

- .4 Overhead and general expenses, except as may be expressly included in Section B.6.2;
- .5 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .6 Except as provided in Section B.6.2.6.3 of this Amendment, costs due to the negligence of, or failure to fulfill a specific responsibility of the Agreement by, 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;
- .7 Any cost not specifically and expressly described in Section B.6.2; and
- .8 Costs, other than costs included in Modifications approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

#### **§ B.6.5 Other Agreements**

**§ B.6.5.1** Those portions of the Construction Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed under subcontracts or other appropriate agreements with the Design-Builder. The Owner may designate specific persons from whom, or entities from which, the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Construction Work, who are qualified to perform that portion of the Construction Work in accordance with the requirements of the Design-Build Documents. The Design-Builder shall deliver such bids to the Owner with an indication as to which bids the Design-Builder intends to accept. The Owner then has the right to review the Design-Builder's list of proposed Subcontractors and suppliers and, subject to Section 5.9.1.1 of the Agreement, to object to any Subcontractor or supplier. Any approval or objection by the Owner shall not relieve the Design-Builder of its responsibility to perform the Construction Work in accordance with the Design-Build Documents. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

**§ B.6.5.1.1** When a specific Subcontractor or supplier (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Construction 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.

**§ B.6.5.2** Subcontracts or other agreements 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 Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Design-Builder shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Design-Builder in this Amendment.

#### **§ B.6.6 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 Agreement 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, 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, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor invoices, purchase orders, vouchers, memoranda, and other data relating to this Agreement. 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.

#### **§ B.6.7 Relationship of the Parties**

If the basis of payment to the Design-Builder is the Cost of the Work plus a Fee without a Guaranteed Maximum Price or the Cost of the Work plus a Fee with a Guaranteed Maximum Price, the Design-Builder accepts the relationship of trust and confidence established by the 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 business administration 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. The Owner agrees to furnish and approve, in a timely manner, information required by the Design-Builder and to make payments to the Design-Builder in accordance with the requirements of the Design-Build Documents.

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