

TOMBALL INDEPENDENT SCHOOL DISTRICT
RFQ #956-23 – Tomball Innovation Center – Bldg 6

RFQ Issued: October 16, 2023
REQUEST FOR PROPOSALS FOR DESIGN BUILD SERVICES FOR
THE RENOVATION OF AN EXISTING PRE-ENGINEERED BUILDING
MODIFYING EXISTING SPACES FOR EDUCATIONAL USE
AND SYSTEMS TO SUPPORT THEIR USE.

Addendum No. 01

October 31, 2023

Questions and Clarifications to the RFP Document:

1. *Question:* Addressing conflicts in dates.
Response: The Substantial Completion Date shall be July 8, 2024
2. *Question:* Exhibit Q – AIA 141 Agreement was listed to be issued by Addendum.
Response: See attached.
3. *Question:* Public Opening Time
Response: The Public Opening of the Proposals shall be 1:40 PM CST.
1110 Baker Drive
Tomball, Texas 77375

Questions and Clarifications to the Drawings:

1. *Question:* None at this time.
Response:

Questions and Clarifications to the Specifications:

1. *Question:* None at this time.
Response:

End of Addendum

DRAFT AIA® Document A141™ – 2014

Exhibit Q of the RFQ.

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 «TBD » day of «November» in the year «2023» (the “Agreement”)
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

Tomball ISD
RFQ #956-23 - Tomball Innovation Center
Building 6
11211 Farm to Market 2920
Tomball, Texas 77375

THE OWNER:

(Name, legal status and address)

Tomball ISD
310 S. Cherry Street
Tomball, Texas 77375

THE DESIGN-BUILDER:

(Name, legal status and address)

TBD

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

TABLE OF ARTICLES

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

ARTICLE A.1 CONTRACT SUM

§ 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.)

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.

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

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

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

[☒] Cost of the Work plus the Design-BUILDER's Fee, in accordance with Section A.1.3 below

[☐] Cost of the Work plus the Design-BUILDER's 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 - Intentionally Deleted

§ 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.)

General Conditions	_____ %
Profit	_____ %
Professional Services	_____ %

§ A.1.4 Intentionally Deleted

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 This project will require early procurement of some items. Upon completing the preliminary phase of design, the DB shall provide a list of areas of work with Budgeted Maximum Price (BMP). The BMP shall be the basis of early billing for Professional Services. Once early procurement items are identified and a Guaranteed Maximum Price (GMP) for those items they will be balanced to the BMP. When all work has been defined and agreed to in scope, the DB shall present a final GMP in the format noted in this agreement. Once the GMP is established, there shall be no increase in cost to the Owner without prior written approval. The sum of the Cost of the Work and the Design-BUILDER's Fee is guaranteed by the Design-BUILDER not to exceed the accepted Final GMP, 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.)

« Design-BUILDER shall return to the Owner all unused funds from any Contingency account as a deduction from the Guaranteed Maximum Price. The Design-BUILDER shall not participate in any savings. All savings shall be credited to Owner. It is the requirement of this Agreement that if the actual Cost of the Work plus the Design-BUILDER's fee is less than the Guaranteed Maximum Price, as it may be adjusted by approved Change Orders, the entire amount of the savings shall be returned to Owner. »

§ 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.)

«The Guaranteed Maximum Price includes an Owner Allowance in the amount of **\$200,000.00** for the exclusive use by the Owner for any purpose including, but not limited to, Project betterment, unforeseen site conditions and construction issues, if approved.»

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

« »

§ 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, or as follows:

« »

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the «fifteenth » day of the month, the Owner shall make payment of the undisputed amount to the Design-Builder not later than the «fifteenth » day of the «next » 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. The date by which this shall be determined is the date in which the Owner receives a reviewed and accepted 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 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 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. The Design-Builder's Fee shall be shown separately in two parts; that portion attributable to the Cost of the Work for contingencies and allowances, and that portion attributable to all other Cost of the Work. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work and contingency for costs that are included in the Guaranteed Maximum Price (shown as Cost of the Work only, without general conditions or fee) but not otherwise allocated to another line item or included in a Change Order. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior 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.

§ A1.5.1.8 The allocation of the Guaranteed Maximum Price under this Section A1.5.1 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Design-Builder allocates costs from a contingency to another line item in the schedule of values, the Design-Builder shall submit supporting documentation to the Owner.

§ 11.1.5.4 Professional Fees shall be listed as a line item at the end of the Application for Payment. No markup shall be allowed on Professional Fees. Invoices from the Professional shall be attached to the Application for Payment. Calculation for this shall be based upon General Conditions times Cost of work plus that subtotal times Profit for a Total Cost then by adding Professional Fees to the cost.

§ 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 with each GMP being listed as a subtotal. 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 «five » percent («5.0 » %). 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 «five » percent («5.0 » %) 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, accountants or other representatives 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. Payments to the Architect shall be according to the requirements of the Design Criteria Package. No retainage is to be held on Professional Services. Reimbursables shall be listed as a line item budget in the BMP and finalized a GMP for a portion of work has been accepted and approved.

§ 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** The Owner's auditors, accountants, or other representatives will review and report in writing on the Design-Builder's final accounting within 60 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, 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.

§ **A.1.5.5.3** If the Owner's auditors', accountants, or other representatives report concludes that the Cost of the Work, as substantiated by the Design-Builder's final accounting, is less than claimed by the Design-Builder, the Design-Builder shall be entitled to proceed in accordance with Article 14 of the Agreement. Unless agreed to otherwise, a demand for mediation, or other dispute resolution as provided in the Contract Documents of the disputed amount shall be made by the Design-Builder within 30 days after the Design-Builder's receipt of a copy of the Owner's final Certificate for Payment. Failure to make such a demand within this 30-day period shall result in the substantiated amount reported by the Owner's auditors, accountants or other representatives becoming binding on the Design-Builder. Pending a final resolution of the disputed amount, the Owner shall pay the Design-Builder the amount certified in the Owner's final Certificate for Payment.

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 **«» (« »)** 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.)

Final Substantial Completion for the Project shall **be July 8, 2024**

Substantial Completion for portions of work identified in early GMP packages shall align to support the Final Substantial Completion.

Portion of Work	Substantial Completion Date

, 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.)

«As indicated in AIA A141-2014 between the parties »

§ **A.2.3** The Design-Builder shall achieve Final Completion of the Work not later than **«Sixty » («60 »)** days from the actual date of Substantial Completion for each Phase.

« »

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
Not provided at the time of the Amendment			

§ **A.3.1.2** The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

Exhibit A: Design Criteria Package– (Exhibit V in the RFQ.)
 Exhibit B: Tomball ISD Construction Standards– (Exhibit U in the RFQ.)
 Exhibit C: General Conditions – (Exhibit T in the RFQ.)»

Section	Title	Date	Pages

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

«Not provided at the time of the Amendment »

Number	Title	Date

§ 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.)

Title	Date	Pages
Not applicable		

Other identifying information:

«Not applicable »

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

.1 Allowances

«Owner Allowance: \$200,000.00 »

.2 Contingencies

« »

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

TBD if approved by the Owner

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

TBD

§ 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:

«Not provided at the time of the Amendment »

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

« »

.2 Project Manager

« »

.3 Others

« »

§ 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

The term Cost of the Work shall mean direct, actual, and verifiable costs reasonably and necessarily incurred by the Design-Builder in the proper performance of the Work as described in this Article A.5. Costs constituting or comprising the Cost of the Work shall not include any items contained in A141-2014 as modified by the Owner for the project and listed as General Conditions items listed in Exhibit C of A141-2014. The Cost of the Work shall include only the items set forth in Section A.5.1.

§ 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 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site and performing Work are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for employment-related 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. Any Contractor Work to be performed by the Design-Builder's own forces or subsidiary of the Design-Builder on the basis of a bid or proposal submitted by the Design Builder, shall be treated as Work performed by a Contractor. The Design-Builder's compensation for such Contractor Work performed shall be based on the amount of the bid or proposal submitted by Design-Builder for such Work, rather than "actual costs" as provided elsewhere in Article 5 of this Amendment. Costs paid to the Design-Builder for such Work shall be treated only as "Contract Costs" for purposes of computing the amount due to the Design-Builder for the self-performed work. The Design-Builder, in furnishing a proposal for self-performed work, recognizes that the Design-Builder shall not be entitled to Design-Builder's Fee or Compensation for General Conditions for self-performed work.

§ 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 are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ 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 are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ 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 are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ 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 (1) a Texas independent school district is exempt, and (2) the Owner will provide the DB with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

§ 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 Intentionally deleted

§ 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 are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ 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 are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ A.5.1.6 Other Costs and Emergencies

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

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

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder or the Design-Builder's Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by or contributed to in whole or in part by negligence or failure of the Design-Builder or the Design-Builder's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel or any person over whom Design-Builder has contact or supervision to fulfill a specific responsibility to the Owner set forth in this Agreement or the failure of the Design-Builder's personnel to supervise adequately the Work of the Contractors or suppliers; and further provided that such costs of repair or correction is not recoverable by the Design-Builder after exhausting all attempts to obtain same from insurance, Contractors, suppliers, or bonding companies.

§ 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 or their Professional Services Consultants, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase; and
- .9 Subcontractor Default Insurance (SDI). However, at the time of the Guaranteed Maximum Price proposal, if the Design-Builder can show that there would be either a significant cost savings, or an enhancement of the Project schedule, the Owner will have the option to allow the Design-Builder to include the purchase SDI for specific Subcontractors. Any cost for such Bonds or Insurance, if approved, will be added as a "Cost of the Work" and must be approved in writing by the Owner.

§ 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, accountants or other representatives, 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, including any record retention policy applicable to the Owner.

§ 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.

OWNER *(Signature)*

« »« »

(Printed name and title)

Date

DESIGN-BUILDER *(Signature)*

«TBD »« »

(Printed name and title)

Date

