

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the _____ day of _____ in the year of 2018.

BETWEEN the Owner:

*Metropolitan Nashville Airport Authority
One Terminal Dr, Suite 501
Nashville, TN 37214*

and the Design-Builder:

*<Design-Builder>
<Design-Builder Address>
<Design-Builder Address>
<Design-Builder Address>*

For the following Project:

*CIP 1803, Concourse D & Terminal Wings
Nashville International Airport*

The Owner and Design-Builder agree as follows:

DRAFT

TABLE OF ARTICLES

- 1 THE DESIGN-BUILD DOCUMENTS**
- 2 WORK OF THIS AGREEMENT**
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- 4 CONTRACT SUM**
- 5 PAYMENTS**
- 6 DISPUTE RESOLUTION**
- 7 MISCELLANEOUS PROVISIONS**
- 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS**

TABLE OF EXHIBITS

- A TERMS AND CONDITIONS**
- B DETERMINATION OF THE COST OF THE WORK**
- C SMALL MINORITY WOMAN-OWNED BUSINESS ENTERPRISE**
- D STAFFING ORGANIZATION CHART**
- E AFFIDAVITS AND BONDS**
- F. LIST OF SMWBE SUBCONTRACTOR PARTICIPATION**
- G. FIXED HOURLY RATES**
- H SMWBE PARTICIPATION REPORTS**

ARTICLE 1 THE DESIGN-BUILD DOCUMENT

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the “Agreement”) and its attached Exhibits and/or Attachments; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner; the Design-Builder’s Proposal and written modifications to the Proposal accepted by the Owner; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

DRAFT

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be identified in a Notice to Proceed issued by the Owner in accordance with the Division 1 Specifications.

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents in the Division 1 Specifications.

§ 3.3 The Design-Builder shall achieve **Substantial Completion** of the Work within 900 calendar days of issuance of the Notice to Proceed (NTP). The Design-Builder shall achieve Substantial Completion of Concession Spaces (White Box Space) within 780 days of issuance of the NTP. Final Completion shall be completed ninety (90) days after Substantial Completion.

§ 3.4 Time is an essential element of the Contract and it is important that the Work be vigorously prosecuted until completion. For each day that any work shall remain uncompleted beyond the time(s) specified below, the Design-Builder shall pay to the Owner liquidated damages as specified below:

Contractual Milestone	Calendar Days from NTP	Associated Daily Liquidated Damages
Substantial Completion of Concessions White Boxes	780	\$5,500.00
Project Substantial Completion	900	\$30,000.00

§ 3.4.1 If the Design-Builder fails to achieve Substantial Completion of any of the Work within the time specified in the Contract, including stated milestones, or any extension thereof, the Design-Builder shall pay the Owner, or the Owner will deduct payments due under this Contract or any other contract with the Owner, as liquidated damages, Associated Daily Liquidated Damages specified above for each day of delay.

§ 3.4.2 The amount of Liquidated Damages provided in this Contract is neither a penalty nor a forfeiture and shall compensate the Owner solely for the Owner's inability to use the Work for its intended purpose and is not intended to, and does not, include:

- .1 Any damages, additional or extended costs, incurred by the Owner, for extended administration of this Contract, or by the Owner's agents, consultants, or independent contractors for extended administration of this Contract.
- .2 Any increases in financing costs resulting from the delay in completion of the Work.
- .3 Any additional services, relating to or arising as a result of the delay in the completion of the Work.

§ 3.4.3 The Owner shall be entitled to claim against the Design-Builder for its actual damages and amounts not specifically included within the Liquidated Damages as set forth herein. Such costs shall be computed separately. Together with liquidated damages, they shall be either deducted from the Contract Amount or billed to the Design-Builder.

§ 3.4.4 The Liquidated Damages referred to in this article are intended to be and are cumulative and shall be in addition to every other remedy now or hereinafter enforceable at law, in equity, by statute, or under the Contract. These conditions apply provided, however, that due account shall be taken of

any adjustment of specified completion times(s) for completion of work as granted by approved change orders.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be the Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

§ 4.2 STIPULATED SUM - Not Used.

§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE – Not Used.

§4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 Not Used.

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed amount of \$<###,###,###.00>, subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

§ 4.4.3.2 The Design-Builder shall be responsible for establishing the GMP within the Design to Budget allocations. Refer to Division 1 Specifications.

§ 4.4.3.3 Should Owner and the Design-Builder not be able to reach an agreement on the GMP, Owner may use the work products produced to date to complete the project.

§ 4.4.3.4 Component Guaranteed Maximum Price (CGMP) for development of the Guaranteed Maximum Price (GMP)

§ 4.4.3.4.1 Owner will require a GMP for the Project no later than the 60% Design stage. However, Owner may authorize the Design-Builder to proceed with some early packages in order to meet the Project Schedule. If early packages are issued, the CGMP process will be followed. In the event a CGMP is initially established, it is intended that the CGMP will cover the initial Work of the Project. As design for the Project is further developed, it is planned that the additional work will be added to the contract and the GMP adjusted accordingly. The Contract shall be amended with each CGMP. At any given time during the Contract, the GMP will equal the sum of the approved CGMPs. When plans are no more than sixty percent (60%) complete the CGMP will be converted to a GMP, establishing the Guaranteed Maximum price for the project.

§ 4.4.3.4.2 Owner will issue a request to the Design-Builder to establish the GMP or CGMP Proposal for the complete Project or for the Work Package(s). Design-Builder shall deliver to Owner a proposed GMP or CGMP Proposal, with a detailed estimate prepared by the Design-Builder which shall be reviewed by Owner before being deemed to be adequately supported. Each GMP or CGMP proposal shall also include the following sections:

- Section 1: Summary of Work, including a list of all construction documents.
- Section 2: GMP or CGMP Price Summary with Line Item Schedule of Values.
- Section 3: Scope Clarifications and Assumptions.
- Section 4: Procurement Plan.
- Section 5: GMP or CGMP Construction Schedule.

Section 6: Analysis of CGMP on the Total Construction Budget and Project Schedule.
 Section 7: SMWBE Participation, including a total to date participation status report.
 Section 8: Permitting Plan.
 Section 9: Risk Plan.
 Section 10: Construction Work Plan.
 Section 11: Commissioning Plan and Activation Plan.
 Section 12: Project Manuals.

§ 4.4.3.4.3 In addition to the Cost of the Work, a GMP or CGMP may include agreed to allowances needed to complete the scope of work that can't be defined in a bid package and an agreed upon Design-Builder Contingency per the Contract Documents.

§ 4.4.3.4.4 The Design-Builder's Fee as proposed by the Design-Builder. That fee includes home office and off-site overhead and profit.

§ 4.4.3.4.5 For the GMP or each CGMP, the Design-Builder shall develop a corresponding Schedule of Values.

§ 4.4.3.4.6 For the GMP or each CGMP will be subject to modification for changes as allowed by the Contract Documents.

§ 4.4.3.4.7 The Design-Builder shall submit its proposed GMP or CGMP to Owner. Owner will meet with the Design-Builder to review and analyze the GMP or CGMP proposal and, negotiate a GMP or CGMP.

§ 4.4.3.4.8 The following step in the development of the GMP or CGMP shall not occur unless and until the Project has been approved by Owner. If agreed upon, the GMP or CGMP will be submitted to the Board, and if approved by the Board, the GMP or CGMP shall be signed by Owner and issued to the Design-Builder, which shall constitute authorization for the Design-Builder to proceed with procurement and construction of the approved GMP or CGMP Work.

§ 4.4.3.4.9 If Owner rejects the GMP or CGMP proposal, the GMP or CGMP proposal shall be deemed withdrawn and of no effect. In such event, Owner and the Design-Builder shall meet and confer as to how the Project or Work Package(s) will proceed, with Owner having the following options:

- .1 Owner and Design-Builder may suggest modifications to the GMP or CGMP proposal and the Design-Builder shall submit a revised GMP or CGMP proposal and the approval process will recommence; or
- .2 Owner may remove the Work Package from the scope and Owner may procure and construct the Work Packages(s) independently of this Contract.
- .3 The actual price paid by Owner to the Design-Builder on the GMP or CGMP shall be the actual incurred cost of all Work for the GMP or CGMP, including subcontracts, supply agreements, direct labor costs, direct supervision costs, the direct job costs as allowed pursuant to the Contract Documents and the contractually agreed upon fee, or the GMP or CGMP amount, whichever is less.

§ 4.4.3.4.10 The following Allowances/Contingencies shall be incorporated into the Guaranteed Maximum Price:

<u>Allowance/Contingencies</u>	<u>Amount</u>
Owner's Contingency	\$2,500,000.00
Co-Location Allowance	\$1,500,000.00

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:

- .1 Request for Proposal with all attachments, exhibits, and addenda, issued October 6, 2017
- .2 Design-Builder's response to Request for Proposal.

§ 4.5 CHANGES IN THE WORK

§4.5.1 Adjustments of the Cost of Work on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 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 to the Design-Builder as provided in the Division 1 Specifications.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. The Design-Builder must submit a written narrative with each Application for Payment. See Exhibit A, Article 9 for additional information for Application for Payment.

§ 5.1.3 Provided an Application for Payment is received by the Owner not later than the first (1st) day of a month, the Owner shall make payment to the Design-Builder not later than the thirtieth (30th) day of the current month. If an acceptable 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 an acceptable Application for Payment.

§ 5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit General Conditions information related to payroll timesheets, 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.

§ 5.1.4.1 An option for a negotiated lump sum payment schedule for General Conditions may be utilized in lieu of **§ 5.1.4**.

§ 5.1.5 Not Used.

§ 5.1.6 The Design-Builder's Applications for Payment shall be accurate and complete. Processing and payment by the Owner shall not be interpreted to mean that the Owner has made a detailed explanation, audit or arithmetic verification of the documentation, 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 on account of the Agreement.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Not Used.

§ 5.3 Not Used.

§ 5.4 PROGRESS PAYMENTS – COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payments 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 percentage of that portion of the Work which has actually been completed.

Prior to application for first payment, the Design-Builder shall submit to the Owner a Schedule of Values of the various parts of the Work, aggregating the total sum of the contract. The maximum cost associated with a Schedule of Values line item should be under \$250,000. Line items representing equipment, general conditions, general requirements and Design-Builder's Contingency are exempted from \$250,000 limit. This schedule of values shall be so divided as to facilitate payments to Subcontractors. The form of this submission including the level of detail shall be as the Design-Builder and the Owner have agreed upon and shall be supported by such evidence as to its correctness as the Owner may direct.

Application for Payment shall be submitted once each month. A draft copy of the Application for Payment shall be prepared for review by the Owner prior to submission of monthly Application for Payment. The Owner reserves the right to modify the submittal date for monthly Applications for Payment.

§ 5.4.2 Not Used.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work shall be subject to retainage of not less than five percent (5%). This applies to all GMP line items except Pre-Construction phase services.

§ 5.4.4 Pre-Construction Services Phase

§ 5.4.4.1 Payments will be made based on work accomplished. The Design-Builder will be paid on a monthly basis for 100% of the approved amount earned.

§ 5.4.4.2 If the Design-Builder fails to submit the required deliverables within the time prescribed, or revisions thereof within the requested time, the Owner may withhold approval of progress payments for Design-Builder until such time as the Design-Builder submits the required documents.

§ 5.4.4.3 Payments for Allowances will be based on actual invoices with no mark-up.

§ 5.4.5 Construction Management Services Phase

§ 5.4.5.1 Payments will be made based on the progress of the Subcontract Work and based upon the latest updated Detailed Construction Schedule of Values.

§ 5.4.5.2 If the Design-Builder fails to submit the required construction phase documents within the time prescribed, or revisions thereof within the requested time, the Owner may withhold approval of progress payments for Design-Builder fees until such time as the Design-Builder submits the required documents.

§ 5.4.6 Subcontracts and Suppliers

§ 5.4.6.1 Progress Payments will be made on the current Schedule of Values that has been accepted by the Owner.

§ 5.4.6.2 With each Application for Payment provide a partial release of liens for each subcontract. The release of liens shall indicate the amount of the original subcontract the total amount of change orders, and the final subcontract amount. The release of liens must be signed by the Subcontractor and notarized.

§ 5.4.7 General Conditions

§ 5.4.7.1 Payments for General Conditions will be made in accordance with **§5.1.4** of this Contract.

§ 5.4.7.2 Alternatively, if agreed by the Owner:

Payment for General Conditions will be made monthly based on the percentage of completion of the Subcontractors work. A negotiated percentage will be allocated to mobilization and demobilization and close-out, and paid as these activities are completed.

§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than thirty (30) days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, 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. See Division 1 Specifications for additional information.

§ 5.5.2 The Design-Builder will be paid one hundred percent (100%) of the earned Design-Builder's Fee up to the date of Final Acceptance.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 The parties agree to endeavor, in good faith and in recognition of the costs and expenses associated with legal proceedings, to resolve and settle among themselves any disputes or controversies pertaining to the Contract. However, if settlement or resolution cannot be reached, the parties agree to the following dispute resolution procedures:

§ 6.2 Mediation: If during the course of this Contract the parties are unable to resolve any dispute or controversy arising out of or relating to the Contract, such claims shall first be subject to non-binding mediation as a condition precedent to the initiation of any legal action (either court action or arbitration). The mediation, unless the parties mutually agree otherwise in writing, shall be in accordance with the Construction Industry Rules of the American Arbitration Association. Demand for mediation shall be made in writing. The parties agree to share in the mediator's fee and any filing fees. Any mediation will be held in Nashville, Tennessee. Agreements reached in mediation shall be as enforceable as settlement agreements. Each party agrees to bear its own attorneys' fees associated with the mediation.

§ 6.3 ARBITRATION

§ 6.3.1 Arbitration and Litigation: If the mediation described in Section 6.2 is unsuccessful, then, in the Owner's sole discretion, any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be resolved by either binding arbitration or litigation (filed in the state or local courts of Nashville, Tennessee). The Owner will notify the Design-Builder in writing of its election of arbitration or litigation within twenty (20) days after the date of the unsuccessful mediation, and Design-Builder agrees not to commence any legal action against the Owner until such election is made and communicated. If the Owner elects binding arbitration, it shall be administered, unless the parties mutually agree otherwise in writing, in accordance with the most recent Construction Industry Rules of the American Arbitration Association. Whether arbitration or litigation is elected by the Owner, any hearing shall be held in Nashville, Tennessee, and the Court or Arbitrator(s) shall have the power to award to the prevailing party its reasonable attorneys' fees, expenses and costs.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the State of Tennessee and are listed in Exhibit "D".

§ 7.2 Not Used.

§ 7.3 Not Used.

§ 7.4 Not Used.

§ 7.4.1 The Owner's Designated Representative shall be authorized to act on the Owner's behalf with respect to the Project. The Owner's Designated Representative shall be the MNAA Vice President Development & Chief Engineer or his/her designee.

§ 7.5 The Design-Builder's Designated Representative is:
<Insert name, address and other information.>

§ 7.5.1 the Design-Builder's Designated Representative shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 The Design-Builder's Team, as identified in Exhibit "D", Staffing Organization Chart, shall not be changed without approval from the Owner. Design-Builder may revise its Staffing Organization Chart only with the prior written approval of the Owner. Any revision must be requested within ten (10) days after Design-Builder receives a written Notice to Proceed. Any revised Staffing Organization Chart shall include the following information for each professional-level employee proposed for assignment on the Project:

1. Name of employee;
2. Description of Project task(s);
3. Applicable registration;
4. Principal office of employment;
5. Summary of relevant experience; and
6. Date and expected duration of assignment

The Owner may require removal from the Project of any employee of Design-Builder providing services under this Contract. During the term of this Contract, Design-Builder must obtain, maintain and pay for all licenses, permits, and certificates, including all professional licenses required by any statute, ordinance, rule or regulation. Design-Builder shall immediately notify the Owner of any suspension, revocation, or other negative action involving its license or the license of any person who has acted or is acting on behalf of the Design-Builder on the Project.

§ 7.7 Other Provisions:

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents. If there are discrepancies between the Agreement and Design-Build Documents, the more stringent applies. The Owner is the final judge as to what controls.

§ 7.8 Approved Equals:

The terms "Or Equal", "Equal", "Approved Equal" are used as synonyms throughout the specifications. They are implied in reference to all named manufacturers in the specifications unless otherwise stated. Only materials fully equal in all details will be considered. The Owner is the final judge as to equality. The Owner does not represent or warrant under any circumstances, including by use of the words "or equal", that there exists an equal to any item specified.

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, Project Criteria, except for Modifications issued after execution of this Agreement, are enumerated as follows:

1. All applicable Federal, State, and local guidelines.
2. Request for Proposal with All Attachments, Exhibits, and Addenda, issued October 06, 2017.
3. Design-Builder's response to Request for Proposal including Affidavits and Bonds.

§ 8.1.2 Not Used.

§ 8.1.3 The Addenda, if any, are as follows: <Insert Issued Addenda>

§ 8.1.4 Exhibit A, Terms and Conditions.

§ 8.1.5 Exhibit B, Determination of the Cost of the Work.

§ 8.1.6 Exhibit C, Small Minority Woman-Owned Business Enterprise (SMWBE)

§ 8.1.7 Exhibit D, Staffing Organization Chart

§ 8.1.8 Exhibit E, Not Used.

§ 8.1.9 Exhibit F, List of SMWBE Subcontractor Participation

§ 8.1.10 Exhibit G, Fixed Hourly Rates

§ 8.1.11 Exhibit H, SMWBE Participation Reports

DRAFT

IN WITNESS WHEREOF, the Owner and Design-Builder have executed this Contract as of the date first written above.

<Contractor>, “Design-Builder”

By: _____

Signature: _____

Title: _____

METROPOLITAN NASHVILLE AIRPORT AUTHORITY “Owner”

APPROVED:

ATTEST/SEAL:

Robert J. Joslin, Jr.
MNAA Board Chair

Aubrey B. Harwell, III
MNAA Board Secretary

APPROVED AS TO FORM & LEGALITY:

Douglas E. Kreulen, AAE
Acting President & CEO

Senior Vice President and Chief Legal Officer

RECOMMENDED:

SUFFICIENCY OF FUNDS:

Robert L. Ramsey, P.E., A.A.E.
Vice President Development & Chief Engineer

Vice President & Chief Financial Officer

EXHIBIT A

Terms and Conditions

for the following PROJECT:

*CIP 1803, Concourse D & Terminal Wings
Nashville International Airport*

THE OWNER:

*Metropolitan Nashville Airport Authority
One Terminal Dr, Suite 501
Nashville, TN 37214*

THE DESIGN BUILDER:

*<Design-Builder>
<Design-Builder Address>
<Design-Builder Address>
<Design-Builder Address>*

DRAFT

TABLE OF ARTICLES

- A.1 GENERAL PROVISIONS**
- A.2 OWNER**
- A.3 DESIGN-BUILDER**
- A.4 DISPUTE RESOLUTION**
- A.5 AWARD OF CONTRACTS**
- A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**
- A.7 CHANGES IN THE WORK**
- A.8 TIME**
- A.9 PAYMENTS AND COMPLETION**
- A.10 PROTECTION OF PERSONS AND PROPERTY**
- A.11 INSURANCE AND BONDS**
- A.12 UNCOVERING AND CORRECTION OF WORK**
- A.13 MISCELLANEOUS PROVISIONS**
- A.14 TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT**

ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 AASHTO

The American Association of State Highway and Transportation Officials, the successor association to AASHO.

§ A.1.1.2 ACCESS ROAD

The right-of-way, the roadway and all improvements constructed thereon connecting the airport to a public highway.

§ A.1.1.3 ADVERTISEMENT

A public announcement, as required by local law, inviting bids for work to be performed and materials to be furnished.

§ A.1.1.4 AIP

The Airport Improvement Program, a grant-in-aid program, administered by the Federal Aviation Administration.

§ A.1.1.5 AIR OPERATIONS AREA

For the purpose of the contract and these specifications, the term air operations area shall mean any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operation area shall include such paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiway, or apron.

§ A.1.1.6 AIRPORT

Airport means an area of land or water which is used or intended to be used for the landing and takeoff of aircraft, and includes its buildings and facilities, if any, and any and all property and improvements owned, leased or controlled by Owner which shall mean the Metropolitan Nashville Airport Authority (MNAA), Nashville, Tennessee.

§ A.1.1.7 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.8 ASTM

The American Society for Testing and Materials.

§ A.1.1.9 AWARD

The acceptance, by Owner, of the successful Respondent's Proposal.

§ A.1.1.10 BANK LETTER OF CREDIT

The irrevocable letter of credit issued by a commercial bank acceptable to Owner, in a form acceptable to Owner in its sole discretion and drawable at a financial institution located in Nashville, Tennessee, and having an expiration date not prior to ninety (90) days following the bid opening date. Proposer is encouraged to use a Disadvantaged Financial Institution with respect to its Letter of Credit.

§ A.1.1.11 BID/PROPOSAL GUARANTY

The security furnished with a bid or proposal to guarantee that the Proposer will enter into a contract if his/her Proposal is accepted by Owner.

§ A.1.1.12 BIDDER

Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a bid for the work contemplated. The term "Bidder" is interchangeable with "Proposer" and "Respondent" throughout.

§ A.1.1.13 BUILDING AREA

An area on the airport to be used, considered, or intended to be used for airport buildings or other airport facilities or rights-of-way together with all airport buildings and facilities located thereon.

§ A.1.1.14 CALENDAR DAY

Every day shown on the calendar.

§ A.1.1.15 CHANGE ORDER

A written order to the Design-Builder covering changes in the plans, specifications, or bid quantities and establishing the basis of payment and contract time adjustment, if any, for the work affected by such changes.

§ A.1.1.16 CONTRACT

The written agreement covering the work to be performed. The awarded contract shall include, but is not limited to the items enumerated in Article 8, Enumeration of Design-Build Documents.

§ A.1.1.17 CONTRACT ITEM (PAY ITEM)

A specific unit of work for which a price is provided in the contract.

§ A.1.1.18 CONTRACT TIME

The number of calendar days allowed for completion of the contract, including authorized time extensions. If a calendar date of completion is stated, in lieu of a number of calendar days, the contract shall be completed by that date. Time limits as stated in the contract are critical and of the essence in the contract.

§ A.1.1.19 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Owner to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is interchangeable with "Design-Builder" throughout.

§ A.1.1.20 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.21 DRAINAGE SYSTEM

The system of pipes, ditches, and structures by which surface or subsurface waters are collected and conducted from the airport area.

§ A.1.1.22 ENGINEER

The individual, partnership, firm, or corporation duly authorized by the Owner to be responsible for engineering inspection of the contract work and acting directly or through an authorized representative. Independent of the Design-Builder the Engineer is under direct contract to the Owner and acts on behalf of the Owner.

§ A.1.1.23 EQUIPMENT

All machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the work.

§ A.1.1.24 EXTRA WORK

An item of work not provided for in the awarded contract as previously modified by change order, but which is found by the Owner to be necessary to complete the work within the intended scope of the contract as previously modified.

§ A.1.1.25 FAA

The Federal Aviation Administration of the U.S. Department of Transportation. When used to designate a person, FAA shall mean the Administrator or his/her duly authorized representative.

§ A.1.1.26 FEDERAL SPECIFICATIONS

The Federal Specifications and Standards, Commercial Item Descriptions, and supplements, amendments, and indices thereto are prepared and issued by the General Services Administration of the Federal Government.

§ A.1.1.27 FINAL ACCEPTANCE

Final Acceptance shall occur in accordance with the Contract and shall occur only when all of the work has been fully and finally performed as required by the Contract, and has been inspected and so certified by the Owner.

§ A.1.1.28 FORCE ACCOUNT

Force account construction work is construction that is accomplished through the use of material, equipment, labor, and supervision provided by the Owner or by another public agency pursuant to an agreement with the Owner.

§ A.1.1.29 INSPECTOR/ COORDINATOR

An authorized representative of Owner assigned to make all necessary inspections and/or tests of the work performed or being performed, or of the materials furnished or being furnished by the Design-Builder. An inspector/coordinator is not authorized to make changes in the Contract.

§ A.1.1.30 INTENTION OF TERMS

Whenever, in these specifications or on the plans, the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the Design-Builder is intended; and similarly, the words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Engineer and/or Owner.

Any reference to a specific requirement of a numbered paragraph of the contract specifications or a cited standard shall be interpreted to include all general requirements of the entire section, specification item, or cited standard that may be pertinent to such specific reference.

Words in the singular or plural, masculine or feminine, present, past, or future tense shall be read as to conform or to give effective meaning to the spirit or intent of the contract.

§ A.1.1.31 LABORATORY

The official testing laboratories of Owner or such other laboratories as may be designated by the Owner.

§ A.1.1.32 LIQUIDATED DAMAGES

Fixed amount payable by the Design-Builder to the Owner for delays in Substantial Completion or identified milestones.

§ A.1.1.33 MAJOR AND MINOR CONTRACT ITEMS

Not Used.

§ A.1.1.34 MATERIALS

Any substance or supplies specified for use in the construction of the contract work.

§ A.1.1.35 NOTICE TO PROCEED

A written notice to the Design-Builder to begin the actual Contract work. The Notice to Proceed shall state the date on which the contract time begins.

§ A.1.1.36 NOTICE OF AWARD

Written notice to the successful Proposer that his/her Proposal has been accepted by Owner, subject to all of the terms and conditions and limitations of the Contract.

§ A.1.1.37 OWNER

The Owner is the Metropolitan Nashville Airport Authority, which is also referred to as "MNAA" or "Authority." For AIP contracts, the term "sponsor" shall have the same meaning as the term "Owner." Where the term "Owner" is capitalized in this document, it shall mean airport owner or sponsor only.

§ A.1.1.38 OR EQUAL

Whenever the words "or equal" appear in the contract, they shall be interpreted to mean an item of material or equipment equal in quality to that named in the contract and which is suited to the same use, and capable of performing the same function with at least equivalent efficiency, as that named. Inclusion of "or equal" material or equipment in the contractor's bid shall not obligate Owner to accept such material or equipment if it does not meet or exceed the requirements of the contract and purposes of the specifications. Burden of the proof of equal quality or service shall be the responsibility of the Design-Builder. Any dispute as to equality shall be determined solely by the Owner whose decision in such matters shall be final.

§ A.1.1.39 PAVEMENT

The combined surface course, base course, and subbase course, if any, considered as a single unit.

§ A.1.1.40 PAYMENT BOND

The approved form of security furnished by the Design-Builder and his/her surety as a guaranty that he will pay in full, subject to the terms of the contract, all bills and accounts for materials, supplies, rentals furnished and labor used in the construction of the work, including Tennessee Unemployment Insurance contributions.

§ A.1.1.41 PERFORMANCE BOND

The approved form of security furnished by the Design-Builder and his/her surety as a guaranty that the Design-Builder will complete the work in accordance with the terms of the Contract.

§ A.1.1.42 PLANS

The official drawings, stamped Issued for Construction, which show the location, character, dimensions and details of the airport and the work to be done and which are to be considered as a part of the contract, supplementary to the specifications.

§ A.1.1.43 PROGRESS SCHEDULE

The document that describes the starting, interfacing, and completion of the various stages of design and construction and the starting and completion dates of each trade or Subcontractor performing work on the contract. The progress schedule will be in the form required by the contract.

§ A.1.1.44 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 which may include design and construction by the Owner or by separate contractors.

§ A.1.1.45 PROJECT CRITERIA

The Project Criteria describe the character scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.46 RUNWAY

The area on the airport prepared for the landing and takeoff of aircraft.

§ A.1.1.47 SAMPLES

The physical examples or specimens which illustrate materials, equipment or workmanship or provide specimens or establish standards by which the work will be judged.

§ A.1.1.48

SECURED AREAS

The Design-Builder may be assigned certain secured areas or given access to security or restricted areas, and which areas would otherwise not be accessible to the Design-Builder or the Subcontractor or their employees.

§ A.1.1.49 SHOP DRAWINGS

The drawings, diagrams, schedules or other data specially prepared for the work by the Design-Builder or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work.

§ A.1.1.50 SPECIFICATIONS

A part of the contract containing the written directions and requirements for completing the contract work. Standards for specifying materials or testing which are cited and incorporated in the contract specifications by reference shall have the same force and effect as if included in the contract physically.

§ A.1.1.51 STRUCTURES

Airport facilities such as apron/ramp areas; bridges; culverts; catch basins, inlets, retaining walls, cribbing; storm and sanitary sewer lines; water lines; underdrains; electrical ducts, manholes, handholes, lighting fixtures and bases; transformers; flexible and rigid pavements; navigational aids; buildings; vaults; and, other manmade features of the airport that may be encountered in the work and not otherwise classified herein.

§ A.1.1.52 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Design-Builder to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.53 SUBGRADE

The soil that forms the pavement foundation.

§ A.1.1.54 SUBSTANTIAL COMPLETION

Substantial completion shall be certified by the Owner have occurred when the work is sufficiently complete, so that Owner may occupy and beneficially use the Work or a designated portion thereof.

§ A.1.1.55 SUPERINTENDENT

The Design-Builder's executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the Engineer, and who shall supervise and direct the construction.

§ A.1.1.56 NOT USED

§ A.1.1.57 SURETY

The corporation, partnership, or individual, other than the Design-Builder, executing payment or performance bonds that are furnished to Owner by the Design-Builder. Surety must be authorized to do business in Tennessee.

§ A.1.1.58 TAXIWAY

For the purpose of this document, the term taxiway means the portion of the air operations area of an airport that has been designated by competent airport authority for movement of aircraft to and from the airport's runways or aircraft parking areas.

§ A.1.1.59 NOT USED

§ A.1.1.60 WORK

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

§ A.1.1.61 WORKING DAY

A working day shall be any day including holidays, Saturdays, and Sundays on which the normal working forces of the Design-Builder may proceed with regular work for at least four (4) hours toward completion of the contract.

§ A.1.1.62 WRITTEN NOTICE

All notices required by the Contract shall be in writing and shall be sufficient and shall be deemed delivered, if hand delivered, e-mailed or communicated via Procore to the Owner's or Design-Builder's Designated Representative.

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

§ A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined or (2) the titles of numbered articles and identified references to sections in the document.

§ A.1.4 INTERPRETATION

§ A.1.4.1 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.

§ A.1.4.2 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.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, thoroughly reviewed the Design Build Documents, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 Design-Builder acknowledges and agrees that all ideas and concepts first conceived, created and developed by Design-Builder for the Owner shall, upon payment to the Design-Builder of all amounts due hereunder, be the sole and exclusive property of the Owner and shall be in the name

of the Owner, including but not limited to all intellectual property, e.g., copyrights, trademarks, service marks. Design-Builder further acknowledges and agrees that the expression of said ideas and concepts shall be “works made for hire” as that term is used in the copyright laws of the United States, as set forth in 17 Section 101, et.seq. Notwithstanding the foregoing, Design-Builder agrees that to the extent, if any, that Design-Builder may be deemed an “author” of any material expressing said concepts and ideas, Design-Builder hereby grants, assigns and transfers to the Owner exclusively, perpetually and throughout the world all right, title and interest in and to said material and intellectual property, including but not limited to ownership of the Construction Documents. Design-Builder shall take any actions the Owner may request to confirm the Owner’s ownership of such intellectual property. It is understood that any reuse of documents or other data, in whole or in part, for work not covered by this Agreement without the written consent of the Design-Builder, will relieve the Design-Builder and their Subcontractors of all liability pertaining to such reuse.

The Design-Builder shall include the provision contained in the above paragraph in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Design-Builder shall take such action with respect to any subcontract or procurement as the Owner may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Design-Builder becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Design-Builder may request the Owner to enter into such litigation to protect the interests of the Owner and, in addition, the Design-Builder may request the United States to enter into such litigation to protect the interests of the United States.

§ A.1.6.2 Submission or distribution of the Design-Builder’s Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

ARTICLE A.2 OWNER

§ A.2.1 GENERAL

§ A.2.1.1 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. The term “Engineer” means the Owner or the Owner’s authorized (or designated) representative. 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. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder’s schedule submitted to the Owner.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information relevant to the Design-Builder’s performance of the Work under the Owner’s control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.3 The Owner may obtain independent review of the Design-Builder’s design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner’s expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, license and inspections. The Design-Builder (not the Owner) shall be required to pay the fees for such permits, licenses and inspections.

§ A.2.2.5 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such 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, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2 The Design-Builder shall ensure that design documents, construction documents, or other submittals required by the Design-Build Documents are in conformance with the Design-Build Documents.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1.

§ A.2.3.4 The Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner, or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits 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 quantity or quality 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, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ A.2.3.6 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, Subcontractors or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work 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, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner shall respond to all design phase submissions including cost estimates within fifteen (15) days of receipt. The Owner shall respond to any shop drawing submittals within fifteen (15) days. The Owner shall respond to Requests for Information (RFI) within three (3) working days.

§ A.2.3.9 The Owner shall conduct inspections at the Design-Builder's request to determine the date or dates of Substantial Completion and the date of Final Completion.

§ A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents 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.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-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 after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may 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 due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER

§ A.3.1 GENERAL

§ A.3.1.1 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 Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions. The Owner understands and agrees that the services performed by the Design-Builder's design professionals and consultants are undertaken and performed in the interest of both the Owner and the Design-Builder.

§ A.3.2.2 The agreements between the Design-Builder and design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's request.

§ A.3.2.3 The Design-Builder shall be responsible for acts, errors and omissions of the Design-Builder's employees, Architect, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials, and other information provided by the Owner, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered. Field investigations should be done: (1) as a formal review before the start of design and comments should be provided to the Owner. and (2) a review of existing conditions and field measurements before the start of construction (after which Owner is not responsible for measurements and existing conditions). After the formal pre-design review by the Design-Builder, the Design-Builder assumes all responsibility for the accuracy of the drawings. Discrepancies in field measurements after Design-Builder completes their design is not a basis for a contract adjustment.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Owner's approval of the Design-Builder's design does not relieve the Design-Builder of responsibility to meet the intent of the RFP Scope Documents, other professional design responsibilities, obligation to meet codes and safety requirements, etc. It is the Design-Builder's responsibility to provide a complete and fully functioning system, and any deficiencies in the system are the Design-Builder's responsibility to correct.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades; and
- .3 Include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner weekly (or as otherwise determined by Owner) to review progress of the design and construction documents and provide meeting minutes of that meeting within three (3) days.

§ A.3.2.8 Upon the Owner's written approval of construction documents, 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.

§ A.3.3 DESIGN-BUILDER REPORTS

§ A.3.3.1 During the Pre-Construction Phase, Design-Builder shall submit a Preliminary Architectural/Engineering Report ("PAR") with each design milestone as identified in the Division 1 Specifications. At a minimum, the report shall include: design parameters, preliminary layouts, sketches, recommended final design criteria, list of specifications, geotechnical report (if applicable), preliminary code analysis, electrical calculations, life safety calculations, constructability and phasing requirements, preliminary opinion of probable construction cost, and summary of changes or issues discovered since completion of previous milestone. The report should also sufficiently document any decisions or design direction agreed upon by the Owner. Only updates to the PAR are required after the first milestone report submission.

§ A.3.3.2 Design-Builder shall submit the following reports during the Construction Phase:

.1 Monthly Reports: The Design-Builder shall provide a written report on a monthly basis, beginning thirty (30) days from the issuance of the Notice to Proceed for Construction. The Design-Builder shall submit to the Owner the report formats for each report within ten (10) days of issuance of the Construction Phase Notice to Proceed. The Design-Builder shall obtain the Owner's approval of these formats prior to submission of the report. As a minimum, the monthly report shall include the following items:

- a. Project Status: Written summary of the status to date for the Project inclusive of information on the Subcontractor's Work and the percentage of completion for the Project.
- b. Issues: Describe current critical construction issues with proposed solutions for resolution.
- c. Schedule: A brief narrative of the schedule and status of the significant milestones.
- d. A 30-day and 60-day look ahead schedule and written narrative.
- e. Cost Status: Written summary of the financial status of the Project. Include the Design-Builder contingency log and Design-Builder contingency burn rate narrative and any actual or potential financial concerns associated with Subcontractors working on the project.
- f. Buyouts Status: Tabulated cost summary comparing each estimated trade or CSI division costs of agreed the GMP against executed trade buyouts showing estimated value of trade as agreed, actual lump sum price of trade, buyouts secured expressed as percent of scope, savings/overages and estimated dates of completion of remaining buyouts.
- g. Safety: A safety log of incidents.
- h. Contract Modifications: A summary statement as to the status of Contract Modifications, and Modifications which require the Owner's immediate attention.
- i. Photographs: Include several photographs highlighting the current progress, including aerial photos of the entire project site. Photographs shall include a time and date stamp and represent actual conditions in the field and shall not be altered in any way.
- j. RFI & Submittal Logs
- k. SMWBE Participation Reporting
- l. Project's economic impact to Nashville Promise Zone. Provide labor and manpower data and statistics as request by the Owner.
- m. Summary of Manpower
- n. Potential Change Order Log
- o. Updated Project Directory
- p. Other relevant items/data as directed by the Owner.

- .2 Daily Reports: The Design-Builder shall maintain a detailed daily report for submission into Procore of all events and construction activities. Daily reports shall include, but not limited to, manpower, equipment usage, weather data, visitors and material deliveries. Weather data shall include minimum and maximum temperatures, precipitation type, precipitation amount, sky conditions, and wind velocities.
- .3 Final Contract Report: The Design-Builder shall, within thirty (30) days of Final Completion, provide a final contract report on the financial reconciliation of the Contract. The Design-Builder shall submit the final contract report as a single PDF file in Procore. The final contract report shall include, but is not limited to, the following:
 - a. A Contract summary matrix.
 - b. A matrix enumerating the original Contract, Contract Modifications, and final Contract total.
 - c. Detailed matrices of the disposition of each of the following: preconstruction services fees, project allowances, subcontracts; Allowances, Design-Builder's Contingency, Owner's Contingency General Conditions and General Requirements costs and Design-Builder fee.
 - d. Other information and documents requested by the Owner.

§ A.3.3.3 Cost Management: The Design-Builder shall develop and maintain an effective system of Project cost control. The Design-Builder shall refine and update the approved GMP, incorporate Owner approved changes as they occur, and develop reports and forecasts as needed, or as directed by the Owner. The Design-Builder shall identify variances between actual and estimated costs and advise Owner whenever projected cost exceeds allowances or estimates.

§ A.3.4 CONSTRUCTION

§ A.3.4.1 The Design-Builder shall not perform construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.4.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work; or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.4.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals; to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.4.4 When the Design-Build Documents require that a Design-Builder provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Design-Builder, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by

others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.4.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents. Work phasing and detail must be coordinated with the Owner and Work shall provide for continuance of all operations impacted by such Work.

§ A.3.4.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.4.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner.

§ A.3.4.8 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.

§ A.3.5 LABOR AND MATERIALS

§ A.3.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, system commissioning 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.

§ A.3.5.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.5.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Design-Builder shall manage all employees and Subcontractors to ensure safety and security policies and procedures per Division 1 Specifications are adhered to.

§ A.3.6 WARRANTY

§ A.3.6.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage. It is understood that the Work includes re-use of certain equipment and facilities of the Owner and the Design-Builder assumes no liability, under this Section or otherwise, for repair or replacement of any such equipment and facilities which are non-operational or substandard. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished by Design-Builder.

§ A.3.6.2 Attend and participate in warranty inspections at eleven months after commencement of warranties to identify warranty issues requiring correction, replacement, or repair. Items identified during the inspections will be compiled in a list and issued by the Design-Builder.

§ A.3.6.3 Schedule, manage, and coordinate with the Owner the post-substantial completion activities and services specified in the construction documents, which may include opposite-season commissioning and balancing activities, calibration checks, equipment service, cleaning and maintenance activities; and other specified activities and services.

§ A.3.7 TAXES

§ A.3.7.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ A.3.8 PERMITS, FEES AND NOTICES

§ A.3.8.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, license and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.8.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.8.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.8.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ A.3.9 ALLOWANCES

§ A.3.9.1 The Design-Builder shall include in the GMP all allowances and contingencies stated in the Design-Build Documents.

§ A.3.9.2 The GMP includes allowances and contingencies established by the Owner.

§ A.3.9.3 Allowances shall not include costs or scopes of work that are included in other GMP cost categories.

§ A.3.9.4 Allowances are not allowed within subcontracts and shall not be included in any bids. The Design-Builder shall bid the work or services in Allowances. Allowances shall be used strictly for the purposes for which they are established.

§ A.3.9.5 The expenditure of these Allowances is at the Owner's approval. Prior to receiving authorization from the Owner to expend funds covered by an Allowance, the Design-Builder shall submit a detailed cost proposal outlining all costs, including labor, material, overhead and profit.

§ A.3.9.6 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 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 GMP but not in the Allowances; and
- .3 Cost overruns of Allowances will be covered by the Owner; unused amounts of Allowances will revert to the Owner.

§ A.3.9.7 Work under an allowance shall be implemented in sufficient time to avoid delay in the Work.

§ A.3.10 DESIGN-BUILDER'S CONTINGENCY

§ A.3.10.1 The Design-Builder shall include in the GMP all contingencies stated in the Design-Build Documents.

§ A.3.10.2 The GMP includes contingencies established by the Owner.

§ A.3.10.3 The GMP shall include a Design-Builder controlled construction contingency (Contingency) in an amount approved by the Owner, to protect the Design-Builder against the risks assumed in providing the GMP for the Project. The Owner and the Design-Builder acknowledge that the Contingency is included to adjust the estimate for eventualities which have not been taken into precise account in the establishment of the GMP, including (1) scope gaps between Subcontractors, (2) contract default by Subcontractors, (3) costs of corrective work not provided for elsewhere, and (4) expediting/accelerating of the work to meet scheduled completion dates (if required).

§ A.3.10.4 The Contingency is not allocated to any particular item of the Cost of the Work, and is established for the Design-Builder's use as may be required for increases in costs incurred in the Work from unforeseeable causes or details not capable of reasonable anticipation at the time of the Owner's approval of the GMP. It is understood that the amount of the Contingency is the maximum sum available to the Design-Builder to cover costs incurred as a result of such unanticipated causes or details, and that cost overruns in excess of the amount of the contingency will be borne by the Design-Builder.

§ A.3.10.5 The Contingency may be applied to any items within Cost of the Work. The Design-Builder shall notify the Owner of Design-Builder's intent to apply any part of the Contingency to any item within Cost of the Work prior to such application.

§ A.3.10.6 The Owner retains the right to specifically request revisions to the amount of Contingency prior to Owner's acceptance and approval of the GMP.

§ A.3.10.7 This Contingency is the Design-Builder's contingency and may not be used for any costs not specifically allowed herein and may only be used with Owner's written permission. Owner shall track the net, cumulative unused Contingency until completion of the entire Project, at which time any remaining savings will belong to Owner. Contingency is not the same as an Owner Contingency.

§ A.3.11 OWNER'S CONTINGENCY

§ A.3.11.1 Owner's Contingency is not the same as Design-Builder's Contingency.

§ A.3.11.2 Use of the Owner's Contingency is solely at the Owner's discretion.

§ A.3.11.3 Design-Builder has no rights or expectations as to the amount of or with regard to the use of any Owner Contingency.

§ A.3.12 DESIGN-BUILDER'S SCHEDULE

§ A.3.12.1 The Design-Builder, within fourteen (14) days after execution of the Design-Build Contract, shall prepare and submit for the Owner's information and approval, the Design-Builder's schedule for the Work. The Owner requirements for Schedules, Schedule of Values, Progress Updates and Contract Time Extensions are governed by Division 1 Specifications.

§ A.3.13 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.13.1 The Design-Builder shall maintain at the site for the Owner one (1) record copy, which may be electronic, of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record clarifications, change orders and field changes and directives and selections made during construction, and one (1) record copy, which may be electronic,

of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available for Owner's review at any time during the project duration and be delivered to the Owner upon completion of the Work.

§ A.3.14 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.14.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.14.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.14.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.14.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.14.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.14.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.15 USE OF SITE

§ A.3.15.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment. Coordination shall occur with the Owner prior to initiating each phase of work. Work shall be implemented to allow all aviation operations to occur in an efficient manner.

§ A.3.16 CUTTING AND PATCHING

§ A.3.16.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its part fit together properly. Cutting, fitting, and patching shall be done professionally and finishes for patching shall provide a complete aesthetic look.

§ A.3.16.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ A.3.17 CLEANING UP

§ A.3.17.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.17.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.18 ACCESS TO WORK

§ A.3.18.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.19 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.19.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner 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 or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product 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.

§ A.3.20 INDEMNIFICATION AND HOLD HARMLESS

§ A.3.20.1 INDEMNIFIED PARTIES

For purposes of this Contract, the term "Indemnified Parties" shall mean the Authority and its commissioners, officers, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, successors and assigns.

§ A.3.20.2 INDEMNIFICATION For purposes of this Contract, the term "Indemnified Parties" shall mean the Authority and its commissioners, officers, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, successors and assigns.

§ A3.20.2.1 Negligent or Intentional Act or Omission: The Design-Builder agrees to indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys' fees, court costs and litigation/arbitration expenses) claimed or incurred by reason of any damages, including, but not limited to, bodily injury, death and/or property damage to the extent caused by or arising from any act or omission of the Design-Builder or any of the Design-Builder's officers, contractors, subcontractors, agents, representatives or employees in the performance of professional services under this agreement.

§A3.20.2.2 Ownership or Use of the Construction Documents: The Design-Builder agrees to indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys' fees, court costs and litigation expenses) arising from the ownership or use of the Construction Documents, including, without limitation, claims of infringement of property rights by a third party.

§A3.20.2.3 Hazardous Materials and Environmental Laws: The Design-Builder agrees to indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys' fees, court costs and litigation expenses) arising from any negligent or intentional act or omission of the Design-Builder or any of the Design-Builder's officers, contractors, subcontractors, agents, representatives or employees with respect to (i) any investigation, monitoring, clean-up, containment, removal, storage or restoration work performed by the Authority or a third party with respect to the use or placement of Hazardous Materials (of whatever kind or nature, known or unknown) on the Airport premises or any other areas; (ii) any actual, threatened or alleged contamination by Hazardous Materials on the Airport premises or other areas; (iii) the disposal, release or threatened release of Hazardous Materials on the Airport premises or other areas that is on, from or affects the soil, air, water, vegetation, buildings, personal property, persons or otherwise; (iv) any bodily injury, death or property damage with respect to the use or placement of Hazardous

Materials on the Airport premises or other areas; or (v) any violation of any applicable Environmental Laws.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build 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 Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Time Limits on Claims. Claims by Design-Builder must be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. Claims for Concealed or Unknown Conditions: If conditions are encountered at the site which were not accessible during the pre-design and pre-construction inspections are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents taking into account that unless otherwise stipulated in Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if 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, will consider an equitable adjustment in the GMP or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the Design-Builder, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within ten (10) days after the Owner has given notice of the decision. If the conditions encountered are materially different, the GMP and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the GMP or Contract Time, the adjustment shall be subject to further proceedings pursuant to Section A.4.2.

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make Claim for an increase in the GMP, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) failure of payment by the Owner, Claim shall be filed in accordance with this Agreement.

§ A.4.1.7 Not Used.

§ A.4.1.8 Not Used.

§ A.4.1.9 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 of Construction

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 may be equitably adjusted.

§ A.4.1.10 Claims for Consequential Damage. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build 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 losses of financing, business and reputation, and for loss of profit except anticipated profit arising directing from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If after the enactment of the contract a revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in GMP or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the GMP or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 CLAIMS FOR ADJUSTMENT AND DISPUTES If for any reason the Design-Builder deems that additional compensation is due him for work or materials not clearly provided for in the contract he shall notify the Owner in writing of his/her intention to claim such additional compensation before he begins the work on which he bases the claim. If such notification is not given or the Owner is not afforded proper opportunity by the Design-Builder for keeping strict account of actual cost as required, then the Design-Builder hereby agrees to waive any claim for such additional compensation. Such notice by the Design-Builder and the fact that the Owner has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Design-Builder shall, within ten (10) days, submit his/her written claim to the Owner for consideration in accordance with local laws or ordinances within thirty (30) days of its receipt. If the Design-Builder does not provide the requisite written notice prior to performing the work, the Design-Builder hereby acknowledges and agrees that it has waived any claim for additional compensation.

Nothing in this subsection shall be construed as a waiver of the Design-Builder's right to dispute final payment based on differences in measurements or computations.

§ A.4.3 MEDIATION

§ A.4.3.1 The parties agree to endeavor, in good faith and in recognition of the costs and expenses associated with legal proceedings, to resolve and settle among themselves any disputes or controversies pertaining to the Contract. However, if settlement or resolution cannot be reached, the parties agree to the following dispute resolution procedures:

§ A.4.3.2 MEDIATION

If during the course of this Contract the parties are unable to resolve any dispute or controversy arising out of or relating to the Contract, such claims shall first be subject to non-binding mediation as a condition precedent to the initiation of any legal action (either court action or arbitration). The

mediation, unless the parties mutually agree otherwise in writing, shall be in accordance with the Construction Industry Rules of the American Arbitration Association. Demand for mediation shall be made in writing. The parties agree to share in the mediator's fee and any filing fees. Any mediation will be held in Nashville, Tennessee. Agreements reached in mediation shall be as enforceable as settlement agreements. Each party agrees to bear its own attorneys' fees associated with the mediation.

§ A.4.4 ARBITRATION

If the mediation described in Section A.4.3 is unsuccessful, then, in the Authority's sole discretion, any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be resolved by either binding arbitration or litigation (filed in the state or local courts of Nashville, Tennessee). The Owner will notify the Design-Builder in writing of its election of arbitration or litigation within twenty (20) days after the date of the unsuccessful mediation, and Design-Builder agrees not to commence any legal action against the Owner until such election is made and communicated. If the Owner elects binding arbitration, it shall be administered, unless the parties mutually agree otherwise in writing, in accordance with the most recent Construction Industry Rules of the American Arbitration Association. Whether arbitration or litigation is elected by the Authority, any hearing shall be held in Nashville, Tennessee, and the Court or Arbitrator(s) shall have the power to award to the prevailing party its reasonable attorneys' fees, expenses and costs.

ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which 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 objection.

§ A.5.3 Not Used.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected unless approved in writing by Owner.

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Assignment of a portion of the Work may only occur after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the Design-Builder in writing; and assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related or adjacent 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. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

§ A.6.1.2 The term “separate contractor” shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner’s own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction scheduled 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.

§ A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 **COOPERATION BETWEEN CONTRACTORS** Owner reserves the right to contract for and perform other or additional work on or near the work covered by this contract.

§ A.6.2.2 When separate contracts are let within the limits of any one project, each Design-Builder shall conduct his/her work so as not to interfere with or hinder the progress of completion of the work being performed by other Design-Builders. Contractors working on the same project shall cooperate with each other as directed.

§ A.6.2.3 Each Design-Builder involved shall assume all liability, financial or otherwise, in connection with his/her contract and shall protect and save harmless Owner from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by him because of the presence and operations of other Contractors working within the limits of the same project.

§ A.6.2.4 The Design-Builder shall arrange his/her work and shall place and dispose of the materials being used so as not to interfere with the operations of the other Contractors within the limits of the same project. He shall join his/her work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.16.

§ A.6.3 OWNER’S RIGHT TO CLEAN UP

§ A.6.3.1 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 the Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Builder Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 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 Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the GMP; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 Changes to the Scope and GMP shall be as follows:

- .1 Changes in the scope of work shall be governed by the Terms and Conditions of the Contract.
- .2 The Design-Builder shall notify the Owner in writing with detailed cost and time data if an apparent change in scope will require a change in the GMP.
- .3 No Work associated with a Contract Modification shall be performed prior to execution of a Change Order.
- .4 Design-Builder shall use Procore to submit all proposed Change Orders.

§ A.7.2.3 Methods used in determining adjustments to the GMP may include those listed in Section A.7.3.3.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§ A.7.3.1 A Construction 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 GMP or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the GMP and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive may be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the GMP, 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, or equitably adjusted as provided in Section A.4.1.9;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change on the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the GMP or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in GMP and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the GMP, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the GMP, with a 10% allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, 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 A.7.3.6 shall be limited to the following:

- .1 additional costs of professional services;
- .2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section A.7.3.6.

§ **A.7.3.7** 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 GMP shall be actual net cost plus 10% allowance for overhead and profit.

§ **A.7.3.8** Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the GMP on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.

§ **A.7.3.9** When the Owner and Design-Builder reach agreement concerning the adjustments in the GMP and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ **A.7.4 MINOR CHANGES IN THE WORK**

§ **A.7.4.1** The Owner shall have authority to order minor changes in the Work not involving adjustment in the GMP or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§ **A.8.1 DEFINITIONS**

§ **A.8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Contracts for Substantial Completion of the Work.

§ **A.8.1.2** The date of commencement of the Work shall be fixed in a notice to proceed issued by the Owner.

§ **A.8.1.3** The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ **A.8.1.4** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically designated.

§ **A.8.2 PROGRESS AND COMPLETION**

§ **A.8.2.1** Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ **A.8.2.2** The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless

the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve all Project milestones and Project Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 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 separate contractor employed by the Owner, or by changes ordered in the Work, or by fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which 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.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Division 1 Specifications.

ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The GMP is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, where the GMP is based upon a Cost of the Work plus Design-Builder's Fee with a Guaranteed Maximum Price, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, once approved by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values shall be updated periodically to reflect changes in the allocation of the GMP. The schedule of values is due to the Owner within fifteen (15) days of executing the Agreement.

§ A.9.2.2 Not Used.

§ A.9.3 APPLICATION FOR PAYMENT

§ A.9.3.1 At least ten (10) days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Design-Builder, Subcontractors, material suppliers, and reflecting retainage specified in the Design-Build Documents. With the exception of Changes of Work identified in Article A.7 the Design-Builder's may not invoice the Owner for costs that exceed the GMP, unless the change in work have been fully approved.

§ A.9.3.1.1 Such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payments for portions of the Work for which the Design-Builder does not intend to pay to a Subcontractor or material supplier or other parties.

§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments may be made on account of 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.

§ A.9.3.3 The Design-Builder warrants that title to all Work will pass to the Owner no later than the time of payment. This does not constitute the Owner's acceptance of such Work. 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, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 Not Used.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a 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 Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work 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 Subcontractors or for design services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP;
- .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 persistent failure to carry out the Work in accordance with the Design-Build Documents.

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

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 The Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 Not Used.

§ A.9.6.3 The Design-Builder shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Subcontractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to their Subcontractors in a similar manner.

§ A.9.6.4 Not Used.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3.

§ A.9.6.6 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.

§ A.9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the GMP, payments received by the Design-Builder for Work by Subcontractors and suppliers shall be held by the Design-Builder for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with 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 be 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.

§ A.9.7 NOT USED

§ A.9.8 SUBSTANTIAL COMPLETION

The Owner's designated representative(s) will conduct an inspection or inspections as may be required upon written request from the Design-Builder, to determine the date(s) of Substantial Completion certification to Owner, the Design-Builder, and the Surety. The certification shall be in writing. If the Owner refuses to so certify the Substantial Completion, the Owner shall at the same time period advise the contractor, in writing, as to the precise reasons for the refusal to certify. The inspection for the determination of the Substantial Completion of all or portions of the work may be made at the date of the written request of the Design-Builder or at the option of the Owner. In the event the Owner certifies the Substantial Completion of the Project or a portion thereof, such certification shall not relieve the Design-Builder of his/her obligations to complete all of the Work in accordance with the Agreement. Additionally, such certification shall not constitute acceptance or waiving of the Owner's right to require a final inspection of all Work. In any event, Owner shall have no obligation to release any retainage withheld until final payment is made in accordance with the Contract and Final Acceptance by the Owner.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.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 this Agreement or a separate agreement with the Design-Builder and authorized by public authorities having jurisdiction over the Work. 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, safety, security, maintenance, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or 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 A.9.8. 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.

§ A.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 to determine and record the condition of the Work.

§ A.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.

§ A.9.10 FINAL ACCEPTANCE AND FINAL PAYMENT

§ A.9.10.1 FINAL ACCEPTANCE

§ A.9.10.1.1 Upon due notice from the Design-Builder of presumptive completion of the entire Project, the Owner will make an inspection. If all construction provided for and contemplated by the contract is found to be completed in accordance with the contract, plans, and specifications, such inspection shall constitute the final inspection. The Owner shall notify the Design-Builder in writing of Final Acceptance as of the date of the final inspection.

§ A.9.10.2 If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the Owner will give the Design-Builder the necessary instructions for correction of same and the Design-Builder shall immediately comply with and execute such instructions. Upon correction of the work, another inspection will be made which shall constitute the final inspection, provided the work has been satisfactorily completed. In such event, the Owner will make the final acceptance and notify the Design-Builder in writing of this acceptance as of the date of final inspection.

§ A.9.10.2 ACCEPTANCE AND FINAL PAYMENT

When the Contract Work has been accepted in accordance with the requirements of Section A.9.10.1, the Owner will prepare the final estimate of the items of work actually performed. The Design-Builder shall approve the Owner's final estimate or advise the Owner of his/her objections to the final estimate which are based on disputes in measurements or computations of the final quantities to be paid under the contract as amended by change order. The Design-Builder and the Owner shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within thirty (30) days of the Design-Builder's receipt of the Owner's final estimate. If, after such 30-day period, a dispute still exists, the Design-Builder may approve the Owner's estimate under protest of the quantities in dispute, and such disputed quantities shall be considered by Owner as a claim in accordance with the subsection titled CLAIMS FOR ADJUSTMENT AND DISPUTES. Warranties shall begin to run upon until Final Acceptance by the Owner.

§ A.9.10.3 FINAL DRAWINGS, WAIVERS, AND WARRANTIES

§ A.9.10.3.1 Prior to the submission of the final payment, the Owner shall receive from the Design-Builder the final as-built drawings, final lien waivers, and all warranties, punch list corrections, guaranties, and similar documents. Failure to deliver said documents to the Owner shall be grounds for the Owner to withhold the final payment, until such documents are delivered. As set in the Subsection entitled Final Acceptance in this Section, all warranties shall begin to run from Substantial Completion by the Owner.

§ A.9.10.3.2 All job records furnished by the Design-Builder as above specified shall become the property of Owner.

§ A.9.10.4 FINAL PAYMENT

Upon the Owner's final inspection of the project and confirmation that all work has been found acceptable in accordance with the contract documents, Design-Builder shall make application for final payment. Final payment shall be due within thirty (30) days of said application, subject to the provisions herein contained. Neither the final payment nor the retainage shall be paid until the Design-Builder submits an affidavit, in a form approved by Owner, to accompany the final payment application, affirming that there are no outstanding liens on the Project and all labor and Materials have been paid for, supported by such additional affidavits or evidence of payment as Owner may reasonably require. Owner may, at its option, withhold final payment, and/or the release of all or part of the retainage, until the Design-Builder has provided Owner with a complete and unconditional release of all claims for the payment of labor, equipment or material furnished to the Project, or receipts which evidence full payment of such claims, and Design-Builder shall also furnish Owner an affidavit that to the Design-Builder's best knowledge, information and belief, said releases or payments include all labor, equipment and materials for which a lien could be filed. Notwithstanding the foregoing, the Design-Builder shall continue to be liable for any such claims or liens, including, but not limited to, all guarantees and warranties, which may be asserted or which may be unsatisfied after all payments are made by Owner to the Design-Builder.

The making of the final payment by Owner shall constitute a waiver of all claims by Owner, other than claims arising from faulty Work which appear or become known to Owner after such final payment, and unsettled or unasserted claims against Owner or the Project. Likewise, acceptance of final payment by the Design-Builder and any Subcontractors shall constitute a waiver of all claims by the Design-Builder and any Subcontractors against Owner, and the Design-Builder and all Subcontractors each hereby agree to indemnify and hold "Indemnified Parties" harmless from and against any such unsettled or unasserted claim.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract. A project specific safety plan shall be developed by the Design-Builder and submitted to the Owner for review and acceptance. This document shall be thorough and complete prior to initiating the Work and shall be updated as required as Work progresses.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide 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 or under the care, custody or control of the Design-Builder or the Design-Builder's Subcontractors;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 Owner operations and employees.

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

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.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. Such activity will require the approval of the Owner.

§ A.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 Section A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, a Subcontractor, 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 A.10.2.1.2 and A.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 A.3.20.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be safety, the prevention of accidents, security, and quality control. Such individual(s) shall be on site full time and be dedicated to these causes only.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If Design-Builder encounters a hazardous material or substance not addressed in the Contract 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.

§ A.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 Contract 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 it 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 GMP shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ A.10.3.3 The Owner shall not be responsible under this Section A.10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ A.10.3.4 The Design-Builder shall indemnify the Owner and "Indemnified Parties" 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 the Contract Documents, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ A.10.4 EMERGENCIES

§ A.10.4.1 In an emergency affecting safety or security of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Articles A.7 and A.8.

ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 COMMERCIAL GENERAL LIABILITY INSURANCE

§ A.11.1.1 The Design-Builder shall obtain and maintain continuously in effect at all times during the term of this Contract, as part of the GMP, commercial general liability insurance coverage (the "CGL Coverage"), with coverage limits of \$1,000,000 per occurrence and \$1,000,000 in aggregate, that insures against claims, damages, losses and liabilities arising from bodily injury, death and/or property

damage. The aggregate deductible amount under the insurance policy or policies providing the CGL Coverage shall not exceed \$250,000 per occurrence. Each insurance policy providing the CGL Coverage shall name the Owner and its commissioners, officers and employees as additional insureds thereunder and shall provide that such insurance policy will be considered primary insurance as to any other valid and collectible insurance or self-insured retention the Owner may possess or retain. Any insurance coverages maintained by the Owner shall be considered excess insurance only.

§ A.11.1.2 Each insurance company issuing an insurance policy providing the CGL Coverage shall be (A) admitted to do business in the State of Tennessee and rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

§ A.11.2 AUTOMOBILE LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall obtain and maintain continuously in effect at all times during the term of this Contract, at its sole cost and expense, automobile liability insurance coverage (the "Auto Coverage"), with a coverage limit of not less than \$1,000,000 per occurrence, that insures against claims, damages, losses and liabilities arising from automobile related bodily injury, death and/or property damage. The aggregate deductible amount under the insurance policy or policies providing the Auto Coverage shall not exceed \$250,000 per occurrence. Each insurance policy providing the Auto Coverage shall name the Owner and its commissioners, officers and employees as additional insureds thereunder and shall provide that such insurance policy will be considered primary insurance as to any other valid and collectible insurance or self-insured retention the Owner may possess or retain. Any insurance coverages maintained by the Owner shall be considered excess insurance only.

§ A.11.2.2 Each insurance company issuing an insurance policy providing the Auto Coverage shall be (A) admitted to do business in the State of Tennessee and rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

§ A.11.3 WORKER'S COMPENSATION INSURANCE

§ A.11.3.1 The Design-Builder shall obtain and maintain continuously in effect at all times during the term of this Contract, at its sole cost and expense, worker's compensation insurance coverage (the "WC Coverage") in accordance with statutory requirements and providing employer's liability coverage with limits of not less than \$100,000 for bodily injury by accident, \$100,000 for bodily injury by disease, and \$500,000 policy limit for disease.

§ A.11.3.2 Each insurance company issuing an insurance policy providing the WC Coverage shall be (A) admitted to do business in the State of Tennessee and rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

§ A.11.4 GENERAL INSURANCE REQUIREMENTS

§ A.11.4.1 For purposes of this Contract, the CGL Coverage, the Auto Coverage, and the Worker's Compensation Coverage are collectively referred to as the "Insurance Coverages". The Design-Builder agrees that each insurance policy providing any of the Insurance Coverages (A) shall not be altered, modified, cancelled or replaced without thirty (30) days prior written notice from the Design-Builder to the Authority, (B) shall provide for a waiver of subrogation by the issuing insurance company as to claims against the Authority and its commissioners, officers and employees, (C) shall provide that any "other insurance" clause in such insurance policy shall exclude any policies of insurance maintained

by the Authority and that such insurance policy shall not be brought into contribution with any insurance maintained by the Authority, and (D) shall have a term of not less than one (1) year.

§ A.11.4.2 The Authority shall have the right to change the terms of the Insurance Coverages if such changes are recommended or imposed by the Authority's insurers, so long as the Authority agrees to reimburse the Design-Builder for any increases in insurance premium costs resulting solely from any such change. The Design-Builder shall provide, prior to the commencement of the Design-Builder's performance under this Contract, one or more certificates of insurance which shall indicate that the Design-Builder maintains the Insurance Coverages and that the insurance policy or policies referenced or described in each such certificate of insurance comply with the requirements of this Contract. Each such certificate of insurance shall provide that the insurance company issuing the insurance policy or policies referenced or described therein shall give to the Authority written notice of the cancellation or non-renewal of each such insurance policy not less than thirty (30) days prior to the effective date of such cancellation or the expiration date of such insurance policy, as applicable. Upon receipt of a written request from the Authority, the Design-Builder also agrees to provide to the Authority duplicate originals of any or all of the insurance policies providing the Insurance Coverages. The certificate(s) of insurance provided by the Design-Builder to evidence the WC Coverage shall specifically certify that the insurance policy or policies which provide the WC Coverage cover the Design-Builder's activities in the State of Tennessee.

§ A.11.4.3 If the Design-Builder shall at any time fail to obtain or maintain any of the Insurance Coverages, the Authority may take, but shall not be obligated to take, all actions necessary to effect or maintain such Insurance Coverages, and all monies expended by it for that purpose shall be reimbursed to the Authority by the Design-Builder upon demand therefor or set-off by the Authority against funds of the Design-Builder held by the Authority or funds due to the Design-Builder. The Design-Builder hereby grants, approves of and consents to such right of set-off for the Authority. If any of the Insurance Coverages cannot be obtained for any reason, the Authority may require the Design-Builder to cease any and all work under this Contract until all Insurance Coverage are obtained. If any of the Insurance Coverages is not obtained within a period of time to be determined solely by the Authority, the Authority may terminate this Contract.

§ A.11.4.4 It is expressly understood and agreed that the minimum limits set forth in the Insurance Coverages shall not limit the liability of the Design-Builder for its acts or omissions as provided in this Contract.

§ A.11.4.5 The term "Rating Service" shall mean A.M. Best Company, or, if A.M. Best Company no longer exists or discontinues its rating of insurance companies, such alternative rating service for insurance companies as determined in the sole discretion of the Chief Financial Officer of the Authority. The term "Minimum Rating" shall mean a rating (if A.M. Best Company is the Rating Service) of A- (Financial Size: X) based upon the criteria for financial strength and financial size ratings utilized by A.M. Best Company on the date of this Contract, or such equivalent rating (if A.M. Best Company is not the Rating Service or if A.M. Best Company subsequently revises its criteria for financial strength and financial size ratings) as determined in the sole discretion of the Chief Financial Officer of the Authority.

§ A.11.4.6 Waivers of Subrogation. The Owner and Design-Builder hereby waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, commissioners, officers, consultants, and employees, each of the other, and (2) the Architect, the Engineer, or their respective consultants, separate contractors described in A.6.2 if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by insurance obtained pursuant to the requirements of this Agreement or other insurance applicable to the Work or property adjoining or adjacent to the site, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner and Design-Builder, as appropriate, shall require of the Architect, the Engineer, and their consultants, separate contractors described in A.6.2, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such

waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.5 OWNER CONTROLLED INSURANCE PROGRAM

§A.11.5.1 Prior to commencement of any operations by or on behalf of Design-Builder relating to the Project, and with respect to any and all such operations, the Design-Builder understands and agrees to fully participate in the Owner Controlled Insurance Program (“OCIP”) established by Owner. The terms of the OCIP and coverages are set forth in the OCIP Manual and incorporated herein by reference.

§A.11.5.2 Design-Builder’s Insurance Primary. Where the Contract requires Design-Builder to provide insurance coverage (exclusive of the OCIP), any such coverage applicable to Owner shall be primary and non-contributing with any insurance maintained by Owner in its own name and on its own behalf. Copies of endorsements to Design-Builder’s policies shall be provided to Owner.

§A.11.5.3 No Cancellation. All insurance obtained by the Design-Builder pursuant to this Agreement shall be written by insurance companies licensed to do business in Tennessee and acceptable to Owner. All such insurance shall be in the form and substance satisfactory to the Owner and shall provide that it will not be subject to cancellation, termination or change except after thirty (30) days prior written notice to the Owner.

§A.11.5.4 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Design-Builder’s completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

- .1 Insurance Certificates. According to the terms of the OCIP Manual, Exhibit “T” of the RFP, the Design-Builder shall furnish to the Owner prior to commencement of the work and thereafter upon renewal or replacement of each required policy of insurance certificates of insurance reflecting policies in force, and shall also provide certificates evidencing all renewals of such policies.
- .2 Insurance for Project Property While Outside of the United States and Canada. If any project property is in transit or is located outside the continental United States or Canada for any reason, Design-Builder shall arrange to insure such property for its full replacement value separate from the other insurance described in this Article.
- .3 Compensation payable to the Design-Builder for performance of the Work will exclude all costs of insurance provided by Owner with limits specified in the Design-Builder Required Coverage section of OCIP Manual, Exhibit “T” of the RFP. Initial bids and change orders, if any, must exclude all costs for insurance coverage provided under the OCIP.

§ A.11.6 PROFESSIONAL LIABILITY INSURANCE

§ A.11.6.1 The Design-Builder shall obtain and maintain continuously in effect at all times during the term of this Contract, at its sole cost and expense, professional liability insurance coverage (the “PL Coverage”), with coverage limits of not less than \$2,000,000 per occurrence and \$2,000,000 in aggregate, that insures against claims, damages, losses and liabilities arising from any errors, omissions or negligent acts of the Design-Builder in the performance of professional services under this Contract. The aggregate deductible amount under the insurance policy or policies providing the PL Coverage shall not exceed \$250,000 per occurrence. The Design-Builder also shall maintain the PL Coverage for a period of three (3) years after all services and work required under the terms of this Contract have been completed by the Design-Builder or after the Design-Builder has been terminated by the Authority, whichever shall last occur.

§ A.11.6.2 Each insurance company issuing an insurance policy providing the PL Coverage shall be (A) rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

§ A.11.7 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.7.1 The Design-Builder who is awarded the Contract must provide Performance and Payment Bonds equal to 100% of the Contract amount. All bonds must be completed on the forms provided with the Contract Documents.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense 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.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER FINAL ACCEPTANCE

§ A.12.2.1.1 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 Final Acceptance and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER FINAL ACCEPTANCE

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.6, if, within one year after the date of Final Acceptance or after the date for commencement of warranties established under Section A.9.10 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct if promptly after receipt of written notice from the Owner to 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 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 non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after commencement of warranty by the period of time between commencement of warranty and acceptance of the corrected Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which 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.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligations to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work 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 GMP will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Contract shall be governed by the laws of the State of Tennessee. All rights and remedies available to the Owner under this Contract shall be cumulative and in addition to all other rights and remedies granted to the Owner at law or in equity.

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Neither party to the Design-Build Contract shall assign to the Design-Build 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 Design-Build Contract.

§ A.13.3 FORCE MAJEURE

§ A.13.3.1 Timely performance by both parties is essential to this Contract. However, neither party will be liable for delays or other failures to perform its obligations under this Contract to the extent the delay or failure is caused by an event of Force Majeure. For purposes of this Contract, Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders and the acts of superior governmental or military authority.

§ A.13.3.2 This relief is not applicable unless the affected party does the following:

- .1 uses due diligence to remove the Force Majeure as quickly as possible;
- .2 provides the other party with prompt written notice of the cause and its anticipated effect; and
- .3 provides the other party with written notice describing the actual delay or non-performance incurred within seven days after the Force Majeure ceases.

§ A.13.3.3 The Owner may perform Design-Builder's services itself or contract for such services with a third party during periods of Force Majeure and withhold from Design-Builder any payments for such services from the lump sum amount for the applicable phase in an amount equal to the greater of the

Owner's payment of such services or the percentage of completion of the applicable phase of such services by such third party. Performance of such services by the Owner or other entity does not constitute a default or breach of this Contract by the Design-Builder or Owner.

§ A.13.3.4 If the Force Majeure continues for more than fourteen (14) days, the Owner may terminate this Contract by giving seven days written notice to Design-Builder. Design-Builder waives any claim it may have for financial losses or other damages resulting from such termination, except for amounts due for services completed by Design-Builder, in accordance with the terms and conditions of this Contract, that are reasonably satisfactory to the Design-Builder, prior to the effective date of termination.

§ A.13.3.5 A strike or work slowdown by the Design-Builder's employees, among other circumstances, does not constitute Force Majeure under this Contract.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 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.

§ 13.4.2 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 Design-Build Documents, 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.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Written reports generated from tests and inspections are required and shall be submitted to the Owner.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing 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 A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 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, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and delivered to the Owner within 24-hours of receipt.

§ A.13.5.5 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,

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 As between the Owner and Design-Builder:

§ A.13.6.1.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any all events not later than such date of Substantial Completion.

§ A.13.6.1.2 Between Substantial Completion and Final Application for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and

§ A.13.6.1.3 After Final Application for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.6, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

§ A.13.7 PROJECT MANAGEMENT SYSTEM (PROCORE)

§ A.13.7.1 The Owner utilizes Program Management Software, Procore, to efficiently and effectively manage construction projects. This Software allows many project management functions to be conducted electronically. The Design-Builder shall enter specific project related information directly into Procore on a day-to-day basis. Some project management functions that are executed within the system the Design-Builder may be responsible for include (but are not limited to) Potential Change Orders, Meeting Minutes, Requests for Information (RFIs), Submittal Register, Submittal Packages, Daily Reports, Applications for Payment, Punchlists, etc.

§ A.13.7.2 Unless otherwise specified, the Design-Builder will use Owner supplied software licenses when using the Owner's system. The system provided by the Owner shall not be used for communication related to contracts and costs between Design-Builder and Subcontractors.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Design-Builder or a Subcontractor 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; or
- .3 If for reasons beyond the Design-Builder's contractual requirements and other than those enumerated in Section A.9.5.1, the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents.

§ A.14.1.2 If one of the reasons described in Section 14.1.1 exists, the Design-Builder may, upon fourteen (14) days' written notice to the Owner, terminate the Contract and Design-Builder's sole and only compensation shall be for the Cost of the Work pursuant to the Contract provided the Owner is in possession of such work at the time of termination, plus any earned Design-Builder's fee.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Contract if the Design-Builder:

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Design-Builder and the subcontractors.
- .3 Disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 Otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ A.14.2.2 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 subcontracts pursuant to Section A.5.5.1; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

§ A.14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the cost of finishing the Work exceeds the GMP as established at the time of termination, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Owner by Design-Builder.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1 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 a period of time as the Owner may determine.

§ A.14.3.2 The GMP and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1.1. 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.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§A.14.4.2 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 subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ A.14.4.3 In case of such termination for the Owner's convenience, the Design-Builder sole and only compensation shall be for the Cost of the Work pursuant to the Contract provided the Owner is in possession of such work at the time of termination, plus any earned Design-Builder's fee.

§ A.14.5 TERMINATION FOR DEFAULT – DAMAGES FOR DELAY

§ A.14.5.1 If the Design-Builder refuses or fails to prosecute the Work or any separable part thereof, with such diligence as shall insure its completion within the time specified in this contract or any extension thereof or fails to complete said work within this time, the Owner may, by written notice to the Design-Builder, terminate his right to proceed with the Work or the part of the work as to which there has been delay. In this event, the Owner may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the Work, the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Design-Builder's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Owner resulting from his refusal or failure to complete the work within the specified time.

§ A.14.5.2 If fixed and agreed liquidated damages are provided in the Contract and if the Owner so terminates the Design-Builder's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for Final Completion of the Work together with any increased costs occasioned the Owner in completing the Work.

§ A.14.5.3 If fixed and agreed liquidated damages are provided in the contract and if the Owner does not so terminate the Design-Builder's right to proceed, the resulting damage shall consist of these liquidated damages until the Work is completed or accepted.

§ A.14.5.4 The Design-Builder's right to proceed may not be so terminated nor the Design-Builder charged with resulting damages if:

- .1 The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Design-Builder, including but not restricted to, acts of God, acts of the public enemy, acts of the Owner in either its sovereign or contractual capacity, acts of another Design-Builder in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Design-Builder and the subcontractors or suppliers; and
- .2 The Design-Builder, within ten (10) days from the beginning of any such delay (unless the procurement officer grants a further period of time before the date of final payment under the contract), notifies the Owner in writing of the causes of delay. The Owner shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Dispute Resolution" clause of this contract.

§ A.14.5.5 If, after notice of termination of the Design-Builder's right to proceed under the provisions of this clause, it is determined for any reason that the Design-Builder was not in fault under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Owner, be the same as if the notice of termination had been issued pursuant to the termination for convenience clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Owner, the contract shall be equitably adjusted to compensate for the termination and the Contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute Resolution".

§ A.14.5.6 The rights and remedies of the Owner provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

DRAFT

EXHIBIT B

DETERMINATION of the Cost of the Work

for the following PROJECT:

*CIP 1803, Concourse D & Terminal Wings
Nashville International Airport*

THE OWNER:

*Metropolitan Nashville Airport Authority
One Terminal Dr, Suite 501
Nashville, TN 37214*

THE DESIGN-BUILDER:

*<Design-Builder>
<Design-Builder Address>
<Design-Builder Address>
<Design-Builder Address>*

DRAFT

TABLE OF ARTICLES

B.1 CONTROL ESTIMATE

B.2 COSTS TO BE REIMBURSED

B.3 COSTS NOT TO BE REIMBURSED

B.4 DISCOUNTS, REBATES AND REFUNDS

**B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS
HIRED BY THE DESIGN-BUILDER**

B.6 ACCOUNTING RECORDS

DRAFT

ARTICLE B.1 CONTROL ESTIMATE

§ B.1.1 The Design-Builder shall develop and implement a detailed system of cost control that will provide the Owner with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Design-Builder's first Application for Payment and shall be revised monthly or at other intervals as mutually agreed. The Design-Builder shall also comply with Division 1 Design to Budget Specification.

ARTICLE B.2 COSTS TO BE REIMBURSED

§ B.2.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs 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 set forth in this Article B.2. With the exception of Changes of Work identified in Article A.7 the Design-Builder may not invoice the Owner for costs that exceed the GMP, unless the change in Work has been fully approved.

§ B.2.2 LABOR COSTS

§ B.2.2.1 Fixed hourly rates as set forth in Exhibit G of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's approval, at off-site locations.

§ B.2.2.2 Fixed hourly rates as set forth in Exhibit G of the Design-Builder's supervisory and administrative personnel when stationed at the site with the Owner's approval.

§ B.2.2.3 Not Used.

§ B.2.2.4 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, are included in the fixed hourly rates under Sections B.2.2.

§ B.2.3 SUBCONTRACT COSTS

§ B.2.3.1 Payments made by the Design-Builder to Subcontractors in accordance with the requirements of their contracts.

§ B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ B.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ B.2.4.2 Costs of materials described in the preceding Section B.2.4.1 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.

§ B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ B.2.5.1 Costs, including transportation and 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; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value.

§ **B.2.5.2** 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, whether rented from the Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ **B.2.5.3** Costs or removal of debris from the site.

§ **B.2.5.4** Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office. All costs and expenditures necessary for the operation of the field office, as negotiated and approved in prior to commencement of work, shall be determined and agreed to by the Owner prior to initiation of Construction. Any items purchased shall become the possession of the Owner at the project conclusion.

§ **B.2.5.5** That portion of the reasonable expenses of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work.

§ **B.2.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

§ **B.2.6 DESIGN AND OTHER CONSULTING SERVICES**

§ **B.2.6.1** Compensation, including fees and reimbursable expenses, paid by the Design-Builder for design and other consulting services required by the Design-Build Documents.

§ **B.2.7 MISCELLANEOUS COSTS**

§ **B.2.7.1** That portion of insurance and bond premiums that can be directly attributed to this Design-Build Contract.

§ **B.2.7.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Works shall be incorporated in the completed construction cost.

§ **B.2.7.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required to pay.

§ **B.2.7.4** Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.13.5.3.

§ **B.2.7.5** 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 last sentence of Section A.3.19.1 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ **B.2.7.6** Data processing costs related to the Work.

§ **B.2.7.7** Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Design-Build Documents.

§ B.2.8 OTHER COSTS AND EMERGENCIES

§ B.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and Conditions.

§ B.2.8.3 In repairing or correcting damaged or nonconforming Work executed by the Design-Builder or nonconforming Work not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Design-Builder or the Design-Builder's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Design-Builder, or the failure of the Design-Builder's personnel to supervise adequately the Work of the subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, subcontractors or suppliers.

§ B.3 COSTS NOT TO BE REIMBURSED

§ B.3.1 the Cost of the Work shall not include:

§ B.3.1.1 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 Section B.2.2.

§ B.3.1.2 Expenses of the Design-Builder's principal office and offices other than the site office.

§ B.3.1.3 Overhead and general expenses, except as may be expressly included in Article B.2 of this Exhibit.

§ B.3.1.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.

§ B.3.1.5 Rental costs of machinery and equipment, except as specifically provided in Section B.2.5.2.

§ B.3.1.6 Except as provided in Section B.2.8.3 of this Agreement, costs due to the negligence or failure of the Design-Builder to fulfill a specific responsibility of the Design-Builder, Design-Builders, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ B.3.1.7 Any cost not specifically and expressly described in Article B.2, Costs to be Reimbursed.

§ B.3.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price, if any, to be exceeded.

ARTICLE B.4 DISCOUNTS, REBATES AND REFUNDS

§ B.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured.

§ B.4.2. Amounts that accrue to the Owner in accordance with the provisions of Section B.4.1 shall be credited to the Owner as a deduction from the Cost of Work.

ARTICLE B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS HIRED BY THE DESIGN-BUILDER

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed by others under contracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons or entities from whom the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner. The Owner shall then determine which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 Contracts or other agreements shall conform to the applicable payment provisions of the Design-Build Contract, and shall not be awarded on the basis of cost plus a fee without the Owner's prior consent.

ARTICLE B.6 ACCOUNTING RECORDS

§ B.6.1 The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of five years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the Owner's accountant a final accounting of the Cost of the Work.

§ B.6.3 The Owner will review and report in writing on the Design-Builder's final accounting after delivery of the final accounting. Based upon such Cost of the Work as the Owner's report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section A.9.10 of the Agreement have been met, the Owner will notify the Design-Builder in writing of the Owner's intention to make final payment or to withhold final payment.

§ B.6.4 If the Owner reports the Cost of the Work as substantiated by the Design-Builder's final accounting to be less than claimed by the Design-Builder, the Design-Builder shall be entitled to initiate resolution of the dispute pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, for the disputed amount. If the Design-Builder fails to so initiate resolution of the dispute within the period of time required by Section A.4.1.2 of Exhibit A, Terms and Conditions, the substantiated amount reported by the Owner shall become binding on the Design-Builder. Pending a final resolution pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, the Owner shall pay the Design-Builder the amount, if any, determined by the Owner to be due the Design-Builder.

EXHIBIT C

Small Minority Woman-Owned Business Enterprise (SMWBE) Program

for the following PROJECT:

*CIP 1803, Concourse D & Terminal Wings
Nashville International Airport*

THE OWNER:

*Metropolitan Nashville Airport Authority
One Terminal Dr, Suite 501
Nashville, TN 37214*

THE DESIGN-BUILDER:

*<Design-Builder>
<Design-Builder Address>
<Design-Builder Address>
<Design-Builder Address>*

DRAFT

TABLE OF ARTICLES

C.1 SMWBE PARTICIPATION GOAL

DRAFT

ARTICLE C.1 DEFINITIONS

ARTICLE C.1 SMWBE PARTICIPATION GOAL

§ C.1.1 The attainment of the goal established for this Contract is to be measured as a percentage of the total dollar value of the Contract. The Design-Builder, as well as its Subcontractors and vendors, agree that it shall not discriminate on the basis of race, color, national origin, sex or handicap in the performance of Contract. Design-Builders of the Owner are required to engage in good faith efforts to joint venture, subcontract, or contract for supplies or services with SMWBEs and meet the goal unless an exception exists that excuses a Design-Builder from compliance with the goals. Owner established a goal of **6.29%MBE and 9.13% MBE and 4% SBE (Target)**. Design-Builder has committed to achieve a **<Insert D/B Committed Amount>** goal. Exhibit F identifies a breakdown of certified companies and associated dollar values which will be expended by the Design-Builder to achieve the **<Insert D/B Committed Amount>** goal. Failure by the Design-Builder to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Owner shall deem appropriate in accordance with the Contract.

§ C.1.2 For the purpose of counting SMWBE participation toward meeting the goal expressed above, Owner shall grant to its Design-Builders sixty percent (60%) of expenditures for material and supplies required under a Contract and obtained from a SMWBE regular dealer, and one hundred percent (100%) of such expenditures obtained from a SMWBE manufacturer.

§ C.1.3 For the purpose of the SMWBE program, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained.

EXHIBIT D

<INSERT ORG CHART>

DRAFT

EXHIBIT E

NOT USED

DRAFT

EXHIBIT F

SMWBE Subcontractor Participation

for the following PROJECT:

*CIP 1803, Concourse D & Terminal Wings
Nashville International Airport*

THE OWNER:

*Metropolitan Nashville Airport Authority
One Terminal Dr, Suite 501
Nashville, TN 37214*

THE DESIGN-BUILDER:

*<Design-Builder>
<Design-Builder Address>
<Design-Builder Address>
<Design-Builder Address>*

DRAFT

SMWBE SUBCONTRACTOR LIST

MNAA Certification (SBE/MBE/WBE)	SMWBE Subcontractor Names & Addresses	Subcontract Work Item	Dollar Value Subcontract Work

Total Dollar Value of SMWBE Subcontract Work _____

Total Dollar Value of Proposal _____

Percent of SMWBE Total _____ %

EXHIBIT G
Fixed Hourly Rates

DRAFT

EXHIBIT H

SMWBE Participation Reports

for the following PROJECT:

*CIP 1803, Concourse D & Terminal Wings
Nashville International Airport*

THE OWNER:

*Metropolitan Nashville Airport Authority
One Terminal Dr, Suite 501
Nashville, TN 37214*

THE DESIGN-BUILDER:

*<Design-Builder>
<Design-Builder Address>
<Design-Builder Address>
<Design-Builder Address>*

DRAFT

SMWBE PARTICIPATION REPORT

1. SMWBE listed below must be certified by the Metropolitan Nashville Airport Authority's Certification Program.
2. The Consultant shall enter into an agreement with the SMWBE Participant for work listed above upon execution of a contract with the Airport Authority.
3. This SMWBE Participation Report must be completed and returned and made part of this Contract.
4. Consultant is required to provide reason(s) by completing the Good Faith Effort Non-Participation Statement below if s/he is unable to meet proposed SMWBE participation levels.
5. Use a separate form for each SMWBE participant.

Name of Company/Prime Consultant:
[Name]
[Address]
[City, State Zip]
[Phone Number]

Name of SMWBE/Subconsultant:
[Name]
[Address]
[City, State Zip]
[Phone Number]

Male Owned Female Owned

Contact Name: _____

Contact Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

Proposed Scope of Services for SMWBE/Subconsultant:

MNAA Project Name and Number: Concourse D & Terminal Wings, Project No. 1803

Terms of Proposed Contract: _____

Proposed Total Contract Amount: \$ _____

Proposed Total SMWBE Amount: \$ _____ Total (%): _____

Good Faith Effort Non-Participation Statement:

MNAA Approval: _____ Date: _____

Director, Business Diversity Development