



**AIA**<sup>®</sup>

# Document A141™ – 2014

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

AGREEMENT made as of the 31st day of August in the year 2016  
*(In words, indicate day, month and year.)*

BETWEEN the Owner:  
*(Name, legal status, address and other information)*

Space Florida, an independent special district, a body politic and corporate, and a subdivision of the State of Florida  
505 Odyssey Way, Suite 300  
Exploration Park, FL 32953  
321-730-5301

and the Design-Builder:  
*(Name, legal status, address and other information)*

Hensel Phelps Construction, a Delaware General Partnership  
6557 Hazeltine National Drive  
Suite One  
Orlando, FL 32822  
407-856-2400  
Florida Contractor's License No. CGC1509056

for the following Project:  
*(Name, location and detailed description)*

Spacecraft Integration Facility in Exploration Park, Florida

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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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- K Exploration Park Previous Geotechnical Reports
- L Exploration Park As-Built & Survey
- M FDOT Spaceport Improvement Grant Agreement
- N Cape Canaveral Spaceport Development Manual
- O Exploration Park Covenants, Conditions, and Restrictions ("CCRs")

**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:**

*(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)*

See RFQ-SF-02-0-2016/TR attached as Exhibit "C".

**§ 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.)*

See Airbus OneWeb Satellites, LLC's Factory Requirements attached as Exhibit "I".

**§ 1.1.3 The Project's physical characteristics:**

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

- a. Exploration Park Conceptual Site Plan attached as Exhibit "J".
- b. Exploration Park Previous Geotechnical Reports attached as Exhibit "K".
- c. Exploration Park As-Built & Survey attached as Exhibit "L".

**§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:**

*(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)*

As required per the following documents:

- a. Cape Canaveral Spaceport Development Manual attached as Exhibit "N".
- b. Exploration Park Enhanced Use Lease (including Amendments 1, 2 & 3) attached as Exhibit "G".
- c. Exploration Park Covenants, Conditions, and Restrictions attached as Exhibit "O".

**§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:**

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(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

None.

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:  
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

Design: \$2,184,901.00  
Site Work: \$3,000,000.00  
Construction: \$23,454,996.00  
Total Project: \$28,639,897.00

§ 1.1.7 The Owner's design and construction milestone dates:

- .1 Design Phase Work milestone dates, which milestones are measured from the date of the last party signing this Agreement:

Schematic Design Documents:	complete as of Agreement execution
Design Development Documents:	9 weeks from Agreement execution
Mobilization & General Requirements:	12 weeks from Agreement execution
90% Building Design Documents:	18 weeks from Agreement execution
Bidding, GMP Proposal Preparation & Scheduling:	18 weeks from Agreement execution
100% Construction Drawings:	20 weeks from Agreement execution

- .2 Submission of Design-Builder GMP Proposal(s):

Design Builder will provide progressive GMP Proposals for each phase of the construction Work: Site Civil, Foundations and Structure, Core & Shell, and Building Interiors & Finish Site Improvements. The GMP Proposals will be submitted to Owner within thirty (30) days of completion of Construction Documents for each phase or earlier if agreed to by the parties. Upon agreement, progressive Design Build Amendments (GMP Amendments) will be executed by the parties adding each phase of the construction Work.

- .3 Phased completion dates:

As stated in GMP Amendments.

- .4 Target Substantial Completion dates for Construction Phase Work measured from the date of the last party signing this Agreement:

Integration Room Substantial Completion target date: 12 months from Agreement execution, but Design-Builder will use best efforts to attempt to reach Substantial Completion by November 1, 2017

All remaining Work Substantial Completion target date: 14 months from Agreement execution; Agreed Substantial Completion Dates will be set forth and agreed upon in the GMP Amendments.

- .5 Other milestone dates:

As stated in GMP Amendments.

§ 1.1.8 The Design-Builder shall retain the following Architect, Consultants and Contractors at the Design-Builder's cost, none of which shall be replaced with another firm without the written prior approval of Owner:

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User Notes:

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*(List name, legal status, address and other information.)*

.1 Architect

BRPH Architects

.2 Consultants

Connectkit, Inc.

.3 Contractors

Hensel Phelps Construction, a Delaware General Partnership

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

*(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)*

All personnel working on the Project must be properly trained and appropriately licensed or certified at no cost to Owner and proof of qualifications will be provided to Owner upon request.

§ 1.1.10 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.

§ 1.1.10.1 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.

§ 1.1.11 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.

§ 1.1.12 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:

*(List name, address and other information.)*

Name: Todd Romberger

Phone: 321-730-5301

Email: [tromberger@spaceflorida.gov](mailto:tromberger@spaceflorida.gov)

However, only a Space Florida Board authorized officer of the Owner may execute any Change Orders, Modifications, or Task Orders.

§ 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:

*(List name, address and other information.)*

a. Airbus OneWeb Satellites, LLC ("AOS")

b. NASA, if and as required by the EUL (Exhibit G) and by NASA's role on the Architectural Review Committee described in the CCRs (Exhibit O)

§ 1.2.3 The Owner will retain the following consultants and separate contractors:

*(List discipline, scope of work, and, if known, identify by name and address.)*

AOS will act as Owner's representative to monitor the construction, provide review, comment, advice, and technical supervision, all of which shall be subject to Owner's approval and concurrence. AOS will be represented by Brian Holz. Design-Builder will copy AOS with all communications made to Owner.

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§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:  
(List name, address and other information.)

John Saul, Operations Manager

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without five (5) days' written notice to the other party.

### § 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:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Arbitration pursuant to Section 14.4

Litigation in a court of competent jurisdiction

Other: (Specify)

### § 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 (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(s), (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, representations 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, 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.** All documents, drawings, specifications, designs, and information regarding this Project shall be considered confidential unless designated in writing as not confidential by Owner or AOS. Design-Builder shall include contract language in all its subcontracts that all Project information shall be treated as Confidential Information pursuant to the requirements of Section 15.6.

§ 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 Construction Phase 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 **Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of each Design-Build Amendment, and is the total of the Construction Phase Fees and the Cost of the Work, as identified in Article A.1 of the Design-Build Amendment form attached as Exhibit "A".

§ 1.4.16 **Cost of the Work.** The term Cost of the Work shall mean the actual construction costs necessarily incurred by the Design-Builder for the Construction Phase of the Work, except Cost of the Work does not include the Design Fee or the Construction Phase Fees. The Construction Phase Fees shall not be included in the Cost of the Work, but will be added as a percentage of the Cost of the Work. Cost of the Work shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items permitted in Article § A.5 of the Design Build Amendment form attached to this Agreement as Exhibit "A", which Article § A.5 is incorporated herein by reference. Where any cost is subject to the Owner's prior approval, the Design-Builder shall obtain such Owner approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Design Build Amendment(s), the form of which is attached as Exhibit "A".

§ 1.4.17 **General Conditions Costs.** The term General Conditions Costs shall mean general conditions and general requirements type costs including but not limited to: all payroll costs for administrative staff, supervision staff,

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estimators, project engineers, project managers, and clerical staff working directly on the Project and not already charged under General & Administrative Costs, plan and drawing expenses, as-built drawings, safety expenses, safety equipment, first aid equipment and training, fire extinguishers, trailers, temporary toilets, jobsite signage, software, postage, shipping, cellular and land line phone service, internet service, temporary utilities and hook-ups, cleaning (other than cleaning by trade contractors of their own work that is included in their subcontracts), dumpsters, and dump fees. Design-Builder's staff costs to manage, supervise, or support any of the Cost of the Work is part of and is included in General Conditions Costs and shall not be separately charged as Cost of the Work. Certain costs are prohibited to be charged or included in Cost of Work and General Conditions Costs per § A.5.2 of the GMP Amendment. Allowable General Conditions Costs are also subject to FDOT eligibility. For clarification, the following costs are considered Cost of the Work, but are not included in General Conditions Costs:

- a. Material hoisting provided by subcontractors and included in subcontractors' lump sum subcontracts.
- b. Testing & Inspections by third party subcontractors
- c. Permits, Review Fees, Tap Fees, etc. from Local Authorities.
- d. Final Cleaning by subcontractors and included in subcontractors' lump sum subcontracts.
- e. Commissioning and/or Specialized MEP Supervision/Coordination (i.e. ConnectKit) by subcontractors and included in subcontractors' lump sum subcontracts.
- f. Construction Administration Services (CA) by the Architect (BRPH); however such CA Services are not subject to any Construction Phase Fees.
- g. Subcontractor Bonds are allowable as Cost of Work and will be included in the price of subcontracts. However, such subcontractor bond costs are not subject to any Construction Phase Fees.
- h. Permanent building power, water, sewer incurred after issuance of the certificate of occupancy for the Project, except for the cost of the utilities for tenant's testing and operation of tenant's equipment that occurs before issuance of the certificate of occupancy for the Project; however such utilities are not Cost of the Work but will be paid by Owner's tenant.
- i. Management/supervisory personnel when assigned specifically to self-performed scopes of work (i.e. Concrete) as long as such personnel and time are in addition to those personnel and time that are already included in General Conditions Costs.

Design-Builder's staff costs to manage, supervise, or support any of the above is included in General Conditions Costs.

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§ 1.4.18 **General & Administrative Costs.** The term General & Administrative Costs shall mean Design-Builder's home office/district/corporate overhead, including general and administrative staff and costs related to the Project. Certain costs are prohibited to be charged or included in Cost of the Work and General & Administrative Costs per § A.5.2 of the GMP Amendment. Allowable General & Administrative Costs are also subject to FDOT eligibility.

§ 1.4.19 **Construction Fee.** The term Construction Fee shall mean the Design-Builder's fee charged for profit on the Construction Phase of the Work.

§ 1.4.20 **Construction Phase Fees.** The term Construction Phase Fees shall mean the total of the Design-Builder's General Conditions Costs, General & Administrative Costs, and Construction Fee charged on the Construction Phase Cost of the Work. Construction Phase Fees shall not be charged on bond and insurance costs of Design-Builder, Architect, and Contractor. Construction Phase Fees shall not be charged on bond costs of subcontractors. Construction Phase Fees shall not be charged on the Architect's construction administration fees. The total of the Construction Phase Fees shall equal Ten Point Five Percent (10.5%) of the Cost of the Work set forth in the Construction Phase GMP Amendment. (Change Order fees are addressed separately in § 6.3.3).

§ 1.4.21 **Design Phase and Construction Phase of the Work.** The Design Phase of the Work is that Work performed before execution of the Design Build Amendment(s). The Construction Phase of the Work is that Work performed after execution of the Design Build Amendment(s) (a/k/a the GMP Amendment(s)).

The Design Phase consists of the following scope of Work performed before execution of the Design-Build Amendment(s):

- a) Finalize facility programming and site layout
- b) Perform necessary topographic surveys
- c) Perform necessary geotechnical investigations
- d) Prepare all design Work set forth in this Agreement up to and including Construction Documents to obtain Permit letter modification and provide a Guaranteed Maximum Price
- e) Provide cost estimating and scheduling
- f) General Conditions Costs during the Design Phase
- g) Mobilization at the Project Site

The Construction Phase consists of the following scope of Work all performed after execution of the Design-Build Amendment(s):

- a) Construct the Project including all site infrastructure and vertical construction in accordance with this Agreement and the Design-Build Amendment(s)
- b) General Conditions Costs during the Construction Phase
- c) Demobilization and complete Contract closeout requirements.

## ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

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

§ 2.1.1 For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

A total design and preconstruction fee of Two Million One Hundred Eighty Four Thousand Nine Hundred One and 00/100 Dollars (\$2,184,901.00) ("Design Fee"). The Design Fee is for all design services, Design Phase General Conditions Costs, Design Phase General & Administrative Costs, Design Phase fees, reimbursable expenses, preconstruction services, and mobilization services (including the general conditions and requirements costs as listed in Exhibit "D") under this Agreement, is a lump sum, and shall be paid on a completed task basis after all deliverables and design documents for the particular task below are delivered to and approved by Owner:

Schematic Design Documents	Fifteen	percent (	15	%)
Design Development Documents	Thirty	percent (	30	%)
Mobilization & General Conditions	Four point one five	percent (	4.15	%)
90% Construction Documents	Twenty	percent (	20	%)
Bidding and GMP Proposal	Ten	percent (	10	%)
Submitted	Twenty point eight	percent (	20.85	%)
100% Construction Documents	five			
<b>Total Design Fee</b>	<b>one hundred</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

The portion of the Design Fee for Design Phase General Conditions Costs and Project site mobilization is \$90,621.00 and is included in the Design Fee.

The Design Fee is a lump sum fee and shall not be subject to adjustment regardless of whether an audit determines that the actual time and costs incurred by Design-Builder in performing the Design Phase services are more or less than budgeted, estimated, or anticipated.

Also, as the Design Fee is a lump sum fee, Design-Builder shall not be entitled to any increase in the Design Fee or any compensation of any kind for any delays of any kind from any cause, as a result of any extension in the design schedule, or as a result of any extension of the period of time before the Design-Build Amendment(s) are signed.

§ 2.1.2 The hourly billing rates for additional services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Change Orders for additional services may be negotiated on a lump sum or hourly basis. If hourly rates are used, the hourly rates for Change Orders for additional services are set forth in Exhibit "D" attached.

Individual or Position	Rate
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§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are included in the Design Fee and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 n/a;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 n/a;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

Expenses related to transportation, travel, and subsistence shall not be reimbursable and shall not be paid. Any fees of authorities having jurisdiction over the Project, such as permit fees, shall be paid by Design-Builder during the Construction Phase and shall be included in the Cost of the Work within the Construction Phase GMPs, unless otherwise agreed and stated in the GMP Amendments.

§ 2.1.3.2 n/a.

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**§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment for Design Phase Work**

**§ 2.1.4.1** Payments are due and payable within thirty (30) days after presentation of the Design-Builder's proper and complete invoice. Amounts unpaid thirty (30) days after the proper and complete invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

Applications for Payment shall only be submitted when tasks are completed. With each pay request, the Design-Builder shall certify that all Work for which payment is requested is completed properly in accordance with the defined statement of Work. On the cover page, each pay request shall identify the dates of the period of the Work performed. All invoices shall be submitted if by mail to Space Florida, 505 Odyssey Way, Suite 300, Exploration Park, FL 32953; and if electronically, confirmed reply receipt, to [accounting@spaceflorida.gov](mailto:accounting@spaceflorida.gov) with a cc: to the Program/Project Manager, Todd Romberger [tromberger@spaceflorida.gov](mailto:tromberger@spaceflorida.gov) and to [jbonjawo@spaceflorida.gov](mailto:jbonjawo@spaceflorida.gov).

*(Insert rate of monthly or annual interest agreed upon.)*

Interest shall be payable in accordance with Florida Statute 255.073(4).

**§ 2.1.4.2** Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of five (5) years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

*(Paragraphs deleted)*

**§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment(s) for the Construction Phase of the Work**

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment(s) for the Construction Phase of the Work, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment(s).

**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. Design-Builder shall comply with the Americans with Disabilities Act for all Work to be performed by Design-Builder under this Agreement.

**§ 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 regular meetings with the Owner, Architect, Design-Builder, and appropriate Subcontractors 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 The period of performance of the Work and the 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;
- .12 Additional information as agreed to by the Owner and Design-Builder; and
- .13 Potential complications or delays to the Project.

§ 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; and
- .4 Any anticipated impacts to the GMP.

### § 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder shall perform the Work in accordance with the program schedule and milestones stated in this Agreement ("Program Schedule"). The schedule, with prior approval of the Owner, shall be updated at appropriate intervals to provide for expeditious and practicable execution of the Work, and shall always 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 accordance with the most recent schedules submitted to and approved by the Owner. Float or slack is a shared commodity which can be used by either the Owner or the Design-Builder. Extensions of time for performance will be granted only to the extent that the equitable time adjustments for the activity or activities affected exceed the total float along the activity chain involved at the time the change was ordered or the delay occurred. Notwithstanding the above, the Design-Builder shall only be entitled

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to an extension of time for an excusable delay to the critical path of the Work that delays completion of the Project beyond the completion date stated in this Agreement

**§ 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.

**§ 3.1.11.6** If modifications to existing buildings are involved, prior to ordering any material or performing any portion of the Work, the Design-Builder shall verify all dimensions and check all conditions in order to assure Design-Builder that they properly reflect those of the drawings. Any inconsistency shall be brought to the attention of the Owner.

**§ 3.1.12 Warranty.** The Design-Builder warrants to the Owner and to Owner's tenants in the Project that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects for a period of one (1) year after Substantial Completion, 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

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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. The Design-Builder assigns to Owner all warranties of all subcontractors and suppliers of the Work.

**§ 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** Design-Builder shall indemnify, defend, save and hold harmless NASA, State of Florida, Department of Transportation, Space Florida, Airbus OneWeb Satellites, LLC and all of its affiliates, officers, directors, agents or employees from all suits, actions, claims, demands, liens, expenses, or liability of any nature whatsoever to the extent arising out of, because of, or resulting from, that are caused by: (i) the performance of services under this Agreement by the Design-Builder, Architect, Consultant, or Contractor, or any person or organization directly or indirectly employed by the Design-Builder to perform or furnish any of the services or anyone for whose acts any of them may be liable, (ii) breach of the terms of this Agreement by the Design-Builder, Architect, Consultant, or Contractor, or any person or organization directly or indirectly employed by the Design-Builder to perform or furnish any of the services or anyone for whose acts any of them may be liable, (iii) violations of applicable law by the Design Builder, Architect, Consultant, or Contractor, or any person or organization directly or indirectly employed by the Design-Builder to perform or furnish any services under this Agreement or anyone for whose acts any of them may be liable, (iv) disease or death of any individuals, including but not limited to employees, independent contractors, or agents of NASA, State of Florida, Department of Transportation, Space Florida, Airbus OneWeb Satellites, LLC, Design-Builder, or any third parties, or (v) due to any negligent act or occurrence of omission or commission of the Design-Builder, Architect, Consultant, or Contractor or their officers, agents or employees.

**§ 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 for any reason, and only for those agreements that the Owner optionally 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 optionally 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

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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. There shall be no Construction Phase Fees charged on Design-Builder's bonds and insurance. Construction Phase Fees shall not be charged on bond costs of subcontractors.

#### 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 1.11 and Design-Builder shall insure that all its participants comply with the confidentiality provisions of Section 1.4.12 and Section 15.6 and any non-disclosure agreements executed by the parties. 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 recommended revisions to the Program Schedule, which may include proposed revisions to the 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;

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- .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 Schematic Design Documents. If not approved, the Design-Builder will revise the Preliminary Design and resubmit to the Owner until approved by the Owner. Such resubmissions are included in the Design Fee. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

#### § 4.4 Schematic Design

##### § 4.4.1

*(Paragraphs deleted)*

Based on the Owner's approval of the preliminary design, the Design-Builder shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 4.4.2 The Design-Builder shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 4.4.3 The Design-Builder shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 4.4.4 The Design-Builder shall submit the Schematic Design Documents to the Owner along with a cost estimate, make a presentation to Owner, and request the Owner's written approval. Design-Builder shall modify the Schematic Documents before beginning the Design Development Documents and incorporate revisions into the Schematic Documents as requested by the Owner and make changes so that the cost estimate of the design going forward is within the Owner's budget. Modifications of such documents shall be included within the Design Fee.

#### § 4.5 Design Development

§ 4.5.1 Upon the Owner's written approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Design-Builder shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. The Design Development Documents shall include preliminary plans, elevations, sections, illustrations, material and furniture selections, sketches and renderings.

§ 4.5.2 The Design-Builder shall submit the Design Development documents to the Owner, make a presentation to Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's written approval. Design-Builder shall modify the Design Development Documents before beginning the Construction Documents, and incorporate revisions into the Design Development Documents, as requested by the Owner and make changes so that the cost estimate of the design going forward is within the Owner's budget. Modifications of such documents shall be included within the Design Fee.

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**ARTICLE 5 CONSTRUCTION DOCUMENTS, DESIGN-BUILDER'S GMP PROPOSAL(S), THE DESIGN-BUILD AMENDMENT(S), AND CONSTRUCTION OF THE WORK**

**§ 5.1 Construction Documents**

**§ 5.1.1** Upon the Owner's written approval of the Design Development

Documents, 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 review and written approval. . If not approved, the Design-Builder will revise the Construction Documents and resubmit to the Owner until approved by the Owner. Such resubmissions are included in the Design Fee. 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.

**§ 5.1.3 Bids.** Design-Builder shall obtain bids on all of the Work, including obtaining third party bids on any Work that Design-Builder desires to self-perform. Prior to accepting bids, the Design-Builder shall pre-qualify Subcontractors performing major or critical portions of the Work. Alternatively, if the Design-Builder desires to self-perform any portion of the Work, then the Owner may elect to have the Design-Builder self-perform portions of the Work on a basis of cost plus Construction Phase Fees (10.5%), without any additional stacked fees. Self-perform means that the Design-Builder uses its own employees and not subcontractors. If the Owner elects to use a basis of cost plus Construction Phase Fees for the self-performed Work, there shall be established a guaranteed maximum price for those components of the Work that are self-performed that shall be equal to the average of the bids obtained from third party subcontractors. Design-Builder shall prepare and submit its own bids on any Work it intends to self-perform. Those portions of the Work that the Design-Builder does not perform with the Design-Builder's own personnel shall be performed under subcontracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons from whom, or entities from which, the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Subcontractors, from itself, and from suppliers of materials or equipment fabricated especially for the Work and shall deliver all such bids (without redaction or analysis) to the Owner and the Architect within 24 hours of receipt by the Design-Builder. Design-Builder shall then analyze such bids and prepare a bid recap table. After completion of such analysis, the analyzed bids for each bid package shall be delivered to the Owner all on the same day. The Owner shall then determine, with the advice of the Design-Builder and the Architect, which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable and substantiated objection. The Design-Builder shall attempt to obtain a minimum of three bids for each subcontracted portion of the Work.

**§ 5.1.4 Design-Builder's GMP Proposal**

Within thirty (30) days after the Owner's approval of the Construction Documents of each phase in Article 5.1.2, or at such earlier time if agreed to by the parties, the Design-Builder shall prepare and submit the Design-Builder's GMP Proposal(s) to the Owner. The Design-Builder's GMP Proposal(s) shall include the following:

- .1 A list of the Construction Documents and other information, Drawings, and Specifications, 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 fees, a written statement of estimated costs organized by trade categories, allowances, contingencies, Design-Builder's General Conditions Costs (individually itemized), General & Administrative Costs (individually itemized), and Construction Fee, bonds, insurance, and other items that comprise the Contract Sum;
- .3 A detailed list of items included in Design-Builder's General Conditions Costs, General & Administrative Costs, and Construction Fee which total shall equal Ten Point Five Percent (10.5%) of the Cost of the Work set forth in the GMP Proposal;
- .4 The proposed Guaranteed Maximum Price ("GMP") which includes the Design Fee plus the Contract Sum;
- .5 The proposed date the Design-Builder shall achieve Substantial Completion;

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- .6 An enumeration of any qualifications and exclusions, if applicable;
- .7 A list of the Design-Builder's key personnel, Contractors and suppliers;
- .8 The date on which the Design-Builder's GMP Proposal expires;
- .9 A sum agreed to by the Parties for contingency for the Design-Builder's use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order, with all unspent contingency sums accruing to the benefit of the Owner. At Final Completion, the GMP shall be reduced by Change Order by the amount of the unspent contingency sum. Expenditure of contingency funds by the Design-Builder shall be done only with written approval of the Owner, which approval shall not be unreasonably denied; and
- .10 Copies of all bids, take-off quantities, quotes, and prices.

Additionally, copies of executed subcontracts and supplier contracts shall be provided by Design-Builder to Owner within 3 days of the subcontractor's or supplier's signature.

§ 5.1.5 The Construction Phase Fees (the total of Design-Builder's General Conditions Costs, General & Administrative Costs, and Construction Fee) shall equal Ten Point Five Percent (10.5%) of the estimated Cost of the Work (less bond, insurance, and Architect construction administration costs) that is set forth in the executed Design Build Amendment(s). The Construction Phase Fees shall not be charged on bond and insurance costs of Design-Builder, Architect, and Contractor. Construction Phase Fees shall not be charged on bond costs of subcontractors. Construction Phase Fees shall not be charged on the Architect's construction administration fees. The Construction Phase Fees will be fixed at the time of the execution of the Design Build Amendment(s), but the Construction Phase Fees shall be subject to adjustment for Change Orders and Construction Change Directive Work as provided in § 6.3.3. However, if the Design Fee, the actual Cost of the Work, plus the Construction Phase Fees exceeds the GMP, then the Construction Phase Fees shall be reduced appropriately so that the total of the actual Cost of the Work plus the Construction Phase Fees do not exceed the GMP. Construction Phase Fees are a lump sum fee and shall not be subject to adjustment regardless of whether an audit determines that the actual expenses and costs incurred by Design-Builder are more or less than 10.5%, unless expenses included in such fees are of a type prohibited by this Agreement.

§ 5.1.6 Submission of the Design-Builder's GMP Proposal(s) 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. Prior to the Owner's written acceptance of the Design-Builder's GMP Proposal(s) and issuance of a Notice to Proceed, the Design-Builder shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 5.1.7 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute a Design-Build Amendment in form of attached Exhibit "A" setting forth the terms of their agreement and the GMP and the Design-Builder shall proceed with preparation and finalization of coordinated Construction Documents and construction of the Work set forth in the Design-Build Amendment.

§ 5.1.8 The Owner may, at its sole discretion and based upon its sole judgment, upon receipt of a Design Builder's GMP Proposal, do any of the following singularly or in any combination: (i) indicate its acceptance of the GMP proposal; (ii) reject the GMP proposal; (iii) negotiate the price and terms of the GMP Proposal; (iv) terminate the Project; (v) terminate this Agreement for convenience pursuant to Article 13 of this Agreement, and/or (vi) seek bids, proposals, or qualifications from other contractors and construction managers and proceed to award the Work to and construct the Project using such other entities. If the Owner rejects a Design-Builder's GMP proposal, Owner shall have no further obligations pursuant to this Agreement; except that Owner shall pay for design and preconstruction services properly performed and delivered by the Design-Builder to Owner through the date of the termination notice and in accordance with the terms of this Agreement.

## § 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(s). However, such authorization shall not waive the Owner's right to reject the

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Design-Builder's Proposal. Additional Work prior to execution of the Design-Build Amendment(s) may be optionally authorized in writing by Owner in an amount agreed upon in writing by the parties.

§ 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.

§ 5.2.5 The Design-Builder shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Design-Builder, and communications given to the superintendent shall be as binding as if given to the Design-Builder.

§ 5.2.6 Prior to start of construction, the Design-Builder shall submit written qualifications of the Superintendent(s) and Project Manager to the Owner for their review and approval. The Superintendent and Project Manager shall have had recent experience in the type of commercial facility construction that is of the same type as the Project. The Superintendent and Project Manager shall be satisfactory to Owner and shall not be changed without the consent of the Owner (which consent shall not be unreasonably withheld) unless the Superintendent or Project Manager proves to be unsatisfactory to the Design-Builder and ceases to be in its employ.

### § 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 with Owner's written approval in accordance with Article 6. By making request for substitution, the Design-Builder:

- .1 represents that it has personally investigated the proposed substitute product and determined that it is equal or superior in all respect to that specified;
- .2 represents that it will provide the same warranty for the substitution as the original product specified;
- .3 certifies that the cost data presented is complete and includes all related costs under the Contract Documents, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all aspects.

§ 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.

§ 5.3.4 Design-Builder agrees to remove from the Project any employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner's written rules and regulations regarding jobsite conduct.

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§ 5.3.5 Design-Builder shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers, and proper shoes are required apparel. The display of vulgar words, signs, or figures is prohibited. Sandals and flip-flops are prohibited on the Project site.

§ 5.3.6 Construction personnel shall not use profanity, illegal drugs, or alcohol on the Project site. Design-Builder shall implement a pre-hire, a random, and a post-accident drug screening program.

§ 5.3.7 The use of radios, tape players, cd players, boom boxes, sound producing devices, and the like are prohibited on the Project site.

§ 5.3.8 Smoking is prohibited on the Project site, except in areas specifically designated for same by Owner.

#### § 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 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, unless otherwise agreed and stated in the GMP Amendments.

§ 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.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 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.

#### § 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, if Design-Builder shall notify Owner in advance of its intent to incur costs over an allowance, then subject to Owner's prior approval, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

**§ 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 prior to changing any of same, 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 and shall obtain Owner's approval before engaging such other person or entity. 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 not unreasonably encumber the site with materials or equipment.

**§ 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

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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.

**§ 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 Design-Builder shall cooperate with 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 the separate contractors 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

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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 as set forth below; or
- .4 As provided in Section 6.3.7.

For Change Orders or Construction Change Directive Work arising during the Construction Phase of the Work, General & Administrative Costs and Construction Fee shall be added or deducted not to exceed a total of Six

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Percent (6%) of the Cost of the Change Order and/or Change Directive Work. No General Conditions Costs shall be included unless the change includes an increase in the Contract Time, then extended daily General Conditions Costs will be added in accordance with Section 8.2 of this Agreement and if the change includes an increase in General Conditions Costs for staffing, then an increase for the costs of the additional staffing will be added, provided that the total of the Construction Phase Fees (General Conditions Costs, General & Administrative Costs, and Construction Fee) shall not exceed Ten Point Five Percent (10.5%) of the Cost of the Work of the Change Order and/or Change Directive Work. However, Construction Phase Fees shall not be reduced for deductive changes for materials under the Sales Tax Savings Program described in Section 15.9 of this Agreement except that fee on the amount of the sales tax saved shall be deducted.

The amount of a Subcontractor's overhead and profit for increases or decreases in the cost of its portion of the Work shall be:

For Change Order Work or Construction Change Directives arising during the Construction Phase of the Work, the amounts payable or deductible, as the case may be, for fees including profit, overhead, and the like are as follows:

1. For the Design-Builder, for Work performed by the Design-Builder's own forces, no overhead charges, but the Design-Builder shall be paid a fee equal to that percentage stated in Section 5.1.3 times the additional Cost of the Work. For Work performed by Design-Builder's Subcontractors, Design-Builder shall be paid no overhead, but a fee equal to that percentage set forth in Section 5.1.5 times the amount due the Subcontractor.
2. For each Subcontractor, for Work performed by that Subcontractor's own forces, 10% of the Cost of the Work for overhead plus a fee equal to 5% of the Cost of the Work shall be paid to the Subcontractor.
3. For each Subcontractor, for Work performed by that Subcontractor's sub-subcontractor, no overhead charges, but a 5% fee on the amount due the sub-subcontractor shall be paid the Subcontractor.
4. For each Sub-subcontractor, for Work performed by that Sub-subcontractor's own forces, 10% of the Cost of the Work plus a fee equal to 5% of the Cost of the Work shall be paid to the Sub-subcontractor.
5. No further tiering of sub-subcontractors will be allowed mark up for fees, overhead, or profit.
6. Costs to which fees, overhead, and profit is to be applied shall be those costs set forth in Subparagraph 7.3.7 of the General Conditions.
7. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case shall a Change Order involving over \$100 be approved without such itemization.

No General Conditions Costs shall be added, except that if the change includes an increase in the Contract Time, then extended daily General Conditions Costs will be added in accordance with Section 8.2 of this Agreement and if the change includes an increase in General Conditions Costs staffing, then an increase for the costs of the additional staffing will be added.

§ 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.

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§ 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, whether rented from the Design-Builder or others;
- .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. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 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

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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.

§ 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.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice 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 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, 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. In such event, the Design-Builder shall specify the services required. 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 have the right to review and approve or take other appropriate action on 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

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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. Owner shall incur no liability for delays occasioned by any stop-Work order issued in accordance with this Section.

#### § 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 fire, by acts of God, unusual extraordinary weather events, unavoidable casualties or other causes not within the Design-Builder's control or responsibility; 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; however, the Design Fee shall never be increased, and the Contract Sum shall not be increased except for a per diem payment as described below. It is the express and bargained for intent of the parties that the risk of any monetary damages caused by any delays described in this Section 8.2.1. or any other delays from any other cause are accepted and assumed entirely by Design-Builder, and in no event shall any claim relating thereto for an increase in the Design Fee or an increase in the Contract Sum be made or recognized, except for the per diem payment as described below. Design-Builder's sole remedy for any delay, impact, disruption, or interruption caused by any of the reasons listed in this Section 8.2.1 shall be an equitable extension of time to perform the Construction Phase Work for each day of such delay that impacts the critical path schedule of the Project that extends the Date of Substantial Completion, and only for such delays that occur during the Construction Phase of the Work, a per diem payment not to exceed Design-Builder's and its impacted subcontractors' reasonable extended daily General Conditions Costs per day for each day of such delay that impacts the critical path schedule of the Construction Phase Work of the Project that extends the Date of Substantial Completion. Design-Builder shall not make any other claim nor seek any other damages of any kind against Owner for any delays, impacts, disruptions, or interruptions of any kind. If a Design-Builder caused delay runs concurrent with such delays, Design-Builder shall be entitled to an extension of time, but no per diem payment for the concurrent period of delay. Delays caused by labor disputes, delivery delays, and dispute resolution proceedings are considered within the Design-Builder's control and shall not be grounds for a delay claim.

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

8.2.2.1 Extensions of time will be granted only if the item, task, or other phase of construction delayed is critical to the Work and so indicated on the Design-Builder's schedule.

8.2.2.2. Extensions of time due to adverse weather conditions not reasonably anticipated will be granted only because of such inclement weather occurring on a normal working day and preventing the execution of the major or critical item of construction ordinarily performed at that time. Extensions of time for weather delays will be considered only if such inclement weather exceeds that normally recorded by the National Weather Bureau for the same month and location.

§ 8.2.3 This Section 8.2 does preclude recovery of damages for delay by Design-Builder under any other provisions of the Design-Build Documents.

## ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

### § 9.1 Contract Sum

The Contract Sum (Construction Phase Fees plus the Cost of the Work) is stated in the Design-Build Amendment(s).

### § 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 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. Form AIA G702, supported by form AIA G703 shall be used for all applications for payment.

Applications for Payment shall relate to Work performed through the 30<sup>th</sup> day of the month. With each pay request, the Design-Builder shall certify that all Work for which payment is requested is completed properly in accordance with the defined statement of Work. On the cover page, each pay request shall identify the dates of the period of the Work performed. All invoices shall be submitted if by mail to Space Florida, 505 Odyssey Way, Suite 300, Exploration Park, FL 32953; and if electronically, confirmed reply receipt, to [accounting@spaceflorida.gov](mailto:accounting@spaceflorida.gov) with a cc: to the Program/Project Manager, [tromberger@spaceflorida.gov](mailto:tromberger@spaceflorida.gov) and to [ibonjawa@spaceflorida.gov](mailto:ibonjawa@spaceflorida.gov).

§ 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;

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- .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. As a condition to each progress payment the Design-Builder shall have furnished Owner with a partial lien waiver and release signed by Design-Builder, conditioned upon payment for all Work performed that is included in the current Application for Payment in the form attached to the Contract or if not attached, in a form approved by Owner, and shall have furnished Owner with partial unconditional lien waivers and releases signed by all subcontractors, suppliers, persons or entities furnishing any labor or material, equipment, services, and materials for the Project and for all Work performed by same that is included in the respective prior Application for Payment. In addition, as a condition to each progress payment, in the event that any liens have been filed against the Project, the Design-Builder shall have either recorded a satisfaction of such lien or transferred the lien to a bond satisfactory to Owner.

§ 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.

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§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

#### § 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.

Additionally for the Work to be Substantially Complete the Work must also meet the following conditions:

- a. The Work is complete in accordance with the Contract Documents to the extent required for Owner to obtain a Certificate of Occupancy and such certificate has actually been granted by the appropriate government authorities, provided that a failure to obtain the Certificate of Occupancy due to causes for which the Design-Builder is not responsible shall not be grounds to deny Substantial Completion status.
- b. All HVAC systems included in the Work are properly functioning in accordance with the Contract Documents and verified by the Test and Balance report which shall have been delivered to the Owner.
- c. All life safety systems included in the Work are functioning in accordance with the Contract Documents: and
- d. A certificate of Substantial Completion has been issued.

§ 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. The Design-Builder's warranties required by the Contract Documents shall commence on the date of Substantial Completion regardless of the warranty dates established by subcontractors, equipment manufacturers or vendors.

§ 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.

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§ 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 withheld for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents in an amount equal to 150% of the value of the defective or incomplete Work.

#### § 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 Design-Builder shall submit its Final Pay Request within 45 days of Final Completion of the Project 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. Final payment to the Design-Builder will not be made until all guarantees, warranties, operating manuals, parts list, instructions and record (as-built in pdf format) drawings have been received by the Owner.

§ 9.10.2 Design-Builder shall submit its final payment request within 45 days of Final Completion of the Project. Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) a final contractor's affidavit stating that the Work is Complete and all subcontractors and suppliers have been paid in compliance with the Statutes of the State where the Project is located and 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,

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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.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 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. Design-Builder shall provide Owner with its safety manual before commencing with the Work.

### § 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.

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§ 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.

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#### § 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 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

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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, Architect, Contractors, Consultants, their subconsultants, and any other person or entity providing services or work for any of them ("Instruments of Service"), including those in electronic form, are the sole and exclusive property of Owner from inception, shall be considered as being specially ordered by Owner as "works made for hire" under 17 U.S.C. §101, and may be used in any manner at the sole discretion of Owner. Owner shall have full and sole ownership rights to the Instruments of Service. Design-Builder shall furnish Owner with such reproductions of any Instruments of Service as the Owner may request at any time. Any reproductions shall be the sole and exclusive property of the Owner who may use them without Design-Builder's permission for any purpose determined to be proper by the Owner. Owner shall own all rights, copyrights, or other intellectual property there may be with respect to the Instruments of Service. In the event that the Instruments of Service are held not to be "works made for hire", then Design-Builder agrees that all Instruments of Service, whether in final form or draft, which result from any services performed by Design-Builder under this Agreement, are hereby assigned exclusively to Owner, including any copyright, patent, trademark, and all other intellectual property rights. In all cases, Design-Builder further hereby expressly assigns all of its present and future rights therein to Owner, and agrees to execute and furnish, and to cause all the Design-Builder's consultants to execute and furnish, in favor of Owner separate assignment documents from time to time as requested by Owner. This Section shall survive any termination or expiration of this Agreement. The Design-Builder shall be entitled to retain copies of the Instruments of Service for the Design-Builder's use and records. Owner shall be free to use the Instruments of Service for completion, renovation, additions, and expansion of the Project and to use the design concepts of the Instruments of Service on other projects. The Design-Builder shall have no liability for the Owner's reuse of such documents unless the Design-Builder is retained. Design-Builder shall require language in each of its subconsultants' contracts providing for Owner's ownership of all Project documents and the Instruments of Service.

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**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 (7) 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. The Design-Builder's compensation for the remaining Work shall be equitably adjusted if Design-Builder's cost rise during the suspension and the time to complete shall be increased by the time of the suspension,

**§ 13.1.3** If the Owner suspends the Project for more than 90 cumulative 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.

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§ 13.1.4 Either party may terminate this Agreement upon not less than seven (7) 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 (7) days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of any termination, the Design-Builder shall be compensated for Work properly performed prior to termination, together with Reimbursable Expenses then due. This payment shall be Design-Builder's sole remedy for such termination. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

### § 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; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 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 (7) days' written notice to the Owner, as its sole remedy, terminate the Contract and recover from the Owner payment for the Cost of the Work properly executed as of the date of termination plus the Construction Phase Fees on such Cost of the Work. Design-Builder shall not be entitled to any payment, damages, Construction Phase Fees, fees, costs, or profits for Work not yet performed.

§ 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;
- .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;

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- .4 repeatedly 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.

§ 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 until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.2.5 If any termination by Owner is later determined to have been improper or unjustified, such termination shall nonetheless be deemed and considered for all purposes a termination for convenience.

§ 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 Cost of the Work properly executed as of the date of termination, plus the Construction Phase Fees on such Cost of the Work, plus reasonable expenses for demobilization of equipment and loss of deposits, restocking fees, or costs for specially ordered materials that cannot be returned. This payment shall be Design-Builder's sole remedy for such termination. Design-Builder shall not be entitled to any payment, damages, Construction Phase Fees, fees, costs, or profits for Work not yet performed.

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§ 13.2.5 In the event of any termination, the Design-Builder shall upon Owner's request, assign any and all subcontracts and purchase orders to Owner. Design-Builder shall have clauses in all its subcontracts and purchase orders allowing such assignment to Owner. As a precondition to any payment due Design-Builder as a result of any termination of this Agreement, Design-Builder shall execute any and all documents necessary to assign all rights and benefits of such subcontracts and purchase orders to Owner.

## 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, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

### § 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.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 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 shall be given before proceeding to execute the portion of the Work that relates to the Claim. 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 shall be given. 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.

### § 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. 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 loss of use, for rental expenses, for losses of financing, business and

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reputation, loss of employee productivity or the services of such persons, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

**§ 14.2 Initial Decision**

**§ 14.2.1** An initial decision shall be required as a condition precedent to non-binding mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

**§ 14.2.2 Procedure**

**§ 14.2.2.1 Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

**§ 14.2.2.2 Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

**§ 14.2.3** In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

**§ 14.2.4** If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

**§ 14.2.5** The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to non-binding mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 14.2.6** Either party may file for non-binding mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

**§ 14.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

**§ 14.2.7** In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 14.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

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§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to non-binding mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by non-binding mediation which, unless the parties mutually agree otherwise, shall be administered in accordance with the statute, law, or civil procedure rule applicable in the State where the Project is located. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

*(Paragraphs deleted)*

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law and Venue

The Contract shall be governed by the law of the place where the Project is located. Venue for any dispute shall be in the County 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.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment. The Owner may assign the Contract to AOS subject to Design-Builder's written consent, which consent shall not be unreasonably withheld.

§ 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, or if sent by electronic mail by and between the parties' designated representatives if a reply email is received confirming receipt.

## § 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 required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. The Design-Builder shall provide and pay for all tests and inspections during construction through an independent quality control firm, which shall have no relation to Design-Builder and which firm shall be subject to the prior approval of Owner. These tests and inspections normally include site grading and foundation inspection; concrete and reinforcement steel inspection and testing; structural steel inspection; roofing inspection; and testing of asphalt paving. Copies of test reports will be distributed to the Owner within two (2) days of issuance. The Design-Builder shall give Owner timely notice of when and where test and inspections are to be made so the Owner may be present for such procedures. The costs for such testing and inspections shall be included in the Cost of the Work within the Construction Phase GMPs.

§ 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 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.

**§ 15.9. Sales Tax Savings Program.** The Owner is a not-for-profit, tax exempt organization. The Design-Builder shall work with and assist the Owner to prevent payment of taxes not due.

**§ 15.9.1** Notwithstanding anything herein to the contrary, because Owner is exempt from sales tax and wishes to generate sales tax savings for the Project, Owner reserves the right to make direct purchases of various construction materials and equipment included in the Work. Before purchasing materials or equipment for the Project or a combination of like items that exceed \$200,000 in cost, Design-Builder shall identify in writing to Owner all materials and equipment or a combination of like items to be included in the Work that will generate sales tax savings if purchased direct by Owner. Design-Builder shall comply with the written procedures for Owner Purchased materials provided by Owner to Design-Builder and shall incorporate a similar provision to this provision in all of its subcontracts requiring the Subcontractors' compliance with said procedures. Owner shall execute direct purchase orders with vendors for such Owner Purchased materials. The purchase orders shall contain Owner's Consumer Certificate of Exemption number. Owner shall acquire title to all Owner Purchased materials at the time same are delivered to the Project site. Owner shall obtain insurance on the Owner Purchased Materials and Owner shall assume all risk of loss and theft for the Owner Purchased Materials upon their delivery to the Project site and until they are incorporated into the real property. Vendors shall invoice Owner directly for the Owner Purchased Materials. Owner shall pay vendors directly for the Owner Purchased Materials. Design-Builder represents and warrants that it will use its best efforts to cooperate with Owner in implementing this sales tax savings program in order maximize cost savings for the Project. The cost of the Owner direct purchased materials will initially be part of the Contract Sum; then, upon the execution of a purchase order, Owner and Design-Builder shall execute a Change Order decreasing the Contract Sum by the total cost, including the saved sales tax for the materials or equipment purchased directly by Owner under said purchase order. In no event will Owner be required to pay Design-Builder for any direct purchased materials as part of the Contract Sum or otherwise. Notwithstanding the foregoing, the Design-Builder's bond costs, General Conditions Costs, General & Administrative Costs, Design Builder's Construction Fee, and Design Builder's insurance on the direct purchased materials shall not be deducted from the Contract Sum. With respect to all direct purchases by Owner, Design-Builder shall remain responsible for coordinating, installing, inspecting, storing, handling, warranting, installation, and quality control for all direct purchases. Notwithstanding anything herein to the contrary, Design-Builder expressly acknowledges and agrees that any materials or equipment directly purchased by Owner pursuant to this Paragraph shall be included within and covered to the same extent as all other warranties and performance guarantees provided by Design-Builder pursuant to the terms of the Contract Documents, including bonds. Owner assigns to Design-Builder any and all warranties and rights Owner may have from any manufacturer or supplier of any such direct purchases by Owner. The Parties understand that the above Owner direct purchase procedures are generally not available to purchase fabricated materials from a vendor that, in addition to fabricating them, also installs those same fabricated materials into the Project.

**§ 15.9.2** The Owner agrees to indemnify and hold harmless the Design-Builder, its Subcontractors, vendors and suppliers from and against the payment of or liability for any sales or use taxes arising out of or resulting from the Owner purchasing materials for the Project under the Owner's sales tax exempt status, and for which the Owner or the Design-Builder, Subcontractors, vendors or suppliers should become liable, but only upon the condition that Design-Builder has properly complied with the Owner's written sales tax program procedures.

**§ 15.10 Other Provisions**

**15.10.1** All activities under or pursuant to this Agreement are subject to the availability of appropriated funds by the Legislature of the State of Florida, if applicable. Owner shall immediately notify Design-Builder should funds become unavailable. In such case, either party shall have the right to stop work and/or terminate this Agreement.

15.10.2 **Public Records.**

- a. To the extent Design Builder is acting on behalf of Owner as provided under Subsection 119.011(2) of the Florida Statutes, Design Builder shall:
- i. Keep and maintain public records required by Owner to perform the services under this Agreement.
  - ii. Upon request from Owner's custodian of public records, provide Owner 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 costs provided in Chapter 119 of the Florida Statutes or otherwise provided by law.
  - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Design Builder does not transfer the records to Owner. Examples of such records are trade secrets as defined by Florida Statute 812.081 and exempt from public records disclosure per Florida Statute 331.326.
  - iv. Upon completion of the Agreement, transfer, at no cost, to Owner all public records in possession of Design Builder or keep and maintain public records required by Owner to perform the service. If the Design Builder transfers all public records to Owner upon completion of the Agreement, the Design Builder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Design Builder keeps and maintains public records upon completion of the Agreement, the Design Builder shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Owner, upon request from Owner's custodian of public records, in a format that is compatible with the information technology systems of Owner.
- b. If the Design Builder fails to provide the public records to Owner within a reasonable time the Design Builder may be subject to penalties under Section 119.10 of the Florida Statutes. Further, Owner may exercise any remedies at law or in equity, including, without limitation, the right to (i) impose sanctions and assess financial consequences, (ii) withhold and/or reduce payment, and (iii) terminate this Agreement in accordance with the terms hereof.
- c. **IF THE DESIGN BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT OWNER'S CUSTODIAN OF PUBLIC RECORDS, DESIREE MAYFIELD AT 321-695-5301, DMAYFIELD@SPACEFLORIDA.GOV, 505 Odyssey Way, Suite 300, Exploration Park, FL 32953.**

15.10.3 Owner's limits of liability are set forth in Section 768.28, Florida Statutes, and nothing herein shall be construed to extend the liabilities of Owner beyond that provided in Section 768.28, Florida Statutes. Nothing herein is intended as a waiver of Owner's sovereign immunity under Section 768.28, Florida Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, including but not limited to, which might allow claims otherwise barred by sovereign immunity or operation of law. Furthermore, Owner's obligations under this Agreement are limited and Owner's liability shall not exceed the amount to be paid by Owner to Design-Builder under this Agreement, even if the sovereign immunity limitations of the statute are not otherwise applicable to the matter.

15.10.4 Design-Builder shall not use any funds received pursuant to this Agreement for lobbying the Florida Legislature, the judicial branch, or any state agency.

15.10.5 Design-Builder affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes, and that at no time has Design-Builder been convicted of a Public Entity Crime. Design-Builder agrees that it shall not

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violate such law and further acknowledges and agrees that any conviction during the term of this Agreement may result in termination of this Contract by Owner.

15.10.6 The Design-Builder and the Design-Builder's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Design-Builder shall take affirmative action to ensure that qualified applicants are employed if work is available and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Design-Builder agrees to post in places available to all employees and applicants for employment, notices setting forth the policies of nondiscrimination.

15.10.7 The Design-Builder and the Design-Builder's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

15.10.8 Design-Builder shall preserve all contract records and documents for the entire term of this Agreement and for five (5) years after the later of: (i) the date of submission of Design-Builder's final services, or (ii) until all claims (if any) regarding the Agreement are resolved. During such period of time, Design-Builder shall retain and maintain all records and make such records available for an audit as may be requested by Owner. The records shall be subject at all times to inspection, review, or audit by State personnel of the Office of the Auditor General, Chief Financial Officer, and Office of the Chief Inspector General. Owner may, at any time and for any reason whatsoever, review, audit, copy, examine and investigate in any manner, any records of Design-Builder which include, but are not limited to, papers, independent auditor working papers, books, documents, vouchers, bills, invoices, requests for payment, accounting records, and other supporting documentation, which according to generally accepted accounting principles, procedures and practices, sufficiently and properly reflect all costs expended in the performance of this Agreement.

15.10.9 To the extent applicable, Design-Builder shall comply with the audit requirements of Section 215.97 of the Florida Statutes and those found in Exhibit F attached, Audit Requirements. Design-Builder shall include the audit and record keeping requirements provided for in this Section and in Exhibit F, in all subcontracts and for all sub-recipients of state funds according to Section 215.97 of the Florida Statutes. For purposes of this Agreement, "sub-recipient" shall be defined in accordance with Subsection 215.99(2)(x) of the Florida Statutes.

15.10.10 Design-Builder shall be responsible for maintaining in good condition all cultivated grass plots, trees, shrubs, and landscaping on the Project site. If damaged, Design-Builder shall restore same to its original condition after completion of the Work.

15.10.11 Design-Builder shall permit Owner to have reasonable access to Design-Builder's records, account books, bills, invoices, payrolls, daily logs, and other records related to the Project. Design-Builder shall preserve such records for five (5) years after Substantial Completion of the Project. The Owner may require an audit of the Design-Builder's records. The audit shall be conducted by the Owner's personnel or authorized representative. The Owner reserves the right to audit at any time during the Project and within four (4) years after the Substantial Completion of the Work.

15.10.12 It is understood and agreed that the relationship of Design-Builder to Owner shall be that of an independent contractor. Nothing herein shall be construed to make Design-Builder the agent, servant, or employee of Owner or create any partnership, joint venture, or other association.

15.10.13 For services related to this Agreement, Design-Builder may not transact business with any entity that has been placed on the discriminatory vendor list as set forth in Florida Statute 215.97.

15.10.14 **Bonds.** See Exhibit "B".

15.10.15 Design-Builder warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Design-Builder to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Design-Builder any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

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15.10.16. Design-Builder shall require language in each of its subconsultants' contracts providing for Owner's ownership of all Project documents.

15.10.17 Design-Builder shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. Design-Builder shall insert a similar provision in accordance with this Section, in all subcontracts for this Project.

15.10.18. Owner shall be entitled to make any decision or approval required by this Agreement to made of by the Architect or Engineer. Any decision of Owner shall supersede any decision of the Architect or Engineer. Any time Design-Builder shall be required to notify or report to the Architect or Engineer such notice or report shall be also be made to Owner.

15.10.19. Design-Builder shall not be entitled to any claim for delay because of restrictions associated with accessing the Project site. There will be delays and work stoppages due to NASA activities at or near the Project site. Design-Builder's vehicles and personal will be subject to delays and inspections upon entering the property and Design-Builder has included these delays in its Design Fee and Contract Sum. Design-Builder shall coordinate daily with the designated Owner representative prior to arriving on-site to avoid delays and work-stoppages due to other NASA activities at or near the Project site. Material deliveries require minimum 48 hour prior advance coordination with Owner.

15.10.20 Safety and Health Plan. Prior to commencement of the Work the Design-Builder shall submit to the Owner a Safety and Health Plan, or similar documentation, describing how the Design-Builder intends to ensure the safety and health of personnel and protect property from damage. The Safety and Health Plan, or similar documentation, shall include descriptions of policies, procedures, and techniques for all anticipated working conditions that will be encountered throughout the services to be provided.

15.10.21 There are no intended or unintended third party beneficiaries of this Agreement, and no parties other than the Owner and the Design-Builder shall have the right to enforce this Agreement.

15.10.22 Conflicts. This Agreement shall have precedence in the event of any conflicts between this Agreement and any of the Drawings, Specifications, Design-Builder's Proposal or Quotation Form, attachments, or other documents incorporated by reference to this Agreement.

15.10.25 The Design-Build Amendment shall include as an attachment a list of Design-Builder's temporary equipment, storage areas, fencing, trailers, and porta johns and a drawing showing the locations of same. Design-Builder shall not change these locations without the written approval of Owner.

15.10.26 Design-Builder shall install a sign at the Project site that identifies the points of contact for Owner, Design-Builder, Architect, and Design-Builder's major subcontractors, including individual contact names, addresses, phone numbers, and emails.

15.10.27 Design-Builder shall maintain a redlined set of drawings at the job site to show any deviations made from the Contract drawings, and which reflect the "As-Built" conditions. These drawings shall clearly identify all dimensions established in the field and all deviations to the drawings, as approved by the Owner representative. All red-line drawings shall be turned-over and provided to Owner within two (2) weeks of Final Completion.

15.10.28 Design-Builder and all sub-contractors for this Project shall comply with Davis-Bacon Act salary and wage requirements and reporting.

15.10.29 Design-Builder shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees hired by Design-Builder during the term of this Agreement; and Design-Builder shall expressly require any subcontractors to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees hired by the subcontractors during the contract term.

15.10.30 The employment by Design-Builder or any of its subcontractors of unauthorized aliens, as described by Section 274A(e) of the Immigration and Nationalization Act, shall be cause for termination of this Agreement.

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15.10.31. Design-Builder shall report on a quarterly basis its expenditures with minority and women-owned businesses and a final report after Final Completion of the Project. The reports shall contain the names and addresses of the minority and women-owned businesses; the aggregate dollar figure disbursed that quarter for each business; the time period; type of goods or services; and the applicable code. If no expenditures were made to minority or women-owned businesses, Design-Builder shall submit a statement to this effect.

15.10.32 Design-Builder shall comply with all the terms and conditions of the Cape Canaveral Spaceport Development Manual attached as Exhibit "N", the Exploration Park Enhanced Use Lease including Amendments 1, 2, & 3 attached as Exhibit "G", and of the Exploration Park Covenants, Conditions, and Restrictions, attached as Exhibit "O".

15.10.33 This Agreement is conditioned upon the Project's lender's (if any) approval of the terms and conditions of this Agreement.

15.10.34 This Agreement is conditioned upon the terms and conditions of the FDOT Spaceport Improvement Grant Agreement attached as Exhibit "M" including the FDOT reimbursement requirements stated therein. Design-Builder agrees to comply with the terms and conditions required by the FDOT Spaceport Improvement Grant Agreement for all payment applications.

#### ARTICLE 16 SCOPE OF THE AGREEMENT

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

- .1 Revised AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 Revised AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 Revised AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 Exhibit C, RFQ-SF-02-0-2016/TR
- .5 Exhibit D, Design Builder's Proposal, Fee Breakdown, Clarifications and Assumptions, Hourly Rates, and Schedule (however, the Schedule in Exhibit "D" is not applicable)
- .6 Exhibit E, not applicable.
- .7 Exhibit F, State of Florida Audit Requirements
- .8 Exhibit G, Exploration Park Enhanced Use Lease with NASA including Amendments 1, 2, & 3
- .9 Exhibit H, not applicable
- .10 Exhibit I, Airbus OneWeb Satellites, LLC's Factory Requirements
- .11 Exhibit J, Exploration Park Conceptual Site Plan
- .12 Exhibit K, Exploration Park Previous Geotechnical Reports
- .13 Exhibit L, Exploration Park As-Built & Survey
- .14 Exhibit M, FDOT Spaceport Improvement Grant Agreement
- .15 Exhibit N, Cape Canaveral Spaceport Development Manual
- .16 Exhibit O, Exploration Park Covenants, Conditions, and Restrictions

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

Space Florida, an independent special district, a body politic and corporate, and a subdivision of the State of Florida

Hensel Phelps Construction, a Delaware General Partnership

Init.

*Howard J. Hagg*

OWNER (Signature)

HOWARD J. HAGG  
VP & TREASURER

(Printed name and title)

JANUARY 5, 2017

Date

*Kirk Hantzen*

DESIGN-BUILDER (Signature)

Kirk Hantzen, Vice President of Hensel Phelps  
Parent 1, Inc. and Hensel Phelps Parent 2, Inc.,  
general partners

(Printed name and title)

1.4.17

Date

Init.

KH/



## Design-Build Amendment

### GMP Amendment No. 1. Phase 2, Task 1– Pre-Engineered Metal Building

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the 31st day of August in the year 2016 (the "Agreement")  
*(In words, indicate day, month and year.)*

**for the following PROJECT:**  
*(Name and location or address)*

Spacecraft Integration Facility in Exploration Park, Florida: Phase 2, Task 1-  
Pre-Engineered Metal Building

**THE OWNER:**  
*(Name, legal status and address)*

Space Florida, an independent special district, a body politic and corporate, and a subdivision of the State of Florida  
505 Odyssey Way, Suite 300  
Exploration Park, FL 32953  
321-730-5301

**THE DESIGN-BUILDER:**  
*(Name, legal status and address)*

Hensel Phelps Construction, a Delaware General Partnership  
6557 Hazeltine National Drive  
Suite One  
Orlando, FL 32822  
407-856-2400  
Florida Contractor’s License No. CGC1509056

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

#### TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER’S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

#### ARTICLE A.1 CONTRACT SUM for Phase 2, Task 1

AIA Document A141™ – 2014 Exhibit A. Copyright © 2004 and 2014 by The American Institute of Architects. **All rights reserved. WARNING: This AIA<sup>®</sup> Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA<sup>®</sup> Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 15:57:16 on 02/07/2017 under Order No.8107117609\_1 which expires on 12/31/2017, and is not for resale.  
**User Notes:** (1953055331)

**§ 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 Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

*(Check the appropriate box.)*

Stipulated Sum, in accordance with Section A.1.2 below

Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

Cost of the Work plus the Design-Builder's Construction Phase Fees with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

*(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)*

**§ A.1.2 Stipulated Sum N/A.**

*(Table deleted)*

*(Paragraphs deleted)*

**§ A.1.3 Cost of the Work Plus Design-Builder's Fee N/A.**

*(Paragraphs deleted)*

**§ A.1.4 Cost of the Work Plus Design-Builder's Construction Phase Fees With a Guaranteed Maximum Price**

**§ A.1.4.1** The Cost of the Work is as defined in Article A.5, Cost of the Work.

**§ A.1.4.2** The Design-Builder's Construction Phase Fees:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Construction Phase Fees and the method for adjustment to the Fee for changes in the Work.)*

The Construction Phase Fees shall not exceed that percentage of the Cost of the Work equal to that percentage defined in **§ 5.1.5** of the executed AIAA141 Agreement Between Owner and Design-Builder.

**§ A.1.4.3 Guaranteed Maximum Price**

**§ A.1.4.3.1** The sum of the Design Fee and the Contract Sum for Phase 2, Task 1 (the Contract Sum is the total of the Cost of the Work and the Construction Phase Fees) is guaranteed by the Design-Builder not to exceed Three Million Nine Hundred Twenty Four Thousand and 00/100 dollars (\$3,924,000.00 ), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents (the "Guaranteed Maximum Price" or "GMP"). Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

*(Insert specific provisions if the Design-Builder is to participate in any savings.)*

**§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price**

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design Fee, the Construction Phase Fees (General Conditions Costs, General & Administrative Costs, and Construction Fee), the Cost of the Work, and other items that comprise the Guaranteed Maximum Price for Phase 2, Task 1.

*(Provide information below or reference an attachment.)*

The Design Fee is: \$ \_\_included\_ ( which is included in the GMP below)

The Construction Phase Fees are: \$342,000.00\_\_ (which amount is included in the GMP below)

The Cost of the Work is: \$3,582,000.00 (which is included in the GMP below and includes \$200,000.00 for contingency in accordance with Article 5.1.4.9 of the Agreement)

The Contract Sum being the total of the Construction Phase Fees and the Cost of the Work is:

\$3,924,000.00\_\_ (which is included in the GMP below)

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The Guaranteed Maximum Price is: \$3,924,000.00\_(the Design Fee, the Construction Phase Fees, and the Cost of the Work as detailed and itemized in attached Exhibit "A").

**§ A.1.4.3.3** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)*

Attached as Exhibit "B".

**§ A.1.4.3.4** 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)
Unit Prices, if any, attached as Exhibit "K".		

**§ A.1.4.3.5** Comments, and Clarifications, other documents, and information, if any, on which the Guaranteed Maximum Price is based:

Design-Builder's Comments and Clarifications are attached as Exhibit "D".

List of Items Included in General Conditions Costs, attached as Exhibit "H".

Completion Schedule, attached as Exhibit "I".

Schedule of Values, attached as Exhibit "J".

## **§ A.1.5 Payments**

### **§ A.1.5.1 Progress Payments**

**§ A.1.5.1.1** 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 (Construction Phase Fees plus the Cost of the Work) to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

**§ A.1.5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

Applications for Payment shall relate to Work performed through the 30<sup>th</sup> day of the month. With each pay request, the Design-Builder shall certify that all Work for which payment is requested is completed properly in accordance with the defined statement of Work. On the cover page, each pay request shall identify the dates of the period of the Work performed. All invoices shall be submitted if by mail to Space Florida, 505 Odyssey Way, Suite 300, Exploration Park, FL 32953; and if electronically, confirmed reply receipt, to [accounting@spaceflorida.gov](mailto:accounting@spaceflorida.gov) with a cc: to the Program/Project Manager, [trumberger@spaceflorida.gov](mailto:trumberger@spaceflorida.gov) and to [jbonjawo@spaceflorida.gov](mailto:jbonjawo@spaceflorida.gov).

**§ A.1.5.1.3** Provided that a properly completed Application for Payment along with all backup documentation is received not later than the 5th day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 5th day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment. All payment procedures in this Agreement are subject to Owner's lender's requirements and procedures. All payment procedures in this Agreement are also subject to the requirements and procedures set forth in the [FDOT Spaceport Improvement Program Grant Agreement](#). Interest shall be payable on late payments in accordance with Florida Statute 255.073(4).

*(Federal, state or local laws may require payment within a certain period of time.)*

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. 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. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee 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.1.5.1.6 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.1.5.1.7 Except with the Owner's prior written 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.

§ A.1.5.2 Progress Payments—Stipulated Sum N/A.

*(Paragraphs deleted)*

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee N/A.

*(Paragraphs deleted)*

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee 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.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10%), except no retainage shall be withheld on Owner direct purchased materials and equipment. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less retainage of ten percent (10%);

- .3 Add the Design-Builder's Fee, less retainage of ten percent (10%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ten percent (10%) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

**§ A.1.5.4.3** Retainage shall be withheld and reduced in accordance with Florida Statute 255.078. 10% retainage shall be initially withheld. At 50% completion of the Project, retainage shall be reduced to 5% for each subsequent progress payments in accordance with Florida Statutes Section 255.078. After the Project is 50% complete, the Contractor may request release of up to one-half of retainage previously withheld subject to the requirements of Florida Statute 255.078. At Substantial Completion, all retainage may be invoiced by Contractor and shall be released, except 150% of the value of Punch List Work, incomplete Work, and defective Work which shall be withheld. Upon mutual agreement between Owner and Design-Builder and before the Project's Substantial Completion date, payment in full including release of applicable retainage may be made to the Design-Builder for a particular subcontractor's Work that is fully and satisfactorily completed, provided that the Design-Builder and Subcontractor provide a satisfactory complete release of all claims for such Work and provided that both have complied with all requirements for final payment in accordance with the Contract Documents.

**§ A.1.5.5 Final Payment**

**§ A.1.5.5.1** Design-Builder shall submit its Final Pay Request within 45 days of Final Completion of the Project. Final payment, constituting the entire unpaid balance of the Contract Sum, less 150% of the estimated value of any punchlist, defective, or incomplete Work, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract, approval of the Work by the Owner, Owner's completion of the audit of the Cost of the Work pursuant to **§ 1.5.5.2**, 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.

**§ A.1.5.5.2** If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within sixty (60) days after the Design-Builder delivers the final accounting to the Owner, which 60 day time period shall be reasonably extended in the event that the Design-Builder does not timely provide information requested within three (3) days of the auditor's request or provides partial information requested. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

**ARTICLE A.2 CONTRACT TIME**

**§ A.2.1** Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Construction Phase of the Work.

**§ A.2.2** The Design-Builder shall achieve Substantial Completion of the Phase 2, Task 1 Work not later than October 23, 2017, or as follows:  
*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

**Portion of Work**

**Substantial Completion Date**

, subject to adjustments of the Contract Time as provided in the Design-Build Documents. Design-Builder shall achieve Final Completion of the Phase 2, Task 1 Work within 30 days after Substantial Completion of the Phase 2, Task 1 Work.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

**Liquidated Damages.** If the Design-Builder fails to substantially complete the Phase 2, Task 1 Work before the agreed upon Date of Substantial Completion set forth in this Agreement (including any extension granted by the Owner in writing), then the Design-Builder agrees to pay the Owner, as liquidated damages, a sum equal to **Five Thousand and 00/100 Dollars (\$5,000.00)** per calendar day until Substantial Completion of the Work is actually achieved. Such amount is agreed upon as a reasonable measure of the damages that the Owner will sustain from the Design-Builder's failure to timely complete the Work. Owner and the Design-Builder recognize the delays, expense and difficulties involved in providing in an arbitration or judicial proceeding the actual loss suffered by the Owner if the Work is not completed on time and accordingly, instead of requiring such proofs, they agree upon the above-stated amount as liquidated damages for delay (but not as a penalty). The foregoing liquidated damages shall be in lieu of all other monetary remedies that the Owner shall have in the event of the Design-Builder's delay in completing the Project.

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

§ A.3.1 The Contract Sum, GMP, and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Attached as Exhibit "E".			

§ A.3.1.2 The Specifications:  
*(Either list the specifications here or refer to an exhibit attached to this Amendment.)*

Attached as Exhibit "F".

Section	Title	Date	Pages

§ A.3.1.3 The Drawings:  
*(Either list the drawings here or refer to an exhibit attached to this Amendment.)*

Attached as Exhibit "G".

Number	Title	Date

§ A.3.1.4  
*(Paragraphs deleted)*

N/A. § A.3.1.5 Allowances and Contingencies:  
*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

- .1 Allowances  
See Exhibit "A".
- .2 Contingencies  
See Exhibit "A"

§ A.3.1.6 Design-Builder's assumptions and clarifications:

Attached as Exhibit "D".

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

Equipment List and Locations: Exhibit "L" contains the list of Design-Builder's temporary equipment, storage areas, fencing, trailers, and porta johns and a drawing showing the locations of same. Design-Builder shall not change these locations without the written approval of Owner.

**ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**

§ A.4.1 The Design-Builder's key personnel are identified below:

*(Identify name, title and contact information.)*

*(Paragraphs deleted)*

See Exhibit "M"

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

*(List name, discipline, address and other information.)*

Building Management Systems, Melbourne, Florida PEMB subcontractor.

**ARTICLE A.5 COST OF THE WORK FOR THE CONSTRUCTION PHASE OF THE WORK**

§ A.5.1 Cost To Be Reimbursed as Part of the Contract Sum

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops, to be calculated in accordance with the Fee and Rate Schedule attached to the Agreement as Exhibit "D".

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site, to be calculated in accordance with the Fee and Rate Schedule attached to the Agreement as Exhibit "D" and to be included in General Conditions Costs.

*(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

*(Table deleted)*

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel (including Design-Builder's Project Manager) engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work, with all such sums included in General Conditions Costs. Prior to commencing the Work, the Design-Builder shall submit to the Owner for approval, a list of supervisory and field office personnel, their duties on the Work, and their respective pay rates and anticipated hours for the Project that will be assigned as a Cost of the Work. Time and wages beyond 40 hours per week for salaried personnel will not be reimbursed.

§ A.5.1.1.4 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 included in the Cost of the Work under Section A.5.1.1.

**§ A.5.1.1.5 General Conditions Costs, General & Administrative Costs (G&A), and Construction Fee ("Construction Phase Fees").** Construction Phase Fees are part of the Contract Sum but not included in the Cost of the Work. The total of Design-Builder's General Conditions Costs, General & Administrative Costs, and Construction Fee shall equal Ten Point Five Percent (10.5%) of the Cost of the Work of the Construction Phase GMP Amendment. General Conditions Costs, General & Administrative Costs, and the Construction Fee shall not be included in the Cost of the Work, but will be added as a percentage of the Cost of the Work. Such Construction Phase Fees shall not be charged on bond and insurance costs of Design-Builder, Architect, and Contractor. Construction Phase Fees shall not be charged on bond costs of subcontractors. Construction Phase Fees shall not be charged on the Architect's construction administration fees. Construction Phase Fees are a lump sum fee and shall not be subject to adjustment regardless of whether an audit determines that the actual expenses and costs incurred by Design-Builder are more or less than 10.5%, unless expenses included in such fees are of a type prohibited by this Agreement.

**§ A.5.1.2 Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

**§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ A.5.1.3.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ A.5.1.3.2** Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. 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 Cost of the Work.

**§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ A.5.1.4.1** 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. 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.5.1.4.2** 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. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. The total rental cost of any piece of equipment for the duration of the Project that the Design-Builder or any related party owns shall not exceed 75% of the fair market value of that equipment at the commencement of the rental period. Where a rental agreement contains an option to purchase and this option is exercised, the equity accrued shall be credited to the Owner against the total rental cost of that equipment on the Work. Prior to beginning the Work, the Design-Builder shall submit a list to the Program Manager and Owner of rental equipment owned by the Design-Builder or a related party of the Design-Builder indicating the fair market value at commencement of the Work and the proposed rental rates. The Design-Builder shall attach to each monthly Application for Payment an itemized list of rental equipment owned by the Design-Builder or the related party and the applicable rates for such equipment used on the Project during that period.

**§ A.5.1.4.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ A.5.1.4.4** 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. There shall be no markup on these expenses.

**§ A.5.1.4.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.4.5 Job site vehicle shall be limited to one per site or as agreed to in writing by the Owner. Rental rates for the job site vehicle shall include gas, maintenance, repairs, and taxes and licenses and shall not be billed separately. This single job site vehicle is in addition to the supervisors' vehicle allowances.

#### § A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract but Construction Phase Fees shall not be charged on insurance and bonds. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 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.

§ A.5.1.5.4 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.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 Small tools shall be treated as a Cost item and are defined as those tools costing five hundred dollars (\$500.00) or less. A record showing the disposition of these tools is to be on file at the Contractor's office on the project site. Ownership of small tools not consumed during construction shall remain with the Owner upon completion of the Project.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 In lieu or renting certain items of equipment, machinery and tools, valued at more than five hundred dollars (\$500.00) from the Design-Builder or other third parties, the Owner reserves the right to have those items purchased and maintained as a Cost of the Work. A record showing the disposition of these items is to be on file at the Design-Builder's office on the project site. Ownership of the items not consumed during construction shall remain with the Owner upon completion of the Project.

§ A.5.1.5.10 n/a.

§ A.5.1.5.11 Bond costs for Design-Builder and bond costs for Design-Builder's subcontractors with subcontracts over \$50,000, but Construction Phase Fees shall not be charged on any such bond costs.

### § A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 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.5.1.6.3 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.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, 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.5.1.7.2 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, according to the terms of Section A.5.4. 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 according to the terms of Section A.5.4.

*(Paragraphs deleted)*

### § A.5.2 Costs Not to Be Reimbursed as Part of the Contract Sum:

The Cost of the Work shall not include the items listed below:

- .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, except as specifically provided in General & Administrative Costs;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office, except as provided in General & Administrative Costs;
- .3 Overhead and general expenses, except as may be expressly included in General Conditions Costs and General & Administrative Costs;
- .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;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 The Design Fee;
- .9 Payments to Design-Builder's employees over and above their regular pay (bonuses, incentive pay, profit sharing, severance pay, etc.), including salary increases not identified in the Design-Builder's GMP proposal;
- .10 Technology, Data Processing, Project Specific Web Sites, or Project Management System Cost incurred by the Design-Builder in preparing the Project Schedule, Payroll, Accounting, Project Cost Reports or Project Status Reports and any other reports necessary to the progress of the Work;
- .11 Any fees paid to Design-Builder organizations (AGC, ABC, etc.);
- .12 Design-Builder's business license;
- .13 Recruitment or training costs of personnel;
- .14 Overtime expense of any salaried personnel;

- .15 Except as provided in Section 5.1, any cost not specifically and expressly described in Section 5.;
- .16 Costs which would cause the Guaranteed Maximum Price to be exceeded;
- .17 Any expenses for Construction Phase Fees that cause the total to exceed that maximum set forth in § A.5.1.1.5;
- .18 Bond costs for Design-Builder's suppliers;
- .19 Expenses for the transportation, travel, and subsistence of personnel;
- .20 Pre-employment screening costs;
- .21 Office supplies and equipment, including computers, printers, copy machines, and software; and
- .22 Cellular and land line phone equipment;
- .23 Office rent other than temporary trailers at the Project site; and
- .24 Any costs not permitted by the Florida Department of Transportation.

**§ A.5.3 Discounts, Rebates, and Refunds**

**§ A.5.3.1** Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner. Trade discounts, commissions, 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.5.3.2** 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 Other Agreements**

**§ A.5.4.1** 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.5.4.2** 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 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.5.4.3** 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.5.5 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 five (5) years after final payment, or for such longer period as may be required by law.

**§ A.5.6 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.

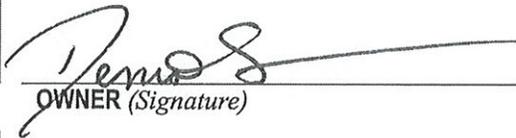
Attachments:

- Exhibit A GMP No. 1 – Breakdown of GMP
- Exhibit B GMP No. 1 - Alternates
- Exhibit C GMP No. 1 – not used
- Exhibit D GMP No. 1 - Design-Builder's Comments and Clarifications
- Exhibit E GMP No. 1 - Supplementary and other Conditions of the Contract
- Exhibit F GMP No. 1 - Specifications
- Exhibit G GMP No. 1 - Drawings
- Exhibit H GMP No. 1 – General Conditions Costs
- Exhibit I GMP No. 1 - Completion Schedule
- Exhibit J GMP No. 1 – Schedule of Values
- Exhibit K GMP No. 1 – Unit Prices
- Exhibit L GMP No. 1 – Equipment Locations
- Exhibit M GMP No. 1 – Key Personnel

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

Space Florida, an independent special district, a body politic and corporate, and a subdivision of the State of Florida

Hensel Phelps Construction, a Delaware General Partnership

  
OWNER (Signature)

  
DESIGN-BUILDER (Signature)

Denise Swanson, CFO/CAO  
(Printed name and title)

Kirk Hanzen, Vice President of Hensel Phelps Parent 1, Inc. and Hensel Phelps Parent 2, Inc., general partners  
(Printed name and title)

February 17, 2017  
Date

2.22.17  
Date



# Document A141™ – 2014 Exhibit A

## Design-Build Amendment

### GMP Amendment No. 2. Phase 2, Task 2– Site Development

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the 31st day of August in the year 2016 (the "Agreement")  
*(In words, indicate day, month and year.)*

**for the following PROJECT:**  
*(Name and location or address)*

Spacecraft Integration Facility in Exploration Park, Florida: Phase 2, Task 2- Site Development

**THE OWNER:**  
*(Name, legal status and address)*

Space Florida, an independent special district, a body politic and corporate, and a subdivision of the State of Florida  
505 Odyssey Way, Suite 300  
Exploration Park, FL 32953  
321-730-5301

**THE DESIGN-BUILDER:**  
*(Name, legal status and address)*

Hensel Phelps Construction, a Delaware General Partnership  
6557 Hazeltine National Drive  
Suite One  
Orlando, FL 32822  
407-856-2400  
Florida Contractor's License No. CGC1509056

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

#### TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

#### ARTICLE A.1 CONTRACT SUM for Phase 2, Task 2

**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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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.

§ 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 Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

Stipulated Sum, in accordance with Section A.1.2 below

Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

Cost of the Work plus the Design-Builder's Construction Phase Fees with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum N/A.

(Table deleted)

(Paragraphs deleted)

§ A.1.3 Cost of the Work Plus Design-Builder's Fee N/A.

(Paragraphs deleted)

§ A.1.4 Cost of the Work Plus Design-Builder's Construction Phase Fees With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Construction Phase Fees:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Construction Phase Fees and the method for adjustment to the Fee for changes in the Work.)

The Construction Phase Fees shall not exceed that percentage of the Cost of the Work equal to that percentage defined in § 5.1.5 of the executed AIAA141 Agreement Between Owner and Design-Builder.

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Design Fee and the Contract Sum for Phase 2, Task 2 (the Contract Sum is the total of the Cost of the Work and the Construction Phase Fees) is guaranteed by the Design-Builder not to exceed One Million Nine Hundred Fifty Five Thousand and 00/100 dollars (\$1,955,000.00), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents (the "Guaranteed Maximum Price" or "GMP"). Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design Fee, the Construction Phase Fees (General Conditions Costs, General & Administrative Costs, and Construction Fee), the Cost of the Work, and other items that comprise the Guaranteed Maximum Price for Phase 2, Task 2.

(Provide information below or reference an attachment.)

The Design Fee is: \$ \_\_\_ included (which is included in the GMP below)

The Construction Phase Fees are: \$165,000.00 (which amount is included in the GMP below)

The Cost of the Work is: \$1,790,000.00 (which is included in the GMP below and includes \$171,000.00 for contingency in accordance with Article 5.1.4.9 of the Agreement)

The Contract Sum being the total of the Construction Phase Fees and the Cost of the Work is:

\$1,955,000.00 (which is included in the GMP below)

init.

The Guaranteed Maximum Price is: \$1,955,000.00 (the Design Fee, the Construction Phase Fees, and the Cost of the Work as detailed and itemized in attached Exhibit "A").

**§ A.1.4.3.3** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)*

Attached as Exhibit "B".

**§ A.1.4.3.4** 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)
Unit Prices, if any, attached as Exhibit "K".		

**§ A.1.4.3.5** Comments, and Clarifications, other documents, and information, if any, on which the Guaranteed Maximum Price is based:

Design-Builder's Comments and Clarifications are attached as Exhibit "D".

List of Items Included in General Conditions Costs, attached as Exhibit "H".

Completion Schedule, attached as Exhibit "I".

Schedule of Values, attached as Exhibit "J".

## **§ A.1.5 Payments**

### **§ A.1.5.1 Progress Payments**

**§ A.1.5.1.1** 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 (Construction Phase Fees plus the Cost of the Work) to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

**§ A.1.5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

Applications for Payment shall relate to Work performed through the 30<sup>th</sup> day of the month. With each pay request, the Design-Builder shall certify that all Work for which payment is requested is completed properly in accordance with the defined statement of Work. On the cover page, each pay request shall identify the dates of the period of the Work performed. All invoices shall be submitted if by mail to Space Florida, 505 Odyssey Way, Suite 300, Exploration Park, FL 32953; and if electronically, confirmed reply receipt, to [accounting@spaceflorida.gov](mailto:accounting@spaceflorida.gov) with a cc: to the Program/Project Manager, [tromberger@spaceflorida.gov](mailto:tromberger@spaceflorida.gov) and to [jbonjawo@spaceflorida.gov](mailto:jbonjawo@spaceflorida.gov).

**§ A.1.5.1.3** Provided that a properly completed Application for Payment along with all backup documentation is received not later than the 5th day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 5th day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment. All payment procedures in this Agreement are subject to Owner's lender's requirements and procedures. All payment procedures in this Agreement are also subject to the requirements and procedures set forth in the FDOT Spaceport Improvement Program Grant Agreement. Interest shall be payable on late payments in accordance with Florida Statute 255.073(4).

*(Federal, state or local laws may require payment within a certain period of time.)*

Init.

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. 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. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee 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.1.5.1.6 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.1.5.1.7 Except with the Owner's prior written 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.

§ A.1.5.2 Progress Payments—Stipulated Sum N/A.

*(Paragraphs deleted)*

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee N/A.

*(Paragraphs deleted)*

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee 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.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10%), except no retainage shall be withheld on Owner direct purchased materials and equipment. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less retainage of ten percent (10%);

- .3 Add the Design-Builder's Fee, less retainage of ten percent (10%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ten percent (10%) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 Retainage shall be withheld and reduced in accordance with Florida Statute 255.078. 10% retainage shall be initially withheld. At 50% completion of the Project, retainage shall be reduced to 5% for each subsequent progress payments in accordance with Florida Statutes Section 255.078. After the Project is 50% complete, the Contractor may request release of up to one-half of retainage previously withheld subject to the requirements of Florida Statute 255.078. At Substantial Completion, all retainage may be invoiced by Contractor and shall be released, except 150% of the value of Punch List Work, incomplete Work, and defective Work which shall be withheld. Upon mutual agreement between Owner and Design-Builder and before the Project's Substantial Completion date, payment in full including release of applicable retainage may be made to the Design-Builder for a particular subcontractor's Work that is fully and satisfactorily completed, provided that the Design-Builder and Subcontractor provide a satisfactory complete release of all claims for such Work and provided that both have complied with all requirements for final payment in accordance with the Contract Documents.

#### § A.1.5.5 Final Payment

§ A.1.5.5.1 Design-Builder shall submit its Final Pay Request within 45 days of Final Completion of the Project. Final payment, constituting the entire unpaid balance of the Contract Sum, less 150% of the estimated value of any punchlist, defective, or incomplete Work, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract, approval of the Work by the Owner, Owner's completion of the audit of the Cost of the Work pursuant to § 1.5.5.2, 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.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within sixty (60) days after the Design-Builder delivers the final accounting to the Owner, which 60 day time period shall be reasonably extended in the event that the Design-Builder does not timely provide information requested within three (3) days of the auditor's request or provides partial information requested. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

#### ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Construction Phase of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Phase 2, Task 2 Work not later than **December 6, 2017**, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

**Portion of Work**

**Substantial Completion Date**

, subject to adjustments of the Contract Time as provided in the Design-Build Documents. The above Substantial Completion Date shall also amend and become the Substantial Completion Date for all Work for all prior GMP Amendments entered into by the Parties. Design-Builder shall achieve Final Completion of the Phase 2, Task 2 Work and all other Work under all prior GMP Amendments within 30 days after Substantial Completion of the Phase 2, Task 2 Work.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

**Liquidated Damages.** If the Design-Builder fails to substantially complete the Phase 2, Task 2 Work before the agreed upon Date of Substantial Completion set forth in this Agreement (including any extension granted by the Owner in writing), then the Design-Builder agrees to pay the Owner, as liquidated damages, a sum equal to **Five Thousand and 00/100 Dollars (\$5,000.00)** per calendar day until Substantial Completion of the Work is actually achieved. Such amount is agreed upon as a reasonable measure of the damages that the Owner will sustain from the Design-Builder's failure to timely complete the Work. Owner and the Design-Builder recognize the delays, expense and difficulties involved in providing in an arbitration or judicial proceeding the actual loss suffered by the Owner if the Work is not completed on time and accordingly, instead of requiring such proofs, they agree upon the above-stated amount as liquidated damages for delay (but not as a penalty). The foregoing liquidated damages shall be in lieu of all other monetary remedies that the Owner shall have in the event of the Design-Builder's delay in completing the Project.

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

§ A.3.1 The Contract Sum, GMP, and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Attached as Exhibit "E".			

§ A.3.1.2 The Specifications:  
*(Either list the specifications here or refer to an exhibit attached to this Amendment.)*

Attached as Exhibit "F".

Section	Title	Date	Pages

§ A.3.1.3 The Drawings:  
*(Either list the drawings here or refer to an exhibit attached to this Amendment.)*

Attached as Exhibit "G".

Number	Title	Date

§ A.3.1.4  
*(Paragraphs deleted)*

N/A. § A.3.1.5 Allowances and Contingencies:  
*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

- .1 Allowances  
See Exhibit "A".
- .2 Contingencies

See Exhibit "A"

§ A.3.1.6 Design-Builder's assumptions and clarifications:

Attached as Exhibit "D".

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

Equipment List and Locations: Exhibit "L" contains the list of Design-Builder's temporary equipment, storage areas, fencing, trailers, and porta johns and a drawing showing the locations of same. Design-Builder shall not change these locations without the written approval of Owner.

**ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**

§ A.4.1 The Design-Builder's key personnel are identified below:

*(Identify name, title and contact information.)*

*(Paragraphs deleted)*

See Exhibit "M"

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

*(List name, discipline, address and other information.)*

**Ramage Contracting, Inc., Mims, FL - Site Development subcontractor**

**ARTICLE A.5 COST OF THE WORK FOR THE CONSTRUCTION PHASE OF THE WORK**

§ A.5.1 Cost To Be Reimbursed as Part of the Contract Sum

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops, to be calculated in accordance with the Fee and Rate Schedule attached to the Agreement as Exhibit "D".

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site, to be calculated in accordance with the Fee and Rate Schedule attached to the Agreement as Exhibit "D" and to be included in General Conditions Costs.

*(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

*(Table deleted)*

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel (including Design-Builder's Project Manager) engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work, with all such sums included in General Conditions Costs. Prior to commencing the Work, the Design-Builder shall submit to the Owner for approval, a list of supervisory and field office personnel, their duties on the Work, and their respective pay rates and anticipated hours for the Project that will be assigned as a Cost of the Work. Time and wages beyond 40 hours per week for salaried personnel will not be reimbursed.

§ A.5.1.1.4 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 included in the Cost of the Work under Section A.5.1.1.

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**§ A.5.1.1.5 General Conditions Costs, General & Administrative Costs (G&A), and Construction Fee ("Construction Phase Fees").** Construction Phase Fees are part of the Contract Sum but not included in the Cost of the Work. The total of Design-Builder's General Conditions Costs, General & Administrative Costs, and Construction Fee shall equal Ten Point Five Percent (10.5%) of the Cost of the Work of the Construction Phase GMP Amendment. General Conditions Costs, General & Administrative Costs, and the Construction Fee shall not be included in the Cost of the Work, but will be added as a percentage of the Cost of the Work. Such Construction Phase Fees shall not be charged on bond and insurance costs of Design-Builder, Architect, and Contractor. Construction Phase Fees shall not be charged on bond costs of subcontractors. Construction Phase Fees shall not be charged on the Architect's construction administration fees. Construction Phase Fees are a lump sum fee and shall not be subject to adjustment regardless of whether an audit determines that the actual expenses and costs incurred by Design-Builder are more or less than 10.5%, unless expenses included in such fees are of a type prohibited by this Agreement.

**§ A.5.1.2 Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

**§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ A.5.1.3.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ A.5.1.3.2** Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. 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 Cost of the Work.

**§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ A.5.1.4.1** 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. 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.5.1.4.2** 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. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. The total rental cost of any piece of equipment for the duration of the Project that the Design-Builder or any related party owns shall not exceed 75% of the fair market value of that equipment at the commencement of the rental period. Where a rental agreement contains an option to purchase and this option is exercised, the equity accrued shall be credited to the Owner against the total rental cost of that equipment on the Work. Prior to beginning the Work, the Design-Builder shall submit a list to the Program Manager and Owner of rental equipment owned by the Design-Builder or a related party of the Design-Builder indicating the fair market value at commencement of the Work and the proposed rental rates. The Design-Builder shall attach to each monthly Application for Payment an itemized list of rental equipment owned by the Design-Builder or the related party and the applicable rates for such equipment used on the Project during that period.

**§ A.5.1.4.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ A.5.1.4.4** 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. There shall be no markup on these expenses.

**§ A.5.1.4.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.4.5 Job site vehicle shall be limited to one per site or as agreed to in writing by the Owner. Rental rates for the job site vehicle shall include gas, maintenance, repairs, and taxes and licenses and shall not be billed separately. This single job site vehicle is in addition to the supervisors' vehicle allowances.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract but Construction Phase Fees shall not be charged on insurance and bonds. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 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.

§ A.5.1.5.4 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.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 Small tools shall be treated as a Cost item and are defined as those tools costing five hundred dollars (\$500.00) or less. A record showing the disposition of these tools is to be on file at the Contractor's office on the project site. Ownership of small tools not consumed during construction shall remain with the Owner upon completion of the Project.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 In lieu or renting certain items of equipment, machinery and tools, valued at more than five hundred dollars (\$500.00) from the Design-Builder or other third parties, the Owner reserves the right to have those items purchased and maintained as a Cost of the Work. A record showing the disposition of these items is to be on file at the Design-Builder's office on the project site. Ownership of the items not consumed during construction shall remain with the Owner upon completion of the Project.

§ A.5.1.5.10 n/a.

§ A.5.1.5.11 Bond costs for Design-Builder and bond costs for Design-Builder's subcontractors with subcontracts over \$50,000, but Construction Phase Fees shall not be charged on any such bond costs.

**§ A.5.1.6 Other Costs and Emergencies**

**§ A.5.1.6.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

**§ A.5.1.6.2** 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.5.1.6.3** 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.5.1.7 Related Party Transactions**

**§ A.5.1.7.1** For purposes of Section A.5.1.7, 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.5.1.7.2** 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, according to the terms of Section A.5.4. 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 according to the terms of Section A.5.4.

*(Paragraphs deleted)*

**§ A.5.2 Costs Not to Be Reimbursed as Part of the Contract Sum:**

The Cost of the Work shall not include the items listed below:

- .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, except as specifically provided in General & Administrative Costs;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office, except as provided in General & Administrative Costs;
- .3 Overhead and general expenses, except as may be expressly included in General Conditions Costs and General & Administrative Costs;
- .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;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 The Design Fee;
- .9 Payments to Design-Builder's employees over and above their regular pay (bonuses, incentive pay, profit sharing, severance pay, etc.), including salary increases not identified in the Design-Builder's GMP proposal;
- .10 Technology, Data Processing, Project Specific Web Sites, or Project Management System Cost incurred by the Design-Builder in preparing the Project Schedule, Payroll, Accounting, Project Cost Reports or Project Status Reports and any other reports necessary to the progress of the Work;
- .11 Any fees paid to Design-Builder organizations (AGC, ABC, etc.);
- .12 Design-Builder's business license;
- .13 Recruitment or training costs of personnel;
- .14 Overtime expense of any salaried personnel;

- .15 Except as provided in Section 5.1, any cost not specifically and expressly described in Section 5.;
- .16 Costs which would cause the Guaranteed Maximum Price to be exceeded;
- .17 Any expenses for Construction Phase Fees that cause the total to exceed that maximum set forth in § A.5.1.1.5;
- .18 Bond costs for Design-Builder's suppliers;
- .19 Expenses for the transportation, travel, and subsistence of personnel;
- .20 Pre-employment screening costs;
- .21 Office supplies and equipment, including computers, printers, copy machines, and software; and
- .22 Cellular and land line phone equipment;
- .23 Office rent other than temporary trailers at the Project site; and
- .24 Any costs not permitted by the Florida Department of Transportation.

**§ A.5.3 Discounts, Rebates, and Refunds**

**§ A.5.3.1** Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner. Trade discounts, commissions, 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.5.3.2** 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 Other Agreements**

**§ A.5.4.1** 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.5.4.2** 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 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.5.4.3** 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.5.5 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 five (5) years after final payment, or for such longer period as may be required by law.

**§ A.5.6 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.

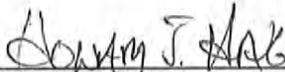
Attachments:

- Exhibit A GMP No. 2 – Breakdown of GMP
- Exhibit B GMP No. 2 - Alternates
- Exhibit C GMP No. 2 – not used
- Exhibit D GMP No. 2 - Design-Builder's Comments and Clarifications
- Exhibit E GMP No. 2 - Supplementary and other Conditions of the Contract
- Exhibit F GMP No. 2 - Specifications
- Exhibit G GMP No. 2 - Drawings
- Exhibit H GMP No. 2 – General Conditions Costs
- Exhibit I GMP No. 2 - Completion Schedule
- Exhibit J GMP No. 2 – Schedule of Values
- Exhibit K GMP No. 2 – Unit Prices
- Exhibit L GMP No. 2 – Equipment Locations
- Exhibit M GMP No. 2 – Key Personnel

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

Space Florida, an independent special district, a body politic and corporate, and a subdivision of the State of Florida

Hensel Phelps Construction, a Delaware General Partnership

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

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

Howard J. Hays, EVP & Treasurer  
\_\_\_\_\_  
(Printed name and title)

Kirk Hartzen, Vice President of Hensel Phelps Parent 1, Inc. and Hensel Phelps Parent 2, Inc., general partners  
\_\_\_\_\_  
(Printed name and title)

MARCH 6, 2017  
\_\_\_\_\_  
Date

3.6.17  
\_\_\_\_\_  
Date