AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

This form is based on **AIA Document A141-2004**, Standard Form of Agreement Between Owner and Design-Builder.

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_
(In words, indicate day, month and year.)

BETWEEN the Owner:

**Chattanooga Metropolitan Airport Authority**

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

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

The Owner and the Design-Builder agree as follows.

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# THE DESIGN-BUILD DOCUMENTS

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

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

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

# THE WORK OF THE DESIGN-BUILD CONTRACT

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

# DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the Owner.
(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to the commencement of Work, the Owner requires time to file mortgages, documents related to mechanic’s liens and other security interests, the Owner’s time requirement shall be as follows:
(Insert Owner’s time requirements.)

The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

 The Design-Builder shall achieve Substantial Completion of the Work not later than \_\_\_\_\_ days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

# CONTRACT SUM

 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder’s performance of the Design-Build Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

[ **X** ] Stipulated Sum in accordance with Section 4.2 below;

[ ] Cost of the Work Plus Design-Builder’s Fee in accordance with Section 4.3 below;

[ ] Cost of the Work Plus Design-Builder’s Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

## STIPULATED SUM

 The Stipulated Sum shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_\_\_), subject to additions and deductions as provided in the Design-Build Documents.

 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:

 Unit prices, if any, are as follows:

|  |  |  |
| --- | --- | --- |
| Description | Units | Price ($0.00) |
|  |  |  |

 Allowances, if any, are as follows:
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)

|  |  |  |
| --- | --- | --- |
| Allowance | Amount ($0.00) | Included Items |
|  |  |  |

 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

## COST OF THE WORK PLUS DESIGN-BUILDER’S FEE

**[INTENTIONALLY DELETED]**

## COST OF THE WORK PLUS DESIGN-BUILDER’S FEE WITH A GUARANTEED MAXIMUM PRICE

**[INTENTIONALLY DELETED]**

## CHANGES IN THE WORK

 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in the General Conditions.

#  PAYMENTS

## PROGRESS PAYMENTS

 Based upon Applications for Payment submitted to the Owner and Construction Manager 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.

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

 Provided that an Application for Payment is received not later than the last day of month, the Owner shall make payment to the Design-Builder in forty-five (45) days, subject to review and approval of Applications for Payment by Construction Manager as provided in the General Conditions. 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 review and approval of the Construction Manager for the Application for Payment as provided in the General Conditions.

 With each Application for Payment, the Design-Builder shall submit such other documentation in such form and supported by such data to substantiate its accuracy as the Owner may reasonably require.

 In taking action on the Design-Builder’s Applications for Payment, the Owner and Construction Manager shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of any supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner’s accountants acting in the sole interest of the Owner.

## PROGRESS PAYMENTS - STIPULATED SUM

 The Design-Builder shall submit Applications for Payment not less than monthly indicating the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment, in accordance with the Schedule of Values.

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

#### 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 the General Conditions;

#### 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%);

#### Subtract the aggregate of previous payments made by the Owner; and

#### Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in the General Conditions.

 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 above, and this is not explained elsewhere in the Design-Build Documents, insert here provisions for such reduction or limitation.)

## FINAL PAYMENT

 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 45 days after the Design-Builder has fully performed the Design-Build Contract, including the conditions precedent to final payment and other requirements of the General Conditions, except for the Design-Builder’s responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

# DISPUTE RESOLUTION

 The parties shall follow the claims and alternative dispute resolution procedures as set forth in Sections 4.7 and 4.8 of the General Conditions.

# MISCELLANEOUS PROVISIONS

 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:
(Insert name, address, license number, relationship to Design-Builder and other information.)

|  |  |  |  |
| --- | --- | --- | --- |
| Name and Address | License Number | Relation to Design-Builder | Other Information |
|  |  |  |  |

 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:
(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

|  |  |  |  |
| --- | --- | --- | --- |
| Name and Address | License Number | Responsibilities to Owner | Other Information |
|  |  |  |  |

 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:
(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

|  |  |  |  |
| --- | --- | --- | --- |
| Name and Address | License Number | Responsibilities to Owner | Other Information |
|  |  |  |  |

 The Owner’s Designated Representative is:
(Insert name, address and other information.)

 The Owner’s Designated Representative identified above shall be authorized to act on the Owner’s behalf with respect to the Project.

 The Design-Builder’s Designated Representative is:
(Insert name, address and other information.)

 The Design-Builder’s Designated Representative identified above shall be authorized to act on the Design-Builder’s behalf with respect to the Project.

 Neither the Owner’s nor the Design-Builder’s Designated Representative shall be changed without ten days written notice to the other party.

 Other provisions:

 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

 Payments on undisputed amounts due and unpaid under the Design-Build Contract shall bear interest from the date payment is due at the rate stated in Section 13.6.1 of the General Conditions.

# enumeration of the design-build documents

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

 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, based on AIA Document A141-2004.

 The Supplementary, Special and other Conditions of the Agreement, if any, are attached hereto and incorporated herein by reference.
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

|  |  |  |
| --- | --- | --- |
| Document | Title | Pages |
|  |  |  |

 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:
(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

|  |  |
| --- | --- |
| Title | Date |
|  |  |

 The Design-Builder’s Proposal, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, consists of the following:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

 Amendments to the Design-Builder’s Proposal, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

 The Addenda, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

|  |  |  |
| --- | --- | --- |
| Number | Date | Pages |
|  |  |  |

 General Conditions. The General Conditions are based on AIA Document A201-1997, as modified, and as attached hereto.

 Exhibit A, Determination of the Cost of the Work, if applicable.
(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)

 Exhibit B, Insurance and Bonds. The Design-Builder shall provide payment and performance bonds reasonably acceptable to Owner and satisfying all Applicable Laws.

 Other documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

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

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **OWNER** (Signature) |  | **DESIGN-BUILDER** (Signature) |
|  |  |  |
| (Printed name and title) |  | (Printed name and title) |