-year period commencing October 1, 2023, with an option to renew the contract for one additional three-(3) year period by mutual agreement of both parties. Renewal terms require that sixty (60) days prior to the end of the original contract term, the bank must provide written notice of

the proposed pricing schedule for the option period, with any increases not to exceed the most recent month of May 12-months-over-12-months' change in the Consumer Price Index for All Urban Consumers (CPI-U) as published by the Bureau of Labor Statistics. The Authority will provide written notice of acceptance thirty (30) days prior to the expiration of contract term. In the event the Authority declines the three-year extension of this contract, services will continue with the original pricing schedule until the Authority obtains a new bank provider or for 60 days beyond the termination date (November 30, 2028), whichever occurs sooner.

#### **IV. TERMINATION OF CONTRACT**

The contract may be terminated by either party by giving the other party written notice of such intent not less than one hundred twenty (120) days prior to the effective date of termination. In the event of termination, claims for compensation shall be limited to verifiable services rendered.

#### **V. PROPOSER'S QUALIFICATIONS**

The Proposal shall provide the following information:

##### **A. Minimum Eligibility Requirements**

1. To be eligible to submit a proposal, a bank must provide evidence that it meets the following qualifications:
  - a) Be a federally or State of Iowa chartered bank.
  - b) Be federally insured.
  - c) In its capacity as a depository for Authority funds, provide collateral security of a form and in an amount consistent with Section 12C.22 of the Code of Iowa.

##### **B. Business Organization**

1. An overview of the banking services available at branch or headquarters that would serve as the primary facility for the Authority's account.
2. The names of the owner(s) of the bank, as well as the principal executive and account service team that would handle the Des Moines Airport Authority account.
3. Annual audited financial statements for the past two years, and your most recent SEC 10-Q quarterly report (or equivalent).
4. Indication of most recent bank ratings from independent rating agencies such as Standard and Poor's, Moody's and Bankrate.com.

### **C. Corporate Experience**

The proposal shall include an overview of the current client mix of the bank and any relevant public entity experience.

### **D. References**

1. References of at least two (2) clients for whom members of the Account Team (as identified in V.B.2. above) have worked continuously for a reasonable period including:
  - a) The name of the client.
  - b) The name, title, and telephone number of the primary person with whom the team member(s) works.

## **VII. INSTRUCTIONS FOR SUBMITTING PROPOSALS**

### **A. Proposal Format**

All proposals must respond clearly to the questions and information requested in Section X of this Request. The proposed pricing schedule (Appendix B) should be in the same format as provided in the RFP.

### **B. Proposer's Conditions**

Any conditions or expectations on the part of the proposer for performance by the Authority must be set forth in the proposal.

## **VIII. AWARD OF CONTRACT**

A Selection Committee will assess all proposals that meet the minimum eligibility requirements (described in Section V.A. above). The Selection Committee will score the proposals based on the categories listed in Section XI.B. below. The recommendation of the Evaluation and Selection Committee regarding the selection of the winning proposer will be submitted to the Authority Board for its consideration at the September 2023 Authority Board meeting.

### **A. Proposer Interviews**

The Authority may conduct interviews for responding banks if necessary. If conducted, interviews will be held at the office location of the proposer being interviewed.

### **B. Notification of Intent to Award**

The Authority will notify each responding bank by Notice of Intent to Award at least 5 days prior to the recommendation to the Authority Board.

### **C. Contract**

The successful Proposer shall enter into a contract with the Authority in substantially the form of the attached Sample Agreement (Appendix C). The contract shall include and be composed of the following documents:

- a) The Contract Document (sample agreement appended to RFP)

- b) The Authority's Request for Proposal (RFP)
- c) Clarifications to the RFP (addenda or otherwise)
- d) The successful Banking Services Proposal
- e) Bank specific agreements for specific services (i.e. Internet Banking, Wire Services)

In the event of any conflict or inconsistency between the Contract and the other documents comprising the Contract, the terms of the Contract Document shall be controlling to the extent that the Contract Document addresses the issue causing the conflict or inconsistency.

## **IX. TERMS AND CONDITIONS**

### **A. Additional Information**

The Authority reserves the right to request additional information, if necessary, for the evaluation of the proposals.

### **B. Proposal Guaranteed**

The proposal shall be firm for a period of one hundred and twenty (120) days to allow for a full evaluation of all proposals and to recommend an award deemed to be in the best interests of the Authority.

### **C. Promotional Material**

The proposal should not contain promotional or display materials.

### **D. Contract Amendment**

Any contractual changes shall be made in writing and shall be mutually agreed upon by both the Authority and the proposer, and are subject to Authority Board approval.

### **E. Tax-exempt Entity**

The Authority is a tax-exempt entity, and therefore, taxes are not to be included in a proposer's fee calculations.

### **G. Records Audit**

The successful proposer shall maintain such account records in connection with its performance of services for the Authority as are required by federal, state or local statute, and that may be reasonably required by the Authority. Such account records shall be kept for a period of three (3) years following the termination of the resulting contract, unless a longer period is required by a governing statute or generally-accepted guidelines. The successful proposer shall afford the Authority's agents and auditors reasonable facilities and access for the examination and audit of its records pertaining to its performance, and shall upon request, produce and exhibit all such records.

## **X. SCOPE OF SERVICES**

While the exact range and extent of services to be provided will be subject to contract negotiation, the Authority anticipates that the selected bank shall provide, at a minimum, professional services and dedicated personnel necessary to perform the following services.

The proposal shall describe in detail how the proposer intends to accomplish each of the services required below:

## **A. Bank Services**

1. **Controlled Disbursement:** The Authority requires one controlled disbursement account for vendor checks. This zero-balance account is funded by the Authority's general account as checks are cleared by the bank. The Authority will expect online notification of checks clearing the accounts by approximately 8 AM each business day. Please address the following:
  - a) Describe your controlled disbursement options.
  - b) What controlled disbursement funding options are offered?
  - c) How and when would the Authority be able to access daily clearings?
2. **Returned Check Processing:** The Authority requires that all items returned for insufficient funds are presented for payment a second time. The Authority averages one return item per month.
  - a) Describe your NSF check collection options.
3. **Wire Transfer Services:** The Authority requires that the bank handle requests for wire transfers in an expeditious manner, regardless of whether the request is by telephone or via online access. The Authority prefers to utilize an electronic system (internet) to initiate wire transfers. Please address the following:
  - a) Describe your internet-based wire transfer service, including repetitive and non-repetitive wires. If not available, describe alternatives.
  - b) Describe the administrative controls on the wire process (i.e. dual authorization, authentication procedures).
  - c) Explain the posting procedures (timeline) for incoming wires.
4. **Automated Clearing House (ACH) Transactions:** The successful proposer must have and maintain ACH originating bank capabilities. Please address the following:
  - a) Describe the process and formats required to complete electronic upload of ACH files.
  - b) What options do you offer for providing payment details with an ACH payment?
  - c) Describe your ACH blocking/filtering services.
  - d) Other pertinent information.
5. **Availability of Funds:** The Authority requires that any deposit reaching the bank at or before 4 PM receive credit on that day's business. Please address the following:
  - a) Please provide a current corporate availability schedule.
  - b) What is your normal ledger cut-off for posting deposited items?
  - c) What are times and locations where a final daily deposit will be accepted?
  - d) Other pertinent information.

6. **Stop Payments:** The Authority desires the ability to initiate on-line stop payments through the internet, as well as immediate acknowledgment that the stop payment was accepted by the bank's system. Are you able to accommodate this?
7. **Balance Information and Reporting:** The Authority strongly prefers the ability to obtain previous day balances via online access by 8 AM each business day. Ledger balance, available balance, and collected balance are needed. Please address the following:
- a) Describe your online balance reporting system. What are its features?
  - b) What hardware and software are needed to access the electronic reporting system?
  - c) Are detail reports available for current day activity as well as previous day activity? At what time is current day activity available? During what hours can customers access daily balance reporting information from the internet?
8. **Account Reconciliation and Monthly Statements:** The Authority requires the ability to download account activity based on date criteria. Please address the following:
- a) Is download of account activity available through your website? In what formats can the data be downloaded?
  - b) When are monthly statements available on the website following the bank's month end processing?
9. **Account Analysis:** The cut-off date for statement purposes for Authority bank accounts will be the last banking business day of each month.
- a) What is the normal delivery date for the bank fee analysis?
- All fees agreed to as part of this bid will be billed on a monthly itemized statement.
10. **Imaging:** The Authority currently has images made of paid checks that are placed on a CD-ROM. Any additional information that the financial institution wishes to share regarding imaging capabilities may be included in a narrative response within this section.
11. **Fraud Protection:** The Authority currently utilizes a positive pay system as a protection against fraud.
- a) Please describe your fraud protection options.
  - b) What positive pay options exist for ACH and paper checks? What format is required for uploading a positive pay file?

## **B. Optional Services**

The Authority is interested in receiving cost and other information for additional services. These services are listed below, but are optional. The Authority may elect to use a different provider for these services but requests separate pricing information for the following option:

1. **Corporate Credit Cards**: The Authority currently issues seven corporate credit cards to Authority personnel.
  - a) Please describe the costs associated with issuing credit cards as well as the features of your bank's credit cards.
  - b) Credit card balances will be paid on a monthly basis when due. Please provide any other pertinent information on credit cards.

## **C. Other Required Information**

In addition to the above, the Authority requires the following information:

1. What interest rate will be paid on deposits during the agreement? (Express as a percentage of federal funds rate)
2. Describe your online security features:
  - a) Available user authentication – including recognition of IP address.
  - b) Secure sign-on features.
  - c) Controls on ACH and wire activity.
  - d) Method of notification if there is a suspected problem with any account.



## **XI. EVALUATION OF PROPOSALS**

### **A. Evaluation Process**

Proposals will be evaluated based on the categories noted below. If interviews are necessary, the Authority will use the categories below to choose the banks to be interviewed, and then the Authority will select a bank from those interviewed based on the criteria listed below and any additional questions which may be asked during the interview.

### **B. Evaluation Categories and Point Allocation**

<u>Evaluation Category</u>	<u>Weight</u>
The score will be made up of the following:	
1) Availability and quality of services meeting the needs of the Authority as listed under Scope of Services, and as verified by record of performance on similar contracts	30
2) Pricing as shown on Pricing Schedule (Appendix B)	10
The maximum number of points will be awarded to the proposal with the lowest cost. Points assigned to other proposals will be on a proportional basis according to the following formula:	
Proposal A: \$18,000 = 10 points	
Proposal B: \$20,000 = 9 points	
Low Cost Proposal A/Proposal B X 10 = points awarded	
\$18,000/\$20,000 X 10 = 9 points	
4) Bank stability (financial and organizational)	15
5) Technology/Innovation	25
6) Costs of conversion and implementation	<u>20</u>
<b>TOTAL POINTS POSSIBLE</b>	<b>100</b>

## **XII. PAYMENT OF BANK FEES**

Fees will be paid by the Authority by automatic withdrawal from the General Operating account.

### **XIII. SCHEDULE OF EVENTS**

Issuance of Request for Proposal .....	August 11, 2023
Written Questions .....	3:00pm, August 17, 2023
Adendum with Answers to Proposal Questions.....	5:00pm, August 21, 2023
Proposals Due.....	5:00 pm, August 28, 2023
Notice of Intent to Award.....	September 1, 2023
Contract Execution by Authority Board .....	September 12, 2023

\*\*\*Dates are subject to modification

## **APPENDIX A.**

### **STANDARD PROVISIONS AND REQUIREMENTS FOR REQUESTS FOR PROPOSALS (RFPs)**

#### **1. Proposal Must Be Signed by Proposer or Its Officer or Designated Agent**

A proposal submitted in response to the Authority's Request for Proposals shall be signed by the proposer if an individual, or by an officer of the proposing firm, or by a designated agent empowered to bind the firm in a contract.

#### **2. Partnership and Joint Venture Proposals; Use of Corporate Name or Fictitious Corporate Name.**

(a) If a proposal is submitted by two or more persons acting as a partnership, the names of the persons appearing on the proposal must be followed by the notation -- "a partnership", or words of similar import.

(b) If a proposal is submitted by two or more persons or corporate entities as a joint venture, the names of the persons or entities appearing on the proposal must be followed by the notation -- "a joint venture". In that instance, the proposal must also be signed by all such persons and/or the authorized agents of all such entities, and the proposal bond or fidelity bond, if any is required, must cover the joint venture. Joint venture proposals shall identify which person or firm will act as lead person of firm.

(c) A proposal submitted by two or more persons or corporate entities without any indication that they are submitting it as a joint venture, without being signed by all such persons and/or the authorized representatives of all such entities, and without a proposal bond or fidelity bond covering all such persons or entities as a joint venture, will be subject to rejection.

(d) In submitting a proposal and in entering into a contract in response to an RFP, a corporate entity may use its fictitious corporate name in addition to its legal corporate name, if the fictitious name is appropriately registered with the Iowa Secretary of State. Proposers are advised to exercise care in the use of any fictitious name for their firms.

#### **3. Collusion Prohibited - Affidavit Required.**

Any agreement or collusion among proposers or prospective proposers, in restraint of freedom of competition by agreement to propose a fixed price or otherwise shall render the proposals of such proposers void. Proposers will be required to execute and submit with their proposals a Non-Collusion Affidavit in the form appended hereto as Attachment 1. Any disclosure by one proposer to another proposer of the content of a proposal in advance of the submission of proposals shall render the proposals of both such proposers void, and may at the discretion of the Procurement Administrator render the RFP proceedings void.

#### **4. Gratuities Prohibited.**

(a) The laws of Iowa provide that it is a felony to offer, promise, or give any thing of value or benefit to government employees with the intent to influence that employee's acts, opinion,

judgment or exercise of discretion with respect to that employee's duties. Evidence of violations of this clause will be turned over to the appropriate law enforcement agency.

(b) The Des Moines Airport Authority provides reimbursement for transportation lodging, meals and miscellaneous expense for its employees incurred while on duty and engaged in the preparation or evaluation of RFPs.

#### **5. Proposals Not Confidential; Proposer Requests for Confidentiality Under Iowa Open Records Law, Chapter 22 of Iowa Code; Disclosure of Proposal Content.**

Under Chapter 22 of the Iowa Code, "Examination of Public Records", all records of a governmental body are presumed to be public records, open to inspection by members of the public. Section 22.7 of the Iowa Code sets forth a number of exceptions to that general rule, establishing several categories of "confidential records". Under this provision, confidential records are to be kept confidential, "unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information". Among the public records which are considered confidential under this Iowa Code provision are the following:

3. Trade secrets which are recognized and protected as such by law.
6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

Under Chapter 22 of the Iowa Code, the Authority, as custodian of the proposal submitted in response to a Request for Proposals, may, but is not required, to keep portions of such proposals confidential under exceptions 22.7(3) and 22.7(6) noted above. If a responding individual or company determines that a portion or portions of its proposal constitute a trade secret, or should otherwise be kept confidential to avoid giving advantage to competitors, **a confidentiality request may be submitted with the proposal** identifying which portion or portions of the proposal or bid should be kept confidential and why. The burden will be on each individual proposer to make such confidentiality request and to justify application of a confidentiality exception to its proposal. The Authority will not under any circumstance consider the entire proposal to be a confidential record.

If a request is thereafter made by a member of the public to examine a proposal including the portion or portions thereof for which a confidentiality request has been made, the Authority will so notify the proposer and will keep confidential that portion of the proposal covered by the confidentiality request, pending action by the proposer requesting confidentiality to defend its request. In that notification, the proposer requesting confidentiality will be given not more than 5 calendar days within which to file suit in Polk County District Court seeking the entry of a declaratory order and/or injunction to protect and keep confidential such portion of its proposal. Absent such action by a proposer requesting confidentiality, and absent the entry of a court order declaring such portion or portions of the proposal confidential, the entire proposal will be released for public examination.

If the process for selecting the best proposal includes two or more evaluation stages, in which proposals are evaluated at each stage and the field of competing proposals is reduced, all proposals submitted shall be kept confidential, pursuant to Section 22.7(6) of the Iowa Code, cited above, until completion of the final stage of the evaluation process in order to avoid giving advantage to competing proposers. Upon completion of the final stage in the evaluation process, all competing

proposals shall be subject to disclosure, if not otherwise determined confidential as above provided.

#### **6. Proposers to Provide Evidence of Ability to Obtain Insurance.**

Each proposer shall be required to provide evidence satisfactory to the Authority that it can obtain the required insurance coverages. For this purpose, each proposer shall submit with its proposal the certification form appended to this RFP as Attachment 2, in which the proposer's insurance agent will be required to certify that the proposer can obtain the required insurance coverages. Failure to submit the required certification form shall be considered in the evaluation of the proposal.

#### **7. Rejection Of Proposals.**

The Authority reserves the right to reject any or all proposals in whole or in part received in response to the RFP. The Authority will not pay for any information requested in the RFP, nor is it liable for any cost incurred by a proposer in responding to the RFP.

#### **8. Formation of Contract.**

- A. The successful Proposer shall enter into a contract with the Authority in substantially the form of the attached Sample Agreement.
- B. Upon the Authority's approval of the evidence of insurance submitted by the successful Proposer (if required by the RFP), and upon the Authority's legal representative's review of the form of contract executed by the Proposer, and of the performance bond submitted by the Proposer (if required by the RFP), the Authority Board Chairperson will execute the contract as directed by the Authority Board.

#### **9. Proposal Obligations.**

The contents of this RFP, of a proposal submitted in response thereto, and of the Authority's official response to a question, objection, or request for clarification or interpretation regarding the RFP, and of any exception to the RFP submitted by the successful proposer and accepted by the Authority, shall become part of the contractual obligation and shall be deemed incorporated by reference into the ensuing contract.

#### **10. Disposition of Proposals.**

All proposals submitted in response to the RFP become the property of the Authority and will not be returned.

#### **11. Assignment of Contract Prohibited Unless Approved in Writing by the Authority.**

No contract awarded pursuant to RFP is assignable without the written consent of the Authority.

#### **12. Title VI Solicitation Notice**

The Des Moines Airport Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the

Regulations, hereby notifies all proposers that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

**13. Attachments**

- (a) Attachment 1: Non-Collusion Affidavit
- (b) Attachment 2: Certification of Proposer's Insurance Agent Regarding Proposer's Ability to Obtain Required Insurance Coverages.

**ATTACHMENT 1**  
**NON-COLLUSION AFFIDAVIT**

The Proposer hereby certifies:

1. That this proposal is not affected by, contingent on, or dependent on any other proposal submitted for any improvement in the Des Moines Airport Authority; and
2. That no individual employed by the Proposer was paid or will be paid by any person, corporation, firm, association, or other organization for soliciting the bid, other than the payment of their normal compensation to persons regularly employed by the Proposer whose services in connection with the making of this proposal were in the regular course of their duties for the Proposer; and
3. That no part of the compensation to be received by the Proposer was paid or will be paid to any person, corporation, firm, association, or other organization for soliciting the bid, other than the payment of their normal compensation to persons regularly employed by the Proposer whose services in connection with the making of this proposal were in the regular course of their duties for the Proposer; and
4. That this proposal is genuine and not collusive or sham; that the Proposer has not colluded, conspired, connived or agreed, directly or indirectly, with any other proposer or person, to put in a sham proposal or to refrain from making a proposal, and has not in any manner, directly or indirectly, sought, by agreement or collusion, or communication or conference, with any person, to fix the proposal price of Proposer or of any other Proposer, or to otherwise restrain freedom of competition, and that all statements in this proposal are true; and
5. That the individual(s) executing this proposal have the authority to execute this proposal on behalf of the Proposer.

\_\_\_\_\_  
Proposer

\_\_\_\_\_  
Signature

By \_\_\_\_\_  
Name (Print/Type)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

## ATTACHMENT 2

### **CERTIFICATION OF PROPOSER'S INSURANCE AGENT REGARDING PROPOSER'S ABILITY TO OBTAIN REQUIRED INSURANCE COVERAGE**

I hereby certify that my client, as identified below, will be able to meet all of the insurance requirements of Attachment 2, has been advised of any additional costs associated with doing so, and has agreed to obtain such coverages if selected as the successful proposer of the RFP to which my client has responded:

Legal Name of Proposer:

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Name/Address/Phone/FAX # of Insurance Agency:

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Phone \_\_\_\_\_ FAX \_\_\_\_\_

Name of Agent/Broker (Print):

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Signature of Agent/Broker:

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Date of Signature: \_\_\_\_\_

Signature and stamp of Notary Republic

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## APPENDIX B

### BANK PRICING SCHEDULE

SERVICE	AVERAGE MONTHLY USAGE	UNIT COST	TOTAL COST
Account Maintenance	8		
Statements	8		
ACH Credits	114		
Checks Paid	150		
Miscellaneous Debits	11		
ACH Debits Received	20		
Deposited Items	213		
Deposited Items-Out of State			
Foreign Items Deposited			
Wire Transfer In	1		
Wire Transfer Out - Non-Repetitive	3		
Vault Services:			
Currency Orders - Full Strap	32		
ACH File Upload	8		
ACH Items Dr & Cr Originated	100		
ACH Reports - Fax or Email	1		
Online Services			
Balance/Transaction Reporting - all accts	1		
Images Viewed	10		
Stop Payments	1		
Wire Transfer Module Fee			
Transfers	5		
Credit Cards:			
Authority Held corporate credit card	7 accts		
Fee for corporate credit cards			
Additional Required Fees			
Please list fee and unit cost			

All fees charged by winning proposer must be listed here to be considered part of the service agreement and bank's compensation for services.

## APPENDIX C

### AGREEMENT FOR BANKING AND CUSTODIAL SERVICES FOR THE DES MOINES AIRPORT AUTHORITY

1. Agreement. This Agreement is made by and between the Des Moines Airport Authority (“Authority”) and \_\_\_\_ (“Bank”). Pursuant to this Agreement, Bank shall provide banking and custodial services for the Authority. The documents making up this entire Agreement between these parties shall include the following:

- A. The Des Moines Airport Authority’s August 11, 2023 Request for Proposals (“RFP”).
- B. Clarifications to the Request for Proposals set out in Addendum #1 dated \_\_\_\_.
- C. Bank’s Des Moines Airport Authority RFP Response, including all commitments, representations and responses contained therein.

In the event of any conflict or inconsistency between any of the incorporated documents set out above, all such documents shall be reviewed, and the parties agree, that documents providing the highest degree of clarification on the particular issue in question shall be controlling. The terms of this Agreement shall control in the event of a conflict or inconsistency between this Agreement and any of the incorporated documents set out above to the extent this Agreement addresses the issue causing the conflict or inconsistency.

2. Independent Contractor. Bank and all Bank employees and agents will be independent contractors and not employees of the Authority. Bank is responsible for all withholding taxes, social security, unemployment, worker's compensation and other taxes and shall hold the Authority harmless for any claim for the same.

3. Compliance with Professional Standards. Bank shall perform all services required by this Agreement in accordance with the applicable professional standards. Except as otherwise explicitly noted in this Agreement, nothing herein contained, however, shall be construed to protect Bank against any liability to the Bank by reason of Bank’s failure to comply with federal or state law, rule, or regulation or any misfeasance, bad faith or negligence in the performance of its obligations and duties under this Agreement, nor shall anything herein contained constitute a waiver or limitation on any rights which the Authority may have. In no event will Bank be liable for the negligent acts or omissions of the Authority, its employees, contractors or vendors.

4. Term, Fees Option Term. The term of this Agreement, including the above listed incorporated documents, shall be from October 1, 2013 until September 30, 2028, with an option to renew for one additional three (3) year term by mutual agreement of the parties and consistent with the procedure outlined in Section III of the Request for Proposals document. The fees for the banking services performed by Bank during the term of the Agreement are set forth in the commercial banking service fee schedule contained in Bank’s Proposal incorporated herein.

5. Early Termination. This Agreement may be terminated without penalty by a party giving the other party written notice of such intent not less than one hundred twenty (120) days prior to the effective date of termination. If, at any time, the Authority determines that the services provided under any incorporated agreement are not needed or otherwise desired, the Authority shall have the right to terminate such incorporated agreement without penalty and without impacting the validity of the other incorporated agreements by giving thirty (30) days written notice. Any party shall have the right to terminate this Agreement or any of the incorporated agreements in the event of a default by another party provided that a twenty (20) day notice to cure is given to such defaulting party and such default is not remedied within such notice period. In the event of termination, claims for compensation will be limited to verifiable services rendered.

6. Sensitive Security Information. Bank, with respect to Sensitive Security Information (SSI), as defined in 49 CFR § 1520, that it has received or receives during the performance of services, shall:

A. Safeguard those documents, and the information contained in them, from disclosure by keeping the documents under the control of authorized persons only and storing the documents in a secure container, such as a locked desk, file cabinet or locked room when not in use;

B. Not release those documents, or the information contained in them, to any party, company, person, organization or entity for any reason that does not directly serve the Bank's obligations to the Authority under this Agreement as determined by Bank's employee with appropriate supervisory and decision-making authority;

C. Not release those documents, or the information contained in them, in response to a request under the Iowa Open Records Act or the Federal Freedom of Information Act without affording the Authority the opportunity under those laws to protect those documents from disclosure;

D. Timely notify the Authority if a request is made for those documents or the information contained in them;

E. Return, or destroy, at the option of the Authority, those documents immediately following the completion of the agreed upon services;

F. Comply with federal regulations in handling SSI;

G. Within 20 days of the completion of contract performance, provide the Authority with a listing of all SSI material received, returned and destroyed.

Bank acknowledges that the Authority has the right to seek all appropriate legal remedies for any violation of the foregoing.

7. Insurance Requirements.

7.1. General. Bank shall purchase and maintain insurance to protect Bank and Authority throughout the duration of this Agreement. All policies shall be written on a per occurrence basis and not a claims-made basis unless otherwise approved by Authority. All policies shall be written in form and amounts and with companies satisfactory to Authority. Certificates of Insurance confirming adequate insurance coverage shall be submitted to Authority prior to agreement execution or commencement of work and/or services.

7.2 Insurance Requirements

A. Commercial General Liability Insurance. Bank shall procure and maintain during the term of this Agreement, Commercial General Liability Insurance on a per occurrence basis with limits of liability not less than \$2,000,000 per occurrence and \$4,000,000 aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following: (1) Contractual Liability; (2) Premises and Operations; (3) Products and Completed Operations; (4) Independent Contractors Coverage; (5) Personal and Advertising Injury; and (6) deletion of Explosion, Collapse and Underground (XCU), where applicable. Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001, Ed 07/98) with standard exclusions "a" through "o" or an equivalent acceptable to Authority. The policy shall be endorsed to provide an Aggregate Per Location Endorsement.

B. Umbrella/Excess Insurance. The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis unless otherwise approved by Authority and shall include the same endorsements as required of the primary policy(-ies).

C. Insurance for Other Losses. The Bank shall assume during the life of this Agreement, full responsibility for all loss or damage from any cause whatsoever to any property brought onto Authority property that is owned or rented by the Bank, or any of the Bank's employees, agents, subcontractors, suppliers or their employees, to the extent that such property is utilized in carrying out the provisions of this Agreement. The Bank shall cause its insurance carrier(s) providing physical damage insurance to the Bank to provide a Waiver of Right of Subrogation against the Authority of Des Moines, Iowa.

D. Crime Insurance. Bank shall procure and maintain during the life of this Contract Crime Insurance on an occurrence basis covering Employee Dishonesty for each loss at a limit of not less than \$50,000. The insurance carrier shall be liable for direct losses of money, securities, and other property of Authority caused by theft or forgery by any employee of Bank acting alone or in collusion with others who are not employees of Bank, in addition, the insurance shall include coverage for theft, disappearance and destruction at a limit of not less than \$5,000 for loss inside premises and \$5,000 for loss outside of premises. Theft shall mean the unlawful taking of money, securities or other property to the deprivation of Authority. The above are the minimum Crime Insurance requirements

to be maintained; however, these limits may be adjusted at Authority's discretion subject to changes in the total value of delinquent accounts provided to the Bank annually. Authority's third-party interest shall be covered through the inclusion of a "joint loss payee" endorsement. Bank agrees to: (1) submit claims on behalf of Authority to recover applicable Authority losses, and (2) ensure that Authority receives payment for those losses.

E. Errors & Omissions/Professional Liability Insurance. Bank shall procure and maintain during the life of this Contract Errors & Omissions/Professional Liability Insurance in an amount not less than \$5,000,000 per claim and annual aggregate, covering all acts, errors, omissions, and negligence in the performance of services for Authority or on behalf of Authority hereunder. Such insurance shall be maintained in force at all times during the term of the agreement and for a period of 2 years thereafter for services completed during the term of the agreement.

F. Subcontractors. Except for Crime Insurance and the Authority's Additional Insured, Governmental Immunities and Cancellation and Material Change Endorsements, the Bank shall require that any of its agents and subcontractors who perform work and/or services pursuant to the provisions of this Agreement meet the same insurance requirements as are required of Bank.

G. Additional Insured and Governmental Immunity. The insurance policies providing the coverage specified in Paragraphs A, B, C, D, and E above shall include Authority's Additional Insured and Governmental Immunities Endorsements attached as part of Exhibit A. Authority shall have no liability for any premiums charged for such coverage, and the inclusion of Authority as an Additional Insured is not intended to, and shall not make, Authority a partner or joint venturer with Bank in its operations on behalf of the Airport.

H. Cancellation or Material Change Notice. The insurance policies providing the coverages specified in Paragraphs A through G above shall include Authority's Cancellation Notice Endorsement. A copy of the required endorsement is attached as part of Exhibit A.

I. Proof of Insurance. Bank shall provide to Authority a Certificate or Certificates of Insurance evidencing all required insurance coverage as provided in Paragraphs A through F and H and I above utilizing the latest version of the ACORD form or other such form that is acceptable to Authority. The Certificate(s) of Insurance shall specify under "Description of Operations/ Locations/ Vehicle/Special Items": (1) the title of the Agreement, and (2) the following statement: "Authority's Additional Insured, Government Immunities and Cancellation/Material Change endorsements have been included per attached." Authority's endorsement language shall be attached as a supplement to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required. Bank may not operate under the terms of the Agreement until all required certificates and endorsements have been submitted and approved by Authority. All certificates and endorsements shall be submitted to: Executive Director, Des Moines International Airport, 5800 Fleur Drive, Suite 201, Des Moines, Iowa, 50321, at least 14

days prior to the effective date of the Agreement.

J. Changes in Coverage Limits. If during the term of this Agreement, the Executive Director, in consultation with Authority's Risk Management Office, determines that the limits of coverage are insufficient, Authority shall provide Bank with 60 days written notice of any required changes. Bank shall submit to the Executive Director new Certificate(s) of Insurance indicating that the required changes have been effected. Said certificates shall be submitted to the Executive Director prior to the expiration of the 60 day notification period.

### 7.3 Indemnification (Hold Harmless) Provision

A. Bank shall defend, indemnify, and hold harmless the Authority, its Board, officers, agents, and employees from and against any and all liabilities, damages, losses, claims, actions, or proceedings, including, without limitation, reasonable attorneys' fees that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Bank or the employees or agents of the Bank in the performance of this contract. The Authority shall give the Bank reasonable notice of any such claims or actions. The Bank shall also use counsel reasonably acceptable to the Authority in carrying out its obligations. Indemnity requirements shall survive the expiration or early termination of this agreement. Acceptance of the Bank's services by the Authority shall not operate as a waiver of the rights granted the Authority herein.

## 8. General Provisions.

8.1 Rules, Regulations, and Policies. Bank shall observe and obey all rules, regulations, and policies that the Authority may adopt, from time to time, with respect to the use of the Airport. Bank shall not violate and shall not knowingly permit its agents, contractors, invitees or employees acting on Bank's behalf to violate any such rules, regulations, or policies.

8.2 Compliance with Law. Bank shall comply, at all times, at its own cost and expense, with all applicable ordinances and laws of city, county and state government and of the United States Government, and of any political division, subdivision, agency, authority or commission that has jurisdiction to pass laws or ordinances with respect to the Airport or to the uses permitted in this Agreement.

8.3 Reservation of Rights. Any and all rights and privileges not expressly granted to Bank by this Agreement are hereby reserved for and to Authority.

8.4 Successors and Assigns Bound by Covenant. All the terms, covenants, and agreements herein contained will be binding upon and shall inure to the benefit of successors, permitted assigns, and legal representatives of the respective parties hereto.

8.5 Governing Law, Forum and Disputes. This Agreement and all claims or disputes arising out of or relating to this Agreement or its subject matter are governed by the laws of the State of Iowa, without regard to its conflict of laws provisions, and any action, claim or proceeding arising out of or relating to this Agreement must be brought only in the Iowa District Court for

Polk County, Iowa or the United States District Court for the Southern District of Iowa, Central Division. Each party hereby waives any objection, including any objection based upon improper venue or *forum non conveniens*, that it may have, now or in the future, to the bringing of any action, claim or proceeding in the Iowa District Court for Polk County, Iowa or the United States District Court for the Southern District of Iowa, Central Division.

8.6 Nonwaiver of Rights. No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party will be construed as, or operate as, a waiver of the terms, covenants, or conditions unless expressly agreed to by the party in writing, and any such waiver shall not operate as a waiver of any other terms, covenants, and conditions herein contained or any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

8.7 Severability. If one or more clauses, sections, or provisions of this Agreement, or the application thereof, shall be held to be unlawful, invalid, or unenforceable, then such clauses, sections, and provisions shall be construed in a manner to best effectuate the intent of the parties and be lawful, valid, and enforceable, and the remainder of this Agreement and the application of its remaining provisions will not be affected thereby.

8.8 Force Majeure. Neither Bank nor Authority will be liable for delays in performance caused by acts of God or government regulatory authority, war, riot, sabotage, storm, flood, inclement weather, strike or work stoppage, or other cause beyond the control of Bank or Authority. However, this provision does not excuse Bank from paying those fees set forth in the Rules and Regulations, nor does it excuse compliance with Section 10.12, Taxes and Assessments.

8.9 Entire Agreement. This Agreement, together with all exhibits and attachments, constitutes the entire agreement between the parties, and all prior representations, promises or statements, verbal or written, are merged in this Agreement. This Agreement supersedes and cancels any and all previous agreements and understandings on its subject matter between Bank and Authority.

8.10 Amendments. Any and all changes or amendments to this Agreement must be in writing and duly executed by all parties.

8.11 Licenses and Permits. Bank shall obtain and/or maintain all applicable licenses and permits required by federal, state, or local law.

8.12 Taxes and Assessments. Bank shall be fully responsible for payment of any and all taxes, assessments, and charges levied against any taxable interest of Bank acquired in this Agreement from and after the date of this Agreement. Bank shall pay all such taxes, assessments and charges as the same become due and payable. Such taxes, assessments and charges shall not be included in operating expenses. Upon request, Bank shall deliver to Authority duplicate receipted tax statements showing such taxes, assessments and charges as having been paid prior to delinquency. Taxes for the fiscal year in which this Agreement is terminated shall be paid upon such termination in a prorated amount equal to one-twelfth of the taxes due and payable for the preceding fiscal year multiplied by the number of months in the fiscal year of such termination which elapsed prior to and including the month of such termination.

8.13 Right to Amend. In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of Airport, Bank agrees to consent to such amendments, modifications, revisions, supplements or deletions or any of the terms, conditions, or requirements of this Agreement as may be required to obtain such funds.

8.14 War or National Emergency. During the time of war or national emergency, Authority shall have the right to lease the landing area of the Airport or any part thereof to the United States Government for military or naval use, and, if such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the Government shall be suspended.

8.15 Subordination to Bond Ordinance.

A. This Agreement is made subject and subordinate to any Airport Bond Resolution enacted by Authority, whether enacted prior to or as of the time of execution of this Agreement or thereafter.

B. In the event of conflicts between this Agreement and the Bond Resolution, the Bond Resolution shall govern.

C. It is mutually understood and agreed that, so long as any bonds secured by a Bond Resolution are outstanding, the deposit and application of Airport revenues shall be governed by the Bond Resolution.

8.16 Agreement Construction. Words and phrases used in this Agreement are to be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, and as disjunctive or conjunctive, according to the context. Any rule to the effect that ambiguities are to be resolved against the drafting party will not apply to the interpretation of this Agreement or any amendments or exhibits.

8.17 Representations of Parties. Authority and Bank represent that each has the full power and proper authority to make and execute this Agreement, to exercise its rights, powers and privileges as described herein, and to perform the agreements and covenants set forth herein. Bank further warrants that it has the authority to enter into and be bound by the terms of this Agreement and no order of any bankruptcy or other court, and no agreement with others, prohibits or limits such authority.

8.18 No Third Party Beneficiaries. This Agreement is for the benefit of Bank and the Authority only. This Agreement shall not create any rights in any person not a party to this Agreement.



#### 8.19 Notices.

A. Notices required herein must be given by registered or certified mail, return receipt requested, by depositing the same in the United States mail in the United States, postage prepaid, or by certified overnight delivery via a commercial carrier. Either party has the right, by giving written notice to the other in accordance with this Section 10.21, to change the address at which its notices are to be received. Until any change is made, notices are to be delivered as follows:

Authority:  
Executive Director  
Des Moines Airport Authority  
5800 Fleur Drive, Room 207  
Des Moines, Iowa 50321-2854  
Telephone: (515) 256-5100

Bank:

B. Any notice given by registered or certified mail, return receipt requested, or by overnight delivery will be effective upon receipt by the addressee as shown on the mail or delivery receipt. If notice is given in any other manner or at any other place, it must also be given at the place and in the manner specified above.

8.20 Rights and Remedies Cumulative. The various rights, powers, options, elections and remedies of either party provided in this Agreement shall be construed as cumulative and no one of them as exclusive of the others, or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

8.21 Certification. Bank certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Bank hereby agrees to defend, indemnify and hold harmless Authority from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

8.22 Survival. The representations, warranties, and indemnities contained in this Agreement shall survive the termination or expiration of this Agreement. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

8.23 No Assignment. Bank shall not assign any of its rights or delegate any of its duties or obligations under this Agreement without the express written consent of the Authority.

8.24 **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

9. Attachments.

- A. Exhibit A: Insurance Endorsements
- B. Exhibit B: Mandatory FAA Contract Provisions

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of \_\_\_\_\_, 2023.

ATTEST:

DES MOINES AIRPORT AUTHORITY

\_\_\_\_\_  
Mary Benson  
Board Clerk

\_\_\_\_\_  
Ni Wagner  
Director of Finance

ATTEST:

BANK

By:\_\_\_\_\_

**EXHIBIT A**  
**INSURANCE ENDORSEMENTS**

**DES MOINES AIRPORT AUTHORITY**  
**CANCELLATION AND MATERIAL CHANGES ENDORSEMENT**

Thirty days Advance Written Notice of Cancellation, Non-Renewal, Reduction in insurance coverage and/or limits and 10 days written notice of non-payment of premium shall be sent to: Contracts Manager, Des Moines Airport Authority, 5800 Fleur Drive, Suite 207, Des Moines, Iowa 50321. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.

**DES MOINES AIRPORT AUTHORITY**  
**ADDITIONAL INSURED ENDORSEMENT**

The Des Moines Airport Authority, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees, and volunteers, are included as Additional Insureds with respect to liability arising out of Operator's operations on or use of the Airport. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess.

**DES MOINES AIRPORT AUTHORITY**  
**GOVERNMENTAL IMMUNITIES ENDORSEMENT**

1. Non-Waiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the Des Moines Airport Authority as an Additional Insured does not waive any of the defenses of governmental immunity available to the Des Moines Airport Authority under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
3. Assertion of Government Immunity. The Des Moines Airport Authority shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the Des Moines Airport Authority.

4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the Des Moines Airport Authority under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the Des Moines Airport Authority.

5. No Other Change in Policy. The insurance carrier and the Des Moines Airport Authority agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

**EXHIBIT B**  
**MANDATORY FAA CONTRACT PROVISIONS**

**1.0 Compliance with Nondiscrimination Requirements**

During the performance of this Agreement, Tenant, for itself, its assignees, and successors in interest agrees as follows:

- A. Compliance with Regulations: Tenant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
- B. Non-discrimination: Tenant, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by Tenant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Tenant of Tenant's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
- D. Information and Reports: Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Tenant will so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of Tenant's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - 1. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - 2. Cancelling, terminating, or suspending a contract, in whole or in part.

- F. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## 2.0 Use of Real Property Acquired Under FAA Programs

Tenant for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the List of Discrimination Acts And Authorities.

With respect to this Agreement, in the event of breach of any of the above nondiscrimination covenants, the Authority will have the right to terminate the Agreement and to enter or re-enter and repossess said land and the facilities thereon and hold the same as if said Agreement had never been made or issued.

## 3.0 Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;

- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The FAA’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

#### 4.0 Subordination to Agreements

This Agreement is subject and subordinate to the provisions of any existing or future agreements between Authority and the United States or the State of Iowa relative to the operation, maintenance, development, or administration of the Airport, the execution of which is or has been required as a condition precedent to the transfer of Federal rights or property to Authority for Airport purposes, or to the expenditure of Federal or State of Iowa funds or passenger facility charges for the improvement or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as the act may be amended from time to time. Tenant shall abide by requirements of agreements entered into between Authority and the United States and shall also consent to amendments and modifications of this Agreement if required by any such agreements or if required as a condition of Authority's entry into such agreements.

## 5.0 Inclusion of Discrimination Provision in Tenant Agreements

Tenant agrees to include the above Sections 1.0 and 2.0 in any subsequent agreements, relating to its operations at the Des Moines International Airport, that it enters into and cause those businesses to similarly include the statements in further agreements.