

**CONTRACT AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND
AUSTIN COMMERCIAL, L.P.
FOR THE
TERMINAL CORES AND APM INTERFACE PROJECT
AT LOS ANGELES INTERNATIONAL AIRPORT**

THIS CONTRACT, made and entered into this _____ day of _____, 2018 (hereinafter referred to as "Contract Effective Date"), by and between the CITY OF LOS ANGELES (hereinafter referred to as "City"), a municipal corporation, acting by order of and through its Board of Airport Commissioners (hereinafter referred to as "Board"), and AUSTIN COMMERCIAL, L.P. (hereinafter referred to as "Contractor"),

RECITALS

WHEREAS, City's Department of Airports, by action of the Board; approved and authorized the issuance of a "Request For Proposals" for the construction of the project entitled "Terminal Cores and APM Interface Project" (hereinafter referred to as "Project") at Los Angeles International Airport (hereinafter referred to as "Airport"); and

WHEREAS the City of Los Angeles' (City) Department of Airports known as Los Angeles World Airports (LAWA) is responsible for the management and administration of this Contract, and

WHEREAS, in response to said Request For Proposals and said Project Specifications thereto, Contractor was determined to be the proposer with the lowest ultimate cost to the City for the Project; and

WHEREAS, Contractor is engaged in the business of providing Design/Build services of the type sought by LAWA; and

WHEREAS, the Board has now authorized the Construction of the Project, as specified in said Request For Proposals and the Contractor's Proposal;

NOW THEREFORE, in consideration of the premises, and of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties hereto, IT IS MUTUALLY AGREED AS FOLLOWS:

Section 1.0 Incorporation by Reference.

It is expressly understood and agreed that this Contract Agreement together with all of its Exhibits, including the Proposal Agreement (Exhibit "A"), Cost Reimbursable Guidelines (Exhibit "B"), First Source Hiring Program (Exhibit "C"), General Conditions (Exhibit "D"), Special Conditions (Exhibit "E"), Project Requirements (Exhibit "F"), Bonds, Insurance, Plans/Drawings, Design/Builder's Price and Fee Proposal, the Request for Proposals and Administrative Requirements, (hereinafter referred to as the "Contract Documents") and any document referenced in said documents, are hereby incorporated by this reference as though specifically set forth herein and shall constitute, and are hereby made, a part of this Contract, and each of the parties does hereby expressly covenant and agree to carry out and fully perform each and all of the provisions of said documents upon its part to be performed.

Section 2.0 Scope of Work.

2.1 Design/Builder agrees to furnish all labor, materials and equipment, and to perform all work required as outlined in the Contract Documents hereto, to completely provide the Phase 1 Design/Preconstruction services and Phase 2 Construction (upon LAWA issuing a fully executed Notice to Proceed (NTP) for Phase 2), in a final and finished state, in strict compliance with the Contract Documents.

2.2 It is expressly understood and agreed that Design/Builder shall perform all incidental work required to complete the Design/Build Services, including work for which no specific bid item(s) was/were included, and/or including work which is required to furnish a final finished detailed project consistent with, and to fulfill, the intent of the Contract Documents. All such incidental work shall not be considered extra work for which additional compensation can be claimed by Design/Builder.

2.3 This contract is for Design/Build Services. The Work consists of the Design/Build Services for the Terminal Cores and APM Interface project using the Two-Phase Design/Build delivery method. Each Phase may only commence when LAWA issues a fully executed Notice to Proceed (NTP) for that Phase and on the date stated therein as the "NTP Date"

Section 3.0 Term of Contract.

Notwithstanding any other provision herein, the term of this Contract Agreement shall commence on the date of issuance by LAWA to Design/Builder of a Notice to Proceed and expire no later than five years from said date, and subject to other termination provisions contained within

the Contract Documents. Design/Builder will be assessed Liquidated Damages as set forth in the Contract Documents if it fails to meet the full construction of the Project, consistent with the intent of the Contract Documents, and as defined in each CGMP, subject to LAWA authorized modifications as provided for in the Contract Documents. In addition, Design/Builder may be assessed Liquidated Damages for failure to meet specific Contract Milestone dates as set forth in the individual CGMPs. The term of this Contract Agreement may be extended by the Board of Airport Commissioners (BOAC) subject to approval by the Los Angeles City Council.

Section 4.0 Contract Amount.

For all labor, all materials, all equipment and all services rendered, for all costs direct or indirect, and for all expenses incurred by Contractor pursuant to this Contract, and upon satisfactory completion of said Project in a final finished form consistent with the intent of the Contract Documents, the amount that LAWA may pay to the Contractor under the terms of this Contract, inclusive of Phase 1 and Phase 2, shall Not-to-Exceed \$336,531,000.00 (Three Hundred Thirty-six Million, Five Hundred Thirty-one Thousand dollars). The basis for billings and payment under this contract shall be pursuant to the Contract Documents, and the Design/Builder's Price and Fee Proposal, copies of which are attached hereto and incorporated by reference. Authorization of the full Not-to-Exceed contract amount is subject to approval of a mutually agreed upon Guaranteed Maximum Price (GMP). The amount that may be paid to Design/Builder under the terms of this Contract for Phase 1 is an amount not-to-exceed (NTE) \$95,000,000.00 (Ninety-five Million dollars).

Section 5.0 Notices.

Notice to City. Written notices to City hereunder, with a copy to the City Attorney of the City of Los Angeles, shall be given by registered or certified mail, postage prepaid, and addressed to:

**Deputy Executive Director - PDG
7301 World Way West
10th Floor
Los Angeles, CA 90045**

And

**Department of Airports
1 World Way
Post Office Box 92216
Los Angeles, CA 90009-2216**

or to such other address as City may designate by written notice to Contractor.

Notice to Contractor. Written notices to Contractor hereunder, with a copy to the City Attorney of the City of Los Angeles, shall be given by registered or certified mail, postage prepaid, and addressed to:

**Thomas Conroy, Vice President, California
Austin Commercial, L.P.
6100 Center Drive, Suite 1175
Los Angeles, CA 90045**

or to such other address as Contractor may designate by written notice to City.

The execution of any such notice by the Chief Executive Officer or the designee shall be as effective as to Contractor as if it were executed by the Board, or by Resolution or Order of said Board, and Contractor shall not question the authority of the Chief Executive Officer or the designee to execute any such notice.

Section 6.0 Contract Contains Entire Agreement.

The provisions of this Contract Agreement, including the Contract Documents and provisions incorporated herein and by reference, contain the entire agreement between the parties hereto and supersedes any and all prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, or understandings, oral or written, between and among the parties relating to the subject matter contained in this Contract Agreement which are not fully set forth herein. This is an integrated agreement. This agreement may not be changed or modified in any manner except by written amendment fully executed by LAWA and Contractor or as otherwise set forth in the Contract Documents.

Section 7.0 Small Business/Local Business/Local Small Business/Disabled Veteran Business Enterprises.

7.1. Contractor hereby agree and obligates itself to utilize the services of the Small Business Enterprise (SBE) firms designated in its Proposal and any/all subsequent subcontractors that are added on the level designated in its Proposal (specifically, a 20% Small Business Enterprise (SBE) Subcontractor level of participation for the required project designated Work).

7.2 Contractor hereby agrees and obligates itself to utilize the services of the Local Business Enterprise (LBE) firms designated in its Proposal and any/all subsequent subcontractors that are added on the level designated in its Proposal on the level designated in its Proposal

(specifically a 7% Local Business Enterprise (LBE) Subcontractor level of participation for the required project designated Work).

7.3 Contractor hereby agrees and obligates itself to utilize the services of the Local Small Business Enterprise (LSBE) firms designated in its Proposal and any/all subsequent subcontractors that are added on the level designated in its Proposal on the level designated in its Proposal (specifically 5% Local Small Business Enterprise (LSBE) Subcontractor level of participation for the required project designated Work).

7.4. Contractor hereby agrees and obligates itself to utilize the services of the Local State Disabled Veteran Business Enterprise (DVBE) firms designated in its Proposal and any/all subsequent subcontractors that are added on the level designated in its Proposal on the level designated in its Proposal (specifically 3% Local State Disabled Veteran Business Enterprise (DVBE) Subcontractor level of participation for the required project designated Work).

7.5 Contractor hereby further agrees and obligates itself to strictly comply with all of the Rules and Regulations (Rules) of LAWA's Small Business Enterprise Program and LAWA's Local and Local Small Business Enterprise Program (collectively "Programs").

7.5. Failure to comply with any of the Program's requirements shall subject the Contractor to the "Penalties" set forth in the Program's Rules.

7.6 Contractor shall submit, on a monthly basis, together with its invoice for payment, the monthly Subcontractor Utilization Report and/or data entry into a business enterprise monitoring system selected by LAWA listing the SBE/LBE/LSBE/DVBE Subcontractors utilized during the reporting period. Contractor shall cooperate with LAWA personnel in providing such information as shall be requested by LAWA in order to ensure compliance with the provisions of this section. LAWA will not process or pay Contractor's subsequent invoices if the monthly Subcontractor Utilization Report and/or data entry into a business enterprise monitoring system selected by LAWA are not timely submitted or if the Contractor fails to cooperate with LAWA personnel by promptly providing any and all information related to SBE/LBE/LSBE/DVBE participation requested by LAWA.

7.7. Failure to comply with any of the terms of this Section (or the terms of this Contract) shall constitute a material breach of contract and may result in the Contractor being deemed "Non-Responsible." (Section 10.40 et seq. of the Los Angeles Administrative Code.)

Section 8.0 Compliance With Los Angeles City Charter Section 470(c)(12) and 609(E).

8.1 The Contractor, other underwriting firm members of the underwriting syndicate, Subcontractors, and their Principals are obligated to fully comply with City of Los Angeles Charter Sections 470(c)(12), 609(e) and related ordinances, regarding limitations on campaign contributions and fundraising to certain elected City officials or candidates for elected City office. Gifts to elected officials and certain City officials are also limited. Additionally, Contractor and other underwriting firm members of the underwriting syndicate are required to provide and update certain information to the City as specified by law. Any Contractor and other underwriting firm members of the underwriting syndicate subject to Charter Section 470(c)(12) and 609(e), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this contract:

"Notice Regarding City of Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Sections 470(c)(12), 609(e) and related ordinances, you are subcontractor or underwriting firm on City of Los Angeles Contract/Resolution #_____. Pursuant to City Charter Section 470(c)(12) and 609(e), underwriting firm, subcontractor and principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Additionally, gifts are limited to elected officials and certain City officials. Subcontractor is required to provide to contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to contractor within 10 business days. Failure to comply may result in termination of contract or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213/978-1960."

8.2 Contractor, underwriting firms, Subcontractors, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available."

Section 9.0 Assignment of Anti-Trust Claims

Pursuant to California Government Code Sections 4550 et seq. regarding Anti-Trust Claims, it is the policy of the City of Los Angeles to inform each proposer that in submitting a bid/proposal to LAWA the proposer offers and agrees to assign LAWA all rights, title and interest in and to all causes of action it may have under the Clayton Act or Cartwright Act, arising from purchases of goods, services or materials. This assignment is made and becomes effective at the time LAWA tenders final payment to the Proposer.

Section 10.0 Subcontractor Payments

10.1. Progress Payments. The Contractor agrees to pay all subcontractors under this prime contract, and require the same of its subcontractors, not later than seven (7) days after receipt of each progress payment, the respective amounts allowed the Contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein pursuant to California Business and Professions Code Section 7108.5.

10.2. Retention/Final Payments. Within seven (7) days from the time that all or any portion of the retention proceeds are received by the Contractor, the Contractor shall pay all of its subcontractors from whom retention has been withheld, all subcontractor's share of the retention received, and require the same of its subcontractors, pursuant to the terms of California Public Contract Code Section 7107.

Section 11.0 Dispute Resolution

The parties acknowledge California Public Contract Code section 9204, a copy of which is provided at Exhibit "G". In addition to the requirements of the Public Contract Code section 9204, the Contract Documents prescribe procedures for LAWA Changes, Contractor Change Requests, Claims and Disputes that both parties agree are reasonable and consistent with and do not impair the timeframes set forth in Public Contract Code section 9204.

Section 12.0 Prevailing Wage

Contractor shall, at all times during the performance of the work hereunder, pay the general prevailing rate of per diem wages for each craft or type of worker needed to execute this Contract, at such rate(s) as has been determined by the Director of the Department of Industrial Relations of the State of California, or by the US Department of Labor (Davis-Bacon and Related Acts (DBRA) as specifically applied to Los Angeles County. See the following link: <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=Davis-Bacon&docid=CA20030033>). Contractor shall pay the higher of these stated prevailing labor rates.

Section 13.0 First Source Hiring Program

Contractor shall comply with the provisions of the First Source Hiring Program adopted by the Board. The rules, regulations, requirements, and penalties of the First Source Hiring

Program are attached as Exhibit "C" and made a material term of this agreement. Contractor shall be an "Airport Employer" under the First Source Hiring Program.

Section 14.0 City Held Harmless

14.1 To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless City and any and all of City's Boards, officers, agents, employees, assigns and successors in interest from and against any and all suits, claims, causes of action, liability, losses, damages, demands or expenses (including, but not limited to, attorney's fees and costs of litigation), claimed by anyone (including Contractor and/or Contractor's agents or employees) by reason of injury to, or death of, any person(s) (including Contractor and/or Contractor's agents or employees), or for damage to, or destruction of, any property (including property of Contractor and/or Contractor's agents or employees) or for any and all other losses, founded upon or alleged to arise out of, pertain to, or relate to the Contractor's and/or Sub-Contractor's performance of the Contract, whether or not contributed to by any act or omission of City, or of any of City's Boards, officers, agents or employees; provided, however, that where such suits, claims, causes of action, liability, losses, damages, demands or expenses arise from or relate to Contractor's performance of a "Construction Contract" as defined by California Civil Code section 2783, this paragraph shall not be construed to require Contractor to indemnify or hold City harmless to the extent such suits, causes of action, claims, losses, demands and expenses are caused by the City's sole negligence, willful misconduct or active negligence; provided further that where such suits, claims, causes of action, liability, losses, damages, demands or expenses arise from Contractor's design professional services as defined by California Civil Code section 2782.8, Contractor's indemnity obligations shall be limited to allegations, suits, claims, causes of action, liability, losses, damages, demands or expenses arising out of, pertaining to, or relating to the Contractor's negligence, recklessness or willful misconduct in the performance of the Contract.

14.2 In addition, Contractor agrees to protect, defend, indemnify, keep and hold harmless City, including its Boards, Departments and City's officers, agents, servants and employees, from and against any and all claims, damages, liabilities, losses and expenses arising out of any threatened, alleged or actual claim that the end product provided to LAWA by Contractor violates any patent, copyright, trade secret, proprietary right, intellectual property right, moral right, privacy, or similar right, or any other rights of any third party anywhere in the world. Contractor agrees to, and shall, pay all damages, settlements, expenses and costs, including costs of investigation, court costs and attorney's fees, and all other costs and damages sustained

or incurred by City arising out of, or relating to, the matters set forth above in this paragraph of the City's "Hold Harmless" agreement.

14.3 In Contractor's defense of the City under this Section, negotiation, compromise, and settlement of any action, the City shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals there from, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

14.4 The provisions of this City Held Harmless Section shall remain operative following a termination of all other performance under this Agreement unless specifically extinguished in a writing signed as approved as to form by the Office of the City Attorney.

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IN WITNESS WHEREOF, City has caused this Contract Agreement to be executed by the Chief Executive Officer of its Department of Airports, and Contractor has caused the same to be executed by its duly authorized officers, and its corporate seal to be hereunto affixed, all as of the day and year first hereinabove written.

APPROVED AS TO FORM
Michael N. Feuer, City Attorney

CITY OF LOS ANGELES

Date: Jan. 24, 2018

By: _____
Chief Executive Officer
Los Angeles World Airports

By: 
Deputy City Attorney

By: _____
Chief Financial Officer
Los Angeles World Airports

ATTEST:

By: 
ASST. Secretary (Signature)
ALAN STAKE
Print Name

AUSTIN COMMERCIAL, L.P.
by Austin Commercial, Inc., its general partner

By: 
Signature
Bradley P. Brown
Print Name

President
Print Title

[SEAL]