



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 Owner and Design-Builder dated the 3 day of September in the year 2024 (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

Mt Juliet Fire Station #3
4370 Old Lebanon Dirt Road
Mt. Juliet, TN 37087

THE OWNER:

(Name, legal status and address)

The City of Mt. Juliet
2425 N Mt. Juliet Road
Mt. Juliet, TN 37087

THE DESIGN-BUILDER:

(Name, legal status and address)

Nabholz Construction Corporation
725 Cool Springs Blvd. Suite 525
Franklin, TN 37067

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

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A.1 CONTRACT SUM

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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.)

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

ADDITIONS AND DELETIONS:

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

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

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

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

[x] 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.)

The Contract Sum is based upon the Project not being subject to State and Federal Prevailing Wage Law. In the event, that this Project becomes subject to State or Federal Prevailing Wage Law the Contract Sum will be adjusted accordingly.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

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

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

§ A.1.4.2 The Design-Builder's Fee:

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

By executing this amendment, the initial contract will be established with the Design-Builders lump sum fee to complete its limited design-build services and perform preconstruction services totaling \$154,126. This was calculated based on the RFP response provided and attached as follows (\$142,600 for design services + \$10,000 for preconstruction services) 1.0% GL) = \$154,126.

At a later time, when the GMP is established, the lump sum fee of \$400,000 proposed in the RFP Response, will be incorporated into the final Guaranteed Maximum Price Amendment and is separate from the lump sum fee for design and preconstruction services listed above.

In the event scope increase post GMP Change Orders shall be adjusted 5% for additive and 0% for deductive.

If no specific provision is made herein for adjustment of the Design-Builder's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions will cause substantial inequity to the Owner or Design-Builder, the Design-Builder's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

§ A.1.4.3 Guaranteed Maximum Price

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

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

A GMP will be established at a later time.

§ A.1.4.3.2 Owner acknowledges that the Guaranteed Maximum Price applies in the aggregate to all categories and line items of the Cost of the Work as defined in Article A.5 of this Agreement and in no event shall be considered a line item guarantee of the cost of any individual portion of the Work.

§ 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. The construction contingency included in the Guaranteed Maximum Price is for the sole use by the Design-Builder. The Construction Contingency is not allocated to any particular item of the cost of the Work and is established for the Cost of the Work incurred by the Design Builder, including mitigation of weather impact, losses, expenses or damages

not covered by insurance or bonds, low estimates or deviations from the estimated cost, price escalation, and overly aggressive scheduling or shortage of materials or properly skilled workforce.

(Provide information below or reference an attachment.)

N/A

§ 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.)

N/A

§ A.1.4.3.4 Unit Prices, if any:

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

Item
N/A

Units and Limitations
N/A

Price per Unit (\$0.00)
N/A

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

N/A

§ 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 1st day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 14th day of the same 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 thirty (30) days after the Owner receives the Application for Payment. An Application for Payment shall be deemed certified seven (7) days after submittal unless the Owner objects in writing to all or part of the Application for Payment within fourteen (7) days of submittal.

(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 a detailed cost transaction report generated from the Design-Builder's accounting system and upon request by the Owner, shall provide any other evidence reasonably required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract

Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may reasonably require. This schedule of values 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.

§ A.1.5.1.8 Notwithstanding any other provision in the Design-Build Documents, the Design-Builder's Fee; General Conditions costs; insurance charges; bond costs, if any; tax and costs of permits, fees, testing, inspections and similar items if paid by the Design-Builder shall not be subject to retainage.

§ A.1.5.1.9 The receipt by Design-Builder of a partial payment of any amount due to Design-Builder endorsed as payment in full will be deemed to be a part payment only, and any endorsements or statements on a check or other form of commercial paper, or any other document accompanying the payment, shall not be deemed an accord and/or satisfaction, notwithstanding such endorsements.

§ A.1.5.2 Progress Payments—Stipulated Sum

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

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

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

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

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

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

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

If the manner of completion of the work, and its progress are and remain satisfactory for the Owner, and the Work is shown at fifty percent (50%) or more complete in the Application for Payment, without reduction of previous retainage, no further retainage will be withheld.

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

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

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

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of 0 percent (0 %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of 5 percent (5 %) from that portion of the Work that the Design-Builder self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 Except with the Owner's prior approval, the percentage of retainage held on agreements with the Consultants, and Contractors shall not exceed five percent (5%). Upon recommendation of the Design-Builder, a Consultant's, or Contractor's retainage may be reduced by a percentage established and agreed upon by the Design-Builder. The full retainage may be reinstated with respect to remaining payments for identified Consultants or Contractors whose manner of completion of the work and its progress do not remain satisfactory to the Design-Builder and/or the Owner, or if any surety withholds its consent, or for other good and sufficient reasons.

§ A.1.5.3.4 If the manner of completion of the work, and its progress are and remain satisfactory for the Owner, and the Work is shown at fifty percent (50%) or more complete in the Application for Payment, without reduction of previous retainage, no further retainage will be withheld.

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

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final

determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.

- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of 0 percent (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 %) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 Except with the Owner's prior approval, the percentage of retainage held on agreements with the Consultants, and Contractors shall not exceed five percent (5%). Upon recommendation of the Design-Builder, a Consultant's or Contractor's retainage may be reduced by a percentage established and agreed upon by the Design-Builder. The full retainage may be reinstated with respect to remaining payments for identified Consultants, or Contractors whose manner of completion of the work and its progress do not remain satisfactory to the Design-Builder and/or the Owner, or if any surety withholds its consent, or for other good and sufficient reasons.

§ A.1.5.4.4 If the manner of completion of the work, and its progress are and remain satisfactory for the Owner, and the Work is shown at fifty percent (50%) or more complete in the Application for Payment, without reduction of previous retainage, no further retainage will be withheld.

§ A.1.5.5 Final Payment

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

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

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

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

13 months of construction, Substantial completion will be defined in GMP Amendment

Portion of Work

Substantial Completion Date
TBD

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

(Paragraphs deleted)

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

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

Document	Title	Date	Pages
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§ A.3.1.2 The Specifications:

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

Project Manual (Division 00 Only) - 07/22/2024 by The Hall Group Architecture

Section	Title	Date	Pages
	Project Manual	07/24/2024	1-146

§ A.3.1.3 The Drawings:

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

Concept Design Dated 07/24/2024 by The Hall Group Architecture

Number	Title	Date
23014	Concept Design	07/24/2024

§ 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
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Other identifying information:

Potential structural requirements for solar panels on the roof of the structure. Coordination with the Electrical Engineer.

§ 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

Init.

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

Conceptual documents provided by The Hall Group Architecture Dated 7/24/24

§ A.3.1.7 Deviations from the Owner'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 Owner 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

Brian O' Neil

.2 Project Manager

George Bruce

.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.)

Civil Engineer / Landscape Design:

Civil Site Design Group (CSDG)

2305 Kline Ave.

Nashville, TN 37211

Mechanical, Electrical, Plumbing, Fire Protection Engineers:

I.C. Thomasson Associates, Inc (ICT)

2950 Kraft Drive

Nashville, TN 37204

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 at off-site locations workshops.

§ A.5.1.1.2 Salaries and burden of the Design-Builder's supervisory, project/operations management, executive, safety and administrative personnel when engaged in execution of the Work whether at the site, at the Design-Builder's principal office or offices other than the site office.

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

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

§ A.5.1.1.3 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, collectively referred to as "Labor Burden," shall be charged at a flat rate of 49% of base wage, provided that such costs are based on wages and salaries included in the Cost of the Work as described herein. Owner acknowledges that the Labor Burden rate set forth in this A.5.1.1.4 is confidential and competitive to Design-Builder and shall not be disclosed to any third-party without advance written authorization of Design-Builder's Operations President.

(Paragraph deleted)

§ A.5.1.1.4 The Contract Sum is based upon the Project not being subject to State and Federal Prevailing Wage Law. In the event that this Project becomes subject to State or Federal Prevailing Wage Law, the Contract Sum will be adjusted accordingly.

§ 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 any Consultant, Contractor or supplier, with the Owner's prior approval.

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

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

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

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

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

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

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not owned by the construction workers, which are provided by the Design-Builder at the site, whether rented from the Design-Builder or others, and costs of transportation, installation, minor repairs, replacements, dismantling and removal thereof. Equipment owned by the Design-Builder shall be rented at a rate not to exceed the standard rental rate in the geographical area in which the project is located.

§ A.5.1.4.3 Costs of removal of debris and/or costs associated with diverting waste to a waste recycling center from the site of the Work and its proper and legal disposal.

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

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

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 That portion of insurance, including deductibles, bonds and other surety programs required by the Design-Build Documents and the Design Builder that can be directly attributed to the Contract and expenses for Contractor and supplier surety shall be reimbursed at the following rate: 1) Design-Builder's Contractor Supplier Default Insurance (SSDI) at one and a quarter (1.25%) of the Contractor/Supplier value; 2) Design-Builder's actual premium cost for other Payment and Performance Bonds from Contractors. At the Design-Builder's option, a combination of the above may be used. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

The cost of the Design-Builder's insurance program shall be reimbursed at the rate of \$9.50 per thousand dollars of Contract Sum. Rates shall be subject to adjustment on the first day of each calendar year if required by the Design-Builder.

Builder's Risk, if provided by Design-Builder pursuant to Exhibit B, will be maintained at the rate of \$0.15 per thousand of Contract Sum per month.

Owner acknowledges that the information provided in this Section A.5.1.5.1 is trade secret, proprietary, competitive or otherwise confidential to Design-Builder and shall not be disclosed to any third-party without advance written authorization of Design-Builder's Operations President. In the event Owner receives a request for disclosure pursuant to subpoena or other means, Owner shall provide notice of such request to Design-Builder within twenty-four (24) hours of receipt of the request, subpoena or demand, and shall not disclose such information without order.

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

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

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

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

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

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

§ A.5.1.5.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

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

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

§ A.5.1.6 Other Costs and Emergencies

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

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

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, the Consultants, Contractors or suppliers, or anyone directly or indirectly employed or contracted by any of them or whose acts any of them may be liable, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder, the Consultants, Contractors or suppliers, or anyone directly or indirectly employed or contracted by any of them or whose acts any of them may be liable, and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Consultants, Contractors, suppliers, or others.

(Paragraphs deleted)

§ A.5.1.6.4 Warranty Reserve. A warranty reserve in the amount of one quarter percent (0.25%) of the Cost of the Work may be established and included in the Guaranteed Maximum price to cover the Design-Builder's cost for providing the warranty as outlined in the Design-Build Documents. The warranty reserve shall be deemed a Cost of the Work. In order to facilitate the final payment process set forth in Article A.1.5.5, the Design-Builder may bill the Owner a lump sum amount for the full warranty reserve at the time of final payment. The expenditure of the warranty reserve will not be subject to the audit provisions of this Agreement.

§ A.5.1.7 [Intentionally Omitted]

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

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

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

§ A.5.3 Discounts, Rebates, and Refunds

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

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

§ A.5.4 Other Agreements

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

Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

§ A.5.4.3 The agreements between the Design-Builder and 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 Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.5.1 The Design-Builder shall not be obligated to provide any services, information or documentation relating to its Work to auditors working on a contingency fee basis (auditor's fees calculated as a percentage of the client's net recovery), nor shall any reimbursement obligation otherwise required by the Design-Build Documents be applicable to Design-Builder when an auditor is hired by Owner on a contingency fee basis.

§ 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)*

Kenny Martin City Manager
(Printed name and title)

DESIGN-BUILDER *(Signature)*

John M. Strack Executive Vice President
(Printed name and title)