

PO Number \_\_\_\_\_  
Vendor Number 321176

**LEE COUNTY PORT AUTHORITY**  
**SERVICE PROVIDER AGREEMENT No. 24-22MSC**  
**ABB Variable Frequency Drive (VFD) Replacement**

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_ 2024, (hereafter referred to as the Effective Date), between LEE COUNTY PORT AUTHORITY, a political subdivision and special district of the State of Florida (Authority), located at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913, and COMMERCIAL AIR MANAGEMENT, INC. (Provider), a corporation authorized to do business in the State of Florida, whose principal business address is 3950 Old Metro Parkway, Fort Myers, FL 33916 and whose Federal Identification Number is 65-0443866. Collectively, the Authority and Provider are referred to throughout this Agreement as the Parties.

**WITNESSETH**

**WHEREAS**, the Authority desires to replace existing ABB Variable Frequency Drives (VFD), and obtain unit start-up warranty certification, and as-needed installation labor services for VFD equipment located at Southwest Florida International Airport and/or Page Field in Fort Myers, Florida; and,

**WHEREAS**, Provider states that it is qualified, willing and able to provide the products and perform all services required according to the provisions, conditions and terms below and in accordance with all governing federal, state and local laws and regulations; and,

**WHEREAS**, the Authority has determined in writing that there is adequate justification explaining the basis for use of the single or sole source procurement type in accordance with applicable Florida statutes and the Authority's Procurement Policy, as approved by the Authority's Board of Port Commissioners; and,

**WHEREAS**, Provider certifies that it has been granted and possesses valid, current licenses to do business in the State of Florida and in Lee County, Florida, issued by any applicable State Boards or Government Agencies responsible for regulating and licensing the services and products to be provided under this Agreement; and,

**NOW, THEREFORE**, in consideration of the foregoing and the terms contained herein, the Parties agree as follows:

**1.0 RECITALS**

The recitals set forth above are true and correct and are incorporated into the terms of this Agreement as if set forth herein at length.

## **2.0 SCOPE OF SERVICES**

Provider hereby agrees to furnish all labor, work, equipment, materials and related professional, technical and administrative activities necessary to perform the services and provide the products as described in Exhibit A, Scope of Services.

## **3.0 TERM OF AGREEMENT**

The initial term of this Agreement will begin on the Effective Date and will continue for two (2) years. The Authority will have the option to renew the term of this Agreement at its sole discretion and upon the same terms and conditions, including prices, for one (1) additional one (1) year term.

The Parties agree that unless the Authority, in its sole discretion, provides notice of intent not to renew to Provider at least thirty (30) calendar days prior to the end of the current term, this Agreement will automatically renew in accordance with the provisions of this Article.

## **4.0 LICENSES**

Provider agrees to obtain and maintain throughout the term of this Agreement, all licenses as are required to do business in the state of Florida and in Lee County, Florida, including, but not limited to, licenses required by any applicable state boards or other governmental agencies responsible for regulating and licensing the services provided and performed by Provider.

## **5.0 PERSONNEL**

Provider agrees that when the services and products to be provided and performed relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such service(s), to employ and/or retain only qualified personnel to be in charge of all such professional services to be provided under this Agreement.

Services performed and products to be provided under this Agreement will be performed and delivered by Provider's own staff or by persons selected by Provider to perform the services and provide the products required, according to the processes outlined in the Scope of Services, unless agreed in advance by the Authority.

## **6.0 STANDARDS OF SERVICE**

Provider agrees to provide all products and perform all services under this Agreement in accordance with generally accepted standards of practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agency that regulates or has jurisdiction over the services and products to be provided by the Provider.

## **7.0 COMPENSATION AND PRICE SCHEDULE**

Authority will pay Provider for all requested and authorized services and products in accordance with the requirements, provisions and/or terms of this Agreement, based on the compensation terms described in Exhibit B, Compensation

and Price Schedule.

Provider will submit invoices to the Authority for items delivered and/or work completed and accepted according to the Scope of Services. The invoice will cover services rendered and completed and products delivered and installed and must be itemized to correspond to the basis of compensation as set forth in this Agreement, as may be amended, and the Scope of Services. Invoices will include an itemized description of the services and/or products provided. Provider's failure to follow these instructions may result in an unavoidable delay of payment by the Authority; however, such delay in payment will not be considered a violation of the Authority's obligations under the Agreement.

Payment Schedule - The Authority will issue payment to the Provider in accordance with the Local Government Prompt Payment Act, section 218.70, Florida Statutes upon receipt of an invoice from the Provider that is in an acceptable form and containing the requested breakdown and detailed description and documentation of charges and approval by the Authority indicating the products and services have been provided in conformity with this Agreement. Should the Authority object or take exception to the amount of any Provider's invoice, the Authority will notify Provider of such objection or exception within thirty (30) days. If such objection or exception remains unresolved at the end of the thirty (30) day period, the Authority will withhold the disputed amount and make payment to Provider of all amounts not in dispute. The Parties agree to negotiate informally regarding any disputed amount.

## **8.0 ANNUAL APPROPRIATION**

All funds for payment by the Authority under this Agreement are subject to the availability of an annual appropriation for this purpose. In the event of non-appropriation of funds by the Authority for the services and products provided under this Agreement, the Authority will terminate this Agreement, without termination charge or other liability, on the last day of the then-current fiscal year or the date funds for services covered by this Agreement are spent, whichever occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation will be accepted by Provider on thirty (30) days prior written notice, but failure to give such notice will be of no effect and the Authority will not be obligated under this Agreement beyond the date of termination.

## **9.0 FAILURE TO PERFORM**

If Provider fails to commence, provide, perform and/or complete any of the services or products or any work required under this Agreement in a timely and diligent manner, the Authority may consider such failure as cause to terminate this Agreement. As an alternative to termination, the Authority may, at its option, withhold any or all payments due and owing to Provider, not to exceed the amount of the compensation for the work in dispute, until such time as Provider resumes performance of its obligations in accordance with the time and schedule of performance requirements set forth in this Agreement and the Scope of Services.

## **10.0 INDEMNIFICATION AND HOLD HARMLESS**

Provider agrees to be liable for, and will indemnify, defend and hold harmless Lee County and Authority and their respective commissioners, officers, employees and agents, from and against any and all claims, liabilities, suits, judgments for damages, losses and expenses, including but not limited to court costs, expert witness and professional consultation services, and reasonable attorneys' fees arising out of or resulting from Provider's services or provision of products under this Agreement, or Provider's errors, omissions, negligence, recklessness, or the intentional misconduct of Provider or any agent, employee or other person employed or used by Provider in performance of services under this Agreement, regardless of whether or not caused by a party indemnified hereunder.

Provider understands and agrees that by entering into this Agreement, the Authority does not waive its sovereign immunity and nothing herein will be interpreted as a waiver of the Authority's rights, including the limitation of waiver of immunity in section 768.28, Florida Statutes or any other statutes, and the Authority expressly reserves these rights to the fullest extent allowed by law. Provider's indemnification obligations as stated in this Agreement survive termination or completion of the services contracted hereunder.

#### **11.0 AUTHORITY'S REPRESENTATIVE**

The RSW/FMY Maintenance Department and/or the Senior Procurement Manager will administer this Agreement for Authority.

#### **12.0 PROVIDER'S PUBLIC RECORDS OBLIGATIONS**

Provider specifically acknowledges its obligations to comply with section 119.0701, Florida Statutes, with regard to public records, and will:

1) Keep and maintain public records that ordinarily and necessarily would be required by the Authority in order to perform the services required under this Agreement;

2) Upon request from the Authority, provide the Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Florida Statutes, or as otherwise provided by law;

3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and

4) Meet all requirements for retaining public records and transfer, at no cost to the Authority, all public records in possession of Provider upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Authority in a format that is compatible with the information technology system of the Authority.

**IF PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-590-4504, 11000 TERMINAL ACCESS ROAD, SUITE 8671, FORT MYERS, FLORIDA 33913, [publicrecords@flylcpa.com](mailto:publicrecords@flylcpa.com); <https://www.flylcpa.com/publicrecordsrequest>.**

### **13.0 EXEMPT FROM DISCLOSURE**

Provider acknowledges that any information concerning its services may be exempt from disclosure under the Florida public records law as follows:

(1) **Airport Security Plans** - Southwest Florida International Airport and/or Page Field security plan, and other critical operational materials designated by the Authority, are exempt from disclosure under section 331.22, Florida Statutes. These materials include, but are not limited to, any photograph, map, blueprint, drawing, or similar material that depicts critical airport operating facilities or other information that the Authority determines could jeopardize airport security if generally known.

(2) **Building Plans** - Provider acknowledges that section 119.071(3)(b)1., Florida Statutes, exempts building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building or other structure owned or operated by the Authority or Lee County from disclosure.

(3) **Airport Security and Fire Safety Systems** - Section 281.301, Florida Statutes, exempts information relating to the security or fire safety systems for any property owned by or leased to the Authority and any information relating to the security or fire safety systems for any privately-owned or leased property which is in Authority's possession, including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings or portions thereof relating directly to or that would reveal such systems or information, is confidential and exempt from disclosure.

As used in this paragraph, the term "security or fire safety system plan" also includes threat assessments, threat response plans, emergency evacuation plans, shelter arrangements, security manuals, emergency equipment, and security training as confidential and exempt from disclosure.

Provider agrees not to divulge, furnish or make available to any third person, firm or organization, without Authority's prior written consent, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed or ordered by a court of competent jurisdiction to provide, any confidential or exempt information concerning the services to be rendered by Provider under this Agreement. Provider will require all of its employees, agents, subcontractors to comply with the provisions of this Article.

#### **14.0 AIRPORT SECURITY REQUIREMENTS**

Provider acknowledges that the Authority is subject to strict federal security regulations limiting access to secure areas of the airport and prohibiting violations of the adopted Airport Security Program. Provider may need access to these secure areas to complete the work required by this Agreement.

Provider therefore agrees, in addition to the other indemnification and assumption of liability provisions set out above, to indemnify and hold harmless the Authority and Lee County, Florida, and their respective commissioners, officers and employees, from any duty to pay any fine or assessment or to satisfy any punitive measure imposed on the Authority or Lee County, Florida by the FAA or any other governmental agency for breaches of security rules and regulations by Provider, its agents, employees, subcontractors, or invitees.

Provider further acknowledges that its employees and agents may be required to undergo background checks and take Airport Security and Access Procedures ("S.I.D.A.") training before receiving an Airport Security Identification Badge.

Immediately upon the completion of any work requiring airport security access under this Agreement, or upon the resignation or dismissal or conclusion of any work justifying airport security access to any Provider agent, employee, subcontractor, or invitee, Provider will notify the Airports Police Department that Provider's access authorization or that of any of Provider's agents, employees, subcontractors, or invitees has changed. Provider will confirm that notice, by written confirmation on company letterhead, within twenty-four (24) hours of providing initial notice to the Airport's Police Department.

Upon termination of this Agreement, or the resignation or dismissal of any employee or agent, or conclusion of any work justifying airport security access to any Provider agent, employee, subcontractor, or invitee, Provider will surrender any Airport Security Identification Badge held by Provider or by Provider's agents, employees, subcontractors, or invitees. Should Provider fail to surrender these items within five (5) days, Provider will be assessed a fee of One Hundred Dollars (\$100.00) per identification badge not returned. This fee will be billed to Provider or deducted from any money owing to Provider, at the Authority's discretion.

#### **15.0 INSURANCE**

During the term of the Agreement and at all times without interruption, Provider must provide, pay for, and maintain the types and limits of insurance in accordance with this section. The acceptance by Authority of any certificate of insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by Authority that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance comply with the requirements of this Agreement. No work will commence, or any Services be provided, under this Agreement unless and until the required certificates of insurance are received and approved by Authority.

### 15.1. INSURANCE REQUIRED (Types and Limits)

**Commercial General Liability.** Provider must provide the following types of insurance with minimum limits as indicated:

\$2,000,000	General Aggregate
\$1,000,000	Products & Completed Operations Aggregate
\$1,000,000	Personal/Advertising Injury
\$1,000,000	Each Occurrence
\$50,000	Fire Damage
\$5,000	Medical Expenses

Such insurance must be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements. An excess liability policy or umbrella policy can be used to satisfy the above limits.

**Business Automobile Liability** (which includes coverage of any auto, including owned, hired, and non-owned) is required. Provider must provide the following types of insurance with minimum limits as indicated:

Automobile Liability	\$1,000,000	Combined Single Limit
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Such insurance must be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements. An excess liability or umbrella policy can be used to satisfy the above limits.

**Workers' Compensation** insurance as required by the State of Florida, and Employers' Liability insurance with minimum limits as indicated:

Worker's Compensation	Florida Statutory Coverage	
Employer's Liability	\$1,000,000	Each Accident
	\$1,000,000	Disease Policy Limit
	\$1,000,000	Each Employee/Disease

This insurance must cover Provider (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard workers' compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements).

15.2. Additional Insured. The Authority must be named as an additional insured on all policies except for workers' compensation and professional liability. The policies must be endorsed to include the following language "Lee County Port Authority, its

officers, officials and employees, are to be covered as an additional insured with respect to liability arising out of the 'work' or operations performed by or on behalf of the insured, including materials, parts or equipment furnished in connection with such work or operations."

15.3 Acceptability of Insurers. Insurance is to be placed with insurers duly licensed and authorized to do business in the State of Florida and with an AM Best rating of not less than A-Vii. The Authority in no way warrants that the above required minimum insurer rating is sufficient to protect the Provider from potential insurer insolvency.

15.4 Waiver of Subrogation. Insurance will be primary and noncontributory and will include a Waiver of Subrogation by both the Provider and its insurers in favor of the Authority on all policies including general liability, auto liability and the workers' compensation policy, as well as any umbrella or excess policy coverage

15.5 Certificate of Insurance. Prior to the execution of an Agreement or the issuance of a purchase order, and then annually upon the anniversary date(s) of the insurance policy(s) renewal date for as long as the agreement is in effect, the Provider will furnish the Authority with a certificate of insurance using an ACORD form and containing the solicitation number with Lee County Port Authority named as an additional insured on the applicable coverage set forth above. The appointed insurance agent or carrier will be duly licensed to provide coverage and honor claims within Florida. Provider must ensure the certificate of insurance with Lee County Port Authority as certificate holder is delivered to [riskmanagement@flylcpa.com](mailto:riskmanagement@flylcpa.com).

The certificate of insurance must give the Authority prior notice of cancellation and state that the coverage is primary and noncontributory.

15.6 Policy on Request. If requested in writing by the Authority, the Provider will supply to the Authority a certified copy of all applicable insurance policies required by this Agreement.

15.7 Change in coverage. Provider is required to provide a minimum of thirty (30) days written notice to the Authority Risk Manager of any cancellation, nonrenewal, termination, material change, or reduction of any coverage required herein. All such notices will be sent directly to Lee County Port Authority Risk Manager, 11000 Terminal Access Road, Suite 8671, Fort Myers FL, 33913. If the Provider fails to provide the requisite notice, the Authority may terminate any Agreement(s) with the Provider.

15.8 Subcontractor's requirement. Provider must ensure its subcontractors comply with these insurance requirements.

15.9 Failure to Maintain Insurance. If Provider does not maintain the insurance coverages required by this Agreement at any time, upon notice to Provider and reasonable opportunity to cure, Authority may cancel the Agreement or at its sole discretion is authorized to purchase such coverages and charge Provider for such coverages purchased. Authority will be under no obligation to purchase such insurance, nor will it be responsible for the coverages purchased or the insurance

company/companies used. The decision of Authority to purchase such insurance coverages will in no way be construed to be a waiver of its rights under this Agreement.

Provider agrees to provide Authority's Risk Manager with a certificate of insurance indicating that all policies have been endorsed to provide advance written notice of any cancellation, intent not to renew, material change or alteration, or reduction in the policy coverages except in the application of the aggregate limits provision of any policy. In the event of a reduction in the aggregate limit of any policy, Provider will immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. If there is a cancellation, Provider agrees to obtain replacement coverage as soon as possible. All insurance will be from responsible companies duly authorized to do business, provide coverage, and honor claims in the state of Florida. Provider's certificate of insurance is attached as Exhibit C.

The Authority reserves the right to reject insurance written by an insurer it deems unacceptable because of poor financial condition or other operational deficiency. All insurance must be placed with insurers with an A.M. Best rating of not less than A-VII. Regardless of this requirement, the Authority in no way warrants that the required minimum insurer rating is sufficient to protect Provider from potential insurer insolvency.

The acceptance by the Authority of any certificate of insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by the Authority that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance comply with the requirements of this Agreement.

All of Provider's insurance coverages will be primary and noncontributory to any insurance or self-insurance program carried by the Authority and applicable to work under this Agreement and will include a waiver of subrogation in favor of the Authority.

No work will commence, or any services or products be provided, under this Agreement unless and until the required certificates of insurance are received and approved by the Authority.

#### **16.0 ASSIGNMENT, TRANSFER AND SUBCONTRACTS**

Provider may not assign or transfer any of its rights, benefits or obligations under the Agreement without prior written approval of the Authority. Provider will have the right, subject to the Authority's prior written approval, to employ other persons and/or companies to serve as subcontractors to Provider for Provider's performance of services and work under this Agreement.

#### **17.0 PROVIDER AN INDEPENDENT CONTRACTOR**

Provider is an independent contractor and is not an employee or agent of the Authority. Nothing in this Agreement will be interpreted to establish any relationship other than that of an independent contractor between the Authority and Provider, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement. Nothing in this Agreement may be deemed to give any such party a right of

action against Authority beyond such right as might otherwise exist without regard to this Agreement.

#### **18.0 F.A.A. NON-DISCRIMINATION CLAUSE**

Provider, for itself, its successors in interest, and assigns, as part of the consideration hereof, agrees that it will not discriminate on the basis of race, color, national origin, sex, disability or other protected factor in the performance of this Agreement. Provider will carry out applicable requirements of 49 CFR Part 23 and Part 26 in the award and administration of DOT-assisted contracts. Provider's failure to carry out these requirements is a material breach of this contract, which may result in the termination of this Agreement or such other remedy as the Authority deems appropriate.

#### **19.0 NOTICE REGARDING PUBLIC ENTITY CRIMES**

By entering into this Agreement, Provider confirms that in accordance with section 287.133(2)(a), Florida Statutes, Provider has not been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime and further agrees that should provider be placed on the convicted vendor list at any time during the term of this Agreement, Authority may immediately terminate this agreement.

#### **20.0 OWNERSHIP AND TRANSFER OF DOCUMENTS**

All documents, including but not limited to reports and other records and data relating to the services specifically prepared or developed by Provider under this Agreement, will be the property of Provider, until Provider has been paid for performing the services and work required to produce such documents.

Upon completion, suspension, or termination of this Agreement, all of the above documents, to the extent requested by the Authority, will be delivered to the Authority within thirty (30) calendar days.

Provider, at its expense, may make and retain copies of all documents delivered to the Authority for reference and internal use. Any subsequent use of the documents and materials listed above will be subject to the Authority's prior review and approval.

#### **21.0 MAINTENANCE OF RECORDS**

Provider will keep and maintain adequate records and supporting documentation concerning the procurement and applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. All records and documentation will be retained by Provider for a minimum of five (5) years from the date final payment has been made or termination of this Agreement, or for such period as required by law.

The Authority, the FAA, the Comptroller General of the United States and their authorized agents will, with reasonable prior notice, have the right to audit, inspect and

copy all such records and documentation as often as they deem necessary during the period of this Agreement, and during the period set forth in the paragraph above; provided, however, such activity will be conducted only during Provider's normal business hours.

## **22.0 NO THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement or the incorporated documents will create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

## **23.0 GOVERNING LAW**

This Agreement will be interpreted, construed and governed by the laws of the state of Florida. Exclusive venue for any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement will be in the Circuit Court of Lee County, Florida. The prevailing party in any such suit or action will be entitled to recover its reasonable attorneys' fees and court costs, including any appeals.

## **24.0 PROHIBITED INTERESTS**

No member, officer or employee of the Authority or of the locality during his or her tenure or for one year thereafter will have any interest, direct or indirect, in this Agreement or the proceeds thereof.

## **25.0 LOBBYING CERTIFICATION**

The Authority agrees that no federal appropriated funds have been paid or will be paid by or on behalf of the Authority, to any person for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federal appropriated funds have been paid by the Authority to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Authority will require that the language of this section be included in the award document and any award document for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients will certify and disclose accordingly.

## **26.0 COVENANTS AGAINST DISCRIMINATION**

26.1 DBE POLICY. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this

contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administrations of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: 1) Withholding monthly progress payments; 2) Assessing sanctions; 3) Liquidated Damages; and/or 4) Disqualifying the Contractor from future bidding as non-responsible.

**26.2 PROMPT PAYMENT REQUIREMENTS.** Authority has adopted a DBE Program in compliance with 49 CFR Part 26, and the following requirement will apply to all contracts funded, either wholly or in-part, with DOT financial assistance:

Provider agrees to pay each sub-consultant under this contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment Provider receives from Authority. Provider agrees further to return any retainage payments to each sub-consultant within thirty (30) days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment beyond these time limits may occur only for good cause following written approval of the delay by Authority. This clause applies to both DBE and non-DBE sub-consultants.

**26.3 INCORPORATION OF PROVISIONS.** Provider will include the provisions of paragraphs 26.1 and 26.2 in every subcontract, unless exempt by the above-stated federal regulations or federal directives. Provider will take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. However, in the event Provider becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Provider may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Provider may request the United States to enter into such litigation to protect the interests of the United States.

## **27.0 NONDISCRIMINATION CLAUSE**

Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, the Restoration Action of 1987, the Florida Civil Rights Act of 1992, and as said Regulations may be amended, the Provider must assure that no person in the United States will on the basis of race, color, national origin, sex, creed or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity and in the selection and retention of subcontractors.

Provider will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

## **28.0 GENERAL CIVIL RIGHTS CLAUSE**

Provider agrees to comply with pertinent federal and state statutes, regulations, executive orders and such rules as identified in Title VI List of Pertinent Non Discrimination Acts and Authorities to ensure that no person will be excluded from participating in any activity conducted with or benefiting from federal assistance on the grounds of race, creed, color, national origin (including limited English proficiency), sex (including sexual orientation and gender identity), age, disability or any other protected category.

This provision binds Provider and subcontractors through the completion of the Agreement. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

## **29.0 E-VERIFY REGISTRATION**

Provider certifies that it has registered and is using the U.S. Department of Homeland Security's E-Verify Program for Employment Verification in accordance with the terms governing use of the Program and is eligible to enter this Agreement. Provider further agrees to provide the Authority with proof of such registration within thirty (30) days of the date of this Agreement.

Provider agrees to use the E-Verify Program to confirm the employment eligibility of all persons employed by Provider during the term of this Agreement and all persons, including contractors and subcontractors, assigned by the Provider to perform work or provide services or supplies under the Agreement.

Provider further agrees that it will require each contractor or subcontractor performing work or providing services or supplies under this Agreement to enroll in and use the US Department of Homeland Security's E-Verify program for employment verification to verify the employment eligibility of all persons employed by the contractor or subcontractor during the term of this Agreement.

Provider agrees to maintain records of its participation and compliance with the provisions of the E-Verify Program, including participation by its contractors and subcontractors as provided above, and to make such records available to the Authority or other authorized state or federal agency consistent with the terms of this Agreement.

Compliance with the terms of this Article is made an express condition of this Agreement, and the Authority may treat failure to comply as a material breach of the Agreement and grounds for immediate termination.

## **30.0 HEADINGS**

The headings of the Articles in this Agreement are for the purpose of convenience only and will not be deemed to expand, limit or change the provisions contained in such Articles.

## **31.0 ENTIRE AGREEMENT**

This Agreement, including the referenced exhibits and attachments, constitutes the entire Agreement between the Parties and will supersede all prior agreements or understandings, written or oral, relating to the matters set forth herein.

### **32.0 NOTICES AND ADDRESS**

All notices required and/or made pursuant to this Agreement to be given by either Party to the other will be in writing and will be delivered by hand or by United States Postal Service, first class mail service, postage prepaid, and addressed to the following addresses of record:

For the Authority:

**Lee County Port Authority**

11000 Terminal Access Road, Suite 8671

Fort Myers, FL 33913

Attention: Airport Executive Director

For Provider:

**Commercial Air Management, Inc.**

3950 Old Metro Parkway

Fort Myers, FL 33916

Attention: Paul T. Boudreaux

Either Party may change its address by written notice to the other Party given in accordance with the requirements of this article.

### **33.0 TERMINATION**

For Convenience. This Agreement may be terminated by the Authority at its convenience, or for cause, by giving thirty (30) calendar days written notice to Provider.

For Cause. This provision applies to all contracts with a value that exceeds the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II (A). Any violation of breach of terms of this Agreement on the part of the Provider or its subcontractors may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the right of the parties of this Agreement.

Authority will give the Provider written notice that describes the nature of the breach and corrective actions the Provider must undertake in order to avoid termination of the Agreement. Authority reserves the right to withhold payments to Provider until such time the Provider corrects the breach or the Authority elects to terminate the Agreement. The Authority's notice will identify a specific date by which the Provider must correct the breach. The Authority may proceed with a termination of the Agreement if the Provider fails to correct the breach by the deadline indicated in the Authority's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

### **34.0 TERMINATION UNDER SECTION 287.135, F.S.**

Notwithstanding any provision of this Agreement to the contrary, Authority will have the option to immediately terminate this Agreement, in the exercise of its sole discretion, if Provider is found to have submitted a false certification under section 287.135(5), Florida Statutes, or has been placed on the Scrutinized Companies with Activities in Sudan List; Scrutinized Companies with Activities in the Iran Petroleum

Energy Sector List; is engaged in business operations in Cuba or Syria; or is on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

### **35.0 TERMINATION FOR FAILURE TO MAINTAIN INSURANCE**

If Provider does not maintain the insurance coverages required by this Agreement at any time, Authority may terminate the Agreement or at its sole discretion is authorized to purchase such coverages and charge Provider for coverages purchased. Authority will be under no obligation to purchase insurance, nor will it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase insurance coverages will in no way be construed to be a waiver of its rights under this Agreement.

### **36.0 WAIVER OF BREACH**

Waiver by either Party of a breach of any provision of this Agreement will not be deemed to be a waiver of any other breach and will not be construed to be a modification of the terms of this Agreement.

### **37.0 SECURING AGREEMENT DISCLOSURE**

Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any person or company to secure this Agreement, other than a bona fide employee of Provider.

### **38.0 AMENDMENTS OR MODIFICATIONS**

The terms of this Agreement may be amended in writing, by the mutual agreement of the Parties. Any modifications to the terms of this Agreement will only be valid when issued in writing as a properly executed Amendment to the Agreement and signed by the Parties.

### **39.0 TITLE VI LIST OF PERTINENT NON-DISCRIMINATION ACTS AND AUTHORITIES**

During the performance of this Agreement, the Provider, 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:

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

(Non-discrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance); • The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);

E. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

F. 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, subrecipients and contractors, 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) (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 U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

G. The Federal Aviation Administration’s Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

H. 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);

I. 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. 74087 (2005)];

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

#### **40.0 COMPLIANCE WITH NON-DISCRIMINATION REQUIREMENTS**

During the performance of this Agreement, the Provider, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

A. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Non-discrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

B. **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, 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 Contractor will not participate directly or indirectly in the discrimination prohibited by the Non-discrimination 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 the Contractor 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 the Contractor of the contractor's obligations under this contract and the Non-discrimination Acts and Authorities on the grounds of race, color, or national origin.

D. **Information and Reports:** The Contractor 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 Federal Aviation Administration to be pertinent to ascertain compliance with such Non-discrimination 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, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

E. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or,
- b. Canceling, terminating, or suspending a contract, in whole or in part.

F. **Incorporation of Provisions:** The Contractor will include the provisions of this article 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 Federal Aviation Administration 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.

#### **41.0 ACCEPTANCE**

Acceptance of this Agreement will be indicated by the signature of the duly authorized representative of each party in the space provided. Any affixed electronic signature of the authorized signatory is the act of and attributed to the authorized

signatory. Provider agrees that electronic signatures are true and valid and agrees to be bound to the same extent as that of an original signature. Electronic signature must be of sufficient quality to be legible electronically or when printed in hardcopy.

The undersigned representative of Provider warrants and certifies to Authority that Provider is an organization in good standing in its state of registration, that it is authorized to do business in the State of Florida, and that the undersigned officer is authorized and empowered to bind the organization to the terms of this Agreement by his or her signature affixed below.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement effective the day and year first written above.

COMMERCIAL AIR MANAGEMENT, INC.

By:   
Paul T. Boudreaux, President

BOARD OF PORT COMMISSIONERS  
LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Chair or Vice Chair

ATTEST: Kevin Karnes  
Lee County Clerk of Court

Approved as to form for the reliance of  
Lee County Port Authority only:

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

By: \_\_\_\_\_  
Port Authority Attorney's Office

## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### **1.0 PURPOSE:**

It is the purpose and intent of this Agreement to establish an ongoing source of supply for ABB Variable Frequency Drives (VFD) unit replacements to include, unit start-up warranty certification, and as-needed labor services at fixed pricing to meet the ongoing operational needs of the Authority based on actual needs of the Authority.

#### **2.0 SCOPE:**

At the Authority's written request, provide ACH580 drives w/ NEMA 1 by-pass, disconnect, 5% line reactor, service switch, bluetooth enabled control panel, 3-year warranty, and factory-certified start-up, with as-needed installation services.

The Provider will provide the items identified and described in Exhibit B, Authority Compensation and Price Schedule. The Authority reserves the right to order ABB VFDs not specifically listed on Exhibit B throughout the term of this Agreement. Pricing for such additional VFDs will be confirmed and agreed to in writing by both parties. Provider pricing for additional VFDs is to be better than or equal to pricing offered to other government entities by the provider except for Agreement No. 20/21-A051(R2) with Charlotte County Public Schools.

#### **3.0 ORDER AND DELIVERY:**

The Authority will issue written order requests using item information in Exhibit B, Compensation and Price Schedule, on an as-needed basis. The Provider will fill orders that are placed by the Authority as further described below.

All items will be delivered FOB Destination; freight prepaid and delivered to the Authority before 3:00 p.m., at the Southwest Florida International Airport, 15920 Air Cargo Lane, Fort Myers, Florida 33913 or at Page Field, 4682 Terminal Drive, Fort Myers, FL 33907.

Provider retains title and assumes all transportation charges, responsibility, liability, and risk in transit, and will be responsible for the filing of claims for loss or damages.

#### **4.0 INSTALLATION SERVICES (as-needed):**

At the Authority's written request, Provider will perform installation services on an as-needed basis using the labor rates identified in Exhibit B, Compensation and Price Schedule.

#### **5.0 SUBCONTRACTED ELECTRICAL SERVICES (as-needed):**

Subcontracted Services may be used only with prior written approval from the Authority, and will be invoiced at cost. A maximum of 10% markup of the total subcontracted cost will be allowed for overhead and profit, except no markup of sales tax will be allowed. A copy of the itemized subcontracted services invoice from the

Subcontractor must be included to support all invoices.

## 6.0 WARRANTY

The Provider will fully warrant all items furnished under the Agreement against defects in materials and workmanship for three (3) years from the date of the completed unit start-up certification. Should any defect in materials or workmanship, excluding ordinary wear and tear, appear during the above-stated warranty period, the Provider will repair or replace the defective item at no cost to the Authority, immediately upon written notice from the Authority. The Provider is fully responsible for any warranty work, regardless of third-party warranty coverage.

## 7.0 WORK HOURS

All regular work will be performed between the hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding Authority-recognized holidays. The Authority-recognized Holidays are New Year's Day, Martin Luther King, Jr. Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.

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**EXHIBIT B**  
**COMPENSATION AND PRICE SCHEDULE**

<u>Manufacturer</u>	<u>Description</u>	<u>Unit Price</u>
<u>ABB</u>	<u>ACH580-VCR-012A-4+J429</u> <u>7.5HP, 460V, 3PH, 60Hz MOTOR</u>	<u>\$2,765.00</u>
<u>ABB</u>	<u>ACH580-VCR-014A-4+J429</u> <u>10HP, 460V, 3PH, 60Hz MOTOR</u>	<u>\$3,005.00</u>
<u>ABB</u>	<u>ACH580-VCR-023A-4+J429</u> <u>15HP, 460V, 3PH, 60Hz MOTOR</u>	<u>\$3,550.00</u>
<u>ABB</u>	<u>ACH580-VCR-027A-4+J429</u> <u>20HP, 460V, 3PH, 60Hz MOTOR</u>	<u>\$4,300.00</u>
<u>ABB</u>	<u>ACH580-VCR-034A-4+J429</u> <u>25HP, 460V, 3PH, 60Hz MOTOR</u>	<u>\$5,135.00</u>
<u>ABB</u>	<u>ACH580-VCR-044A-4+J429</u> <u>30HP, 460V, 3PH, 60Hz MOTOR</u>	<u>\$5,710.00</u>
<u>ABB</u>	<u>ACH580-VCR-052A-4+J429</u> <u>40HP, 460V, 3PH, 60Hz MOTOR</u>	<u>\$6,680.00</u>
<u>ABB</u>	<u>ACH580-VCR-065A-4+J429</u> <u>50HP, 460V, 3PH, 60Hz MOTOR</u>	<u>\$8,460.00</u>
<u>ABB</u>	<u>ACH580-VCR-077A-4+J429</u> <u>60HP, 460V, 3PH, 60Hz MOTOR</u>	<u>\$9,750.00</u>
<u>ABB</u>	<u>ACH580-BCR-096A-4+J429</u> <u>75HP, 460V, 3PH, 60Hz MOTOR</u>	<u>\$12,110.00</u>

As-Needed - Hourly Labor Rates:

Regular Labor Rate - Work Hours (Monday - Friday 7AM - 6PM): \$150.00

Overtime Labor Rate - Work Hours (Monday - Friday 7PM - 6AM): \$225.00

Weekend/Holiday Labor Rate: \$300.00

As-Needed - Subcontracted Installation Electrical Services:

Actual Cost plus Percentage Mark-Up: 10%, less sales tax

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**EXHIBIT C**  
**CERTIFICATE OF INSURANCE**