

## **AMENDMENT NO. 3 TO THE CONTRACT FOR PROFESSIONAL SERVICES**

This Amendment No. 3 to the Contract for Professional Services (“Amendment No. 3”) is made and entered into by and between the Trustees of the Oklahoma City Airport Trust (“Trust”), a public trust, and Benham Design, LLC, (“Consultant”), a Delaware limited liability company having authority to transact business in Oklahoma.

### **WITNESSETH:**

**WHEREAS**, the Trust leases, operates, and maintains certain real estate for The City of Oklahoma City (“City”) more commonly known as Will Rogers World Airport (“Airport”), which is located in Oklahoma and Cleveland Counties, Oklahoma; and

**WHEREAS**, the Trust and the Consultant entered into a Professional Services Agreement, February 27, 2020, as the same was amended from time to time by the parties (“Agreement”), whereby the Trust retained the professional services of the Consultant in the Agreement to fulfill certain design, construction, and project representative services for Project No. OCAT WRWA 2005, “Terminal Building Roof Repairs and Replacement”; and

**WHEREAS**, it is the desire of both parties to enter into this Amendment No. 3 to increase Additional Services by \$130,500 for an updated amount not to exceed \$252,132.

**NOW, THEREFORE**, based upon due consideration, the parties agree to the following:

1. This Amendment No. 3 shall be effective as of April 27, 2023 (“Effective Date”).
2. The parties hereby agree to amend and to replace in its entirety “Exhibit C” to this agreement with the Revised Exhibit “C” as attached hereto and incorporated herein by this reference.
3. The Parties agree that Article 18 – Non-Discrimination is hereby deleted and replaced in its entirety with the following language:

### **“ARTICLE 18 - NON-DISCRIMINATION**

#### **A. General Civil Rights Provisions.**

In all its activities within the scope of its airport program, Consultant agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, creed, color, national origin, (including limited English proficiency), sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

The above provision binds the Consultant and subcontractors from the bid solicitation period through the complete of the Contract.

**B. Compliance with Non-Discrimination Requirements.**

During the performance of this Agreement, Consultant, for itself, its assignee, and successor in interest agrees as follows:

1. Compliance with Regulations

Consultant 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.

2. Nondiscrimination

Consultant, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the [Title VI] Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by Consultant 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 Consultant of Consultant's obligations under this Agreement and the [Title VI] Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. Information and Reports

Consultant will provide all information and reports required by the Acts, the Regulations, and the 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 Trust or the Federal Aviation Administration to be pertinent to ascertain compliance with such [Title VI] Nondiscrimination Acts and Authorities and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish the information, Consultant will so certify to the Trust or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance

In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Trust will pose such Agreement sanction [in accordance with any applicable notice and cure provisions provided for in this Agreement] as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- i. Withholding any payments to Consultant under the Agreement until Consultant complies; and/or
- ii. Cancelling, terminating, or suspending the Agreement, in whole or in part.

6. Incorporation of Provisions

Consultant will include the provisions of Article 18 subparagraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the Trust or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant become involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Consultant may request the Trust to enter into any litigation to protect the interests of the Trust. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

**C. Title VI List of Pertinent Nondiscrimination Acts and Authorities.**

During the performance of this Agreement, Consultant, for itself, its assignee, and successor in interest agrees to comply with the following nondiscrimination 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 (Nondiscrimination 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 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- 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 U.S.C. § 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-259), (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 Consultant, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, (42 USC § 12101, *et seq.*), 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 as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination 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, (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 (2005));
- 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. The parties further agree that, except as amended by this Amendment No. 3 all items, provisions, and conditions of the original Agreement shall remain in full force and effect, and the provisions of this Amendment No. 3 shall become a part of the original Agreement as though fully set forth therein.

**BENHAM DESIGN, LLC**



Signature \_\_\_\_\_  
Printed Name: Tommy Willis

Title: Vice President

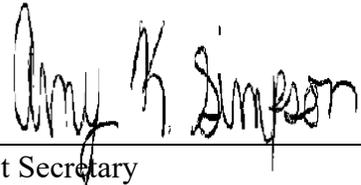
**APPROVAL RECOMMENDED:**



Director of Airports

**APPROVED** by the Oklahoma City Airport Trust and signed by the Chairman this 27TH day of APRIL, 2023.

**ATTEST:**



Trust Secretary



**OKLAHOMA CITY AIRPORT TRUST:**



Chairman

**REVIEWED** for form and legality.



Assistant Municipal Counselor /  
Attorney for the Trust

**REVISED**

**EXHIBIT C**  
**COMPENSATION**

**Contract for Professional Services with Benham Design, LLC**  
**Project No. OCAT WRWA 2005**  
**“Terminal Building Roof Repairs and Replacement”**  
**Will Rogers World Airport**

Under the terms of this Contract, the Consultant agrees to perform the work and services described in this Contract. The Project’s preliminary estimated construction cost is \$3,787,000. The Trust agrees, in accordance with the limitations and conditions set forth in the Contract, to pay the Consultant an amount not to exceed ~~\$408,523~~ \$539,023 (10.08%) (14.23%) of the preliminary estimated construction cost), which includes: for Basic Services, an amount not to exceed \$283,730; for Additional Services, an amount not to exceed ~~\$121,632~~ \$252,132; and for Reimbursable Expenses, an amount not to exceed \$3,161; all of which are specifically set forth in this Exhibit C.

**C.1. Basic Services**

Compensation for Basic Services may not exceed a cumulative total of \$283,730, and in no event may the Consultant receive compensation in excess of the amount listed for each task for performance of its Basic Services.

The Consultant may receive up to the following amounts of the not to exceed amounts for services rendered upon the completion of the following tasks. Partial payments of the not to exceed amounts for each task may be invoiced for incremental work completed. Not to exceed amounts below are accumulative for successive tasks.

Task 1 an amount not to exceed:  
\$39,825 (14%)

Completion and acceptance by the Director of Airports of the Preliminary Report for the Project.

Task 2 an amount not to exceed:  
\$165,045 (58%)

Acceptance by the Trust of the Issue for Construction Documents for the Project.

Task 3 an amount not to exceed:  
\$9,070 (3%)

Acceptance by the Trust and award of the bid for the Project.

Task 4 an amount not to exceed:  
\$59,130 (21%)

Acceptance by the Trust of the completed Project.

Task 5 an amount not to exceed:  
\$10,660 (4%)

Acceptance by the Director of Airports of the completed Record Drawings for the Project.

**C.2. Additional Services**

The Consultant will provide Additional Services as outlined in Exhibit B and as directed in writing by the Director of Airports. Each month, the Consultant will submit to the Trust certified time sheets for employees engaged in the provision of Additional Services. The Trust agrees to pay the Consultant, as compensation for such Additional Services, an amount equal to time expended, multiplied by the corresponding hourly rate included herein; provided that no claims or invoices for Additional Services will be recognized or be binding on the Trust unless such Additional Services are first approved by the Director of Airports. The approved hourly payroll rates for the classification of employees involved in this Project are as follows:

**WAGE RATES, INCLUDING OVERHEAD,  
ADMINISTRATIVE EXPENSES, AND PROFIT**

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Project Manager .....	\$175.00
Architect – Senior .....	\$155.00
Architect – Mid .....	\$115.00
Structural Engineer - Senior.....	\$150.00
Mechanical Engineer - Senior.....	\$155.00
Electrical Engineer - Senior .....	\$145.00
CADD/Draftsman - Senior.....	\$95.00
CADD/Draftsman - Mid .....	\$80.00
Cost Estimator - Senior .....	\$155.00
Administrative.....	\$65.00
Subcontracted Roofing Project Representative .....	\$265.22

Project Representative Services: Total costs for Project Representative Services shall not exceed an amount of ~~\$121,632~~ \$252,132, to be paid hourly.

Miscellaneous Additional Services: Total costs for Miscellaneous Additional Services shall not exceed an amount of \$0.

Provided, however, that the Trust, at its sole discretion, may authorize additional funds to the Project for payment of Additional Services in excess of the maximum limitation amount(s) as set forth above.

### **C.3. Reimbursable Expenses**

1. **Extra Printing and Reproduction.** Printing and reproduction of any reports, studies and final drawings, specifications, and cost estimates required by the Trust in excess of those as set forth in Section 2 of the Contract will be reimbursed at the actual cost thereof when printed by the Consultant. When documents are printed by others, an administrative fee of not to exceed five percent (5%) percent may be added to the cost of reproduction and printing. Costs for these expenses will not exceed a total amount of ~~\$544~~ \$411 without prior approval of the Trust.
2. **Boundary, Site, and Topographical Surveys.** The Consultant may self-perform or use contract land surveyors to perform land surveys necessary for development of plans. Such work is not part of the Consultant's professional fees and Consultant will be reimbursed for such work by the Trust. Invoices for land survey work will be accepted, reviewed, and certified by the Consultant and submitted separately to the Trust as a separate line item on claim vouchers. Total costs for land surveying shall not exceed an amount of \$0. Provided, however, that the Trust, at its sole discretion, may authorize additional funds to the Project for payment of surveying costs and charges in excess of the maximum limitation amount as set forth above.
3. **Geotechnical Investigation, Laboratory Analysis, and Field Testing.** The Consultant shall be reimbursed for the payment of all geotechnical investigation, laboratory analysis, and field testing not paid directly by the Trust and provided by the Consultant pursuant to Section 2, Subsection A, Paragraph (3) of the Contract, but such costs shall not exceed \$2750. The cost for all geotechnical investigation, laboratory analysis, or fielding testing provided by the Consultant shall be based on the rates and charges included in existing City contracts where applicable.
4. **Transportation, Lodging, and Subsistence.** Expense of transportation when traveling out of state in connection with the Project will be reimbursed at the actual cost of transportation (Coach Class) plus actual cost of lodging and subsistence; provided such cost of lodging and subsistence shall not exceed the amount authorized in Federal Travel Regulations ("FTR"), 41 Code of Federal Regulations ("CFR") Chapters 300-304, in effect on the date of this Contract and as subsequently amended. The total cost of transportation, lodging and subsistence for this Project shall not exceed \$0.