

# AIA<sup>®</sup> Document A141<sup>™</sup> - 2014

## *Standard Form of Agreement Between Owner and Design-Builder*

AGREEMENT made as of the 14<sup>th</sup> day of June, 2023.

**BETWEEN** the Owner:

Gainesville-Alachua County Regional Airport Authority  
Gainesville Regional Airport  
3880 NE 39<sup>th</sup> Avenue, Suite A  
Gainesville, Florida 32609-5626  
352.373.0249

and the Design-Builder:

Scherer Construction of North Florida, LLC  
2504 NW 71<sup>st</sup> Place  
Gainesville, Florida 32653  
352.371.1417

for the following Project:

Aircraft Hangar and Office Building #GA 47

The Owner and Design-Builder agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be Reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)*

#### § 1.1.1 The Owner's program for the Project:

##### **Design Build of Aircraft Storage and Office Building GA-47**

Design/Build of a pre-engineered, clear span, steel hangar building with office extension, located on the general aviation side of the airport immediately northeast of Hangar GA-22. The hangar will be a minimum of 10,240 square feet. with an attached office/support building of approximately 1,750 square feet. The minimum door width, clear span height and other minimum requirements are as shown in the attached drawings and Basis of Design, a.k.a. the Design Criteria Package. The site improvements include a minimum of twenty automobile parking spaces and all required sidewalks, exterior lighting and stormwater detention and treatment facilities as described in the Design Criteria Package and to meet applicable permitting requirements.

The minimum requirements of the RFQ for Design Build Services were modified to reflect the desire on the part of the Authority's and Ed and Nate, LLC, to reduce the square footage of the hangar to avoid the necessity to install a foam fire prevention system.

#### § 1.1.2 The Owner's design requirements for the Project and related documentation:

*(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)*

The Airport has engaged eda and Tekton Architecture to develop the Design-Build Request for Proposal for both the hangar and office. The Design-Build Request for Proposal for the proposed hangar and office building call for the facility to be a state-of-the-art facility. The hangar and office space is proposed to have design features such as efficient interior and exterior lighting, environmentally compliant and efficient HVAC, potable water, stormwater and wastewater systems, hangar doors engineered for smooth operation and weathertight integration into the pre-engineered hangar building and factory applied, long lasting exterior finishes. The project requirements are specified in the Design-Build Request for Proposals which includes:

1. Part One-Submission Requirements and Request for Proposals (RFP) No. 23-001;
2. Attachment A, Completed Bid Forms;
3. Attachment B, Project Basis of Design Document; (See modification as stated above in §1.1.1)
4. Attachment C, Project Drawings;
5. Attachment D, Sample Design-Build Contract AIA-141-2014 and Attachments.
6. The Design Builders Technical Proposal submitted in response to RFP 23-001, as amended and accepted by GACRAA.

The Project scope includes, but is not limited to, 100% design, consulting services, engineering to include civil, mechanical, structural, technical specifications permitting, and preparation of drawings, construction and contract administration.

The Airport recognizes the need to allow the selected DB Team maximum flexibility for the final design of the Project. The statement of design criteria and desirable features set forth in the solicitation intended to provide the Proposers with an overview of the Airport's "minimum requirements".

The Design-Builder acknowledge and recognize that the preliminary design is incomplete and not issued for purposes of construction. The Airport neither expressly nor impliedly warrants the adequacy or accuracy of the preliminary design. The Design-Builder assumes any and all risks arising from their use of or reliance upon the preliminary design including, without limitation, risks arising from potential errors or omissions to

the drawings, potential undisclosed site conditions, potential undisclosed environmental hazards or conditions, possible latent site conditions, building code or seismic errors, unknown utilities or interferences, regulatory and zoning requirements of any governmental authority, possible miscalculations, computational errors, design assumptions or conflicting information and mis-coordinated drawings. The Design-Builder will be required to prepare and complete the final design of the Project and shall be required to seal and approve the final design drawings through a properly licensed design professional in accordance with the laws of Florida subject to the Airport's final approval. The successful Design-Builder assumes all risks of the adequacy, accuracy, constructability, sufficiency, building code compliance, and full compliance with all federal, state and local laws and regulations in the final design and construction of the Project. The Design-Builder shall be fully and legally responsible for the final design as the designer of record and assume all risks of the final approved design.

The Authority and Design-Build team hereby agree that all documents which are part of the Design-Build Proposal and the response to the Design-Build Proposal are hereby made a part of and incorporated into the Agreement for all purposes.

The Project scope includes, but is not limited to, 100% design, consulting services, engineering to include civil, mechanical, structural, technical specifications permitting, and preparation of drawings, construction and contract administration.

The Airport recognizes the need to allow the selected Design-Build Team maximum flexibility for the final design of the Project. The statement of design criteria and desirable features set forth in the solicitation are intended to provide the Design-Builders with an overview of the Airport's "minimum requirements". All stated criteria listed are open for discussion, with the exception of the number of parking spaces, and façade of both garage and transit center building to match the existing style of the airport buildings.

The Design-Builder acknowledges and recognizes that the preliminary design is incomplete and not issued for purposes of construction. The Authority neither expressly nor impliedly warrants the adequacy or accuracy of the preliminary design. The Design-Builder assumes any and all risks arising from their use of or reliance upon the preliminary design including, without limitation, risks arising from potential errors or omissions to the drawings, potential undisclosed site conditions, potential undisclosed environmental hazards or conditions, possible latent site conditions, building code or seismic errors, unknown utilities or interferences, regulatory and zoning requirements of any governmental authority, possible miscalculations, computational errors, design assumptions or conflicting information and mis-coordinated drawings. The Design-Builder will be required to prepare and complete the final design of the Project and shall be required to seal and approve the final design drawings through a properly licensed design professional in accordance with the laws of the State of Florida subject to the Airport's final approval. The successful Design-Builder assumes all risks for the adequacy, accuracy, constructability, sufficiency, building code compliance, and full compliance with all federal, state and local laws and regulations in the final design and construction of the Project. The Design-Builder shall be fully and legally responsible for the final design as the designer of record and assume all risks of the final approved design.

#### § 1.1.3 The Owner's design and construction milestone dates:

##### Substantial Completion date:

Total Project Design and Construction time is 386 calendar days from Final approval of design and Notice to Proceed to Substantial Completion. Unless otherwise agreed between the Parties, in writing, failure to achieve Substantial Completion of the Entire Project within 386 calendar days will result in the assessment of Liquidated Damages in the amount of \$250.00 per calendar day until actual Substantial Completion is achieved. Design Builder shall achieve Final Completion within 60 days of Substantial Completion or be assessed Liquidated Damages in the amount of \$250.00 per calendar day until Final Completion.

These liquidated Damages are the Authority's sole and exclusive Substantial and Final Completion delay related damages and represent a reasonable estimate of the Authority's damages in the event Substantial and Final Completion of the project are delayed. Design-Builder agrees these Liquidated Damages do not constitute a penalty or forfeiture.

§ 1.1.4 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.5 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.6 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.7 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

## § 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

Allan Penksa, Chief Executive Officer  
Gainesville-Alachua County Regional Airport Authority

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

As required Construction Submittals shall be directed to Owner's Representative listed in Section 1.2.1 above and Ed Rennia and Nathan Collier, designated representatives of Ed and Nate, Inc.

§ 1.2.3 The Design- Builder designates the following representative who is authorized to act on the Design-Builder's behalf in respect to the project in accordance with Section 3.1.2.

Jeff Godman

§ 1.2.4 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days written notice to the other party. Transmission vis email shall be considered valid with a "Read Confirmation" transmitted and received.

## § 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

Litigation in a court of competent jurisdiction. The laws of Florida shall govern this Agreement. All disputes arising under this Agreement shall be litigated only in a non-jury hearing in the Circuit Court within the Eighth Judicial Circuit of Alachua County, Florida. The parties to this agreement waive any rights to a trial by jury. The prevailing party shall be entitled to recover reasonable attorney's fees and the costs of said litigation.<sup>30</sup>

## § 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits including the Design-Build Request for Proposals (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representation, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 **The Work.** The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, samplings, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 **Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 1.4.8 **Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

§ 1.4.9 **Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 **Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 **Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.” The Design-Builder shall comply with all applicable public records laws, specifically including Chapter 119, Florida Statutes.

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Design Services Fee.** The Design Services Fee is the firm-fixed priced lump-sum fee for the entire scope of work the Design Builder will be paid for its Design and Preconstruction Services and pursuant to this Agreement.

§ 1.4.16 **Construction Services Fee.** The Construction Services Fee is the firm fixed price lump-sum fee (including

all overhead, profit, and all fees and expenses of the Design Builder) for all construction services provided subsequent to the execution of the Design-Build Amendment, and which are not allowable reimbursable costs,

**§ 1.4.15 Final Construction Guaranteed Maximum Price.** The Final Construction Guaranteed Maximum Price is the amount specified in Article A.1 of Exhibit A.

**§ 1.4.18 The Guaranteed Maximum Price.** The Guaranteed Maximum Price is the cumulative total of the Design Services Fee, the Construction Services Fee, and the Final Construction Guaranteed Maximum Price as specified in Article A.1 of Exhibit A. Costs that would cause the amount of the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

## **ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS**

### **§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment**

**§ 2.1.1** Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly on a pro-ratable basis pursuant to the percentage of completion of the Design Services Fee as approved by the Owner. Payments shall be made pursuant to the Owner's standard payment terms upon approval of monthly invoices. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder the amount of the Design Services / Permitting Fee which is established in the firm fixed amount of: one hundred thirty-seven thousand two hundred dollars, (\$137,200.00)

### **§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment**

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Construction Services Fee which is established in the fixed amount of two million four hundred thirty-six thousand seven hundred and fifty dollars, (2,436,750.00)

## **ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT**

### **§ 3.1 General**

**§ 3.1.1** The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

**§ 3.1.2** The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

**§ 3.1.3** The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

**§ 3.1.3.1** The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.1.3.2** Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

**§ 3.1.4** The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

**§ 3.1.5 General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

**§ 3.1.8 Progress Reports**

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

**§ 3.1.9 Design-Builder's Schedules**

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to, and approved by, the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

**§ 3.1.11 Design-Builder's Submittals**

**§ 3.1.11.1** Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

**§ 3.1.11.2** By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

**§ 3.1.11.3** The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

**§ 3.1.11.4** The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

**§ 3.1.11.5** All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**§ 3.1.12 Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. All materials and equipment furnished under the Contract must be pre-approved by Owner. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.1.13 Royalties, Patents and Copyrights**

**§ 3.1.13.1** The Design-Builder shall pay all royalties and license fees.

**§ 3.1.13.2** The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

**§ 3.1.14 Indemnification**

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify, defend, and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent or willful acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 3.1.15 Contingent Assignment of Agreements**

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

**ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT**

**§ 4.1 General**

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 4.2 Evaluation of the Owner's Criteria**

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder

shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include:

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:  
*(List additional information, if any, to be included in the Design-Builder's written report.)*

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

#### § 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§4.3.3 The Design-Builder shall assume the responsibility for designing the Project within the Owner's Project budget and the Guaranteed Maximum Price. In the event the Design Builder's Proposal, if accepted, would exceed the Guaranteed Maximum Price, the Design-Builder shall at Owner's option and at the sole expense and risk of the Design-Builder redesign all or some portions of the Project so as to bring the Guaranteed Maximum Price to be within the Project Budget.

#### § 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;

- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement and the final Guaranteed Maximum Price.

## **ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT**

### **§ 5.1 Construction Documents**

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's approval. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

### **§ 5.2 Construction**

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 5.3 Labor and Materials**

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 5.4 Taxes**

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

**§ 5.5 Permits, Fees, Notices and Compliance with Laws**

**§ 5.5.1** Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

**§ 5.5.2** The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

**§ 5.5.4** If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

**§ 5.7 Key Personnel, Contractors and Suppliers**

**§ 5.7.1** The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

**§ 5.7.2** If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.3** Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.3.1** If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

**§ 5.8 Documents and Submittals at the Site**

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

**§ 5.9 Use of Site**

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall stay within the confines of approved laydown and storage unless prior approval is obtained from Owner.

**§ 5.10 Cutting and Patching**

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

#### **§ 5.11 Cleaning Up**

**§ 5.11.1** The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project. Design-Builder shall control waste so as not to attract birds or other wildlife to the site, which is a hazard to aircraft as determined by Owner.

**§ 5.11.2** If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

#### **§ 5.12 Access to Work**

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

#### **§ 5.13 Construction by Owner or by Separate Contractors**

##### **§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 5.13.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

**§ 5.13.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

**§ 5.13.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

**§ 5.13.1.4** Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

#### **§ 5.14 Mutual Responsibility**

**§ 5.14.1** The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

**§ 5.14.2** If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

#### § 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

### ARTICLE 6 CHANGES IN THE WORK

#### § 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

#### § 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

#### § 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, rented from third party rental companies.;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

## **ARTICLE 7 OWNER'S RESPONSIBILITIES**

### **§ 7.1 General**

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule

agreed to by the Owner.

**§ 7.2 Information and Services Required of the Owner**

**§ 7.2.1** The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

**§ 7.2.2** The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

**§ 7.2.3** The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

**§ 7.2.4** The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

**§ 7.2.5** The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work. The Design Criteria Documents are not for construction and the Design-Builder is responsible for producing their own construction documents.

**§ 7.2.6** If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

**§ 7.2.8** Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

**§ 7.2.9** The Design-Builder shall furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

**§ 7.2.10** The Owner shall purchase and maintain insurance as set forth in Exhibit B.

**§ 7.3 Submittals**

**§ 7.3.1** The Owner shall review and approve or take other appropriate action on requested Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

#### **§ 7.8 Owner's Right to Stop Work**

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

#### **§ 7.9 Owner's Right to Carry Out the Work**

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

### **ARTICLE 8 TIME**

#### **§ 8.1 Progress and Completion**

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### **§ 8.2 Delays and Extensions of Time**

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes

beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents; provided however, that the Owner's liability for delay damages are limited to the items enumerated in Article 6.3.7.

## **ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION**

### **§ 9.1 Contract Sum**

The Contract Sum is as stated in the Design-Build Agreement.

### **§ 9.2 Schedule of Values**

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

### **§ 9.3 Applications for Payment**

§ 9.3.1 At least ten working days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents. Owner shall hold 5% of completed work and materials claimed on any Pay Application as retainage. Pay applications may be submitted once a month.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

### **§ 9.4 Certificates for Payment**

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;  
or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.3** If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

#### **§ 9.6 Progress Payments**

**§ 9.6.1** After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

**§ 9.6.2** The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

**§ 9.6.3** The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

**§ 9.6.4** The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has

properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 The Design-Builder shall provide the Owner with a performance and payment bond in the full penal sum of the Owner's Construction Budget as specified in Article 1.1.6 upon execution of this agreement.

### § 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.5** Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing Conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

### ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

#### § 11.1 Uncovering of Work

The Owner shall be informed in advance of the scheduling of any Work which needs to be inspected prior to covering. The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

#### § 11.2 Correction of Work

§ 11.2.1 **Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

#### § 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build

Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

### § 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

### **§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment**

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 consecutive days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for satisfactory Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated

### **§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment**

#### **§ 13.2.1 Termination by the Design-Builder**

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for satisfactory Work executed; provided however, that the Design-Builder's recovery is limited to the items listed and enumerated in Article 6.3.7.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

#### § 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials or otherwise fails to complete the work in accordance with the Project Schedule so as to achieve Substantial Completion by the dates required in this agreement;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment and shall be liable to the Owner for the costs, actual and consequential damages, and attorney's fees the Owner incurs in completing the Project..

#### § 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

- .2 that an equitable adjustment is made or denied under another provision of the Contract.

**§ 13.2.4 Termination by the Owner for Convenience**

**§ 13.2.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 13.2.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

**§ 13.2.4.3** In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for satisfactory Work executed, and costs incurred by reason of such termination, and a pro-rata (earned) portion of the Construction Services Fee based upon the percentage of satisfactorily completed work.

**ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION**

**§ 14.1 Claims**

**§ 14.1.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§ 14.1.2 Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law.

**§ 14.1.3 Notice of Claims**

**§ 14.1.3.1 Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 14.1.4 Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

**§ 14.1.5 Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein in Article 14.1.3.1 shall be given before proceeding to execute the portion of the Work that relates to the Claim, and Design-Builder waives any claims which are not timely asserted. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 14.1.6 Claims for Additional Time**

**§ 14.1.6.1** If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein in Article 14.1.3.1 shall be given and Design-Builder waives any claims which are not timely asserted. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 14.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Design-Builder shall have no claims due to abnormal weather other than additional time. No additional payment beyond the GMP shall be claimed for weather.

In the event of temporary suspension of work, or during inclement weather, or whenever the Engineer shall direct, the DB Team will, and will cause his subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the DB Team or any of his Subcontractors so to protect his work, such materials shall be removed and replaced at the expense of the Contractor.

#### **§ 14.1.7 Claims for Consequential Damages**

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract except as indicated in Article 13. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

#### **§ 14.2 Initial Decision and Attempt to Resolve Claims and Disputes:**

All disputes or claims arising under this Contract or its interpretation whether involving law or fact or both, or extra work, and all claims for alleged breach of contract, shall be presented initially and informally to the DB Team to the City for consideration and discussion. All claims must include a presentation of facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope, and in the event monetary compensation is requested, a complete and verified summary of the costs and all supporting documents. The parties shall endeavor to resolve the dispute or claim in good faith and may, by mutual agreement, engage the assistance of a mediator. In the meantime, the DB Team shall proceed with the work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived.

In the event the parties are unable to resolve the matter informally, either party may declare an impasse and pursue relief through litigation as provided for herein. The Parties shall proceed with the work of the contract, including any disputed work during the pendency of any claims or disputes.

The laws of Florida shall govern this Agreement. All disputes arising under this Agreement shall be litigated only in a non-jury hearing in the Circuit Court within the Eighth Judicial Circuit of Alachua County, Gainesville, Florida. The prevailing party shall be entitled to recover attorney's fees and the costs of said litigation.

At any time after the submission of a claim seeking additional compensation by the Design-Builder, the Owner shall have the right to review, audit, and examine the Design-Builder's job cost records and financial information supporting the claim as those records are kept in the ordinary course of business, upon reasonable notice to the Design-Builder.

### **ARTICLE 15 MISCELLANEOUS PROVISIONS**

#### **§ 15.1 Governing Law**

The Contract shall be governed by the law of the place where the Project is located.

#### **§ 15.2 Successors and Assigns**

**§ 15.2.1** The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 15.2.3** If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution.

The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### **§ 15.3 Written Notice**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### **§ 15.4 Rights and Remedies**

**§ 15.4.1** Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**§ 15.4.2** No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### **§ 15.5 Tests and Inspections**

**§ 15.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

**§ 15.5.2** If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

**§ 15.5.3** If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

**§ 15.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

**§ 15.5.5** If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

**§ 15.5.6** Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

### **§ 15.6 Confidential Information**

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

**§ 15.6.1** A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process, or statute issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project,

provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

**§ 15.7 Capitalization**

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

**§ 15.8 Interpretation**

**§ 15.8.1** In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 15.8.2** Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

**ARTICLE 16 SCOPE OF THE AGREEMENT**

**§ 16.1** This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder as modified
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 A141 Exhibit A Amendments
  - Disadvantaged Business Enterprise Program
  - Bid Forms
  - Contract Forms
  - Certification of Disbursement of Previous Periodic Payment to Subcontractors
  - DBE Monthly Report
  - E-Verify Language Public Records EEO
- .4 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .5 Other: The Design-Build Request for Proposal dated 05 OCT 2022
- .6 Proposal Definition Documents
- .7 City of Gainesville engineering design & construction
- .8 Gainesville regional airport layout plans
- .9 Gainesville regional airport improvements
- .10 Multimodal transportation & parking facility study options
- .11 Bridging documents for preferred multimodal transportation & parking facility
- .12 Parking revenue system
- .13 AT&T fiber improvements
- .14 Transit center limits

« »

This Agreement entered into as of the day and year first written above.

  
\_\_\_\_\_  
OWNER (Signature)

Allan Penksa, Chief Executive Officer

  
\_\_\_\_\_  
DESIGN-BUILDER (Signature)

Jeffrey W Godman, Vice President

# AIA Document A141™ -2014

## Exhibit A

### Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the First day of April in the year 2023 (the "Agreement")

**for the following PROJECT:**

Design-Build Aircraft Hangar and Office Building GA-47  
At the Gainesville Regional Airport

**THE OWNER:**

Gainesville-Alachua County Regional Airport Authority  
3880 NE 39<sup>th</sup> Avenue, Suite A  
Gainesville, Florida 32609-5626  
352.373.0249

**THE DESIGN-BUILDER:**

Scherer Construction of North Florida, LLC  
2504 NW 71<sup>st</sup> Place  
Gainesville, Florida 32653  
352.371.1417



The Owner and Design-Builder hereby amend the Agreement as follows.

**ARTICLE A.1 CONTRACT SUM**

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Construction Contract Sum shall not exceed: two million five hundred seventy-three thousand nine hundred and fifty dollars, (2,573,950.00), and is allocated as follows: Design Fee of one hundred thirty-seven thousand two hundred dollars, (\$137,200.00) dollars; and Physical Construction costs of two million four hundred thirty-six thousand seven hundred and fifty dollars, (\$2,436,750.00).

**§ A.1.2 Construction Guaranteed Maximum Price**

The sum of the Cost of the Work and the Design-Builder's Construction Services Fee is guaranteed by the Design-Builder not to exceed two million five hundred seventy-three thousand nine hundred and fifty dollars, (2,573,950.00), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

**§ A.1.3. Unit Prices, if any:**

*(Identify item, state the unit price, and state any applicable quantity limitations.)*

Item	Units and Limitations	Price per Unit (\$0.00)
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**§ A.1.4 Payments**

**§ A.1.4.1 Progress Payments**

Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.4.2 Applications for Payment shall be submitted monthly and shall cover one month of work performed. Pay Applications should be submitted no less than 15 days prior to the next regularly scheduled monthly meeting of the Gainesville-Alachua County Regional Airport Authority. The Owner shall make payment of the certified amount to the Design-Builder not later than thirty days after receipt of the Pay Application.

§ A.1.4.3 Design fees related to the Hangar will be accounted for in the Schedule of Values, which shall be submitted separately, but at the same time if applicable. Design-Builder shall include any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder have been made. The Pay Application shall be presented on a form approved by the Owner. Owner shall hold 5% of completed work and materials claimed on any Pay Application as retainage.

§ A.1.4.4 The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.4.5 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.4.6 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site. Owner reserves the right to initiate an Owner's Direct Purchase, (ODP), Program.

§ A.1.4.7 Applications for Payment where the Contract Sum is based upon the Cost of the Work with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.4.8 Owner Direct Purchase, (ODP): The Authority reserves the right to implement a sales tax savings program with respect to the Project. In such event, Design-Builder shall cooperate and assist the Authority, at no additional cost, with respect to the implementation of that sales tax savings program. The Authority and Design-Builder shall work together to identify particular pieces of equipment and material that are suitable for direct purchase by the Authority. As such items are identified, the Authority shall issue purchase orders, in accordance with a schedule mutually acceptable to the Authority and the Design-Builder, to the appropriate Suppliers of such items for the direct purchase of those items by the Authority. The Authority shall pay the supplier of such items directly and the title for such items shall pass directly from the Supplier to the Authority. Notwithstanding the foregoing, Design-Builder shall remain responsible for the ordering, scheduling, coordinating, insuring, delivery, unloading, inventory, storage, installation, operation and warranties of all such direct purchase items, as if the Design-Builder had purchased the items itself for incorporation into the Work. In that regard, the Authority shall assign to Design-Builder all Contract and warranty rights the Authority may have against any such Supplier, so as to permit Design-Builder to assert warranty or other Contract claims for defective or nonconforming materials or equipment directly against the Supplier. As the Authority issues purchase orders to the Suppliers of such items, the Authority and Design-Builder shall execute a Change Order which deducts from the Contract Price the amount being paid by the Authority, plus the amount of sales tax that otherwise would have been paid on such items. As an inducement to Design-Builder to more fully cooperate and facilitate this sales tax savings program, Design-Builder shall receive as a bonus, at the time final payment is to be made hereunder, a sum equal to ten percent (10%) of the total amount of sales tax saved by the Authority as a result of these direct purchases.

§ A.1.4.9 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

## **ARTICLE A.2 CONTRACT TIME**

§ A.2.1 Contract Time, as defined in the Agreement shall be the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work pursuant to the provisions of the Agreement and shall be responsible for liquidated damages in accordance with the Agreement.

§ A.2.3 The Contract Time set forth in this Amendment and Liquidated Damages are agreed to as follows: Total Project Design and Construction time is 386 calendar days from Final approval of design, issuance of permits and Notice to Proceed to Substantial Completion. Failure to achieve Substantial Completion of the Entire Project within 386 calendar days will result in the assessment of liquidated damages in the amount of two hundred and fifty, (\$250.00), dollars per calendar day until actual Substantial Completion is achieved. Design-Builder shall achieve Final Completion within 60 days of Substantial Completion or face an additional assessment of liquidated damages in the amount of two hundred and fifty, (\$250.00), dollars per day until Final Completion.

**ARTICLE A.3 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**

§ A.3.1 The Design-Builder's key personnel are identified below:  
(Please identify name, title and contact information.)

.1 Superintendent: Chuck Crosier Cell: (352) 317-5094 Email: chuckcrosier@schernfl.com

.2 Project Manager: Jeff Godman Cell: (352)538-3688 Email: jeffgodman@schernfl.com

.3 Others

§ A.3.2 E-Verify. Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing use of the system, to confirm the employment eligibility of all persons employed by the vendor/contractor during the term of the Contract to perform employment duties within Florida; and all persons, including subcontractors, assigned by the vendor/contractor to perform work pursuant to the contract between the Gainesville-Alachua County Regional Airport Authority and the Florida Department of Transportation.

§ A.3.3 The Design-Builder shall retain the Sub-contractors as listed on the Sub-contractors List presented the response submitted in the Request for Qualifications 23-001.

§ A.3.4 Personnel costs paid by the Design-Builder are included in the GMP.

§ A.3.5 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries are included in the GMP.

§ A.3.6 Payments made by the Design-Builder for construction services to Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts are included in the GMP.

§ A.3.7 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction are included in the GMP. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the GMP.

§ A.3.8 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work are included in the GMP. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ A.3.9 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal are included in the GMP. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment are included in the GMP.

§ A.3.10 Costs of removal of debris from the site of the Work and its proper and legal disposal are included in the GMP.

§ A.3.11 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office are included in the GMP.

§ A.3.12 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval are included in the GMP.

§ A.3.13 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract are included in the GMP.

§ A.3.14 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable are included in the GMP.

§ A.3.15 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay are included in the GMP.

§ A.3.16 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3 are included in the GMP.

#### § A.4 Other Costs and Emergencies Included in the GMP

§ A.4.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.4.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.4.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

#### § A.5. Related Party Transactions

§ A.5.1 For purposes of Section A.5.1, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party.

#### § A.5.3 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below and the Design Builder acknowledges that the Construction Services Fee is full and complete compensation for any costs which are excluded from "Costs of the Work":

.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office,

- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

**§ A.5.4 Discounts, Rebates, Refunds and Other Agreements**

**§ A.5.4.1** Cash discounts obtained on payments made by the Design-Builder shall accrue to the owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

**§ A.5.4.2** Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

**§ A.5.4.3** The Design-Builder shall endeavor to obtain maximum competition among all subcontractors, suppliers and vendors and shall not engage any subcontractors without obtaining a minimum of three competitive proposals without the express written approval of the Owner. When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ A.5.4.4** Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner. If an agreement between the Design-Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

**§ A.5.4.5** The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

**§ A.5.4.6 Accounting Records**

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

**§ A.5.4.7 Relationship of the Parties**

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

**§ A.6 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (DBE)**

**A.6.1** Design-Builder shall utilize the services of the certified DBE suppliers and subcontractors submitted in their response to Request for Qualifications 23-001. Owner has accepted the Good Faith Effort included in RFQ 23-001.

**§ A.7 MISCELLANEOUS**

**A.7.1** If any provision(s) of Document A-141 or Exhibit A to Document A-141 is/are invalid, illegal, or unenforceable such provision(s) shall be considered divisible, and all other provisions of Document A-141 or Exhibit A to Document A-141 shall nevertheless remain in full force and effect.

**A.7.2** Contractor shall not sell, assign, transfer or otherwise convey any of its rights and shall not delegate any of its duties under the Contract Documents without the prior and expressed written consent of the Authority and the Surety. Any attempted sale, assignment, transfer, conveyance or delegation of Contractor's rights under this Agreement or the other Contract Documents in violation of the terms of this paragraph shall be void and shall relieve the Authority of any further liability under the Contract Documents, but shall not relieve Contractor or Contractor's Surety(ies) of any liability. If the Authority consents in writing to an assignment, unless specifically stated to the contrary in the consent, the assignment shall not release or discharge Contractor from any duty, responsibility or obligation set forth in the Contract Documents, and shall not release or discharge the Surety(ies) under the bonds required by the Contract Documents.

**A.7.3** This Agreement shall be binding on the Authority, Contractor, and all of their respective successors, heirs, legal representatives and, if the Authority has consented to an assignment or delegation as provided in the previous paragraph, assigns and delegates.

**A.7.4** Any waiver by the Authority of any provision of the Contract Documents must be specific and in writing, and shall apply only to the particular matter concerned and not to other similar or dissimilar matters. Any waiver of any breach of the Contract Documents shall not be held to be a waiver of any other breach. Neither the failure of the Authority to exercise any power given to the Authority under the Contract Documents or to insist upon compliance by Contractor with Contractor's obligations under the Contract Documents, nor any custom or practice of the Authority and Contractor at variance with the terms of the Contract Documents, shall constitute a waiver of the Authority's right to demand full and complete compliance by Contractor with the terms and provisions of the Contract Documents.

**A.7.5** Nothing contained in the Contract Documents shall in any manner authorize, empower or constitute Contractor, its Subcontractors or Suppliers as agent(s) of the Authority; authorize or empower Contractor, its Subcontractors or Suppliers to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of the Authority; or authorize or empower Contractor, its Subcontractors or Suppliers to bind the Authority in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of the Authority. Contractor shall perform all Work under the Contract Documents as an independent Contractor. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to the Agreement.

## A.8 INSURANCE

**A.8.1 Responsibility for Damage Claims.** The Contractor shall indemnify, defend, and hold harmless the Engineer and the Owner and their officers, and employees from all suits actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act of omission, neglect, or misconduct of said Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising or recovered under the "Workers Compensation Act," or other law, ordinance, order, or decree. Money due the Contractor under and by virtue of his/her contract as may be considered necessary by the Owner for such purpose may be retained for the use of the Owner or, in case no money is due, his/her surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the Owner, except that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that he is adequately protected by public liability and property damage insurance.

**A.8.2** The Contractor shall not commence any work until he obtains, at his own expense, all required insurance. Such insurance must have the approval of the Owner as to limit, form, and amount. The Contractor will not permit any subcontractor to commence work on this project until the same insurance requirements have been complied with by such subcontractor.

- a. Types – The types of insurance the Contractor is required to obtain and maintain for the full period of the contract will be: Worker's Compensation Insurance, and Comprehensive General Liability Insurance, as detailed in the following portions of this specification.
- b. Evidence – As evidence of specified insurance coverage, the Owner may, in lieu of actual policies, accept certificates issued by the insurance carrier showing such policies in force for the specified period. Each policy or certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage without 10 days notice in writing to be delivered by registered mail to the Owner. Should any policy be canceled before final payment to the Owner to the Contractor and the Contractor fails immediately to procure other insurance as specified, the Owner reserves the right to procure such insurance and to deduct the cost thereof from any sum due the Contractor under this Contract.
- c. Adequacy of Performance – Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guaranty period. Should such insurance be canceled before the end of the guaranty period and the Contractor fails immediately to procure other insurance as specified, the Owner reserves the right to procure such insurance and charge the cost thereof to the Contractor.
- d. Payment of Damages – Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from his operations under this Contract. The costs of all insurance shall be included in the various items of the contract and no additional compensation will be allowed.
- e. It is expressly understood by Contractor that the receipt of any required insurance certificate(s) by Authority hereunder does not constitute agreement that the insurance requirements of this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement or GACRAA's minimum standards. Further, the failure of Authority to obtain certificates or other evidence of insurance from Contractor shall not be deemed a waiver by Authority. Nonconforming insurance shall not relieve Contractor of its obligation to provide the insurance specified herein. Non-fulfillment of the insurance conditions by Contractor hereunder may constitute a material breach

of the Agreement and the Authority retains the right to suspend the Agreement until proper evidence of insurance is provided or, in the continued absence of such evidence of insurance, to terminate this Agreement, at the Authority's sole discretion.

**A.8.3 Workmen's Compensation Insurance.** Before the Agreement between the Owner and the Contractor is entered into, the Contractor shall submit written evidence that he and all subcontractors have obtained, for the period of the Contract, full Worker's Compensation Insurance coverage for all persons whom they employ or may employ in carrying out the work under this Contract.

This insurance shall be in strict accordance with the requirements of the most current and applicable state Worker's Compensation Insurance Laws.

**A.8.4 Comprehensive General Liability Insurance.** The Contractor, prior to execution of the contract, shall file with the Owner copies of complete certificates of insurance, as evidence that he carries adequate insurance, satisfactory to the Owner, to afford protection against all claims for damages to public or private property, and injuries to persons arising out of and during the progress of the proposal, similar insurance to protect the Owner of the premises on or near which construction operations are to be performed.

a. Bodily Injury and Property Damage Other Than Automobile – Unless specifically required by provisions in the proposal, the minimum limits of property damage and bodily injury liability covering each contract shall be:

<u>Bodily Injury Liability</u>	
Each Occurrence -	\$2,000,000
Aggregate -	\$2,000,000
<u>Property Damage Liability</u>	
Each Occurrence -	\$2,000,000
Aggregate -	\$2,000,000
<u>Bodily Injury and Property Damage</u>	
Umbrella Excess \$5,000,000 Single Limit	

Such insurance shall include, but not be limited to, coverage for: (a) Underground damage to facilities due to drilling and excavating with mechanical equipment; and (b) collapse or structural injury to structures due to blasting or explosion, excavation, tunneling, piledriving, cofferdam work, or building moving or demolition.

b. Owners Protective Liability – Bodily injury and property damage protection shall include as Additional Named Insured: the Owner, the Engineer and his consultants, each of their officers, employees and agents, and any other persons with an insurable interest designated by the Owner as an Additional named Insured.

c. Bodily Injury Liability and Property Damage Liability: Automobiles – Unless otherwise specifically required by provisions in the proposal, the minimum limits of bodily injury liability and property damage liability shall be:

Vehicles Operating Outside the Airport

<u>Operation Area Bodily Injury Liability</u>	
Each Person	\$1,000,000
Each Occurrence-	\$1,000,000
<u>Property Damage Liability</u>	
Each Occurrence-	\$1,000,000

d. Contractor's liability insurance shall be endorsed to include as additional insured: the Authority, the Authority's Representative, Engineer, their consultants, any subsidiaries or affiliates, and each of their directors, officers, shareholders, agents, or employees. The insurance afforded to these additional insureds shall be primary insurance, and neither the coverage nor the amount of insurance provided under Contractor's policies shall be reduced or prorated by the existence of any other insurance applicable to any loss they may have sustained. If the Subcontractors and Suppliers do not purchase and maintain the coverage specified in this Article or the Instructions to Bidders, they shall be included in Contractor's policies as additional insured.

**§ A.9 PUBLIC RECORDS**

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

SUZANNE SCHIEMANN  
[Suzanne.schiemann@flygainesville.com](mailto:Suzanne.schiemann@flygainesville.com)  
GAINESVILLE REGIONAL AIRPORT  
3880 NE 39 AVE, SUITE A  
GAINESVILLE, FLORIDA 32609  
(352) 373-0249

The Contractor shall comply with all applicable public records laws, specifically including Chapter 119, Florida Statutes, and shall:

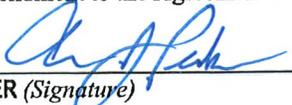
- a. Keep and maintain public records required by the Authority to perform the work.
- b. Upon request from the Authority's custodian of public records, provide the Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the term of the Agreement and following completion of the term of the Agreement if the contractor does not transfer the records to the Authority.
- d. Upon completion of this Agreement, transfer, at no cost to the Authority, all public records in possession of the Contractor or keep and maintain public records in possession of the Contractor or keep and maintain public records required by the Authority to perform the work. If the Contractor transfers all public records to the Authority upon completion of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public record disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Agreement, the Contractor shall meet all applicable requirements for maintaining public records. All records stored electronically must be provided to the Authority, upon request from the Authority's custodian of public records, in a format that is compatible with the information technology systems of the Authority.

## § A.9 TITLE VI CONTRACT REQUIREMENTS

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations.** The contractor shall comply with Regulations relative to non-discrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, code of Federal Regulations, part 21, as they may be amended from time to time (hereinafter referred as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination.** The contractor, with regard to work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 21.5 of the Regulations, including employment practices when the contract covers a program set forth in appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Material and Equipment.** In all solicitations either by competitive bidding or negotiations 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 shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Recipient of the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Recipient or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the non-discrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the contractor under the contract until the contractor complies, and/or
  - Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions.** The contractor shall include: the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Recipient or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States. Contractor shall forward copies of their major subcontracts to GACRAA's Contracts and Grants Administrator prior to execution. Contractor may redact dollar amounts prior to forwarding.

This Amendment to the Agreement entered into as of the day and year first written above.



OWNER (Signature)

Allen Penksa

DESIGN-BUILDER (Signature)

« »« »

Jeffrey W. Godman, Vice President



ATTACHMENTS

Certificate of Insurance  
Notice of Award  
Notice to Proceed  
Partial Waiver and Release of Lien  
Final Release of Lien  
Certification of Disbursement of Previous Periodic Payment to Subcontractors  
DBE Monthly Report

Performance Bond  
Public Payment Bond

**NOTICE OF AWARD**

STATE OF FLORIDA

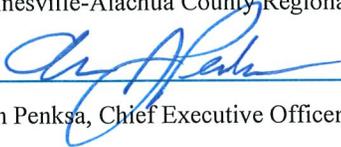
COUNTY OF ALACHUA

THIS CONTRACT AWARD was made this 23<sup>rd</sup> day of March, 2023, by the Gainesville-Alachua County Regional Airport Authority, hereinafter called the OWNER, to Scherer Construction and Engineering of North Florida hereinafter called the CONTRACTOR, is for the completion of a certain project described as: **“Aircraft Hangar and Office Building GA-37”** for the use and benefit of the Owner as shown on the plans and described in the specifications as prepared by **eda Consultanta, Inc., and Tekton Architecture**. The consideration to be paid by the Owner to the Contractor for completion of the project in accordance with the contract documents is the sum of two million five hundred seventy-three thousand nine hundred and fifty dollars, (2,573,950.00).

Commencement of work under this contract shall begin not less than five (5) nor more than ten (10) days after Contractor’s receipt of a Notice to Proceed issued by the Owner and the project is to be completed to substantial completion on or before **386** calendar days after that specified date unless otherwise subsequently agreed.

OWNER: Gainesville-Alachua County Regional Airport Authority

By:

  
\_\_\_\_\_  
Allan Penksa, Chief Executive Officer

Acknowledgement of Receipt of Contract Award by Contractor”

Scherer Construction of North Florida, LLC

\_\_\_\_\_

NOTICE TO PROCEED

DATE:

TO: Scherer Construction and Engineering of North Florida

PROJECT: Design Build of Hangar GA 37 at the Gainesville Regional Airport

You are hereby notified to commence work in accordance with the Contract dated 6/14/23, 2023, not less than five (5) days nor more than ten (10) days after your receipt of this Notice to Proceed as evidenced by the date of receipt shown on the certified mail return receipt, and you are to complete the WORK within **386** calendar days from the project start date established as set forth herein above, to final completion.

By:  \_\_\_\_\_  
Allan Perksa, Chief Executive Officer  
Gainesville-Alachua County Regional Airport Authority

ACCEPTANCE OF NOTICE

Receipt of the above Notice To Proceed is hereby acknowledged this \_\_\_ day of \_\_\_, 2023

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

Name Printed: \_\_\_\_\_

**PARTIAL WAIVER AND RELEASE OF LIEN**

The undersigned lienor, in consideration of the sum of \$ \_\_\_\_\_, hereby waives and releases its lien and right to claim for labor, services and materials furnished to the Gainesville-Alachua County Regional Airport Authority for Aircraft Hangar and Office Building GA-47 from the period beginning \_\_\_\_\_ through the period ending \_\_\_\_\_.

This release is contingent upon full collection by the undersigned of any and all checks, drafts and instruments, in the amount first entered above, given in payment for labor, service or materials on the job. The waiver does not cover retention of labor, services or materials furnished after the date specified.

**BY:** \_\_\_\_\_  
Authorized Official

**COMPANY:** \_\_\_\_\_  
Company

**State of Florida**  
**County of**  
**Alachua**

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did/did not take an oath.

Notary Public Seal

My Commission Expires: \_\_\_\_\_

**FINAL RELEASE OF LIEN**

KNOWN ALL MEN BY THESE PRESENTS, that the undersigned, for and in consideration of the payment of the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), paid by the Authority hereinafter referred to as Owner, receipt of which is hereby acknowledged as total compensation for performance of the below-described Contract for Bid Schedule(s), does hereby fully and completely discharge and release the Owner from and waives any and all debts, accounts, promises, damages, liens, encumbrances, causes of action, suits, bonds, judgements, claims and demands whatsoever, in law or in equity, which the undersigned ever had, now has or might hereafter have on account of labor performed, material furnished, or services rendered, directly or indirectly, for the Contract between the parties dated \_\_\_\_\_, \_\_\_\_\_, known as **Aircraft Hangar and Office Building GA-47**, except for those claims, disputes, and other matters arising out of or relating to said Contract which have been raised by written demand in accordance with the Contract Documents prior to this date and identified by the Contractor as unsettled in the final Application for Payment and are either in arbitration or court litigation, as the case may be, in accordance with the Contract Documents.

The undersigned further covenants that subcontractors, suppliers, and material suppliers, and any or all other persons supplying materials, supplies, service, or labor used directly or indirectly, in the prosecution of the work provided for in the Contract, have been paid in full for all work under this contract.

The undersigned agrees to maintain in full force and effect the provisions of the Contract Documents respecting the guaranty against defective work, and any other special guaranties required by the Contract Documents, for the terms provided in the Contract Documents, which terms shall begin to run from the date specified in the Contract Documents.

The undersigned represents and warrants that the statements contained in the foregoing Release are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

STATE OF: \_\_\_\_\_  
COUNTY OF: \_\_\_\_\_

**State of Florida  
County of  
Alachua**

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did/did not take an oath.

Notary Public Seal

My Commission Expires: \_\_\_\_\_

CERTIFICATION OF DISBURSEMENT OF PREVIOUS PERIODIC PAYMENT TO SUBCONTRACTORS

DATE: \_\_\_\_\_ PAY APPLICATION #: \_\_\_\_\_ WORK THROUGH DATES: \_\_\_\_\_  
CONTRACT NO.: \_\_\_\_\_ PROJECT TITLE: \_\_\_\_\_

\_\_\_\_\_, prime contractor for the above referenced contract, hereby certifies that all subcontractors, except for those noted below, having interest in this contract have received their pro rata share of all previous periodic payments made to date by the Gainesville-Alachua County Regional Airport Authority for all work, materials and equipment furnished under the contract. The term "subcontractor", as used herein, shall also include persons or firms furnishing materials, services or equipment incorporated into the work or stockpiled in the vicinity of the project for which partial payment has been made by the Gainesville-Alachua County Regional Airport Authority, and work done under equipment-rental agreements.

EXCEPTION:

The following subcontractors have not been paid and a copy of the Notification of Good Cause sent to each, explaining why payment has not been made, is attached to this form.

_____	_____	_____
Subcontractor Name	Subcontractor Name	Subcontractor Name
_____	_____	_____
Street Address	Street Address	Street Address
_____	_____	_____
City, State, Zip	City, State, Zip	City, State, Zip

INSTRUCTIONS:

- List the subcontractors that have not been paid the pro rata share for work completed and attach a copy of the Notification of Good Cause sent to them detailing the reason for non-payment.
- Specify the DATE of exception.
- This form is to be signed by an officer or director of the Contractor who has the authority to bind the Contractor.

A false statement or omission made in connection with this Certification is sufficient cause for suspension, revocation, or denial of qualification to bid on future projects, and a determination of non-responsibility, and may subject the person and/or entity making the false statement to any and all civil and criminal penalties available pursuant to applicable Federal and State Law.

\_\_\_\_\_  
(Contractor/ Firm Name Printed)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Authorized Signatory Name Printed)

\_\_\_\_\_  
(Title)

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

/ \_\_\_\_\_  
Commission Expires

SEAL

\_\_\_ Personally Known. \_\_\_ Produced Identification. Identification Produced.

DBE MONTHLY REPORT

DATE: \_\_\_\_\_ PAY APPLICATION #: \_\_\_\_\_ WORK THROUGH  
 DATES: \_\_\_\_\_ CONTRACT NO.: \_\_\_\_\_ PROJECT TITLE: \_

Total Contract Value: \$ \_\_\_\_\_ DBE Goal (10%): \$ \_

Name of DBE Subcontractor	Address	Type of Work	Earned this Month	Earned to Date
(Use Additional Sheets as Necessary) DBE			Subtotal All	
			DBE % of Total Contract Earned to	
			Date DBE % of Total DBE Goal Earned	
			To Date	
			% of Overall Contract Complete	

The undersigned hereby affirms and declares that the firms listed above were actually employed in the performance of work/services under this contract and that each such firm earned and has been paid the amount stated above for this work.

Signature: \_\_\_\_\_ Title: \_  
 \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_/\_\_\_\_\_  
 Notary Public Commission Expires

\_\_\_ Personally Known. \_\_\_ Produced Identification. Identification Produced. \_\_\_\_\_

**PROJECT NO. 23-001**

Aircraft Hangar and Office Building #GA 47,  
Gainesville Regional Airport, 3880 NE 39th Avenue, Suite A Gainesville, Florida 32609-5626

Bond No.: 0250238

**CONTRACT FORMS**

Owner: Gainesville-Alachua County Regional Airport Authority  
Gainesville Regional Airport  
3880 NE 39th Avenue, Suite A  
Gainesville, Florida 32609-5626  
(352) 373-0249

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That Scherer Construction of North Florida, LLC as Principal, located at 2504 NW 71st Place, Gainesville, FL 32653 (352) 371-1417 (Business Address) and Berkley Insurance Company, as Surety, located at 475 Steamboat Road, Greenwich, CT 06830 (203) 542-3800 (Business Address) are held and firmly bound to the **GAINESVILLE-ALACHUA COUNTY REGIONAL AIRPORT AUTHORITY, A REGIONAL AIRPORT AUTHORITY**, as Obligee in the sum of \$ 2,573,950.00 for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally.

**Whereas**, Principal has entered into a Contract dated as of the \_\_\_\_\_, **2023**, with Obligee, for **“Aircraft Hangar and Office Building #GA 47”, Project No. 23-001** in accordance with drawings and specifications, which Contract is incorporated by reference and made apart hereof, and is referred to as the Contract.

**THE CONDITION OF THIS BOND** is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and
2. Pays Obligee any and all losses, damages, costs, and attorneys’ fees, including appellate proceedings, that Obligee sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by Obligee; and
3. Performs the guarantee of all Work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise, it remains in full force.

BE IT FURTHER KNOWN:

1. Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Surety’s Obligation under this Bond.
2. The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other Work to be performed hereunder, or the specifications referred to therein shall in any way affect its obligations under his bond, and it does hereby waive Notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to Work or to the specifications.
3. This instrument shall be construed in all respects as a common law bond. It is expressly understood that the time provisions and statute of limitations under Section 255.05, Florida Statutes, shall not apply to this bond.
4. In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond regardless of the number of suits that may be files by Obligee.

IN WITNESS WHEREOF, the above parties have executed this instrument this 6/26/23, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered in the presence of:

N/A  
N/A

Witness as to Principal

PRINCIPAL:

Scherer Construction of North Florida, LLC

By: Jeffrey W. Godman

Name: Jeffrey W. Godman

Its: Vice President

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 26th day of June, 2023 by means of  physical presence or  online notarization by JEFFREY GODMAN, as VICE PRESIDENT of Scherer Construction of North Florida, LLC, a \_\_\_\_\_ corporation. He/she is

personally known to me OR has produced \_\_\_\_\_ as identification and did (did not) take an oath.

My Commission Expires:

Kelly Crews  
(Signature of Notary)

Name: KELLY CREWS  
(Legibly Printed)

Notary Public, State of FLORIDA

Serial No., If any: \_\_\_\_\_

SURETY: Berkley Insurance Company

N/A

(Printed Name)

N/A

N/A

N/A

(Business Address)

(AFFIX OFFICIAL SEAL)



ATTEST:

N/A

N/A

(Authorized Signature)

N/A

N/A

(Printed Name)

Witness as to Surety

OR

*Allyson M. W.*

*Christine Morton*

As Attorney in Fact

*[Signature]*

Berkley Insurance Company

(Attach Power of Attorney)

Witness

475 Steamboat Road

Greenwich, CT 06830

(203) 542-3800 (Telephone Number)

(Business Address)

Christine Morton

Attorney-in-Fact & FL Licensed Resident Agent

(Printed Name)

Guignard Company, 1904 Boothe Circle, Longwood, FL 32750 Inquiries (407) 834-0022

STATE OF Florida

COUNTY OF Seminole

The foregoing instrument was acknowledged before me this 13th day of June, 2023 by means of  physical presence or  online notarization by Christine Morton, as Attorney-in-Fact & FL Licensed Resident Agent of

Berkley Insurance Company, Surety, on behalf of Surety. He/she is personally known to me

OR has produced \_\_\_\_\_ as identification and did (did not) take an oath.

My Commission Expires: 02/17/2025



*[Signature]*  
(Signature of Notary)

Name: April L. Lively  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of Florida

Serial No., If any: HH 083265

**PROJECT NO. 23-001**

Aircraft Hangar and Office Building #GA 47,  
Gainesville Regional Airport, 3880 NE 39th Avenue, Suite A Gainesville, Florida 32609-5626

Bond No.: 0250238  
**CONTRACT FORMS**

Owner: Gainesville-Alachua County Regional Airport Authority  
Gainesville Regional Airport  
3880 NE 39th Avenue, Suite A  
Gainesville, Florida 32609-5626  
(352) 373-0249

**PUBLIC PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That Scherer Construction of North Florida, LLC as Principal, located at 2504 NW 71st Place, Gainesville, FL 32653 (Business Address) and Berkley Insurance Company, as Surety, located at (352) 371-1417 475 Steamboat Road, Greenwich, CT 06830 (Business Address) are held and firmly bound to the **GAINESVILLE-ALACHUA COUNTY REGIONAL AIRPORT AUTHORITY, A REGIONAL AIRPORT AUTHORITY**, as Obligee in the sum of \$ 2,573,950.00 for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally.

Whereas, Principal has entered into a Contract dated as of the \_\_\_\_\_, 2023, with Obligee, for "Aircraft Hangar and Office Building #GA 47", **Project No. 23-001** in accordance with drawings and specifications, which Contract is incorporated by reference and made apart hereof, and is referred to as the Contract.

**THE CONDITION OF THIS BOND** is that if Principal:

1. Promptly makes payment to all claimants as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials or supplies, used directly or indirectly by Principal in the prosecution of the Work provided for in the Contract; and
2. Pays Obligee all losses, damages, expenses, costs, and attorneys' fees, including appellate proceedings, that Obligee sustains because of default by the Principal under paragraph 1 of this bond; then this bond is void; otherwise it remains in full force.

Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Surety's Obligation under this Bond.

The provisions of this bond are subject to the time limitations of Section 255.05(2). In no event will the Surety be liable in the aggregate to claimants for more than the penal sum of this Payment Bond, regardless of the number of suits that may be filed by claimants.

This bond is given to comply with section 255.05 Florida Statutes, and any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2) and Section 255.05(10), Florida Statutes.

**IN WITNESS WHEREOF**, the above parties have executed this instrument this \_\_\_\_\_, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered in the presence of:

N/A  
Witness as to Principal

PRINCIPAL: Scherer Construction of North Florida, LLC

By: Jeffrey W. Godman  
Name: Jeffrey W. Godman  
Its: Vice President

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 20th day of JUNE, 2023  
by means of  physical presence or  online notarization  
by JEFFREY GODMAN, as VICE PRESIDENT of  
Scherer Construction of North Florida, LLC, a \_\_\_\_\_ corporation. He/she is  
personally known to me OR has produced \_\_\_\_\_ as identification and did (did not) take an oath.

My Commission Expires:



(AFFIX OFFICIAL SEAL)

ATTEST:

Kelly Crews  
(Signature of Notary)

Name: KELLY CREWS  
(Legibly Printed)  
Notary Public, State of FLORIDA

Serial No., If any: \_\_\_\_\_

SURETY: Berkley Insurance Company

N/A  
(Printed Name)

N/A  
N/A

N/A  
(Business Address)

N/A

N/A  
(Authorized Signature)

N/A

N/A  
(Printed Name)

Witness as to Surety

OR

Alyson M. D.  
[Signature]  
Witness

Christine Morton  
As Attorney in Fact  
Christine Morton  
Attorney-in-Fact & FL Licensed Resident Agent  
(Attach Power of Attorney)

Guignard Company/Agency, 1904 Boothe Circle,  
Longwood, FL 32750 Inquiries (407) 834-0022

Berkley Insurance Company,

475 Steamboat Road  
(Business Address)

Greenwich, CT 06830  
(Printed Name)

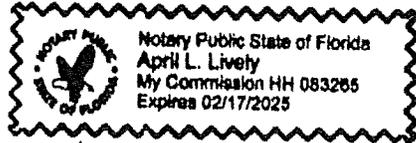
(203) 542-3800  
(Telephone Number)

STATE OF Florida  
COUNTY OF Seminole

The foregoing instrument was acknowledged before me this 13th day of June, 2023  
by means of  physical presence or  online notarization  
by Christine Morton, as Attorney-in-Fact & FL Licensed Resident Agent of

Berkley Insurance Company, Surety, on behalf of Surety. He/she is personally known to me  
OR has produced \_\_\_\_\_ as identification and did (did not) take an oath.

My Commission Expires: 02/17/2025



(AFFIX OFFICIAL SEAL)

*April L. Lively*  
(Signature of Notary)

Name: April L. Lively  
(Legibly Printed)

Notary Public, State of Florida

Serial No., If any: HH 083265





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/13/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> M.E. Wilson Company LLC Waldorff Insurance & Bonding, Inc. 45 Elgin Parkway, NE, Ste 202 Fort Walton Beach FL 32548	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 850-581-4925 E-MAIL ADDRESS: receptionist@waldorffinsurance.com		FAX (A/C, No): 850-581-4930
	<b>INSURER(S) AFFORDING COVERAGE</b>		
<b>INSURED</b> Scherer Construction of North Florida, LLC 2504 NW 71st Place Gainesville FL 32653	SCHE-02	<b>INSURER A:</b> Old Republic Insurance Company	NAIC # 24147
		<b>INSURER B:</b> Travelers Prop & Cas Co of America	25674
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	

**COVERAGES**

CERTIFICATE NUMBER: 496778488

REVISION NUMBER: 01

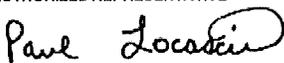
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU <input checked="" type="checkbox"/> Contractual GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		MWZY 312754 23	2/1/2023	2/1/2024	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRE AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y		MWTB 312755 23	2/1/2023	2/1/2024	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
							PIP	\$ 10,000
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y		CUP-0T523008-23-NF	2/1/2023	2/1/2024	EACH OCCURRENCE	\$ 10,000,000
							AGGREGATE	\$ 10,000,000
								\$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	MWC 312753 23	2/1/2023	2/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
B	Rented/Leased Equip			QT-630-9L242041-TIL-23	2/1/2023	2/1/2024	Ded \$2,500 Limit:	\$250,000
B	Installation Floater			QT-630-9L242041-TIL-23	2/1/2023	2/1/2024	Job site Limit	\$100,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

The City of Gainesville, Gainesville-Alachua County Regional Airport Authority, and the Engineer, and each of their consultants, officers, employees and agents, and any other persons with an insurable interest designated by the owner are listed as Additional Insured, when required by written contract, as pertains to General Liability, Automobile Liability and umbrella liability. RE: GA 47 Hangar Project #23-656  
 Cancellation Provision: 30 Days Notice of Cancellation except 10 days for non-payment of premium as respects to General Liability, Automobile Liability and Umbrella Liability.

**CERTIFICATE HOLDER****CANCELLATION**

The City of Gainesville 3880 NE 39th Avenue Gainesville FL 32609	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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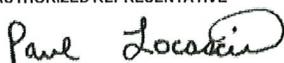
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B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y		CUP-0T523008-23-NF	2/1/2023	2/1/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N	MWC 312753 23	2/1/2023	2/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
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