

**GRANT AGREEMENT  
BETWEEN  
STATE OF FLORIDA  
DEPARTMENT OF FINANCIAL SERVICES  
AND  
CITY OF LAKE CITY**

**THIS GRANT AGREEMENT** (Agreement) is made and entered into by and between the Department of Financial Services (Department), an agency of the state of Florida (State), and the City of Lake City (Grantee), and is effective as of the date last signed. The Department and the Grantee are sometimes referred to herein individually as a “Party” or collectively as the “Parties.”

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

**WHEREAS**, the Department, through its Division of State Fire Marshal (Division), has the authority, pursuant to a specific appropriation of the General Appropriations Act, to grant funds to the Grantee; and

**WHEREAS**, the Grantee represents that it is fully qualified and eligible to receive these grant funds to perform the tasks identified herein in accordance with the terms and conditions hereinafter set forth.

**NOW THEREFORE**, the Department and the Grantee do mutually agree as follows:

**A. Tasks and Performance Requirements:**

In accordance with line 2431A of the General Appropriations Act for the 2022-2023 State fiscal year, the Grantee shall perform the tasks specified herein in accordance with the terms and conditions of this Agreement, including its attachments and exhibits, which are incorporated by reference herein.

The funds shall be utilized to construct a fire station, and the performance requirements are specifically described in Attachment 1, Scope of Work (herein referred to as the “SOW”).

**B. Incorporation of Laws, Rules, Regulations, and Policies:**

The Parties shall comply with the applicable state and federal laws, rules, regulations, and policies, including, but not limited to, those identified in this Agreement.

**C. Performance Period:**

The performance period for this Agreement begins on July 1, 2022, and ends after completion of all deliverables, upon depletion of funding, or upon termination of funding, whichever occurs first, unless terminated earlier in accordance with the terms of this Agreement (Performance Period). No renewals or extensions of the Agreement are permitted.

**D. Funding Requirements of Section 215.971(1), Florida Statutes (F.S.):**

1. The Grantee may only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Performance Period.
2. The Grantee shall refund to the Department any balance of unobligated funds that was advanced or paid to the Grantee.
3. The Grantee shall refund to the Department all funds paid in excess of the amount to which the Grantee or its subrecipients are entitled under the terms and conditions of the Agreement.

**E. Agreement Payment and Funding Considerations:**

1. Compensation. This is a cost reimbursement agreement. This Agreement shall not exceed \$500,000, and payment shall only be issued by the Department after acceptance of the Grantee's performance as set forth by the terms and conditions of this Agreement. The State's and the Department's performance and obligation to pay under this Agreement after the State fiscal year referenced in Section A, above, is contingent upon the fixed capital outlay funding remaining available for use by the Grantee for the purpose specified herein.
2. Payment Process. Subject to the terms and conditions established in this Agreement and the billing procedures established by the Department, the Department agrees to pay the Grantee in accordance with section 215.422, F.S. The applicable interest rate can be obtained at: <https://www.myfloridacfo.com/division/aa/local-governments/judgement-interest-rates.>
3. Grantee Rights. A Vendor Ombudsman has been established within the Department. The duties of this individual include acting as an advocate for grantees who may be experiencing problems in obtaining timely payment(s) from a State agency. The Vendor Ombudsman may be reached at (850) 413-5516.
4. Taxes. The Department is exempted from the payment of State sales and use tax and Federal Excise Tax. Unless otherwise provided by law, the Grantee, however, shall not be exempted from paying State sales and use tax to the appropriate governmental agencies, nor shall the Grantee be exempted from paying its suppliers for any taxes on materials used to fulfill its contractual obligations under this Agreement. The Grantee shall not use the Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement. The Grantee shall provide the Department its taxpayer identification number upon request.
5. Expenditures. All expenditures must be in compliance with the laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the State of Florida Reference Guide for State Expenditures, which can be obtained at: [https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/referenceguideforstateexpenditures4a8dd8e7f6fd4eae3eb12363d341f74.pdf?sfvrsn=ae70963d\\_2](https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/referenceguideforstateexpenditures4a8dd8e7f6fd4eae3eb12363d341f74.pdf?sfvrsn=ae70963d_2). The Grantee may not spend funds received under this Agreement for the purposes of lobbying the Florida legislature, the judicial branch, or a State agency.
6. Invoice Detail. Invoices submitted by the Grantee must fulfill all requirements specified in the SOW and include all supporting documentation, when applicable. The Grantee shall also submit invoices in sufficient detail to fulfill all applicable requirements of the State of Florida Reference Guide for State Expenditures. All charges for performance under this Agreement or for reimbursement of expenses authorized by the Department shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed.
7. Interim Payments. Payments will be made to the Grantee only after the Department's acceptance of the deliverable(s) per the deliverable payment points identified in the SOW; however, if the Department determines that circumstances warrant, the Department may accept partial performance and make partial payment for the partial performance.

8. Advance Payments. If authorized by sections 215.422(15) or 216.181(16), F.S., and approved in writing by the Department, the Grantee may be provided an advance as part of this Agreement.
9. Final Invoice. The Grantee shall submit the final invoice to the Department no later than sixty (60) days after the Agreement ends or is terminated. If the Grantee fails to do so, the Department may, at its sole discretion, refuse to honor any requests submitted after this time period and may consider the Grantee to have forfeited any and all rights to payment under this Agreement.

**F. Governing Laws of the State of Florida:**

1. Governing Law. The Grantee agrees that this Agreement is entered into in the state of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws, rules, and regulations of the State. Each Party shall perform its obligations herein in accordance with the terms and conditions of this Agreement. Without limiting the provisions of Section V., Dispute Resolution, the exclusive venue of any legal or equitable action that arises out of or relates to the Agreement shall be the appropriate State court in Leon County, Florida; in any such action, the Parties waive any right to jury trial.
2. Ethics. The Grantee shall comply with the requirements of sections 11.062 and 216.347, F.S. The Grantee shall not, in connection with this or any other agreement with the State, directly or indirectly:
  - a. offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or
  - b. offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee.

For purposes of subsection b., "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Department's Inspector General, or other authorized State official, the Grantee shall provide any type of information the Inspector General deems relevant to the Grantee's integrity or responsibility. Such information may include, but shall not be limited to, the Grantee's business or financial records, documents, or files of any type or form that refer to or relate to this Agreement. The Grantee shall retain such records in accordance with the record retention requirements of Part V of Attachment 2, Audit Requirements for Awards of State and Federal Financial Assistance.

3. Advertising. Subject to chapter 119, F.S., the Grantee shall not publicly disseminate any information concerning this Agreement without prior written approval from the Department, including, but not limited to, mentioning this Agreement in a press release or other promotional material, identifying the Department or the State as a reference, or otherwise linking the Grantee's name and either a description of the Agreement or the name of the Department or the State in any material published, either in print or electronically, to any entity that is not a Party to this Agreement, except potential or actual authorized distributors, dealers, resellers, or service representatives.
4. Sponsorship. As required by section 286.25, F.S., if the Grantee is a nongovernmental organization that sponsors a program that is financed wholly or in part by State funds, including any funds obtained through this Agreement, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (Grantee's name) and the State of Florida, Department of Financial Services." If the sponsorship reference is in written material, the words "State of Florida, Department of Financial Services" shall appear in the same size letters or type as the name of the Grantee.
5. Conflict of Interest. This Agreement is subject to chapter 112, F.S. The Grantee shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. The

Grantee shall also disclose the name of any State employee who owns, directly or indirectly, more than a five percent (5%) interest in the Grantee or its affiliates.

6. Records Retention. The Grantee shall retain all records made or received in conjunction with the Agreement for the longer of five (5) years after the end of the Performance Period and all pending matters or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <https://dos.myflorida.com/media/703328/gsl-sl-2020.pdf>). If the Grantee's record retention requirements terminate prior to the requirements stated herein, the Grantee may meet the Department's record retention requirements for this Agreement by transferring its records to the Department at that time, and by destroying duplicate records in accordance with section 501.171, F.S., and, if applicable, section 119.0701, F.S. The Grantee shall adhere to established information destruction standards such as those established by the National Institute of Standards and Technology Special Publication 800-88, "Guidelines for Media Sanitization" (2014). See <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-88r1.pdf>.
7. MyFloridaMarketPlace. Disbursements under this Agreement are disbursements of State financial assistance to a recipient as defined in the Florida Single Audit Act, section 215.97, F.S., and are exempt from the MyFloridaMarketPlace Transaction Fee pursuant to Rule 60A-1.031(6)(g), F.A.C. Payments will be made according to the SOW and not through the MyFloridaMarketPlace system.

#### **G. Return or Recoupment of Funds:**

1. If the Grantee or its independent auditor discovers that an overpayment has been made, the Grantee shall repay said overpayment within forty (40) calendar days without prior notification from the Department. In the event that the Department first discovers an overpayment has been made, the Department will notify the Grantee in writing. Should repayment not be made in a timely manner, the Department shall be entitled to charge interest at the lawful rate of interest on the outstanding balance beginning forty (40) calendar days after the date of notification or discovery. Refunds should be sent to the Department's Agreement Manager, and made payable to the "Department of Financial Services."
2. Notwithstanding the damages limitations of Section X., Limitation of Liability, if the Grantee's non-compliance with any provision of the Agreement results in additional costs or monetary loss to the Department or the State, the Department can recoup the costs or losses from monies owed to the Grantee under this Agreement or any other agreement between the Grantee and any State entity. In the event that the discovery of additional costs or losses arises when no monies are available under this Agreement or any other agreement between the Grantee and any State entity, the Grantee shall repay such costs or losses to the Department in full within thirty (30) days from the date of discovery or notification, unless the Department agrees, in writing, to an alternative timeframe.

#### **H. Audits and Records:**

1. Representatives of the Department, including the State's Chief Financial Officer, the State's Auditor General, and representatives of the federal government, shall have access to any of the Grantee's books, documents, papers, and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.
2. The Grantee shall maintain books, records, and documents in accordance with the generally accepted accounting principles to sufficiently and properly reflect all expenditures of funds provided by the Department under this Agreement.

3. The Grantee shall comply with all applicable requirements of section 215.97, F.S., and Attachment 2, Audit Requirements for Awards of State and Federal Financial Assistance. If the Grantee is required to undergo an audit, the Grantee shall disclose all related party transactions to the auditor.
4. The Grantee shall retain all its records, financial records, supporting documents, statistical records, and any other documents, including electronic storage media, pertinent to this Agreement in accordance with the record retention requirements of Part V of Attachment 2, Audit Requirements for Awards of State and Federal Financial Assistance. The Grantee shall cooperate with the Department to facilitate the duplication and transfer of such records or documents upon the Department's request.
5. The Grantee shall include the aforementioned audit and recordkeeping requirements in all approved subrecipient contracts and assignments.

**I. Employment Eligibility Verification: N/A**

**J. Non-Discrimination:**

The Grantee shall not unlawfully discriminate against any individual employed in the performance of this Agreement due to race, religion, color, sex, physical handicap unrelated to such person's ability to engage in this work, national origin, ancestry, or age. The Grantee shall provide a harassment-free workplace, and any allegation of harassment shall be given priority attention and action.

**K. Duty of Continuing Disclosure of Legal Proceedings and Instances of Fraud:**

1. The Grantee shall provide written notice to the Department disclosing any criminal litigation, investigation, or proceeding that arises during the Performance Period involving the Grantee, or, to the extent the Grantee is aware, any of the Grantee's subrecipients or contractors (or any of the foregoing entities' current officers or directors). The Grantee shall also provide written notice to the Department disclosing any civil litigation, arbitration, or proceeding that arises during the Performance Period, to which the Grantee (or, to the extent the Grantee is aware, any subrecipient or contractor hereunder) is a party, and which:
  - a. might reasonably be expected to adversely affect the viability or financial stability of the Grantee or any subrecipient or contractor hereunder; or
  - b. involves a claim or written allegation of fraud against the Grantee, or any subrecipient or contractor hereunder, by a governmental or public entity arising out of business dealings with governmental or public entities.

All notices under this Section must be provided to the Department within thirty (30) business days following the date that the Grantee first becomes aware of any such litigation, investigation, arbitration, or other proceeding (collectively, a "Proceeding"). Details of settlements that are prevented from disclosure by the terms of the settlement must be annotated as such.

2. This duty of disclosure applies to each officer and director of the Grantee, subrecipients, or contractors when any proceeding relates to the officer's or director's business or financial activities.
3. Instances of Grantee operational fraud or criminal activities, regardless of whether a legal proceeding has been initiated, shall be reported to the Department's Agreement Manager within twenty-four (24) hours of the Grantee being made aware of the incident.
4. The Grantee shall promptly notify the Department's Agreement Manager of any Proceeding relating to or affecting the Grantee's, subrecipient's, or contractor's business. If the existence of such Proceeding causes the State to conclude that the Grantee's ability or willingness to perform the Agreement is jeopardized, the Grantee shall be required to provide the Department's Agreement Manager all reasonable assurances requested by the Department to demonstrate that:

- a. the Grantee will be able to perform the Agreement in accordance with its terms and conditions; and
- b. the Grantee and/or its employees, agents, subrecipients, or contractor(s) have not and will not engage in conduct in performance under the Agreement that is similar in nature to the conduct alleged in such Proceeding.

**L. Assignments, Subgrants, and Contracts:**

1. Unless otherwise specified in the SOW or through prior written approval of the Department, the Grantee may not: 1) subgrant any of the funds provided to the Grantee by the Department under this Agreement; 2) contract its duties or responsibilities under this Agreement out to a third party; or 3) assign any of the Grantee's rights or responsibilities hereunder, unless specifically permitted by law to do so. Any such subgrant, contract, or assignment occurring without the prior approval of the Department shall be null and void. In the event the Department approves transfer of the Grantee's obligations, the Grantee remains responsible for all work performed and all expenses incurred in connection with the Agreement. In addition, this Agreement shall bind the successors, assigns, and legal representatives of the Grantee, and of any legal entity that succeeds the Grantee, to the Grantee's obligations to the Department.
2. The Grantee agrees to be responsible for all work performed and all expenses incurred in fulfilling the obligations of this Agreement. If the Department permits the Grantee to contract all or part of the work contemplated under this Agreement, including entering into contracts with vendors for services, it is understood by the Grantee that all such contract arrangements shall be evidenced by a written document containing all provisions necessary to ensure the contractor's compliance with applicable state and federal laws. The Grantee further agrees that the Department shall not be liable to the contractor for any expenses or liabilities incurred under the contract and that the Grantee shall be solely liable to the contractor for all expenses and liabilities incurred under the contract. The Grantee, at its expense, will defend the Department against such claims.
3. The Grantee agrees that the Department may assign or transfer its rights, duties, or obligations under this Agreement to another governmental entity upon giving prior written notice to the Grantee.
4. The Grantee agrees to make payments to any subrecipient or contractor within seven (7) working days after receipt of full or partial payments from the Department, unless otherwise stated in the agreement between the Grantee and the subrecipient or contractor. The Grantee's failure to pay its subrecipients or contractors within seven (7) working days will result in a statutory penalty charged against the Grantee and paid to the subrecipient or contractor in the amount of one-half of one (1) percent of the amount due per day from the expiration date of the period allowed herein for payment. Such statutory penalty shall be in addition to actual payments owed and shall not exceed fifteen (15) percent of the outstanding balance due (see section 287.0585, F.S.).

**M. Nonexpendable Property:**

1. For the requirements of this Section of the Agreement, "nonexpendable property" is the same as "property" as defined in section 273.02, F.S. (equipment, fixtures, and other tangible personal property of a non-consumable and nonexpendable nature, with a value or cost of \$5,000 or more, and a normal expected life of one year or more; hardback-covered bound books that are circulated to students or the general public, with a value or cost of \$25 or more; and hardback-covered bound books, with a value or cost of \$250 or more).
2. All nonexpendable property purchased under this Agreement shall be listed on the property records of the Grantee. For the purposes of section 273.03, F.S., the Grantee is the custodian of all nonexpendable property, and shall be primarily responsible for the supervision, control, and disposition of the property in his or her custody (but may delegate its use and immediate control to

a person under his or her supervision and may require custody receipts). The Grantee must submit an inventory report to the Department with the final expenditure report and inventory annually and maintain accounting records for all nonexpendable property purchased under the Agreement. The records must include information necessary to identify the property, which, at a minimum, must include the following: property tag identification number; description of the item(s); if a group of items, the number and description of the components; physical location; name, make, or manufacturer; year and/or model; manufacturer's serial number(s); if an automobile, the vehicle identification number and title certificate number; date of acquisition; cost or value at date of acquisition; date last inventoried; and the current condition of the item.

3. At no time shall the Grantee dispose of nonexpendable property purchased under this Agreement without the written permission of, and in accordance with instructions from, the Department. In addition to its plain meaning, "dispose of" includes selling, exchanging, transferring, distributing, gifting, and loaning. If the Grantee proposes to dispose of the nonexpendable property, or take any other action that will impact its ownership of the property or modify the use of the property other than for the purposes stated herein, the Department shall have the right, in its sole discretion, to demand that the Grantee reimburse the Department the fair market value of the impacted nonexpendable property.
4. The Grantee is responsible for any loss, damage, or theft of, and any loss, damage, or injury caused by the use of, nonexpendable property purchased with State funds and held in its possession for use in accordance with this Agreement. The Grantee shall immediately notify the Department, in writing, upon discovery of any property loss with the date and reason(s) for the loss.
5. The Grantee shall be responsible for the correct use of all nonexpendable property obtained using funds provided by this Agreement, and for the implementation of adequate maintenance procedures to keep the nonexpendable property in good operating condition.
6. A formal amendment to this Agreement is required prior to the purchase of any item of nonexpendable property not specifically listed in the approved Agreement budget (see SOW).
7. Title (ownership) to all nonexpendable property acquired with funds from this Agreement must be vested in the Department and said property shall be transferred to the Department upon completion or termination of the Agreement unless otherwise authorized in writing by the Department.

#### **N. Requirements Applicable to the Purchase of, or Improvements to, Real Property:**

If funding provided under this Agreement is used for the purchase of, or improvements to, real property, such funds are contingent upon the Grantee granting to the Department a security interest in the property in the amount of the funding provided by this Agreement for the purchase of, or improvements to, the real property for five (5) years from the date of purchase, the completion of the improvements, or as further required by law (see section 287.05805, F.S.).

#### **O. Insurance:**

The Grantee shall, at its sole expense, maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with the Agreement. Adequate insurance coverage is a material obligation of the Grantee, and the failure to maintain such coverage may void the Agreement. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers authorized to write policies in the State. Specific insurance requirements, if any, are listed in the SOW.

Upon execution of this Agreement, the Grantee shall provide the Department written verification of the existence and amount for each type of applicable insurance coverage. Within thirty (30) days of the effective date of the Agreement, the Grantee shall furnish the Department proof of applicable insurance coverage by standard ACORD form certificates of insurance. In the event that any applicable coverage is

cancelled by the insurer for any reason, the Grantee shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within fifteen (15) business days after the cancellation of coverage.

The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee.

**P. Intellectual Property Rights:**

Where activities supported by this Agreement result in the creation of intellectual property rights, the Grantee shall notify the Department, and the Department will determine whether the Grantee will be required to grant the Department a perpetual, irrevocable, royalty-free, nonexclusive license to use, and to authorize others to use for State government purposes, any resulting patented, copyrighted, or trademarked work products developed under this Agreement. The Department will also determine whether the Grantee will be required to pay all or a portion of any royalties resulting from such patents, copyrights, or trademarks.

**Q. Independent Contractor Status:**

It is mutually understood and agreed to that at all times during the Grantee's performance of its duties and responsibilities under this Agreement that Grantee is acting and performing as an independent contractor. The Department shall neither have nor exercise any control or direction over the methods by which the Grantee shall perform its work and functions other than as provided herein. Nothing in this Agreement is intended to or shall be deemed to constitute a partnership or joint venture between the Parties.

1. Unless the Grantee is a State agency, the Grantee (and its officers, agents, employees, subrecipients, contractors, or assignees), in performance of this Agreement, shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the State. Further, unless specifically authorized to do so, the Grantee shall not represent to others that, as the Grantee, it has the authority to bind the Department or the State.
2. Unless the Grantee is a State agency, neither the Grantee nor its officers, agents, employees, subrecipients, contractors, or assignees, are entitled to State retirement or State leave benefits, or to any other compensation of State employment as a result of performing the duties and obligations of this Agreement.
3. The Grantee agrees to take such actions as may be necessary to ensure that each subrecipient or contractor will also be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State.
4. Unless agreed to by the Department in the SOW, the Department will not furnish services of support (e.g., office space, office supplies, telephone service, secretarial, clerical support, etc.) to the Grantee or its subrecipient, contractor, or assignee.
5. The Department shall not be responsible for withholding taxes with respect to the Grantee's compensation hereunder. The Grantee shall have no claim against the Department for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, reemployment assistance benefits, or employee benefits of any kind. The Grantee shall ensure that its employees, subrecipients, contractors, and other agents, receive benefits and necessary insurance (health, workers' compensation, reemployment assistance benefits) from an employer other than the State.
6. At all times during the Performance Period, the Grantee must comply with the reporting and Reemployment Assistance contribution payment requirements of chapter 443, F.S.



**R. Electronic Funds Transfer:**

The Grantee agrees to enroll in Electronic Funds Transfer (EFT), offered by the State's Chief Financial Officer, within thirty (30) days of the date the last Party signed this Agreement. Copies of the authorization form and a sample blank enrollment letter can be found at: <http://www.myfloridacfo.com/Division/AA/Vendors/>.

Questions should be directed to the EFT Section at (850) 413-5517. Once enrolled, invoice payments will be made by EFT.

**S. Entire Agreement:**

The following documents are attached and incorporated into this Agreement, are considered an integral part of the Agreement, and embody the entire Agreement. This Agreement supersedes all previous oral or written communications, representations, or agreements on this subject. If there are any conflicting provisions between the documents that make up the Agreement, the following order of precedence applies:

- a. Attachment 1, Scope of Work;
- b. Pages 1 through 14 of this Agreement;
- c. Attachment 2, Audit Requirements for Awards of State and Federal Financial Assistance (with its Exhibit 1);
- d. Attachment 3, Index of Applicable Laws and Regulations;
- e. Addendum A, Public Records Requirements (all references in this addendum to "Contractor" shall be read to say "Grantee," and all references to "Contract" shall be read to say "Agreement");
- f. Appendix 1, Grantee's contract with its contractor for Design-Build work; and

**T. Time is of the Essence:**

Time is of the essence regarding the performance requirements set forth in this Agreement. The Grantee is obligated to timely complete the deliverables under this Agreement and comply with all other deadlines necessary to perform the Agreement, which include, but are not limited to, attendance of meetings or submittal of reports.

**U. Termination:**

1. Termination Due to the Lack of Funds.

If funds become unavailable for the Agreement's purpose, such event will not constitute a default by the Department or the State. The Department agrees to notify the Grantee in writing at the earliest possible time if funds are no longer available. In the event that any funding identified by the Grantee as funds to be provided for completion of the project as described herein becomes unavailable, including if any State funds upon which this Agreement depends are withdrawn or redirected, the Department may terminate this Agreement by providing written notice to the Grantee. The Department will be the final authority as to the availability of funds.

2. Termination for Cause.

The Department may terminate the Agreement if the Grantee fails to:

- a. satisfactorily complete the deliverables within the time specified in the Agreement;
- b. maintain adequate progress, thus endangering performance of the Agreement;
- c. honor any term of the Agreement; or
- d. abide by any statutory, regulatory, or licensing requirement.

The Grantee shall continue to perform any work not terminated. The Department's rights and remedies in this clause are in addition to any other rights and remedies provided by law or under

the Agreement. The Grantee shall not be entitled to recover any cancellation charges or lost profits. Upon termination, the Department may require that the Grantee return to the Department any funds that were used for purposes that are considered ineligible under:

- a. this Agreement; or
  - b. applicable program laws, rules, and regulations governing the use of funds under this Agreement.
3. Termination for Convenience.  
The Department may terminate this Agreement, in whole or in part, by providing written notice to the Grantee that the Department determined, in its sole discretion, it is in the State's interest to do so. The Grantee shall not furnish any product after it receives the Department's notice of termination, except as necessary to complete the continued portion of the Agreement, if any. The Grantee will not be entitled to recover any cancellation charges or lost profits.
4. Grantee's Responsibilities upon Termination.  
If the Department provides a notice of termination to the Grantee, except as otherwise specified by the Department in that notice, the Grantee shall:
- a. Stop work under this Agreement on the date and to the extent specified in the notice.
  - b. Complete performance of such part of the work that has not been terminated by the Department, if any.
  - c. Take such action as may be necessary, or as the Department may specify, to protect and preserve any property which is in the possession and custody of the Grantee, and in which the Department has or may acquire an interest.
  - d. Transfer, assign, and make available to the Department all property and materials belonging to the Department upon the effective date of termination of this Agreement. No extra compensation will be paid to the Grantee for its services in connection with such transfer or assignment.

## **V. Dispute Resolution:**

Unless otherwise stated in the SOW, disputes concerning performance under the Agreement will be decided by the Department, who shall reduce the decision to writing and serve a copy to the Grantee. In the event a Party is dissatisfied with the dispute resolution decision, jurisdiction for any dispute arising under the terms of the Agreement will be in State courts, and the venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the Parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

## **W. Indemnification:**

1. The Grantee shall be fully liable for the actions of its agents, employees, partners, subrecipients, or contractors and shall fully indemnify, defend, and hold harmless the State and the Department, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the Grantee, its agents, employees, partners, subrecipients, or contractors provided, however, that the Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or the Department.
2. Further, the Grantee shall fully indemnify, defend, and hold harmless the State and the Department from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right provided, however, that the foregoing obligation shall not apply to the Department's misuse or modification of the Grantee's products or the

Department's operation or use of the Grantee's products in a manner not contemplated by the Agreement. If any product is the subject of an infringement suit, or in the Grantee's opinion is likely to become the subject of such a suit, the Grantee may at its sole expense procure for the Department the right to continue using the product or to modify it to become non-infringing. If the Grantee is not reasonably able to modify or otherwise secure the Department the right to continue using the product, the Grantee shall remove the product and refund the Department the amounts paid in excess of a reasonable rental for past use. The Department will not be liable for any royalties.

3. The Grantee's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or the Department giving the Grantee:
  - a. written notice of any action or threatened action;
  - b. the opportunity to take over and settle or defend any such action at the Grantee's sole expense; and
  - c. assistance in defending the action at the Grantee's sole expense.

The Grantee shall not be liable for any cost, expense, or compromise incurred or made by the State or the Department in any legal action without the Grantee's prior written consent, which shall not be unreasonably withheld.

NOTE: For the avoidance of doubt, if the Grantee is a State agency or subdivision, as defined in section 768.28(2), F.S., pursuant to section 768.28(19), F.S., neither Party indemnifies nor insures or assumes any liability to the other Party for the other Party's negligence.

#### **X. Limitation of Liability:**

Unless otherwise specifically enumerated in this Agreement, no Party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the Agreement requires the Grantee to back-up data or records), even if the Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and the Department may, in addition to other remedies available to them at law or in equity and upon notice to the Grantee, retain such monies from amounts due the Grantee as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against them.

#### **Y. Force Majeure and Notice of Delay from Force Majeure:**

Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor caused by the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subrecipients, contractors, or suppliers if no alternate source of supply is available. However, in the event a delay arises from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting damages, costs, delays, or disruptions to the project in accordance with the Party's performance requirements under this Agreement. In the case of any delay the Grantee believes is excusable under this Section, the Grantee shall provide written notice to the Department describing the delay or potential delay and the cause of the delay within: ten (10) calendar days after the cause that creates or will create the delay first arose (if the Grantee could reasonably foresee that a delay could occur as a result); or five (5) calendar days after the date the Grantee first had reason to believe that a delay could result (if the delay is not reasonably foreseeable). **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this Section is a condition precedent to such remedy. The Department, in its sole discretion, will determine if the delay is

excusable under this Section and will notify the Grantee of its decision in writing. The Grantee shall not assert a claim for damages, other than for an extension of time, against the Department. The Grantee will not be entitled to an increase in the Agreement price or payment of any kind from the Department for any reason. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this Section, after the causes have ceased to exist, the Grantee shall resume performance, unless the Department determines, in its sole discretion, that the delay will significantly impair the ability of the Grantee to timely complete its obligations under this Agreement, in which case, the Department may terminate the Agreement in whole or in part.

**Z. Mandatory Disclosure Requirements:**

1. Conflict of Interest. This Agreement is subject to chapter 112, F.S. The Grantee shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. The Grantee shall also disclose the name of any State employee who owns, directly or indirectly, more than a five percent (5%) interest in the Grantee or its affiliates.
2. Convicted Vendor List. The Grantee has a continuous duty to disclose to the Department if the Grantee or any of its affiliates, as defined by section 287.133(1)(a), F.S., are placed on the convicted vendor list. Pursuant to section 287.133(2)(a), F.S.: “A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.”
3. Discriminatory Vendor List. The Grantee has a continuous duty to disclose to the Department if the Grantee or any of its affiliates, as defined by section 287.134(1)(a), F.S., are placed on the discriminatory vendor list. Pursuant to section 287.134(2)(a), F.S.: “An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.”
4. Antitrust Violator Vendor List. The Grantee has a continuous duty to disclose to the Department if the Grantee or any of its affiliates, as defined by section 287.137(1)(a), F.S., are placed on the antitrust violator vendor list. Pursuant to section 287.137(2)(a), F.S.: “A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.”
5. Department Inspection of Records. Pursuant to section 216.1366, F.S., the Grantee shall permit the Department to inspect the Grantee’s financial records, papers, and documents that are directly related to the performance of the Agreement or the expenditure of state funds and the Contractor’s programmatic records, papers, and documents which the Department determines are necessary to monitor the performance of the Agreement or to ensure that the terms of the

Agreement are being met. The Contractor shall provide such records, papers, and documents to the Department's Contract Manager within 10 business days after a request is made to the Contractor.

6. **Foreign Gifts and Contracts.** The Grantee shall comply with any applicable disclosure requirements in section 286.101, F.S. Pursuant to section 286.101(7), F.S.: "In addition to any fine assessed under [section 286.101(7)(a)], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

**AA. Severability:**

If any provision of this Agreement, in whole or in part, is held to be void or unenforceable by a court of competent jurisdiction, that provision will be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions remain in full force and effect.

**BB. Survival:**

Any right or obligation of the Parties in this Agreement which, by its express terms or nature and context, is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.

**CC. Execution in Counterparts:**

This Agreement may be executed in counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

**DD. Contact Information for Grantee and Department Contacts:**

**Grantee's Payee:**

**Grantee's Agreement Manager:**

City of Lake City	Donna Duncan
225 NW Main Blvd	205 N Marion Ave.
Lake City, FL 32055	Lake City, FL 32055
386-752-3312	386-719-5800
wehingerj@lcfla.com	duncand@lcfla.com

**Department's Agreement Manager:**

Melissa Dembicer  
200 E. Gaines Street  
Tallahassee, FL 32399-0340  
(850) 413-3606  
Fax: (850) 922-1235  
Melissa.Dembicer@myfloridacfo.com

In the event that any of the information provided in this Section changes after the execution of this Agreement, the Party making such change shall provide written notice to the other Party of such change. Such changes do not require a formal amendment to the Agreement.

**EE. Notices:**

The contact information provided in the immediately preceding Section shall be used by the Parties for all communications under this Agreement. Where the terms “written notice” or notice “in writing” are used to specify a notice requirement herein, said notice will be deemed to have been given:

1. when personally delivered;
2. when transmitted via facsimile with confirmation of receipt or email with confirmation of receipt if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid);
3. the day following the day (except if not a business day, then the next business day) on which the same has been delivered prepaid to a recognized overnight delivery service; or
4. on the date actually received or the date of the certification of receipt.

**IN WITNESS THEREOF**, and in consideration of the mutual covenants set forth above and in the attachments hereto, the Parties have caused to be executed this Agreement by their undersigned duly authorized officials.

Grantee: City of Lake City

Department of Financial Services:

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment 1**  
**SCOPE OF WORK (SOW)**

- 1. Project Description.** Line 2431A of the General Appropriations Act for the 2022-2023 State fiscal year provides for the appropriation of \$500,000 to the Grantee for the construction of a fire station to serve the needs of the local community.

Funding under this Agreement will be used for the construction of a fire station located at 383 NW Hall of Fame Drive, Lake City, Florida 32055. The fire station construction must comply with the requirements of the contract the Grantee has entered with its contractor, which is attached hereto and incorporated by reference herein. The construction of the fire station will include the construction of the 6,800 square foot building consisting of 2 apparatus bays, with support spaces, day room, kitchen, seven (7) bunk rooms, and patio. The project construction costs are estimated at \$2,900,000. The Grantee will expend \$2,400,000 in local funds.

- 2. Grantee Responsibilities.** The Grantee shall:

- a. Complete all pre-construction elements for the construction, which include, but are not limited to, design development, design plans, engineering plans, and construction site mobilization.
- b. Submit to the Department, prior to beginning construction of the fire station, copies of:
  - i. all ownership documents;
  - ii. all contracts and subcontracts in furtherance of this Agreement; and
  - iii. written evidence that all construction services were competitively procured to the extent required by law.
- c. Complete construction of the fire station in accordance with: the design and construction plans submitted to the Department; the requirements set forth in this Agreement; and any applicable local, State (including, but not limited to, chapter 255, F.S.), and federal laws and regulations.
- d. Provide the Department with any amendments made to the contracts and subcontracts issued in furtherance of this Agreement. Note: It will be in the Department's sole discretion to determine whether such amendments require a written amendment to this Agreement.

- 3. Department's Responsibilities.**

- a. Review the Grantee's reports, invoices, and other records and reconcile them to supporting records.
- b. Monitor the Grantee's progress as it deems necessary, which may include site visits, to verify that the deliverable is being performed in accordance with this Agreement.
- c. Process payments to the Grantee for costs that are allowable, reasonable, and necessary.

*-Remainder of Page Left Intentionally Blank-*

**4. Deliverable.**

The Grantee shall complete the following deliverable:

<b>Table 1 Deliverables</b>		
<b>Deliverable No. 1 – Tasks to Design-Build the Fire Station.</b>		
<b>Tasks</b>	<b>Documentation</b>	<b>Financial Consequences</b>
Complete all work to construct the fire station in accordance with the contract between the Grantee and the contractor performing the work, which is attached as Appendix 1.	<ol style="list-style-type: none"> <li>1) Invoice in accordance with Section 6, below.</li> <li>2) The Grantee shall submit copies of:               <ol style="list-style-type: none"> <li>a. any documents demonstrating satisfactory performance in completion of the tasks listed in the contract which is attached as Appendix 1;</li> <li>b. proof of release of any liens that are associated with the work for which payment is requested; documentation to support performance by and payments made by contractor to subcontractors and suppliers for satisfaction of contractor’s obligations under its contract with the Grantee; and</li> <li>c. cleared checks, electronic funds transfers, or bank statements showing that payment was issued to the Grantee’s contractor.</li> </ol> </li> </ol>	Failure to pass each required construction phase inspection will result in non-payment of the associated invoiced task(s) until passage of the construction phase inspection. The Department will not reimburse the Grantee the amount of fees assessed for any re-inspection.
<b>TOTAL REIMBURSABLE AMOUNT NOT TO EXCEED \$500,000</b>		

**5. Reconciliation Report.**



Pursuant to section 215.971, F.S., the Department's Agreement Manager must produce a final reconciliation report reconciling all funds paid out to the Grantee under this Agreement against all funds expended by the Grantee in performance of this Agreement. If the Department's Agreement Manager requests documentation from the Grantee's Agreement Manager for this purpose, Grantee must submit such documentation to the Department within ten (10) business days of receipt of the Department's request.

## **6. Invoice Submittal and Payment Schedule.**

The Grantee shall provide itemized invoices for all portions of the deliverable rendered during that period of time. After receipt of the invoice, and in accordance with the payment provisions established in Section E of the Agreement, the Department shall disburse the amount of funds approved by the Department.

The Grantee shall submit the following documents with the itemized invoice:

- a. A cover letter signed by the Grantee's Agreement Manager certifying that the costs being claimed in the invoice package:
  - i. are specifically for the project represented to the State in the budget appropriation;
  - ii. are for one or more of the construction components listed in the deliverable in Section 4, Deliverable;
  - iii. have been paid; and
  - iv. were incurred after the date specified in Section C, Performance Period, of the Agreement document, and prior to the end of the Performance Period.
- b. All documentation (specified in Section 4, Deliverable) necessary to demonstrate that progress on the project has been made and the work being invoiced has been completed in accordance with the requirements of this Agreement.

The Department may require any other information from the Grantee that the Department deems necessary to verify performance in accordance with this Agreement.

## **7. Financial Consequences for Failure to Timely and Satisfactorily Perform.**

Failure to complete the required duties outlined in the SOW shall result in the rejection of the invoice, and, as stated above in Section 4, Deliverable, if re-inspection is invoiced, the Department will reduce the invoice by that amount.

This provision for financial consequences shall not affect the Department's right to terminate the Agreement as provided elsewhere in the Agreement.

## **8. Disposition of Property.**

- a. Pursuant to Section M, Nonexpendable Property, of this Agreement, upon satisfactory completion of the requirements of the Agreement, the Grantee is authorized to retain ownership of any nonexpendable property purchased under this Agreement; however, the Grantee hereby grants to the Department a right of first refusal in all such property prior to disposition of any such property during its depreciable life, in accordance with the depreciation schedule in use by the Grantee, but not to exceed five (5) years following the termination of the Agreement. The Grantee shall provide written notice of any such planned disposition and await the Department's response prior to disposing the property. "Disposition" as used herein, includes, but is not limited to, the Grantee no

longer using the nonexpendable property for the uses authorized herein; and the sale, exchange, transfer, trade-in, or disposal of any such nonexpendable property. The Department, in its sole discretion, may require the Grantee to refund to the Department the fair market value of the nonexpendable property at the time of disposition rather than taking possession of the nonexpendable property.

- b. Upon satisfactory completion of the requirements of this Agreement, the Grantee is authorized to retain ownership of the real property improved under this Agreement; however, for five (5) years thereafter the Grantee must provide written notice to the Department of any circumstance that:
  - i. will impact or has impacted, in any way, the Grantee's ownership of such property; or
  - ii. will modify or has modified the use of such property from the purposes authorized herein.

Such notice must be provided within ten (10) business days of learning of the event that will result or has resulted in either circumstance. If either of these circumstances arise, the Department will have the right, within its sole discretion, to demand that the Grantee reimburse the Department for part or all of the funding provided to the Grantee under this Agreement.

**9. Failure to Complete Project Timely.**

Upon completion of the project, the Grantee shall submit to the Department a copy of the Certificate of Occupancy and photos of the completed project. If the Grantee fails to complete the project within five (5) years after the total maximum amount for Deliverable No. 1 has been paid, the Department will have the right, in its sole discretion, to demand that the Grantee reimburse the Department for part or all of the funding provided to the Grantee under this Agreement.

*- End of Attachment 1 (Scope of Work) -*

**Appendix 1**

Grantee's Contract with its Contractor for Design-Build Work

**CITY COUNCIL RESOLUTION NO. 2021-111**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AWARDED A CONTRACT FOR THE CONSTRUCTION OF THE LAKE CITY FIRE STATION NUMBER TWO TO OELRICH CONSTRUCTION, INC.; PROVIDING FOR THE CITY MANAGER TO AUTHORIZE THE PROVISION OF LABOR, EQUIPMENT, AND MATERIALS FOR SITE WORK TO BE PERFORMED BY THE CITY; PROVIDING FOR A CONTRACTUAL GUARANTEED MAXIMUM PRICE OF \$2,425,275.00, TO BE PAID TO OELRICH CONSTRUCTION, INC.; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lake City, Florida (hereinafter the "City") requires the construction of a fire station (No. 2) on the west side of the City (hereinafter the "Project"); and

**WHEREAS**, section 2-178(d) of the City Code requires the procurement of supplies and contractual services based on a competitive bid process and a formal contract to be entered when procuring services valued in excess of \$20,000.00; and

**WHEREAS**, due to the anticipated costs of the Project, competing proposals were solicited and received, and negotiations were conducted with the highest-ranking proposer, and now the city administration recommends that the Project be awarded to Oelrich Construction Inc. (hereinafter "Oelrich"); and

**WHEREAS**, the city administration has recommended to the City Council that the City is to provide certain site work related to the Project to offset the costs of the Project; and

**WHEREAS**, the City Council finds that it is in the City's best interest to award the Project to Oelrich pursuant to and in accordance with the terms, provisions, conditions, and requirements of the *Standard Form of Agreement Between Owner and Design-Builder* (hereinafter the "Agreement") attached hereto as "Exhibit A" and to accept the recommendation of the city administration that site work related to the Project will be performed by the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF  
THE CITY OF LAKE CITY, FLORIDA, AS FOLLOWS:**

**Section 1.** The above recitals are all true and accurate and are incorporated herein and made a part of this Resolution.

**Section 2.** The City Council hereby authorizes and directs the Mayor to execute the attached Agreement with Oelrich Construction, Inc.

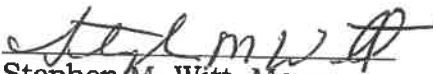
**Section 3.** The City Manager and City Attorney are authorized to make such reasonable changes and modifications to the Agreement as may be deemed necessary to be in the best interest of the City and its citizens. Provided however, that any such changes or modifications shall not cause the payment to Oelrich to exceed the Agreement pricing. The Mayor is authorized and directed to execute and deliver the Agreement in the name of, and on behalf of, the City with such changes, amendments, modifications, omissions, and additions made by the City Manager and City Attorney. Execution by the Mayor and Oelrich shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions, and additions.

*[The remainder of the page has been left blank intentionally.]*

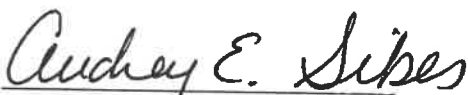
**Section 4.** Effective Date. This resolution shall take effect immediately upon adoption.

**PASSED AND ADOPTED** at a meeting of the City Council this 19<sup>th</sup> day of July 2021.


**CITY OF LAKE CITY, FLORIDA**

By:   
Stephen M. Witt, Mayor

ATTEST:

By:   
Audrey E. Sikes, City Clerk

APPROVED AS TO FORM AND LEGALITY:

By:   
Frederick L. Koberlein, Jr.,  
City Attorney


**AIA** Document A141™ – 2014

CONTRACT #

2021-090

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

ENTERED BY

Kep

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year two thousand twenty-one  
(In words, indicate day, month and year.)

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

City of Lake City  
205 North Marion Avenue  
Lake City, FL 32055  
Phone: 386-719-5768

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

Oelrich Construction, Inc.  
275 NW 137th Drive, Suite A  
Jonesville, FL 32669  
Tel: 352-745-7877  
Fax: 352-745-7878

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

Lake City Fire Station #2  
383 New Hall of Fame Drive  
Lake City, Florida 32055

Project consists of a new Fire Station facility located at 383 NW Hall of Fame Drive. The Fire Station will be approximately 6,800 square feet consisting of two apparatus bays with support spaces, day room, kitchen, seven (7) bunk rooms and patio. The construction budget is \$2.3 million and is anticipated to be completed in twelve (12) months from notice of award.

The Owner and Design-Builder agree as follows.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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

Init.

## TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	COMPENSATION AND PROGRESS PAYMENTS
3	GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
4	WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
6	CHANGES IN THE WORK
7	OWNER'S RESPONSIBILITIES
8	TIME
9	PAYMENT APPLICATIONS AND PROJECT COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	UNCOVERING AND CORRECTION OF WORK
12	COPYRIGHTS AND LICENSES
13	TERMINATION OR SUSPENSION
14	CLAIMS AND DISPUTE RESOLUTION
15	MISCELLANEOUS PROVISIONS
16	SCOPE OF THE AGREEMENT

## TABLE OF EXHIBITS

A	DESIGN-BUILD AMENDMENT
B	INSURANCE AND BONDS
C	SUSTAINABLE PROJECTS

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 Owner's Criteria

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

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

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

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

Based on (bridging) design criteria documents dated April 1, 2021 by Passero Associates.

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

Init.

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User Notes:

(1230333299)



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

Refer to Section 1.1.1

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

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

Project consists of a new Fire Station facility located at 383 NW Hall of Fame Drive. The Fire Station will be approximately 6,800 square feet consisting of two apparatus bays with support spaces, day room, kitchen, seven (7) bunk rooms and patio. The construction budget is \$2,425,275 million and is anticipated to be completed in twelve (12) months from notice of award.

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

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

None.

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

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

None

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

\$2,425,275 million

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

**.1** Design phase milestone dates:

Completed

**.2** Submission of Design-Builder Proposal:

Completed

**.3** Final Design (by Design Building) completion date:

October 4, 2021

**.4** Substantial Completion date:

July 1, 2021

**.5** Other milestone dates:

TBD

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

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

.1 Architect

None

.2 Consultants

None

.3 Contractors

None

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

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

None

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

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

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

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

## § 1.2 Project Team

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

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

City of Lake City  
205 North Marion Avenue  
Lake City, FL 32055

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

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

Justin Vollenweider  
Passero Associates LLC  
4730 Casa Cola Way - Suite 200  
St. Augustine, FL 32095  
Phone: 904.757.6106

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

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

Init.

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User Notes:

(1230333299)

None

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

Matthew Marino  
Vice President  
275 NW 137th Drive, Suite A  
Jonesville, FL 32669  
Tel: 352-745-7877  
Fax: 352-745-7878

**§ 1.2.5** Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

**§ 1.3 Binding Dispute Resolution**

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

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

- Arbitration pursuant to Section 14.4  
 Litigation in a court of competent jurisdiction  
 Other: (Specify)

**§ 1.4 Definitions**

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

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

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

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

**§ 1.4.5 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s),

Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

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

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

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

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

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

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

**§ 1.4.12 Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

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

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

**§ 1.4.15 Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

## ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

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

**§ 2.1.1** Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

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

One hundred fifty thousand dollars (\$150,000) per the Design Build Proposal dated 6/10/2021.

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

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

See the Design Build Proposal Dated 6/10/2021.

**Individual or Position**

**Rate**

**§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment**

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of \_\_\_\_\_ percent ( %) of the expenses incurred.

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

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

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

%

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

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

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

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

**§ 3.1 General**

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

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

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

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

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

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

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

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

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

#### § 3.1.8 **Progress Reports**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.1.13 **Royalties, Patents and Copyrights**

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

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

#### § 3.1.14 Indemnification

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

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

#### § 3.1.15 Contingent Assignment of Agreements

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

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

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

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

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

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

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

#### § 4.1 General

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

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement,



installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

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

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

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

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

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

#### § 4.3 Preliminary Design

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

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

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

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

#### § 4.4 Design-Builder's Proposal

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

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;

- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

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

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

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

### § 5.1 Construction Documents

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

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

### § 5.2 Construction

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

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

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

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

### § 5.3 Labor and Materials

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

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

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

#### § 5.4 Taxes

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

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

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

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

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

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

#### § 5.6 Allowances

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

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

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

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

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

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

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

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

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

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

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

**§ 5.9 Use of Site**

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

**§ 5.10 Cutting and Patching**

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

**§ 5.11 Cleaning Up**

**§ 5.11.1** The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

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

## **§ 5.12 Access to Work**

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

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

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

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

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

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

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

## **§ 5.14 Mutual Responsibility**

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

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

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

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

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

## **§ 5.15 Owner's Right to Clean Up**

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

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## ARTICLE 6 CHANGES IN THE WORK

### § 6.1 General

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

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

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

### § 6.2 Change Orders

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

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

### § 6.3 Change Directives

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 7 OWNER'S RESPONSIBILITIES

### § 7.1 General

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

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

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

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

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

Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

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

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

**§ 7.2.5** The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

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

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

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

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

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

### **§ 7.3 Submittals**

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

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

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

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

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

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

#### § 7.8 Owner's Right to Stop Work

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

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

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

### ARTICLE 8 TIME

#### § 8.1 Progress and Completion

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

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

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

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

**§ 8.2.1** If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

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

**§ 8.2.3** This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

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

### **§ 9.1 Contract Sum**

The Contract Sum is stated in the Design-Build Amendment.

### **§ 9.2 Schedule of Values**

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

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

**§ 9.3.1** At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

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

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

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

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

#### § 9.4 Certificates for Payment

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

#### § 9.5 Decisions to Withhold Certification

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

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

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

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

#### § 9.6 Progress Payments

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

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

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

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the

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

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

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

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

### **§ 9.7 Failure of Payment**

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

### **§ 9.8 Substantial Completion**

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

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

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

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

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

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

**§ 9.9 Partial Occupancy or Use**

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

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

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

**§ 9.10 Final Completion and Final Payment**

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

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

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

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- § 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
  - .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
  - .3 terms of special warranties required by the Design-Build Documents.

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible,

written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 Hazardous Materials

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

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

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such claim, damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

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

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

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

### § 10.4 Emergencies

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

## ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

### § 11.1 Uncovering of Work

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

### § 11.2 Correction of Work

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

### § 11.2.2 After Substantial Completion

**§ 11.2.2.1** In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

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

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

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

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



### **§ 11.3 Acceptance of Nonconforming Work**

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

## **ARTICLE 12 COPYRIGHTS AND LICENSES**

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

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

**§ 12.3** Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

**§ 12.3.1** The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

**§ 12.3.2** In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

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

**§ 13.1.1** If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice

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to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

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

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

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

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

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

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

### § 13.2.1 Termination by the Design-Builder

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

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

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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

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

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

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

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

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

**§ 13.2.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

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

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

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

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

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

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

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

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

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

**§ 13.2.4.3** In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

### § 14.1 Claims

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

**§ 14.1.2 Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

### § 14.1.3 Notice of Claims

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

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

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

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

### § 14.1.6 Claims for Additional Time

**§ 14.1.6.1** If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 14.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

### § 14.1.7 Claims for Consequential Damages

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

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

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

Init.

## § 14.2 Initial Decision

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

## § 14.2.2 Procedure

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

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

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

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

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

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

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

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

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

## § 14.3 Mediation

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

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event,

mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

#### § 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### § 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

### ARTICLE 15 MISCELLANEOUS PROVISIONS

#### § 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

#### § 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of

the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 15.2.2** The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

**§ 15.2.3** If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### **§ 15.3 Written Notice**

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

### **§ 15.4 Rights and Remedies**

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

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

### **§ 15.5 Tests and Inspections**

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

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

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

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

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

Init.

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

**§ 15.6 Confidential Information**

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

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

**§ 15.7 Capitalization**

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

**§ 15.8 Interpretation**

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

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

**ARTICLE 16 SCOPE OF THE AGREEMENT**

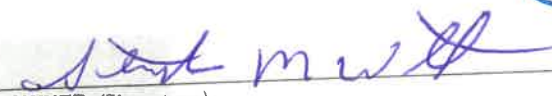
§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed

.6 Other:

Oelrich Construction Lake City Fire Station #2 Design Build Proposal dated June 10, 2021.

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

  
OWNER (Signature)

Mayor

  
DESIGN-BUILDER (Signature)

Ivan Oelrich, President

Init.



(Printed name and title)

(Printed name and title)

Attest

*Audrey E. Sebes*  
\_\_\_\_\_  
City Clerk

*[Signature]*  
\_\_\_\_\_  
City Attorney



# **Additions and Deletions Report for AIA® Document A141™ – 2014**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:06:20 ET on 06/25/2021.

## **PAGE 1**

**AGREEMENT** made as of the                      day of                      in the year two thousand twenty-one

...

City of Lake City  
205 North Marion Avenue  
Lake City, FL 32055  
Phone: 386-719-5768

...

Oelrich Construction, Inc.  
275 NW 137th Drive, Suite A  
Jonesville, FL 32669  
Tel: 352-745-7877  
Fax: 352-745-7878

...

Lake City Fire Station #2  
383 New Hall of Fame Drive  
Lake City, Florida 32055  
Project consists of a new Fire Station facility located at 383 NW Hall of Fame Drive. The Fire Station will be approximately 6,800 square feet consisting of two apparatus bays with support spaces, day room, kitchen, seven (7) bunk rooms and patio. The construction budget is \$2.3 million and is anticipated to be completed in twelve (12) months from notice of award.

## **PAGE 2**

Based on (bridging) design criteria documents dated April 1, 2021 by Passero Associates.

## **PAGE 3**

Refer to Section 1.1.1

...

Project consists of a new Fire Station facility located at 383 NW Hall of Fame Drive. The Fire Station will be approximately 6,800 square feet consisting of two apparatus bays with support spaces, day room, kitchen, seven (7) bunk rooms and patio. The construction budget is \$2,425,275 million and is anticipated to be completed in twelve (12) months from notice of award.

...

None.

...

None

...

\$2,425,275 million

...

Completed

...

Completed

.3 ed completion dates:Final Design (by Design Building) completion date:

October 4, 2021

...

July 1, 2021

...

TBD

**PAGE 4**

None

...

None

...

None

...

None

...

City of Lake City  
205 North Marion Avenue  
Lake City, FL 32055

...

Justin Vollenweider  
Passero Associates LLC  
4730 Casa Cola Way - Suite 200  
St. Augustine, FL 32095

Phone: 904.757.6106

PAGE 5

None

...

Matthew Marino  
Vice President  
275 NW 137th Drive, Suite A  
Jonesville, FL 32669  
Tel: 352-745-7877  
Fax: 352-745-7878

...

Arbitration pursuant to Section 14.4

PAGE 6

One hundred fifty thousand dollars (\$150,000) per the Design Build Proposal dated 6/10/2021.

PAGE 7

See the Design Build Proposal Dated 6/10/2021.

PAGE 34

- ~~3~~ AIA Document A141™ 2014, Exhibit B, Insurance and Bonds
- ~~4~~ AIA Document A141™ 2014, Exhibit C, Sustainable Projects, if completed
- ~~5~~ AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed;  
or the following:

...

Oelrich Construction Lake City Fire Station #2 Design Build Proposal dated June 10, 2021.

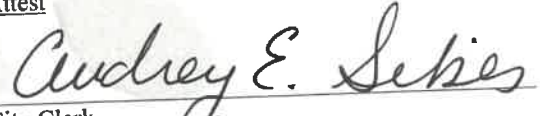
...

Mayor 

PAGE 35

  
Ivan Oelrich, President

Attest

  
City Clerk

  
City Attorney

# **Certification of Document's Authenticity**

## **AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:06:20 ET on 06/25/2021 under Order No. 7433320074 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

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

\_\_\_\_\_  
*(Dated)*

FLK/aj  
1/31/2022  
2/2/2022

**CITY COUNCIL RESOLUTION NO. 2022-011**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AUTHORIZING THE EXECUTION OF THE DESIGN-BUILD AMENDMENT TO THE CONTRACT WITH OELRICH CONSTRUCTION, INC.; PROVIDING FOR THE DESIGN AND CONSTRUCTION OF A SECOND FIRE STATION; PROVIDING FOR A CONTRACTUAL GUARANTEED MAXIMUM PRICE OF \$2,747,429.00; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on July 19, 2021, the City of Lake City, Florida (hereinafter the "City") and Oelrich Construction, Inc. (hereinafter "Oelrich") entered into an agreement for the design and construction of a fire station (No. 2) (hereinafter the "Agreement") pursuant to City Council Resolution No. 2021-111; and

**WHEREAS**, the Agreement required Oelrich to present a design and anticipated construction costs of the fire station as an amendment to the Agreement; and

**WHEREAS**, Oelrich has presented a design to the City administration that includes anticipated construction costs a copy of which is attached hereto and titled *AIA Document A141 – 2014 Exhibit A Design-Build Amendment* (hereinafter the "Amendment"); and

**WHEREAS**, the City administration has advised the City Council of the need for permitting and easements from third-parties prior to initiating the construction of the fire station; and

**WHEREAS**, the City Council finds that it is in the City's best interest to approve the Amendment for the design and construction of the fire station contingent upon the approval of any and all permits required by federal, state, and local government agencies as well as the receipt of any easements related to the construction and operation of the fire station.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AS FOLLOWS:**

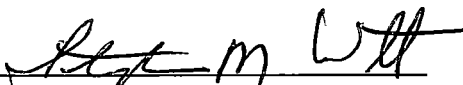
**Section 1.** The above recitals are all true and accurate and are incorporated herein and made a part of this Resolution.

**Section 2.** The City Council hereby authorizes the Mayor to execute the attached Amendment after the City administration confirms that all necessary permits required by federal, state, or local government agencies have been approved and any easements related to the construction and operation of the fire station have been received.

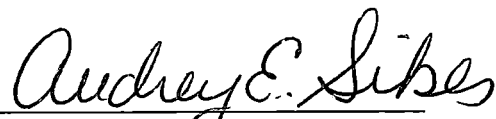
**Section 3.** Effective Date. This resolution shall take effect immediately upon adoption.

**PASSED AND ADOPTED** at a meeting of the City Council this 7<sup>th</sup> day of February 2022.

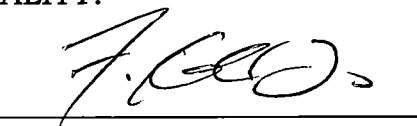
**CITY OF LAKE CITY, FLORIDA**

By:   
Stephen M. Witt, Mayor

ATTEST:

By:   
Audrey E. Sikes, City Clerk

APPROVED AS TO FORM AND LEGALITY:

By:   
Frederick L. Koberlein, Jr.,  
City Attorney



# AIA<sup>®</sup> Document A141™ – 2014 Exhibit A

## Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the nineteenth day of July in the year two thousand twenty-one (the "Agreement")  
*(In words, indicate day, month and year.)*

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

Lake City Fire Station #2  
383 New Hall of Fame Drive  
Lake City, Florida 32055

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

City of Lake City  
205 North Marion Avenue  
Lake City, FL 32055

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

Oelrich Construction, Inc.  
275 NW 137<sup>th</sup> Drive, Suite A  
Jonesville, FL 32669

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

### TABLE OF ARTICLES

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

### ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:  
*(Check the appropriate box.)*

Stipulated Sum, in accordance with Section A.1.2 below

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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



- Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below
- Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

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

**§ A.1.2 Stipulated Sum**

**§ A.1.2.1** The Stipulated Sum shall be two million, seven hundred forty-seven thousand and four hundred twenty-nine dollars, zero cents (\$2,747,429.00), subject to authorized adjustments as provided in the Design-Build Documents.

**§ A.1.2.2** The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)*

Alternatives 2 (Site work), 3 (Site Concrete) and 4 (Landscaping)

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

**§ A.1.5 Payments**

**§ A.1.5.1 Progress Payments**

**§ A.1.5.1.1** Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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

**§ A.1.5.1.3** Provided that an Application for Payment is received not later than the 30th day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 30th day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Owner receives the Application for Payment.

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

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

**§ A.1.5.1.5** With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

**§ A.1.5.1.6** In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a

Init.

detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ A.1.5.2 Progress Payments—Stipulated Sum**

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

~~§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:~~

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)*
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)*

In accordance with the Local Government Prompt Payment Act.

*(Paragraphs deleted)*

**§ A.1.5.5 Final Payment**

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met,

Init.

the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

**ARTICLE A.2 CONTRACT TIME**

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

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than two hundred seventy ( 270 ) days from the date of this  
*(Paragraphs deleted)*  
Amendment subject to adjustments of the Contract Time as provided in the Design-Build Documents.  
*(Paragraphs deleted)*

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

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

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

Document	Title	Date	Pages
GMP Proposal	Revision 1	12/22/21	25
Project Schedule	LCFS2 – Precon Schedule	1/11/22	2

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

Section	Title	Date	Pages
Refer to attached Table of Contents	Project Specifications	11/16/2021	580

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

Number	Title	Date
Refer to attached Cover Sheet for drawing list	Construction Drawings	11/16/21 (69 pages)

*(Paragraphs deleted)*  
*(Table deleted)*  
*(Paragraphs deleted)*

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

Refer to GMP Proposal Revision 1

*(Paragraphs deleted)*

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

§ A.4.1 The Design-Builder's key personnel are identified below:  
*(Identify name, title and contact information.)*

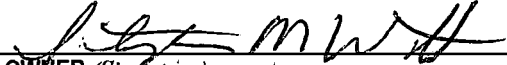
.1 Superintendent

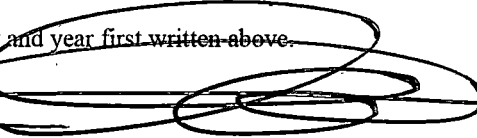
Oelrich Proposal dated December 22, 2021, refer to Exhibit E.

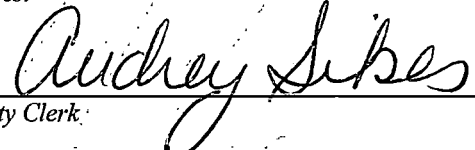
.2 Project Manager

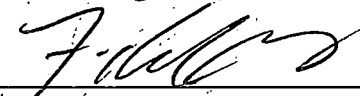
Oelrich Proposal dated December 22, 2021, refer to Exhibit E.

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

  
OWNER (Signature)  
Mayor Stephen M. Witt  
(Printed name and title)

  
DESIGN-BUILDER (Signature)  
Tom A. Cevach, President  
(Printed name and title)

Attest  
  
City Clerk

  
City Attorney

Init.

# Additions and Deletions Report for AIA<sup>®</sup> Document A141<sup>™</sup> – 2014 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:50:25 ET on 01/25/2022.

## PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141<sup>™</sup>-2014, Standard Form of Agreement Between Owner and Design-Builder dated the nineteenth day of July in the year two thousand twenty-one (the "Agreement")

...  
Lake City Fire Station #2  
383 New Hall of Fame Drive  
Lake City, Florida 32055

...  
City of Lake City  
205 North Marion Avenue  
Lake City, FL 32055

...  
Oelrich Construction, Inc.  
275 NW 137<sup>th</sup> Drive, Suite A  
Jonesville, FL 32669

## A.5 COST OF THE WORK

[  ] Stipulated Sum, in accordance with Section A.1.2 below

## PAGE 2

§ A.1.2.1 The Stipulated Sum shall be two million, seven hundred forty-seven thousand and four hundred twenty-nine dollars, zero cents (\$ 2,747,429.00 ), subject to authorized adjustments as provided in the Design-Build Documents.

...

Alternatives 2 (Site work), 3 (Site Concrete) and 4 (Landscaping)

§ ~~A.1.2.3~~ Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

~~§ A.1.3 Cost of the Work Plus Design Builder's Fee~~

~~§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.3.2 The Design Builder's Fee:~~

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

~~§ A.1.4 Cost of the Work Plus Design Builder's Fee With a Guaranteed Maximum Price~~

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

~~§ A.1.4.2 The Design Builder's Fee:~~

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

~~§ A.1.4.3 Guaranteed Maximum Price~~

~~§ A.1.4.3.1 The sum of the Cost of the Work and the Design Builder's Fee is guaranteed by the Design Builder not to exceed (\$ ), subject to additions and deductions for changes in the Work as provided in the Design Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design Builder without reimbursement by the Owner.~~

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

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

~~Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design Builder's Fee, and other items that comprise the Guaranteed Maximum Price.~~

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

~~§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design Build Documents and are hereby accepted by the Owner:~~

~~(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)~~

~~§ A.1.4.3.4 Unit Prices, if any:~~

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

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

~~§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:~~

...

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

month

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the 30th day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 30th day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Owner receives the Application for Payment.

PAGE 3

- 1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5 %);

...  
In accordance with the Local Government Prompt Payment Act.

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

~~§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design Builder through the end of the period covered by the Application for Payment and for which Design Builder has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ A.1.5.3.2 Subject to other provisions of the Design Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~1 Take the Cost of the Work as described in Article A.5 of this Amendment;~~
- ~~2 Add the Design Builder's Fee, less retainage of percent (— %). The Design Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~3 Subtract retainage of percent (— %) from that portion of the Work that the Design Builder self performs;~~
- ~~4 Subtract the aggregate of previous payments made by the Owner;~~
- ~~5 Subtract the shortfall, if any, indicated by the Design Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.~~

~~§ A.1.5.3.3 The Owner and Design Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design Builder shall execute agreements in accordance with those terms.~~

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

~~§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the~~

period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design Builder on account of that portion of the Work for which the Design Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

~~§ A.1.5.4.2~~ Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- ~~1~~ Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- ~~2~~ Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- ~~3~~ Add the Design Builder's Fee, less retainage of ~~—~~ percent (~~—~~ %). The Design Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- ~~4~~ Subtract retainage of ~~—~~ percent (~~—~~ %) from that portion of the Work that the Design Builder self performs;
- ~~5~~ Subtract the aggregate of previous payments made by the Owner;
- ~~6~~ Subtract the shortfall, if any, indicated by the Design Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- ~~7~~ Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

~~§ A.1.5.4.3~~ The Owner and Design Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design Builder shall execute agreements in accordance with those terms.

PAGE 4

~~§ A.2.2~~ The Design-Builder shall achieve Substantial Completion of the Work not later than two hundred seventy (270) days from the date of this Amendment, or as follows:

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

**Portion of Work**

**Substantial Completion Date**

~~Amendment~~ subject to adjustments of the Contract Time as provided in the Design-Build Documents.

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

...

GMP Proposal

Revision 1

12/22/21

25



Project Schedule      LCFS2 – Precon Schedule      1/11/22      2

Refer to attached Table of Contents      Project Specifications      11/16/2021      580

Refer to attached Cover Sheet for drawing      Construction Drawings      11/16/21 (69 pages)  
list:

**§ A.3.1.4 The Sustainability Plan, if any:**

*(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)*

<b>Title</b>	<b>Date</b>	<b>Pages</b>
--------------	-------------	--------------

*Other identifying information:*

**§ A.3.1.5 Allowances and Contingencies:**

*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

.1 Allowances

.2 Contingencies

Refer to GMP Proposal Revision 1

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

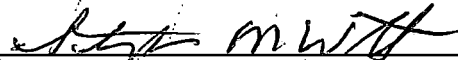
**§ A.3.1.8 To the extent the Design Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:**

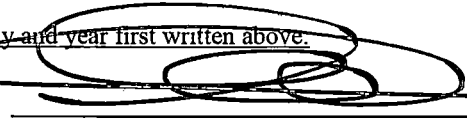
Oelrich Proposal dated December 22, 2021, refer to Exhibit E.

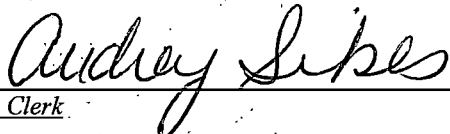
Oelrich Proposal dated December 22, 2021, refer to Exhibit E!

~~3~~ — Others

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

  
OWNER (Signature)  
Mayor Stephen M. Witt  
(Printed name and title)

  
DESIGN-BUILDER (Signature)  
Thomas A. Clench, President  
(Printed name and title)

Attest  
  
City Clerk

  
City Attorney

OWNER (Signature)  
  
(Printed name and title)

DESIGN-BUILDER (Signature)  
  
(Printed name and title)

~~§ A.4.2~~ The Design Builder shall retain the following Consultants, Contractors and suppliers, identified below:  
(List name, discipline, address and other information.)

**ARTICLE A.5 — COST OF THE WORK**

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

~~§ A.5.1.1 Labor Costs~~

~~§ A.5.1.1.1~~ Wages of construction workers directly employed by the Design Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off site workshops.

~~§ A.5.1.1.2~~ With the Owner's prior approval, wages or salaries of the Design Builder's supervisory and administrative personnel when stationed at the site.

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

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------

~~§ A.5.1.1.3 Wages and salaries of the Design Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~§ A.5.1.1.4 Costs paid or incurred by the Design Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.~~

~~§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.~~

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

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

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

~~§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.~~

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

~~§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design Builder shall mean fair market value.~~

~~§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design Builder owned item may not exceed the purchase price of any comparable item. Rates of Design Builder owned equipment and quantities of equipment shall be subject to the Owner's prior approval.~~

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

~~§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.~~

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

~~§ A.5.1.5 Miscellaneous Costs~~

~~§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self insurance for either full or partial amounts of the coverages required by the Design Build Documents.~~

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

~~§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design Builder is required by the Design Build Documents to pay.~~

~~§ A.5.1.5.4 Fees of laboratories for tests required by the Design Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design Build Documents, and which do not fall within the scope of Section A.5.1.6.3.~~

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

~~§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.~~

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

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

~~§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design Builder's personnel required for the Work.~~

~~§ A.5.1.5.10 That portion of the reasonable expenses of the Design Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~

#### ~~§ A.5.1.6 Other Costs and Emergencies~~

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

~~§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.~~

~~§ A.5.1.6.3 Costs of repairing or correcting damaged or noneonforming Work executed by the Design Builder, Contractors or suppliers, provided that such damaged or noneonforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design Builder and only to the extent that the cost of repair or correction is not recovered by the Design Builder from insurance, sureties, Contractors, suppliers, or others.~~

#### ~~§ A.5.1.7 Related Party Transactions~~

~~§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design Builder; any entity in which any stockholder in, or management employee of, the Design Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design Builder. The term "related party" includes any member of the immediate family of any person identified above.~~

~~§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design Builder and a related party, the Design Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design Builder shall procure the Work, equipment, goods or service from~~

the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

#### **~~§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract~~**

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

- ~~1 Salaries and other compensation of the Design Builder's personnel stationed at the Design Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;~~
- ~~2 Expenses of the Design Builder's principal office and offices other than the site office;~~
- ~~3 Overhead and general expenses, except as may be expressly included in Section A.5.1;~~
- ~~4 The Design Builder's capital expenses, including interest on the Design Builder's capital employed for the Work;~~
- ~~5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;~~
- ~~6 Any cost not specifically and expressly described in Section A.5.1; and~~
- ~~7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.~~

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

~~§ A.5.3.1 Cash discounts obtained on payments made by the Design Builder shall accrue to the Owner if (1) before making the payment, the Design Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design Builder with which to make payments; otherwise, cash discounts shall accrue to the Design Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design Builder shall make provisions so that they can be obtained.~~

~~§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.~~

#### **~~§ A.5.4 Other Agreements~~**

~~§ A.5.4.1 When the Design Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.~~

~~§ A.5.4.2 Agreements between the Design Builder and Contractors shall conform to the applicable payment provisions of the Design Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design Builder in Section A.5.5, below.~~

~~§ A.5.4.3 The agreements between the Design Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.~~

#### **~~§ A.5.5 Accounting Records~~**

~~The Design Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase~~

orders, vouchers, memoranda and other data relating to the Contract. The Design Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

**~~§ A.5.6 Relationship of the Parties~~**

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

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

## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:50:25 ET on 01/25/2022 under Order No. 7433320074 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
\_\_\_\_\_  
(Signed)

*President*  
\_\_\_\_\_  
(Title)

*4/4/22*  
\_\_\_\_\_  
(Dated)

**CITY COUNCIL RESOLUTION NO. 2022-051**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AUTHORIZING THE EXECUTION OF CHANGE ORDER NUMBER ONE TO THE CONTRACT BETWEEN THE CITY AND OELRICH CONSTRUCTION, INC., RELATED TO THE ADDITION OF A DRAINAGE EASEMENT FOR THE LAKE CITY FIRE STATION NUMBER 2 PROJECT; PROVIDING FOR AN INCREASE IN THE CONTRACT PRICE BY \$1,800.00; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on July 19, 2021, the City of Lake City, Florida (hereinafter the "City") and Oelrich Construction, Inc. (hereinafter "Oelrich") entered into an agreement for the design and construction of a fire station (No. 2) (hereinafter the "Agreement") pursuant to City Council Resolution No. 2021-111; and

**WHEREAS**, the Agreement required Oelrich to present a design and anticipated construction costs of the fire station as an amendment to the Agreement; and

**WHEREAS**, the Agreement was amended through City Council Resolution 2022-011 for a contractual price of \$2,747,429.00; and

**WHEREAS**, Oelrich has presented a change order for the design and construction of a drainage easement, a copy of which is attached hereto and titled *COP #002 – Easement Add Services* (hereinafter "Change Order Number One"); and

**WHEREAS**, the cost related to the Change Order Number One is increased by one thousand eight hundred dollars and zero cents (\$1,800.00) and no extension of the completion date is requested; and

**WHEREAS**, the City Council finds that it is in the City's best interest to



FLK/aj  
05/10/2022

enter into Change Order Number One pursuant to and in accordance with the respective terms and conditions included in Change Order Number One and leaving all other provisions of the Contract in full force and effect.

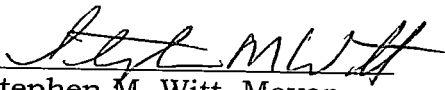
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AS FOLLOWS:**

**Section 1.** The above recitals are all true and accurate and are hereby made a part of this resolution.

**Section 2.** The City Council hereby authorizes the Mayor to execute Change Order Number One.

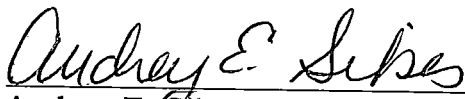
**PASSED AND ADOPTED** at a meeting of the City Council this 16<sup>th</sup> day of May 2022.

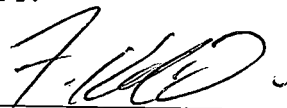
**CITY OF LAKE CITY, FLORIDA**

By:   
Stephen M. Witt, Mayor

ATTEST

APPROVED AS TO FORM AND LEGALITY:

By:   
Audrey E. Sikes, City Clerk

By:   
Frederick L. Koberlein, Jr.,  
City Attorney



April 22, 2022

Justin Vollenweider  
 Senior Project Architect  
 Passero & Associates  
 4730 Casa Cola Way, Suite 200  
 St. Augustine, FL 32095

**Re: 21.01.028 – Lake City Fire Station # 2  
 COP # 002 – Easement Add Services**

Mr. Vollenweider,

Included herein please find Change Order Proposal # 002. This COP is based the additional coordination required for the project related County and City Easement. Please see the detailed breakdown below for more information.

Subcontractor	Cost	Schedule Impact
Walker Architects, Inc.	\$ 1,500	
Oelrich Construction, Inc.	\$ 300	
General Conditions	\$ 0	
General Liability Insurance	\$ 0	
Permit	\$ 0	
CM Fee	\$ 0	

**The total cost and schedule impact of this COP is: \$ 1,800 0 days**

Thank you for your attention to this proposal. If you require any further information on these matters, please do not hesitate to contact me at any time.

Sincerely,  
**Oelrich Construction, Inc.**

*Christina Alexandra*

Christina Alexandra  
 Assistant Project Manager

Approved By:
Signature:
Date:

275 NW 137th Drive  
 Suite A  
 Jonesville, Florida 32669  
 oelrichconstruction.com

352-745-7877

CGC1510579



Walker Architects, Inc.  
2035 NW 13<sup>th</sup> Street  
Gainesville, Florida 32609

352.672.6448  
walker-arch.com  
AA26002009

Date: 3/29/2022

To: Matthew Marino  
Oelrich Construction, Inc.  
275 NW 137<sup>th</sup> Drive, Suite A  
Jonesville, FL 32669

Re: **Additional Service Proposal: ASA-03 Easement Scope**

Architect's Project No: 21031

Dear Matt:

Walker Architects, Incorporated is pleased to submit this letter, which will serve as our Proposal and, when signed by you on the Agreement Acceptance line below and returned to our office, shall also represent the Agreement between the parties. The parties to this Agreement are:

The Design Builder: Oelrich Construction, Inc.

AND

The Architect: Walker Architects, Incorporated

The Design Builder will provide the Architect full information regarding the project scope and program that will set forth the Owner's design objectives, constraints, criteria and budget. It is the intent of this letter to describe the Professional services to be rendered by our firm and the corresponding remuneration.

#### SCOPE OF SERVICES

The Architect will procure from Gmuer Engineering services for analysis of easement approach and documentation to comply with City of Lake City requirements.

Proposed fee includes:

1. Administration by Walker Architects
2. Analysis of easement approach
3. Legal description for driveway easement
4. Writeup of drainage rights for resolution

Proposed fee does not include:

1. Opinions of probable cost / cost estimates
2. Any work not listed above or in the attached sub-consultant proposal(s)



### BASIS OF COMPENSATION

Compensation for the Architect's services will be based on a stipulated sum which shall be agreed upon by both parties prior to commencing the work. The stipulated sum is based on the scope and detail of the work to be prepared by the Architect.

*Schedule of Fees may be found as Exhibit A.*

The agreed upon compensation for this proposal will be added to all previously contracted sums for the project and invoiced concurrently as they are completed.

Reimbursable expenses shall be actual out-of-pocket expenses incurred by the Architect, and will be invoiced in the same manner as agreed to in the original project agreement.

Remuneration for services listed in this proposal is based on the scope of work and the Professional's hourly rates listed in our original contract and in any attached subcontractor proposals.

### DELIVERABLES and SCHEDULE:

Work on these Additional Services will be scheduled upon receipt of a signed contract. The Architect will ~~work with the Owner to integrate the schedule of these deliverables with the schedule of the whole project.~~

- Legal Description for Driveway Easement
- Writeup of Drainage Rights for Resolution

### CONTRACTUAL TERMS

1. Invoicing will be rendered in the same manner as agreed to in the original agreement for the project.
2. Either party may terminate this Agreement at any Phase upon at least seven (7) days written notice to the Architect. In the event of termination, the Architect shall be compensated for all services performed to termination date, together with reimbursable expenses incurred to date.
3. If this Agreement meets with your approval, please sign a copy and return it to our office within (30) days. After 30 days, schedule dates or cost estimates contained in this proposal expire and may require updates.

We look forward to working on this exciting project with you. Please contact us if you have any questions regarding the extent of our services or our compensation methods.

Best Regards,

Tim Williams, AIA, LEED AP  
Principal



Exhibit A: Fee Schedule

Phase	Discipline	Amount
A.03 Easement	Civil Engineer	\$1,200
	Architect	\$300
Grand Total		\$1,500

**IMPACT TO THE PROJECT BUDGET**

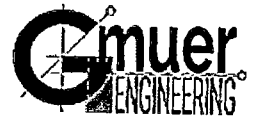
The above fees will be added to the total project budget and invoiced concurrently as the work is completed.

\_\_\_\_\_  
Matthew Marino  
Oelrich Construction, Inc.

Date: \_\_\_\_\_

# INVOICE #21-0055.5

21-0055 - Lake City Fire Station 2



<b>FROM</b>	<b>TO</b>	<b>INVOICE NO.</b>	21-0055.5
Gmuer Engineering, LLC	Walker Architects, Inc.	<b>INVOICE DATE</b>	March 22, 2022
2603 NW 13TH ST # 314	2035 NW 13th St	<b>PAYMENT DUE</b>	April 21, 2022
Gainesville, FL 32609	Gainesville, FL 32609		
billing@gmuereng.com	ID: 16-0037		

DESCRIPTION	QTY	UNIT PRICE	TOTAL PRICE
2022-03-02 Analysis of Easement Approach	1	\$250.00	\$250.00
<del>2022-03-15 Legal Description for Driveway Easement</del>	<del>1</del>	<del>\$650.00</del>	<del>\$650.00</del>
2022-03-16 Write up of Drainage Rights for Resolution	1	\$250.00	\$250.00
2022-03-21 Review Resolution for Typos	1	\$50.00	\$50.00
<b>Total Due</b>			<b>USD \$1,200.00</b>

## TERMS AND NOTES

Thank you for choosing GmuerEng for your project.

**Lake City Fire Station # 2**

**21.01.028**

Oelrich Construction, Inc.

**Preconstruction Services Worksheet**

April 22, 2022

**Change Order Proposal #2: Easement Add Services  
Analysis of easement approach and documentaton**

	Rate Per Hr	
		\$100.00
Matthew Marino, Preconstruction Manager	3	\$ 100.00
Grand Total		\$ 300.00

**Lake City Fire Station # 2**  
**CHANGE ORDER PROPOSAL LOG**  
 Friday, April 22, 2022

COP	Description	Status	Estimated Cost		Submitted Cost		Executed Changes		Schedule Impact	Date Submitted	Date Approved	CO#
			CM Contingency	Contract	CM Contingency	Contract	CM Contingency	Contract				
001	Sligange Allowance Buyout	OPEN										
002	Easement add services	SUBMITTED			\$ 1,800.00					4/22/2022		
004												
<b>SUBTOTALS</b>			\$ -	\$ -	\$ 1,800.00	\$ -	\$ -	\$ -	0.00			

GMP AMOUNT	
CURRENT TOTALS	
ESTIMATED AMOUNTS	

	CONTINGENCY	GMP	CONTRACT TIME
Original Contract Amount:	\$ 37,692	\$ 2,897,429	
Total with Currency Executed Changes:	\$ 37,692	\$ 2,897,429	0.00
Total If All Estimated & Submitted Costs Were Approved:	\$ 35,892	\$ 2,897,429	0.00



**ATTACHMENT 2**



**AUDIT REQUIREMENTS FOR AWARDS OF  
STATE AND FEDERAL FINANCIAL ASSISTANCE**

The administration of resources awarded by the Department of Financial Services (Department) to the Grantee may be subject to audits and/or monitoring by the Department, as described in this section.

---

**MONITORING**

In addition to reviews of audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and section 215.97, Florida Statutes (F.S.), as revised (see AUDITS below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by 2 CFR §200.425, or other procedures. By entering into this agreement, the Grantee agrees to comply and cooperate with any monitoring procedures or processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Grantee is appropriate, the Grantee agrees to comply with any additional instructions provided by Department staff to the Grantee regarding such audit. The Grantee further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

**AUDITS**

**Part I: Federally Funded**

This part is applicable if the Grantee is a state or local government or a nonprofit organization as defined in 2 CFR §200.90, §200.64, and §200.70.

1. A grantee that expends \$750,000 or more in federal awards in its fiscal year must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. EXHIBIT 1 to this form lists the federal resources awarded through the Department by this agreement. In determining the federal awards expended in its fiscal year, the Grantee shall consider all sources of federal awards, including federal resources received from the Department. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR §§200.502-503. An audit of the Grantee conducted by the Auditor General in accordance with the provisions of 2 CFR §200.514 will meet the requirements of this Part.
2. For the audit requirements addressed in Part I, paragraph 1, the Grantee shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR §§200.508-512.
3. A grantee that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. If the Grantee expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from Grantee resources obtained from other than federal entities).

**Part II: State Funded**

1. In the event that the Grantee expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Grantee (for fiscal years ending June 30, 2017, or thereafter), the Grantee must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, F.S.; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the

AUDIT REQUIREMENTS FOR AWARDS OF  
STATE AND FEDERAL FINANCIAL ASSISTANCE

Department by this agreement. In determining the state financial assistance expended in its fiscal year, the Grantee shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for federal program matching requirements.

2. For the audit requirements addressed in Part II, paragraph 1, the Grantee shall ensure that the audit complies with the requirements of section 215.97(8), F.S. This includes submission of a financial reporting package as defined by section 215.97(2), F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the Grantee expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal years ending June 30, 2017, or thereafter), an audit conducted in accordance with the provisions of section 215.97, F.S., is not required. If the Grantee expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the Grantee's resources obtained from other than state entities).

### Part III: Other Audit Requirements

N/A

### Part IV: Report Submission

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and required by Part I of this form shall be submitted, when required by 2 CFR §200.512, by or on behalf of the Grantee directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR §200.36 and §200.512.

The FAC's website provides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website.

2. Copies of financial reporting packages required by Part II of this form shall be submitted by or on behalf of the Grantee directly to each of the following:

- a. The Department at each of the following addresses:

Electronic copies (preferred): [Melissa.Dembicer@myfloridacfo.com](mailto:Melissa.Dembicer@myfloridacfo.com)

or

Paper (hard copy):  
Melissa Dembicer  
Department of Financial Services  
200 East Gaines Street  
Tallahassee, Florida 32399-0340

- b. The Auditor General's Office at the following address:

Auditor General  
Local Government Audits/342  
Claude Pepper Building, Room 401  
111 West Madison Street  
Tallahassee, Florida 32399-1450

AUDIT REQUIREMENTS FOR AWARDS OF  
STATE AND FEDERAL FINANCIAL ASSISTANCE

The Auditor General's website (<https://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Any reports, management letters, or other information required to be submitted to the Department pursuant to this agreement shall be submitted timely in accordance with 2 CFR §200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
4. Grantees, when submitting financial reporting packages to the Department for audits done in accordance with 2 CFR 200, Subpart F - Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Grantee in correspondence accompanying the reporting package.

**Part V: Record Retention**

The Grantee shall retain sufficient records demonstrating its compliance with the terms of the award(s) and this agreement for a period of five (5) years from the date the audit report is issued, and shall allow the Department, or its designee, the CFO, or Auditor General access to such records upon request. The Grantee shall ensure that audit working papers are made available to the Department, or its designee, the CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Department.

AUDIT REQUIREMENTS FOR AWARDS OF  
STATE AND FEDERAL FINANCIAL ASSISTANCE

**EXHIBIT 1**

**Federal Resources Awarded to the Grantee  
Pursuant to this Agreement Consist of the Following:**

1. Federal Program A:

*N/A*

2. Federal Program B:

*N/A*

**Compliance Requirements Applicable to the Federal Resources  
Awarded Pursuant to this Agreement are as Follows:**

1. Federal Program A:

*N/A*

2. Federal Program B:

*N/A*

**State Resources Awarded to the Grantee  
Pursuant to this Agreement Consist of the Following:**

**Matching Resources for Federal Programs:**

1. Federal Program A:

*N/A*

2. Federal Program B:

*N/A*

**Subject to Section 215.97, F.S.:**

1. State Project A:

State Project: Local Government Fire Service Grants

State Awarding Agency: State of Florida, Department of Financial Services

Catalog of State Financial Assistance Title and Number: Local Government Fire Service Grants,  
43.009

Amount: \$500,000

2. State Project B:

*N/A*

**Compliance Requirements Applicable to State Resources Awarded  
Pursuant to this Agreement Are as Follows:**

The compliance requirements are as stated in Grant Agreement #FM724 between the Grantee and the Department, entered in State Fiscal Year 2022-2023.

**Attachment 3**  
**Index of Applicable Laws and Regulations**

1. Statutory Requirements:

Chapter 112, F.S. (conflict of interest)  
Chapter 119, F.S. (public records and exceptions to disclosure)  
Sections 11.062 and 216.347, F.S. (prohibitions on the use of state funds for lobbying purposes)  
Section 216.1366, F.S. (inspection of records)  
Section 286.101, F.S. (foreign gifts and contracts)  
Section 286.25, F.S. (sponsorship)  
Section 287.133, F.S. (convicted vendor list)  
Section 287.134, F.S. (discriminatory vendor list)  
Section 287.137, F.S. (antitrust violator vendor list)  
Americans with Disabilities Act  
Immigration and Nationality Act

2. Audit Requirements:

Section 20.055, F.S. (audit investigations)  
Section 215.34, F.S. (return or recoupment of funds)  
Section 215.97, F.S., Florida Single Audit Act  
Section 215.971, F.S., Agreements Funded with Federal or State Assistance

3. Financial Requirements:

Section 215.422, F.S. (payments from state funds)  
Section 273.02, F.S. (nonexpendable tangible personal property)  
Section 287.05805, F.S. (if funding is used for real property purchase or improvement)  
Section 287.0585, F.S. (payments to subcontractors)  
Rule 60A-1.031, F.A.C. (MyFloridaMarketPlace)  
Chief Financial Officer Memoranda Nos. 1, 2, and 4 (effective July 1, 2020)

**DEPARTMENT OF FINANCIAL SERVICES**  
**Public Records Requirements**

**Addendum A**

**1. Public Records Access Requirements.**

- a. If the Contractor is acting on behalf of the Department in its performance of services under the Contract, the Contractor must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in conjunction with the Contract (Public Records), unless the Public Records are exempt from public access pursuant to section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Contract if the Contractor refuses to allow public access to Public Records as required by law.

**2. Public Records Requirements Applicable to All Contractors.**

- a. For purposes of the Contract, the Contractor is responsible for becoming familiar with Florida's Public Records law, consisting of chapter 119, F.S., section 24(a) of Article I of the Florida Constitution, or other applicable state or federal law (Public Records Law).
- b. All requests to inspect or copy Public Records relating to the Contract must be made directly to the Department. Notwithstanding any provisions to the contrary, disclosure of any records made or received by the State in conjunction with the Contract is governed by Public Records Law.
- c. If the Contractor has a reasonable, legal basis to assert that any portion of any records submitted to the Department is confidential, proprietary, trade secret, or otherwise not subject to disclosure ("Confidential" or "Trade Secret") under Public Records Law or other legal authority, the Contractor must simultaneously provide the Department with a separate redacted copy of the records the Contractor claims as Confidential or Trade Secret and briefly describe in writing the grounds for claiming exemption from the Public Records Law, including the specific statutory citation for such exemption. The un-redacted copy of the records must contain the Contract name and number and must be clearly labeled "Confidential" or "Trade Secret." The redacted copy of the records should only redact those portions of the records that the Contractor claims are Confidential or Trade Secret. If the Contractor fails to submit a redacted copy of records it claims are Confidential or Trade Secret, such action may constitute a waiver of any claim of confidentiality.
- d. If the Department receives a Public Records request, and if records that have been marked as "Confidential" or "Trade Secret" are responsive to such request, the Department will provide the Contractor-redacted copies to the requester. If a requester asserts a right to the portions of records claimed as Confidential or Trade Secret, the Department will notify the Contractor that such an assertion has been made. It is the Contractor's responsibility to assert that the portions of records in question are exempt from disclosure under Public Records Law or other legal authority. If the Department becomes subject to a demand for discovery or disclosure of the portions of records the Contractor claims as Confidential or Trade Secret in a legal proceeding, the Department will give the Contractor prompt notice of the demand, when possible, prior to releasing the portions of records the Contractor claims as Confidential or Trade Secret (unless disclosure is otherwise prohibited by applicable law). The Contractor shall be responsible for defending its determination that the redacted portions of its records are Confidential or Trade Secret. No right or remedy for damages against the Department arises from any disclosure made by the Department based on the Contractor's failure to promptly legally protect its claim of exemption and commence such protective actions within ten days of receipt of such notice from the Department.
- e. If the Contractor claims that the records are "Trade Secret" pursuant to section 624.4213, F.S., and all the requirements of section 624.4213(1), F.S., are met, the Department will respond to the Public Records Request in accordance with the provisions specified in that statute.
- f. The Contractor shall ensure that exempt or confidential and exempt Public Records are not disclosed except as permitted by the Contract or by Public Records Law.

**Addendum A**

**3. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.**

If the Contractor is a “contractor” as defined in section 119.0701(1)(a), F.S., the Contractor shall:

- a. Keep and maintain Public Records required by the Department to perform the service.
- b. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, F.S., or as otherwise provided by law.
- c. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the Public Records to the Department.
- d. Upon completion of the Contract, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the Contractor keeps and maintains Public Records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department’s custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the Contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the Contractor is authorized to access.
- e. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT PUBLIC RECORDS AT:**

**Telephone: (850) 413-3149**  
**Email: [PublicRecordsRequest@myfloridacfo.com](mailto:PublicRecordsRequest@myfloridacfo.com)**  
**Mailing Address: The Department of Financial Services**  
**Office of Open Government**  
**PL-11, The Capitol**  
**Tallahassee, Florida 32399-0301**

A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.