

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
STANDARD WRITTEN AGREEMENT

Agreement No. BEG82
Financial Project I.D. 45441111201
F.E.I.D. No.: F834018346-001
Appropriation Bill Number(s)/Line Item Number(s) for 1st year of contract, pursuant to s. 216.313, F.S.: _____
(required for contracts in excess of \$5 million)
Procurement No.: DOT-RFP-24-9036-CA
78141805, 43232601, 46171600,
DMS Catalog Class No.: 43221718, 43221728, 41115200

BY THIS AGREEMENT, made and entered into on 02/15/24 by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the "Department" and Virtower, LLC, of 13721 Jetport Commerce Pkwy, Ste 2, Ft. Myers, Florida 33913 duly authorized to conduct business in the State of Florida, hereinafter called "Vendor," hereby agree as follows:

1. SERVICES AND PERFORMANCE

- A. In connection with Statewide Airport Operations Counting Data Collection, the Department does hereby retain the Vendor to furnish certain services, information, and items as described in Exhibit "A," attached hereto and made a part hereof.
- B. Before making any additions or deletions to the work described in this Agreement, and before undertaking any changes or revisions to such work, the parties shall negotiate any necessary cost changes and shall enter into an Amendment covering such work and compensation. Reference herein to this Agreement shall include any amendment(s).
- C. All tracings, plans, specifications, maps, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, shall be the exclusive property of the Department without restriction or limitation on their use and shall be made available, upon request, to the Department at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Vendor shall not copyright any material and products or patent any invention developed under this Agreement. The Department shall have the right to visit the site for inspection of the work and the products of the Vendor at any time.
- D. All final plans, documents, reports, studies, and other data prepared by the Vendor shall bear the professional's seal/signature, in accordance with the applicable Florida Statutes, Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the Department, in effect at the time of execution of this Agreement. In the event that changes in the statutes or rules create a conflict with the requirements of published guidelines, requirements of the statutes and rules shall take precedence.
- E. The Vendor agrees to provide project schedule progress reports in a format acceptable to the Department and at intervals established by the Department. The Department shall be entitled at all times to be advised, at its request, as to the status of work being done by the Vendor and of the details thereof. Coordination shall be maintained by the Vendor with representatives of the Department, or of other agencies interested in the project on behalf of the Department. Either party to this Agreement may request and be granted a conference.
- F. All services shall be performed by the Vendor to the satisfaction of the Director who shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount of value thereof; and the decision upon all claims, questions, and disputes shall be final and binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be subject to mutual agreement of the parties, and amendment(s) shall be entered into by the parties in accordance herewith.

Reference herein to the Director shall mean the Assistant Secretary, Strategic Development.

2. TERM

- A. Initial Term. This Agreement shall begin on date of execution and shall remain in full force and effect through completion of all services required or three (3) years after the date of execution, whichever occurs first. Subsequent to the execution of this Agreement by both parties, the services to be rendered by the Vendor shall commence and be completed in accordance with the option selected below. (Select box and indicate date(s) as appropriate):
- Services shall commence _____ and shall be completed by _____ or date of termination, whichever occurs first.
- Services shall commence upon written notice from the Department's Contract Manager and shall be completed by three (3) years after the date of execution or date of termination, whichever occurs first.
- Other: See Exhibit "A"
- B. RENEWALS (Select appropriate box):
- This Agreement may not be renewed.
- This Agreement may be renewed for a period that may not exceed three (3) years or the term of the original contract, whichever is longer. Renewals are contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds. Costs for renewal may not be charged. Any renewal or extension must be in writing and is subject to the same terms and conditions set forth in this Agreement and any written amendments signed by the parties.
- C. EXTENSIONS. In the event that circumstances arise which make performance by the Vendor impracticable or impossible within the time allowed or which prevent a new contract from being executed, the Department, in its discretion, may grant an extension of this Agreement. Extension of this Agreement must be in writing for a period not to exceed six (6) months and is subject to the same terms and conditions set forth in this Agreement and any written amendments signed by the parties; provided the Department may, in its discretion, grant a proportional increase in the total dollar amount based on the method and rate established herein. There may be only one extension of this Agreement unless the failure to meet the criteria set forth in this Agreement for completion of this Agreement is due to events beyond the control of the Vendor.

It shall be the responsibility of the Vendor to ensure at all times that sufficient time remains in the Project Schedule within which to complete services on the project. In the event there have been delays which would affect the project completion date, the Vendor shall submit a written request to the Department which identifies the reason(s) for the delay and the amount of time related to each reason. The Department shall review the request and make a determination as to granting all or part of the requested extension.

3. COMPENSATION AND PAYMENT

- A. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. If the Department determines that the performance of the Vendor is unsatisfactory, the Department shall notify the Vendor of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Vendor shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Vendor will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Vendor shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the vendor resolves the deficiency. If the deficiency is subsequently resolved, the Vendor will bill the Department for the

retained amount during the next billing period. If the Vendor is unable to resolve the deficiency, the funds retained will be forfeited at the end of the agreement period.

- B. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.
- C. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
- D. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Manager, shall be submitted on the Department's Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, F.S and the most current version of the Disbursement Handbook for Employees and Managers.
- E. Vendors providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless otherwise specified herein. The Department has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- F. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the Vendor. Interest penalties of less than one (1) dollar shall not be enforced unless the Vendor requests payment. Invoices which have to be returned to a Vendor because of Vendor preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- G. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(22), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which the Vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the transaction fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, the Vendor shall pay the transaction fee pursuant to Rule 60A-1.031 (2), Florida Administrative Code. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. The Vendor shall receive a credit for any transaction fee paid by the Vendor for the purchase of any item(s) if such item(s) are returned to the Vendor through no fault, act, or omission of the Vendor. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is rejected or returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the Agreement. Failure to comply with these requirements shall constitute grounds for declaring the Vendor in default and recovering procurement costs from the Vendor in addition to all outstanding fees. VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.
- H. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- I. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and records of the Vendor and all subcontractors performing work on the project, and all other records of the Vendor and subcontractors considered necessary by the Department for a proper audit of project costs.
- J. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require

a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

4. INDEMNITY AND PAYMENT FOR CLAIMS

- A. **INDEMNITY:** To the extent permitted by Florida Law, the Vendor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Vendor and persons employed or utilized by the Vendor in the performance of this Agreement.

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

PAYMENT FOR CLAIMS: The Vendor guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Vendor or any subcontractor, in connection with the Agreement. The Department's final acceptance and payment does not release the Vendor's bond until all such claims are paid or released.

- B. **LIABILITY INSURANCE.** (Select and complete as appropriate):

- No general liability insurance is required.
- The Vendor shall carry and keep in force during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with a combined bodily injury limits of at least \$200,000.00 per person and \$300,000.00 each occurrence, and property damage insurance of at least \$200,000 each occurrence, for the services to be rendered in accordance with this Agreement
- The Vendor shall have and maintain during the term of this Agreement, a professional liability insurance policy or policies or an irrevocable letter of credit established pursuant to Chapter 675 and Section 337.106, Florida Statutes, with a company or companies authorized to do business in the State of Florida, affording liability coverage for the professional services to be rendered in accordance with this Agreement in the amount of \$_____.

- C. **WORKERS' COMPENSATION.** The Vendor shall also carry and keep in force Workers' Compensation insurance as required for the State of Florida under the Workers' Compensation Law.

- D. **PERFORMANCE AND PAYMENT BOND.** (Select as appropriate):

- No Bond is required.
- Prior to commencement of any services pursuant to this Agreement and at all times during the term hereof, including renewals and extensions, the Vendor will supply to the Department and keep in force a bond provided by a surety authorized to do business in the State of Florida, payable to the Department and conditioned for the prompt, faithful, and efficient performance of this Agreement according to the terms and conditions hereof and within the time periods specified herein, and for the prompt payment of all persons furnishing labor, materials, equipment, and supplies therefor.

- E. **CERTIFICATION.**

With respect to any general liability insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Vendor shall provide to the Department certificates showing the required coverage to be in effect with endorsements

showing the Department to be an additional insured prior to commencing any work under this Contract. Policies that include Self Insured Retention (SIR) will not be accepted. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the Department or as provided in accordance with Florida law.

5. COMPLIANCE WITH LAWS

- A. The Vendor shall comply with Chapter 119, Florida Statutes. Specifically, the Vendor shall:
- (1) Keep and maintain public records required by the Department to perform the service.
 - (2) Upon request from the Department's custodian of public records, provide the Department 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 for the duration of the Agreement term and following completion of the Agreement if the Vendor does not transfer the records to the Department.
 - (4) Upon completion of the Agreement, transfer, at no cost, to the Department, all public records in possession of the Vendor or keep and maintain public records required by the Department to perform the service. If the Vendor transfers all public records to the Department upon completion of the Agreement, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the Agreement, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

Failure by the Vendor to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by the Department.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Central Office
850-414-5355
COPrcustodian@dot.state.fl.us
Office of the General Counsel
Florida Department of Transportation
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0458

- B. The Vendor agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise discuss or permit to be disclosed or discussed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Department's Contract Manager and securing prior written consent. The Vendor also agrees that it shall not publish,

- copyright, or patent any of the data developed under this Agreement, it being understood that such data or information are works made for hire and the property of the Department.
- C. The Vendor shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- D. If the Vendor is licensed by the Department of Business and Professional Regulation to perform the services herein contracted, then Section 337.162, Florida Statutes, applies as follows:
- (1) If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. The complaint shall be confidential.
 - (2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of the person's employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to Chapter 455, Florida Statutes, and the state licensing law applicable to that licensee. The complaint shall be confidential.
 - (3) Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt from Section 119.07(1), Florida Statutes, pursuant to Chapter 455, Florida Statutes, and applicable state law.
- E. The Vendor covenants and agrees that it and its employees and agents shall be bound by the standards of conduct provided in applicable law and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Vendor further covenants and agrees that when a former state employee is employed by the Vendor, the Vendor shall require that strict adherence by the former state employee to Sections 112.313 and 112.3185, Florida Statutes, is a condition of employment for said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Vendor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- F. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.
- G. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity.
- H. The Department shall consider the employment by any vendor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this agreement.
- I. The Vendor agrees to comply with the Title VI Nondiscrimination Contract Provisions, Appendices A and E, available at <http://www.dot.state.fl.us/procurement/index.shtml>, incorporated herein by reference and made a part of this Agreement.

- J. Pursuant to Section 216.347, Florida Statutes, the vendor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.
- K. Any intellectual property developed as a result of this Agreement will belong to and be the sole property of the State. This provision will survive the termination or expiration of the Agreement.
- L. The Vendor agrees to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.

6. TERMINATION AND DEFAULT

- A. This Agreement may be canceled by the Department in whole or in part at any time the interest of the Department requires such termination. The Department reserves the right to terminate or cancel this Agreement in the event an assignment be made for the benefit of creditors.
- B. If the Department determines that the performance of the Vendor is not satisfactory, the Department shall have the option of (a) immediately terminating the Agreement, or (b) notifying the Vendor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the Department.
- C. If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Vendor, the Department shall notify the Vendor of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- D. If the Agreement is terminated before performance is completed, the Vendor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the Department and shall be turned over promptly by the Vendor.
- E. A Vendor is ineligible to enter into a contract with the Department for goods or services of any amount if, at the time of entering into such contract, the Vendor is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135, Florida Statutes, also prohibits companies from entering into a contract for goods or services of \$1 million or more that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector Lists which were created pursuant to s. 215.473, Florida Statutes. If the Department determines the Vendor submitted a false certification under Section 287.135 of the Florida Statutes, the Department shall either terminate the Contract after it has given the Vendor notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135 of the Florida Statutes, or maintain the Contract if the conditions of Section 287.135 of the Florida Statutes are met.

7. ASSIGNMENT AND SUBCONTRACTS

- A. The Vendor shall maintain an adequate and competent staff so as to enable the Vendor to timely perform under this Agreement and may associate with it such subcontractors, for the purpose of its services hereunder, without additional cost to the Department, other than those costs within the limits and terms of this Agreement. The Vendor is fully responsible for satisfactory completion of all subcontracted work. The Vendor, however, shall not sublet, assign, or transfer any work under this Agreement to other than subcontractors specified in the proposal, bid, and/or Agreement without the written consent of the Department.
- B. Select the appropriate box:
 - The following provision is not applicable to this Agreement:
 -

The following provision is hereby incorporated in and made a part of this Agreement:

- It is expressly understood and agreed that any articles that are the subject of, or required to carry out this Agreement shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for the state agency (Department) insofar as dealings with such qualified nonprofit agency are concerned. RESPECT of Florida provides governmental agencies within the State of Florida with quality products and services produced by persons with disabilities. Available pricing, products, and delivery schedules may be obtained by contacting:

RESPECT
2475 Apalachee Pkwy
Tallahassee, Florida 32301-4946
Phone: (850)487-1471

- The following provision is hereby incorporated in and made a part of this Agreement:
It is expressly understood and agreed that any articles which are the subject of, or required to carry out this Agreement shall be purchased from the corporation identified under Chapter 946, Florida Statutes, in the same manner and under the procedures set forth in Sections 946.515(2) and (4), Florida Statutes; and for purposes of this Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for this agency (Department) insofar as dealings with such corporation are concerned. The "corporation identified" is Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Available pricing, products, and delivery schedules may be obtained by contacting:

PRIDE Enterprises
12425 - 28th Street, North
St. Petersburg, FL 33716-1826 (800)643-8459

- This Agreement involves the expenditure of federal funds and Section 946.515, Florida Statutes, as noted above, does not apply. However, Appendix I is applicable to all parties and is hereof made a part of this Agreement.

8. MISCELLANEOUS

- A. The Vendor and its employees, agents, representatives, or subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Vendor and its employees, agents, representatives, or subcontractors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of the Vendor or its employees, agents, representatives, or subcontractors. Vendor agrees to include this provision in all its subcontracts under this Agreement.
- B. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. The State of Florida terms and conditions, whether general or specific, shall take precedence over and supersede any inconsistent or conflicting provision in any attached terms and conditions of the Vendor.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the

remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

- E. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- F. In any legal action related to this Agreement, instituted by either party, the Vendor hereby waives any and all privileges and rights it may have under Chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in the county chosen by the Department and in the event that any such legal action is filed by the Vendor, the Vendor hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.
- G. If this Agreement involves the purchase or maintenance of information technology as defined in Section 282.0041, Florida Statutes, the selected provisions of the attached Appendix II are made a part of this Agreement.
- H. If this Agreement is the result of a formal solicitation (Invitation to Bid, Request for Proposal or Invitation to Negotiate), the Department of Management Services Forms PUR1000 and PUR1001, included in the solicitation, are incorporated herein by reference and made a part of this Agreement.
- I. The Department may grant the Vendor's employees or subconsultants access to the Department's secure networks as part of the project. In the event such employees' or subconsultants' participation in the project is terminated or will be terminated, the Vendor shall notify the Department's project manager no later than the employees' or subconsultants' separation date from participation in the project or immediately upon the Vendor acquiring knowledge of such termination of employees' or subconsultants' participation in the project, whichever occurs later.
- J. Vendor/Contractor:
 - 1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
 - 2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term; and
 - 3. shall adhere to requirements in section 448.095, Florida Statutes.
- K. Time is of the essence as to each and every obligation under this Agreement.
- L. The following attachments are incorporated and made a part of this agreement:
 - Exhibit "A" Scope of Services
 - Exhibit "B" Method of Compensation
 - Exhibit "C" Price Proposaland by reference the Vendor's Technical Proposal.
- M. Other Provisions:

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month and year set forth above.

Virtower, LLC
Name of Vendor

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: Les Goldsmith
Authorized Signature
Les Goldsmith

BY: Kimberly A. Holland
Authorized Signature
Kimberly A. Holland

(Print/Type)
Title: President

(Print/Type)
Title: Assistant Secretary, Strategic Development

FOR DEPARTMENT USE ONLY

APPROVED:
Paul Baker

LEGAL REVIEW
Jada Roulliac

EXHIBIT “A” SCOPE OF WORK

STATEWIDE AIRPORT OPERATIONS COUNTING DATA COLLECTION

BACKGROUND

For decades the FDOT Aviation Office (AO) has been attempting to collect reliable operations counts from the publicly owned, public use airports in the state of Florida. Operations count data has been used for a variety of reasons including annual growth forecasting, district work program allocation decisions, to better understand trends in both commercial and GA airport usage in Florida, and to establish standards to deal with future system needs.

Today, there is very limited flight operations data being collected at Florida’s non-towered airports, and there is a lack of consistency in operations counting standards across all Florida airports. The AO is seeking to purchase a means of collecting consistent operations data for up to 106 of the publicly owned, public use airports in the state. The AO is considering its options for the level of detailed data it will purchase as part of this contract. At minimum, the AO is interested in purchasing the basic operations count data needed to fill out an airport’s 5010 form. The AO may consider purchasing the full, detailed data that vendors are providing to individual airports. Any data not purchased by the AO may be purchased by individual airports that desire to acquire this data, and other features, from the vendor.

As part of the response to this RFP, vendors should list out the levels of detailed data available and the price associated with each level as well as a list of the common ad-on services for airports (geofencing, flight plan origin data, etc.) and the prices associated with each ad-on. The vendor should list these prices as a per airport amount. The vendor should also acknowledge their ability to provide discounts for large quantity purchases, such as a statewide contract, if applicable.

The counting equipment provided by the vendor should be able to, at minimum, capture all ADS-B aircraft within the monitored range. The equipment should preferably capture as many aircraft operations as possible, both cooperative and non-cooperative. The dashboard should be simple, easy to use, and provide access to all desired data as needed. The cost of the equipment and services should be low enough to support the proposed widespread deployment of this technology across the state.

The AO has already conducted an Request For Information to gather more information on available technologies, but all parties are encouraged to apply to this Request For Proposal. The AO will be selecting the vendor who provides the best combination of a robust, accurate, and affordable service.

PROJECT OBJECTIVE

1. Establish an agreement with a vendor to obtain the most accurate and consistent flight operations data possible for Florida’s publicly owned, public use airports.
2. Identify and make best use of the most advanced flight operations tracking technologies available in Florida.
3. Provide fact-based information needed to make better decisions regarding the significant capital investment that public use airport infrastructure represents.
4. Develop a robust database of Florida airport flight operations information.

EXHIBIT “A” SCOPE OF WORK

5. Establish policies and procedures regarding statewide airport operations counting practices, uses, and the sharing of information.

ANTICIPATED SCOPE OF WORK

TASK 1 – PROJECT KICKOFF MEETING

The project will begin with a kick-off meeting. During this meeting, the final scope of work and work schedule will be discussed and approved, with Federal Aviation Administration Airports District Office coordination, that will meet the Department’s needs and requirements, including Federal Requirements, with respect to conducting aircraft operations counts at selected airports and the accuracy and utility of the end data. This includes the method and equipment to be utilized for data collection, and the determination if form FAA 7460-1 or other local coordination will be necessary. In addition, given the approach, applicable safety and security rules and regulations will be outlined such as FAA Advisory Circular 150/5370-2 - Operational Safety on Airports During Construction, or FAA Advisory Circular 150/5210-20 - Ground Vehicle Operations on Airports. Each deliverable of the project will be discussed in detail, so an understanding of the schedule and final product(s) expected from this project is established between the Vendor and the FDOT.

TASK 2 – AIRPORT COORDINATION & EQUIPMENT INSTALLATION

The Vendor shall prepare, on behalf of the AO, program notice documentation to the Florida Airports System. Notice shall be provided to the public use publicly owned airports and to FDOT District Office Aviation representatives. The airport program notice will focus upon the confirmation of the airports’ participation in the program and formally request critical data needed for airfield access and equipment installation. The Vendor shall be responsible for the processing and cataloguing of airport responses as well as following up with airport staff.

Deliverables

Upon the receipt and confirmation of all participating airports, the Vendor shall prepare a detailed schedule of dates for each participating airport. The schedule shall be developed to ensure timely and well-coordinated installation efforts.

TASK 3 – DASHBOARD CREATION & AO STAFF TRAINING

To catalogue and present data and metadata digitally, the Vendor will provide an internet dashboard tailored to FDOT use that is updated as frequently as possible. This dashboard must be accessible on all FDOT issued devices and compatible with FDOT utilized software.

Deliverables

The Vendor will conduct a training (digitally or in person) for all FDOT Central Office and District staff covering information access and dashboard functionality.

TASK 4 – ONGOING AIRCRAFT OPERATIONS DATA COLLECTION

At the date specified by the FDOT, the Vendor will begin an ongoing process of collecting and relaying flight operations and fleet mix data for each of Florida’s participating public use airports.

Deliverables

The Vendor will provide all requested information updated in real time via the developed database & dashboard to the FDOT AO utilizing software compatible with Department computers, to include:

EXHIBIT “A” SCOPE OF WORK

- Total operations as defined by the FDOT.
- Annual aircraft operations by aircraft type/make/model and design group for those aircraft B II and above (Aircraft Approach Category and/or Airplane Design Group) that can be utilized in determining critical aircraft and regular use per FAA AC No: 150/5000-17 - Critical Aircraft and Regular Use Determination.
- Data needed for each airport’s Master Record (FAA Form 5010), to include:
 - Total Air Carrier (Part 121) operations,
 - Total Air Taxi (Part 135) operations,
 - Total General Aviation Local operations,
 - Total General Aviation Itinerant operations, and
 - Total Military operations.
- All sample data and metadata pertaining to annual aircraft operation counts including, at a minimum, aircraft type, make, and model. The metadata must be able to be correlated directly to the airport at which it was collected and the operation it was counted toward.

TASK 5 – DATABASE & DASHBOARD MANAGEMENT

The Vendor will provide the technical expertise for database and dashboard management, improvement, and maintenance. Services required may include the development of additional applications to manage, store, visualize, and share data. This project will likely require periodic meetings with the FDOT AO and with various airport authorities. Meetings may consist of maintenance discussions, IQA/QCM discussions, and quarterly program management meetings. The Vendor will provide administrative support to document quarterly meetings.

EXHIBIT "B"
METHOD OF COMPENSATION

1.0 PURPOSE:

This Exhibit defines the limits of compensation to be made to the Vendor for the services set forth in Exhibit "A", Scope of Services, and the method by which payments shall be made.

2.0 COMPENSATION:

For the satisfactory **performance** of services detailed in Exhibit "A", the Vendor shall be paid up to a Maximum Limiting Amount of \$576,000.00. It is agreed that this amount will be the limit of all compensation due the Vendor for performance of the services described in Exhibit "A". The Vendor shall not provide services that exceed the maximum limiting amount without an approved Amendment from the Department.

The total amount of this agreement is expected to be funded by multiple appropriations and the State of Florida's performance and obligation to pay under this contract is contingent upon annual appropriation by the Legislature.

Currently, \$96,000.00 of the total amount has been approved and encumbered for this contract. Therefore, it is agreed that the Vendor will not be obligated to perform services nor incur costs which would result in exceeding the funding currently approved, nor will the Department be obligated to reimburse the Vendor for costs or make payments in excess of currently established funding. The Department will provide written authorization (by Letter of Authorization (LOA) or with an email LOA) if and when subsequent funding is approved and encumbered for this contract.

3.0 PROGRESS PAYMENTS:

The Vendor shall submit quarterly invoices (3 copies) in a format acceptable to the Department. Payment for services shall be made quarterly in the arrears, as approved by the Department. The quarterly amount shall include the costs of salaries, overhead, fringe benefits and operating margin. Payment for expenses shall be made on the basis of actual allowable cost incurred as authorized and approved by the Department. **The invoice shall include documentation of man-hours provided and itemization of costs incurred (including receipts).**

Invoices shall be submitted to: Florida Department of Transportation
Office of Aviation
605 Suwannee Street
Tallahassee, Florida 32399-0450

4.0 DETAILS OF UNIT RATES:

Details of the Maximum Limiting Amount for the performance of the Vendor's services set forth in Exhibit "A" are contained in Exhibit "C", attached hereto and made a part hereof.

5.0 TANGIBLE PERSONAL PROPERTY:

This contract does not involve the purchase of Tangible Personal Property, as defined in Chapter 273, F.S.

EXHIBIT "C" - PRICE PROPOSAL FORM (Page 1 of 2)RFP Number: DOT-RFP-24-9036-CARFP Title: Statewide Airport Operations Counting Data Collection**Services to be provided as specified in attached Exhibit "A", Scope of Services.**

The Proposer shall attach a detailed budget to support the lump sum amount identified per task. The total lump sum amount per task shall include cost of salaries, overhead, fringe benefits, operating margins, expenses and applicable equipment. Payments for travel expenses authorized shall be in accordance with Section 112.061, Florida Statutes. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Manager, shall be submitted on the Department's Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, F.S and the most current version of the Disbursement Handbook for Employees and Managers.

Task 1: Project Kickoff Meeting	\$ <u>Inclusive</u> (Lump Sum Amount)
Task 2: Airport Coordination & Equipment Installation	\$ <u>Inclusive</u> (Lump Sum Amount)
Task 3: Dashboard Creation & AO Staff Training	\$ <u>Inclusive</u> (Lump Sum Amount)
Task 4: Ongoing Aircraft Operations Data Collection	\$ <u>576,000</u> (Lump Sum Amount)
Task 5: Database & Dashboard Management	\$ <u>Inclusive</u> (Lump Sum Amount)

****Grand Total Price for tasks 1-5**\$ 576,000****Grand Total Price will be the basis for Price Proposal Evaluation****RENEWAL:** see Special Condition 33).

THE UNIT RATE(S) WILL APPLY TO THE INITIAL TERM AND ANY RENEWAL PERIODS.

NOTE: Unit Rates must be stated specifically in dollars and cents, NOT a percentage increase.

MFMP Transaction Fee: All payment(s) to the vendor resulting from this competitive solicitation **WILL** be subject to the MFMP Transaction Fee in accordance with the referenced Form PUR 1000 General Contract Condition #14. The Transaction Fees imposed shall be based upon the date of issuance of the payment.

NOTE: In submitting a response, the proposer acknowledges they have read and agree to the solicitation terms and conditions and their submission is made in conformance with those terms and


EXHIBIT "C" - PRICE PROPOSAL FORM (Page 2 of 2)

conditions.

ACKNOWLEDGEMENT: I certify that I have read and agree to abide by all terms and conditions of this solicitation and that I am authorized to sign for the proposer. I certify that the response submitted is made in conformance with all requirements of the solicitation.

Proposer: Virtower LLC FEID # 834018346

Address: 13721 Jetport Commerce Pkwy, Ste 2 City, State, Zip Ft Myers FL 33913

Authorized Signature:  Date: 10/15/2023
DocuSigned by: 986DAA39188044D...

Printed / Typed: Les Goldsmith Title: President