

DRAFT AIA® Document A141® - 2014

Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Manager and Design-Builder dated the «TBD» day of «TBD» in the year «TBD» (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

«Parking Lot and Equipment Upgrade Project»
«Hawaii Convention Center ("HCC")»
1801 Kalakaua Avenue
Honolulu, Hawaii 96815»

THE MANAGER:

(Name, legal status and address)

«AEG Management HCC, LLC a Delaware Limited Liability Company»
«1801 Kalakaua Avenue»
«Honolulu, Hawaii 96815»

THE DESIGN-BUILDER:

(Name, legal status and address)

«TBD»
«TBD»
«TBD»

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

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- A.1 CONTRACT SUM**
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ARTICLE A.1 CONTRACT SUM

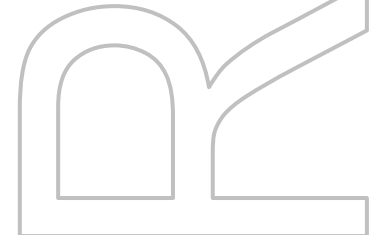
§ A.1.1 The Manager shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Manager paid the Design-Builder for Work 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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[«X»] 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

§ A.1.2.1 The Stipulated Sum shall be «TBD» (\$ «TBD»), subject to authorized adjustments as provided in the Design-Build Documents.

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

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

«N/A»

The Stipulated Sum includes the Design-Builder's Fee of TBD Percent (TBD%).

The Design-Builder's Fee will be the same for changes in the Work.

§ A.1.2.3 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
Request to Stop Work; where initially Manager accept Work on a particular day, but have to stop on the day, due to unforeseen circumstances.	TBD Stop Workdays	\$TBD/day

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

Intentionally deleted.

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

Intentionally deleted.

§ A.1.5 Payments, Also See Sections 16, 17, 18 and 27 of Exhibit D (General Conditions)

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Manager by the Design-Builder, the Manager 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.

«N/A»

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the «1st» day of the month, the Manager shall make payment of the certified and approved amount to the Design-Builder not later than the «1st» day of the « following» month. If an Application for Payment is received by the Manager after the application date fixed above, payment shall be made by the Manager not later than «thirty» («30») days after the Manager approves the Application for Payment.

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

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

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

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

§ A.1.5.2 Progress Payments—Stipulated Sum

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

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of «five» percent («5» %) on the Work. Pending final determination of cost to the Manager of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Manager, suitably stored off the site at a location agreed upon in writing), less retainage of «five» percent («5» %);
- .3 Subtract the aggregate of previous payments made by the Manager; and
- .4 Subtract amounts, if any, the Manager has withheld or nullified, as provided in Section 9.5 of the Agreement.
- .5 Section 103-32.1(d)(3), HRS, allows the Design-Builder to withhold from amounts due its Subcontractors, only the same percentage of retainage as that of the Design-Builder, and only if its Subcontractors have provided valid performance and payment bonds or other bond or collateral acceptable to the Design-Builder. Section 103-32.1, HRS, allows the Design-Builder or Subcontractor to negotiate with, and retain from its respective Subcontractors, a different retainage percentage which cannot exceed ten percent (10%). All amounts retained shall be held by the procurement officer. Therefore no additional amounts are to be retained by the Manager unless: (1) the Design-Builder's progress is not satisfactory, in which case the Manager may continue to withhold up to five percent (5%) of the amount due the Contract, after fifty percent (50%) of the Contract is completed; or (2) there is a subcontract in which the Design-Builder or Subcontractor has negotiated a retainage in excess of the five percent (5%), but no more than ten percent (10%).

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

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

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

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

«At the Manager’s sole discretion, if the Work is proceeding to the satisfaction of the Manager, retainage may be reduced or discontinued on a case-by-case basis based on the quality and level of completeness of a Subcontractor’s Work.»

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

Intentionally deleted.

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

Intentionally deleted.

§ A.1.5.5 Final Payment

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

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Manager’s auditors will review and report in writing on the Design-Builder’s final accounting within 30 days after the Design-Builder delivers the final accounting to the Manager. Based upon the Cost of the Work the Manager’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 Manager will, within seven days after receipt of the written report of the Manager’s auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

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

§ A.2.1.1 The date of commencement shall be set forth in a written ‘Notice to Proceed’ letter.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than «TBD» («TBD») 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.)

«N/A

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. See also Section 9 of General Conditions (Section C)

«The Contractor’s failure to substantially complete the Work within the time period set forth in Section A.2.2 shall result in liquidated damages in the amount of TBD dollars and TBD cents (\$TBD) per calendar day.

The Contractor is on notice that the Work being performed under this Contract at the Hawaii Convention Center where numerous events are scheduled that involve all or various portion of the building. Scheduling of the Work shall and will be done so as not to negatively impact scheduled events. If certain portions of the Work are not performed on time, this could have a negative impact on scheduled events and the running of the Convention Center in general. Consequently, due to the difficulty in determining actual damages should the Work not be completed as stated in the Contract documents, the liquidated damages herein are an approximation of the actual damages should such a delay in completion occur by the Contractor.»

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
See Section 3.1.4.1 of Agreement A141 dated TBD to which this Exhibit A is attached and made a part thereof.			

§ A.3.1.2 The Specifications:

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

«See Section 3.1.1 above»

Section	Title	Date	Pages
N/A			

§ A.3.1.3 The Drawings:

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

«See Section 3.1.1 above»

Number	Title	Date
N/A		

§ A.3.1.4 The Sustainability Plan, if any: N/A

(If the Manager identified a Sustainable Objective in the Manager’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 Manager’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
N/A		

Other identifying information:

«N/A»

§ A.3.1.5 Allowances and Contingencies:

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

.1 Allowances

«TBD»

.2 Contingencies

«TBD»

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

«TBD»

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

«N/A»

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

«N/A»

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

«TBD»

.2 Project Manager

«TBD»

.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.)

«TBD»

ARTICLE A.5 COST OF THE WORK

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

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Manager's prior approval, at off-site workshops in accordance with the approved hourly billing rates attached hereto.

§ A.5.1.1.2 With the Manager's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site, in accordance with the approved hourly billing rates attached hereto, which include all fringe benefits and labor burden. With the prior approval of the Manager, certain accounting or estimating personnel assigned to the Project may be reimbursed for all or part of their time when stationed at the

Design/Builder's principal office, if included in the Contract Sum. Under no circumstances shall salaried employees be compensated for overtime without the Manager's prior written approval.

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

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
See Exhibit G - Preconstruction Costs and General Conditions			

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work in accordance with the approved hourly billing rates attached hereto.

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

§ 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 shall not be reimbursable as a Cost of the Work and shall not be allocated to or included within the wages, salaries or hourly billing rates attached hereto. Bonuses, profit sharing and other discretionary incentive compensation must be included in the Design/Builder's Fee, if provided.

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

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

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

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

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

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

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

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

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

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Manager'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 Manager's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

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

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

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

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Manager'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 Manager's prior approval, costs for electronic equipment and software directly related to the Work.

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

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

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

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

§ A.5.1.6 Other Costs and Emergencies

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

§ 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, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ **A.5.1.7 Related Party Transactions**

§ **A.5.1.7.1** For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common Managership 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 Manager 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 Manager, 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 Manager 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 project executives or personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Manager, that would cause the Guaranteed Maximum Price to be exceeded.

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

§ **A.5.3.1** Cash discounts obtained on payments made by the Design-Builder shall accrue to the Manager if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Manager, or (2) the Manager 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 Manager, and the Design-Builder shall make provisions so that they can be obtained.

§ **A.5.3.2** Amounts that accrue to the Manager in accordance with Section A.5.3.1 shall be credited to the Manager 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 Manager 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 Manager 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 Manager by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Manager.

§ 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 Manager. 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 Manager to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Manager 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 Manager upon the Manager'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 Manager. The Manager and the Manager's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Manager to exercise the Design-Builder's skill and judgment in furthering the interests of the Manager; 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 Manager's interests.

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

MANAGER *(Signature)*

«Teri Orton» «Chief Procurement Officer»

(Printed name and title)

DESIGN-BUILDER *(Signature)*

«TBD» «TBD»

(Printed name and title)