



# AIA<sup>®</sup> Document A101<sup>™</sup> – 2007

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

**AGREEMENT** made as of the Fifth day of September in the year Two Thousand Twelve  
(In words, indicate day, month and year.)

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

Tooele County - Wendover Airport  
345 Airport Apron  
Wendover, Ut 84083  
Telephone Number: (801) 571-2907

and the Contractor:  
(Name, legal status, address and other information)

Wade Payne Construction, Inc.  
P.O. Box 1539  
Orem, UT 84059

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

Wendover Airport ARFF  
Wendover, UT  
New Wendover Airport AARF Building

The Architect:  
(Name, legal status, address and other information)

CRSA, Inc.  
649 East South Temple  
Salt Lake City, UT 84102  
Telephone Number: (801) 355-5915  
Fax Number: (801) 355-9885

The Owner and Contractor 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.

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

## TABLE OF ARTICLES

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### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be 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 to proceed 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.)*

The commencement date will be fixed in a notice to proceed.

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

Not Applicable

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than One hundred twenty (120) 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. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

init.

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract 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.)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Five Hundred Thirteen Thousand Four Hundred Dollars and Zero Cents (\$ 513,400.00 ), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

Not Applicable

§ 4.3 Unit prices, if any:
(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Table with 3 columns: Item, Units and Limitations, Price Per Unit (\$0.00). Row 1: Not Applicable

§ 4.4 Allowances included in the Contract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Table with 2 columns: Item, Price. Row 1: Not Applicable

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 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:

§ 5.1.3 Payment Schedule will be determined by FAA funding requirements.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment 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.

Init.

§ 5.1.6 Subject to other provisions of the Contract 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 ( 5.00 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- 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 ( 5.00 %);
- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 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 Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- 2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 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 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

Not Applicable

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

## § 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- 1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- 2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

Init.

**§ 6.2 BINDING DISPUTE RESOLUTION**

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

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

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

Not Applicable

**§ 8.3** The Owner's representative:  
*(Name, address and other information)*

Jim Petersen  
Wendover Airport Director  
Tooele County Airport Authority

**§ 8.4** The Contractor's representative:  
*(Name, address and other information)*

Wade Payne, President  
Wade Payne Construction, Inc.

Init.

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

#### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Please see attached	Supplementary Conditions		

§ 9.1.4 The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Please see attached Index of Specifications

Section	Title	Date	Pages
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§ 9.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Please see attached Index of Drawings

Number	Title	Date
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§ 9.1.6 The Addenda, if any:

Number	Date	Pages
1	August 15, 2012	2
2	August 20, 2012	3
3	August 20, 2012	3
4	August 22, 2012	1

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

1 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

2 Other documents, if any, listed below:

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User Notes:

(963916857)

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

**ARTICLE 10 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
	\$1,000,000 Public Liability and \$500,000 Property Damage

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

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

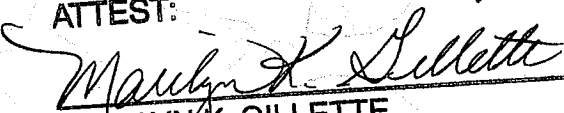
Jim Petersen  
Wendover Airport Director  
\_\_\_\_\_  
(Printed name and title)

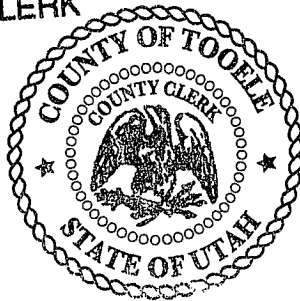
  
\_\_\_\_\_  
CONTRACTOR (Signature)

Wade Payne  
President  
\_\_\_\_\_  
(Printed name and title)

  
Commissioner

ATTEST:

  
\_\_\_\_\_  
MARILYN K. GILLETTE  
TOOELE COUNTY CLERK



Init.

## **S U P P L E M E N T A R Y   C O N D I T I O N S**

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### **ITEM 1 - GENERAL**

1. Conditions of the Contract apply to each Division of the Specifications.
2. Provisions contained in Division 01 apply to Divisions 02 through 33 of the Specifications.

### **ITEM 2 - LIQUIDATED DAMAGE AMOUNTS:**

1. The amount of liquidated damages to be deducted by Owner from final payment for delays in Substantial Completion of the Work is \$325 per day.
2. The amount of liquidated damages to be deducted by Owner from final payment for delays in completing work itemized on the Substantial Completion Certificate is \$225 per day.

### **ITEM 3 - RETENTION APPLIED TO CONTRACTOR PAYMENTS:**

1. Owner will withhold and retain 5% of payments made to Contractor. Contractor may request release from retention for payment of trades that complete work early with no punch list.

END OF DOCUMENT



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### BIDDING REQUIREMENTS

Invitation To Bid

Instructions To Bidders

Sample Forms:

    Equal Product Approval Form

    Bid Form

    Bid Bond

    Standard Form Of Agreement

    Performance Bond

Disclosure Of Lobbying Activities

Certification For Contracts, Grants, Loans, And Cooperative Agreements

Equal Employment Opportunity, Nonsegregated Facilities, And Clean Air And Water Certifications

Disadvantaged Business Enterprise Participation Commitment

Subcontractor / Material Supplier List

Affidavit Of Amounts Paid To Participants

Contractor Contractual Requirements

Labor Provisions

Minimum Wage Rates

Standard Federal Equal Employment Opportunity Construction Contract Specifications

Suggested Guidelines For The Preparation Of An Affirmative Action Plan Regarding Equal Employment Opportunity

Copeland Regulations For Contractors And Subcontractors On Public Work And Public Building And On Building And Work Financed In Whole Or In Part By Loans Or Grants From The United States

Contractor Information Form

Buy American Certification / Waiver Request / Conformance Listing

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### CONDITIONS

GENERAL CONDITIONS

SUPPLEMENTAL CONDITIONS

#### DIVISION 01 - GENERAL REQUIREMENTS

011000 SUMMARY

012900 PAYMENT PROCEDURES

013100 PROJECT MANAGEMENT AND COORDINATION

013200 CONSTRUCTION PROGRESS DOCUMENTATION

013300 SUBMITTAL PROCEDURES

014000 QUALITY REQUIREMENTS

014200 REFERENCES

015000 TEMPORARY FACILITIES AND CONTROLS

016000 PRODUCT REQUIREMENTS

017300 EXECUTION

017329 CUTTING AND PATCHING

017700 CLOSEOUT PROCEDURES

017823 OPERATION AND MAINTENANCE DATA

017839 PROJECT RECORD DOCUMENTS

017900 DEMONSTRATION AND TRAINING

#### DIVISION 03 - CONCRETE

033000 CAST-IN-PLACE CONCRETE

221513	GENERAL-SERVICE COMPRESSED-AIR PIPING
221519	GENERAL-SERVICE PACKAGED AIR COMPRESSORS AND RECEIVERS
223300	ELECTRIC, DOMESTIC-WATER HEATERS
224100	RESIDENTIAL PLUMBING FIXTURES
224216.13	COMMERCIAL LAVATORIES
224216.16	COMMERCIAL SINKS
224500	EMERGENCY PLUMBING FIXTURES
224716	PRESSURE WATER COOLERS

**DIVISION 23 - HEATING VENTILATING AND AIR CONDITIONING**

230513	COMMON MOTOR REQUIREMENTS FOR HVAC EQUIPMENT
230529	HANGERS AND SUPPORTS FOR HVAC PIPING AND EQUIPMENT
230548	VIBRATION AND SEISMIC CONTROLS FOR HVAC PIPING AND EQUIPMENT
230553	IDENTIFICATION FOR HVAC PIPING AND EQUIPMENT
230593	TESTING, ADJUSTING, AND BALANCING FOR HVAC
230900	INSTRUMENTATION AND CONTROL FOR HVAC
233113	METAL DUCTS
233300	AIR DUCT ACCESSORIES
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233713	DIFFUSERS, REGISTERS, AND GRILLES
237433	DEDICATED OUTDOOR-AIR UNITS

**DIVISION 26 - ELECTRICAL**

260500	COMMON WORK RESULTS FOR ELECTRICAL
260519	LOW-VOLTAGE ELECTRICAL POWER CONDUCTORS AND CABLES
260526	GROUNDING AND BONDING FOR ELECTRICAL SYSTEMS
260529	HANGERS AND SUPPORTS FOR ELECTRICAL SYSTEMS
260533	RACEWAY AND BOXES FOR ELECTRICAL SYSTEMS
260548	VIBRATION AND SEISMIC CONTROLS FOR ELECTRICAL SYSTEMS
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262726	WIRING DEVICE SCHEDULE
262726	WIRING DEVICES
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262913	ENCLOSED CONTROLLERS
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265600	EXTERIOR LIGHTING

**DIVISION 28 - ELECTRONIC SAFETY AND SECURITY**

283111	DIGITAL, ADDRESSABLE FIRE-ALARM SYSTEM
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**DIVISION 31 - EARTHWORK**

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312000	EARTH MOVING

**DIVISION 32 - EXTERIOR IMPROVEMENTS**

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323113	SECURITY FENCE

**INFORMATION AVAILABLE TO BIDDER (REFERENCE ONLY)**

GEOTECHNICAL INVESTIGATION REPORT  
END OF T.O.C.

## DRAWING SHEET LIST

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C101 GRADING AND SPOT ELEVATION PLAN  
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AE103 ROOF PLAN  
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AE301 BUILDING SECTIONS  
AE401 WALL SECTIONS  
AE501 INTERIOR ELEVATIONS  
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AE602 DETAILS  
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S201 STRUCTURAL DETAILS

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MH101 MECHANICAL FLOOR PLAN  
MH501 MECHANICAL DETAILS  
MH601 MECHANICAL SCHEDULES  
MH701 MECHANICAL SECTION FLOOR PLAN  
PP101 PLUMBING FLOOR PLAN  
PP501 PLUMBING DETAILS  
PP601 PLUMBING SCHEDULES  
PP701 PLUMBING ISOMETRIC

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EE002 SYMBOL SCHEDULE  
EP101 POWER PLANS  
EP501 DETAILS  
EP502 DETAILS  
EP503 DETAILS  
EP601 ONE-LINE DIAGRAM, EQUIPMENT & PANEL SCHEDULES

Received

SEP 20 2012

CRSA

AIA Document A312

# Payment Bond

Bond No.: 11088650

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**  
W. Wade Payne Construction, Inc.  
P.O. Box 1539  
Orem, Utah 84059

**SURETY (Name and Principal Place of Business)**  
The Guarantee Company of North America USA  
One Towne Square, Suite 1470  
Southfield, Michigan 48076

**OWNER (Name and Address):**  
Tooele County – Wendover Airport  
345 Airport Apron  
Wendover, Utah 84083

### CONSTRUCTION CONTRACT

Date: September 13, 2012

Amount: \$513,400.00

Description (Name and Location): Wendover Airport ARFF Building

**BOND Date (Not earlier than Construction Contract Date):** September 13, 2012


Amount: \$513,400.00

Modifications to this Bond: none

**CONTRACTOR AS PRINCIPAL**  
Company: W. Wade Payne Construction, Inc  
(Corporate Seal)

**SURETY**  
The Guarantee Co. of North Am. USA

Signature:   
Name: Wade Payne, President

Signature:   
Name and Title: Wendi Dean  
Attorney-in-fact

(Any additional signatures appear on page 4.)

**FOR INFORMATION ONLY -- Name, Address and Telephone)**

**AGENT or BROKER:** Dean Insurance Agency, Inc.  
17 North 470 West  
American Fork, Utah 84003  
(801)763-1313

**OWNER'S REPRESENTATIVE (Architect, Engineer or other party):**

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by paragraph 4 is given by Owner to the Contractor or to the Surety, that is sufficient compliance.

6 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

7 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

8 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable

for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

9 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

10 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

11 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

12 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

13 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### 14 DEFINITIONS

14.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

14.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**14.3 Owner Default:** Failure of the Owner, which has  
neither been remedied nor waived, to pay the Contractor

as required by the Construction Contract or to perform and  
complete or comply with the other terms thereof.

**MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall respond within a reasonable time (1) after the Claimant has satisfied the conditions of Paragraph 4 and (2) after the Surety has reviewed all supporting documentation it requested to substantiate the amount of the claim, the Surety shall pay or arrange for payment of any undisputed amounts. Failure of the Surety to satisfy the above requirements shall not be deemed a forfeiture or waiver of the Surety's or the Contractor's defenses under this Bond or their right to dispute such claim. However, in such event the Claimant may bring suit against the Surety as provided under this Bond.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**  
Company:

**SURETY**  
Company:

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address:

# Performance Bond

Bond No.: 11088650

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

W. Wade Payne Construction, Inc  
P.O. Box 1539  
Orem, Utah 84059

**OWNER (Name and Address):**

Tooele County – Wendover Airport  
345 Airport Apron  
Wendover, Utah 84083

**SURETY (Name and Principal Place of Business):**

The Guarantee Company of North America USA  
One Towne Square, Suite 1470  
Southfield, Michigan 48076

**CONSTRUCTION CONTRACT**

Date: September 13, 2012

Amount: \$513,400.00

Description (Name and Location): Wendover Airport ARFF Building

**BOND**

Date (Not earlier than Construction Contract Date September 13, 2012

Amount: \$513,400.00

Modifications to this Bond: none

**CONTRACTOR AS PRINCIPAL**

Company: W. Wade Payne Construction, Inc.

Signature: 

Name: Wade Payne, Pres.

(Any additional signatures appear on page 2.)

FOR INFORMATION ONLY -- Name, Address and Telephone)

**AGENT or BROKER:**

Dean Insurance Agency, Inc.

17 North 470 West

American Fork, Utah 84003

(801) 763-1313

**SURETY:**

The Guarantee Company of North America USA

Signature: 

Name and Title: Wendi Dean

Attorney-in-fact

**OWNER'S REPRESENTATIVE (Architect, Engineer or other party):**

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such and agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

**3.2** The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

**3.3** The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

**4** When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

**4.1** Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

**4.2** Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

**4.3** Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

**4.4** Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

**.1** After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

**.2** Deny liability in whole or in part and notify the Owner citing reasons therefor.

**5** If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

**6** After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall

not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

**6.1** The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

**6.2** Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

**6.3** Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

**7** The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

**8** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**9** Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**10** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

**11** When this Bond has been furnished to comply with statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

## **12 DEFINITIONS**

**12.1** Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the



Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**12.2 Construction Contract:** The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**12.3 Contractor Default:** Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

**12.4 Owner Default:** Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

**MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**  
none

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**  
Company: \_\_\_\_\_ (Corporate Seal)

**SURETY**  
Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:

Signature: \_\_\_\_\_  
Name and Title:

THE GUARANTEE COMPANY OF NORTH AMERICA USA  
Southfield, Michigan  
**POWER OF ATTORNEY**

KNOW ALL BY THESE PRESENTS: That THE GUARANTEE COMPANY OF NORTH AMERICA USA, a corporation organized and existing under the laws of the State of Michigan, having its principal office in Southfield, Michigan, does hereby constitute and appoint

*Wendi Dean-Marshall, Ashley Bolt*  
Dean Insurance Agency, Inc.

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise.

The execution of such instrument(s) in pursuance of these presents, shall be as binding upon THE GUARANTEE COMPANY OF NORTH AMERICA USA as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at the principal office.

The Power of Attorney is executed and may be certified so, and may be revoked, pursuant to and by authority of Article IX, Section 9.03 of the By-Laws adopted by the Board of Directors of THE GUARANTEE COMPANY OF NORTH AMERICA USA at a meeting held on the 31<sup>st</sup> day of December, 2003. The President, or any Vice President, acting with any Secretary or Assistant Secretary, shall have power and authority:

1. To appoint Attorney(s)-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof; and
2. To revoke, at any time, any such Attorney-in-fact and revoke the authority given, except as provided below
3. In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.
4. In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner - Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of the Company adopted at a meeting duly called and held on the 6th day of December 2011, of which the following is a true excerpt:

RESOLVED that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, contracts of indemnity and other writings obligatory in the nature thereof, and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, THE GUARANTEE COMPANY OF NORTH AMERICA USA has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 23rd day of February, 2012.

THE GUARANTEE COMPANY OF NORTH AMERICA USA

*Stephen C. Ruschak*

Stephen C. Ruschak, Vice President

*Randall Musselman*

Randall Musselman, Secretary

STATE OF MICHIGAN  
County of Oakland

On this 23rd day of February, 2012 before me came the individuals who executed the preceding instrument, to me personally known, and being by me duly sworn, said that each is the herein described and authorized officer of The Guarantee Company of North America USA; that the seal affixed to said instrument is the Corporate Seal of said Company; that the Corporate Seal and each signature were duly affixed by order of the Board of Directors of

*Cynthia A. Takai*  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires February 27, 2018  
Acting in Oakland County

IN WITNESS WHEREOF, I have hereunto set my hand at The Guarantee Company of North America USA offices the day and year above written.

*Cynthia A. Takai*

I, Randall Musselman, Secretary of THE GUARANTEE COMPANY OF NORTH AMERICA USA, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by THE GUARANTEE COMPANY OF NORTH AMERICA USA, which is still in full force and effect.

IN WITNESS WHEREOF, I have thereunto set my hand and attached the seal of said Company this 14 day of Sept. 2012

*Randall Musselman*

Randall Musselman, Secretary

