

# AIA<sup>®</sup> Document A141<sup>®</sup> – 2024 Exhibit B

## Design-Build Amendment

This Amendment dated the [ ] day of [ ] in the year [ ] (the “Amendment”) is incorporated into, and amends, AIA Document A141<sup>®</sup>–2024, Standard Form of Agreement Between Owner and Design-Builder for a Traditional Design-Build Project dated the [ ] day of [ ] in the year [ ] (the “Agreement”) (In words, indicate day, month, and year.)

for the following **PROJECT**:  
(Name and location or address)

Mesa Building OTP Remodel  
4101 CR 222  
Durango, Colorado 81303

**THE OWNER:**  
(Name, legal status, and address)

Southern Ute Indian Tribe  
PO Box 737  
Ignacio, Colorado 81137

**THE DESIGN-BUILDER:**  
(Name, legal status, and address)

[ ]  
[ ]

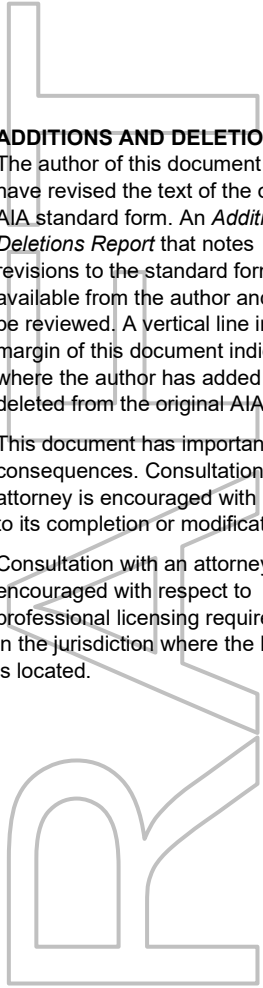
The Owner and Design-Builder hereby amend the Agreement as follows.

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### ARTICLE B.1 CONTRACT SUM

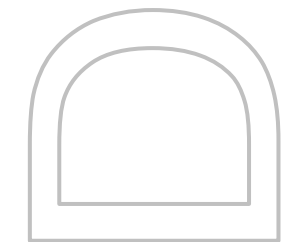
§ B.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Agreement after the execution of this Amendment.



**ADDITIONS AND DELETIONS:**  
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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.



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The Contract Sum shall be the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment. The Contract Sum shall include Early Release Work but shall not include any other compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment. The Contract Sum shall be one of the following:

(Check the appropriate box.)

- Stipulated Sum, in accordance with Section B.1.2 below
- Cost of the Work plus the Design-Builder's Fee, in accordance with Section B.1.3 below
- Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section B.1.4 below

(Based on the selection above, complete Section B.1.2, B.1.3 or B.1.4 below.)

**§ B.1.2 Stipulated Sum – Not Used**

**§ B.1.3 Cost of the Work Plus Design-Builder's Fee – Not Used**

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

**§ B.1.4.1** The Cost of the Work is as defined in Article B.6, Cost of the Work.

**§ B.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.)

**§ B.1.4.3 Guaranteed Maximum Price**

**§ B.1.4.3.1** The sum of the total Cost of the Work and the Design-Builder's Fee and TERO fee is guaranteed by the Design-Builder not to exceed  (\$  ), subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. This maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. The Guaranteed Maximum Price shall include all sales, consumer, use and similar taxes for the Work provided by the Design-Builder that are legally enacted, whether or not yet effective, at the time this Amendment is executed, however it is acknowledged that the Tribe is tax exempt as represented in Section 5.4 of the A141 Agreement. Costs which 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.)

**§ B.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price**

Referenced 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, including Design Services to be performed after execution of the Design-Build Amendment and Early Release Work.

(Provide itemized statement below or reference an attachment.)

**§ B.1.4.3.3 Alternates**

**§ B.1.4.3.3.1** Alternates, if any, included in the Guaranteed Maximum Price:

**Item**

**Price**

**§ B.1.4.3.3.2** Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit B. Upon acceptance, the Owner shall issue a Modification to the Agreement.  
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
[Redacted]		

**§ B.1.4.3.4** Unit prices, if any:  
*(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
[Redacted]		

**§ B.1.4.3.5** Allowances, if any:  
*(Identify each allowance.)*

Item	Price
[Redacted]	

**§ B.1.4.3.6** Assumptions and clarifications, if any, on which the Guaranteed Maximum Price is based:  
*(Identify each assumption and clarification.)*

[Redacted]

**§ B.1.4.3.7** To the extent that the Design-Build Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Design-Build Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

**§ B.1.5 Payments**

**§ B.1.5.1 Progress Payments**

**§ B.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.

**§ B.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.

[Redacted]

**§ B.1.5.1.3** Provided that an Application for Payment is received not later than the last day of the month, the Owner shall make payment of the amount certified to the Design-Builder not later than the last day of the next month. If an Application for Payment is received by the Owner after the application date fixed above, payment of the amount certified shall be made by the Owner not later than sixty (60) days after the Owner receives the Application for Payment.

**§ B.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 Owner to demonstrate that payments already made by the Design-Builder on account of the Cost of the Work equal or exceed progress payments already received by the Design-Builder plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Design-Builder's Fee.

**§ B.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: (1) the various portions of the Work; (2)

any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; (3) the Design-Builder's Fee and (4) TERO fees.

**§ B.1.5.1.6** The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. The schedule of values shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

**§ B.1.5.1.7** The allocation of the Guaranteed Maximum Price under this Section B.1.5.1 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ B.1.5.1.8** 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.

**§ B.1.5.1.9** 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 B.1.5.1.4 or B.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.

**§ B.1.5.1.10** 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.

**§ B.1.5.2 Progress Payments—Stipulated Sum – Not Used**

**§ B.1.5.3 Progress Payments—Cost of the Work Plus a Fee – Not Used**

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

**§ B.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 payment or intends to make 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.

**§ B.1.5.4.2** In accordance with the Tribe's AIA Document A141–2024, and subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

**§ B.1.5.4.3** The amount of each progress payment shall include:

- .1 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 most recent schedule of values;
- .2 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 completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Change Directives that the Owner determines to be reasonably justified; and
- .4 The Design-Builder's Fee, computed upon the Cost of the Work described in Sections B.1.5.4.3.1 and B.1.5.4.3.2 at the rate stated in Section B.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections B.1.5.4.3.1 and B.1.5.4.3.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ B.1.5.4.4** The amount of each progress payment shall be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;

- .2 The amount, if any, for Work that remains uncorrected and for which the Owner has previously withheld a Certificate for Payment as provided in Article 9 of the Tribe's AIA Document A141–2024;
- .3 Any amount for which the Design-Builder does not intend to pay a Subcontractor, sub-subcontractor, or material supplier, unless the Work has been performed by others the Design-Builder intends to pay;
- .4 Any amount for which the Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A141–2024;
- .5 The shortfall, if any, indicated by the Subcontractor in the documentation required by Section B.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
- .6 Retainage withheld pursuant to Section B.1.5.4.5.

#### **§ B.1.5.4.5 Retainage**

**§ B.1.5.4.5.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

2%

**§ B.1.5.4.5.2** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as Design Services, general conditions, bonds, insurance, etc.)*

#### **General Conditions and Insurance Fees**

**§ B.1.5.4.5.3** Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section B.1.5.4.5.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section B.1.5.4.5.4, insert provisions for such modification.)*

n/a

**§ B.1.5.4.5.4** Upon Substantial Completion of the Work, the Design-Builder may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment, except as follows:

*(Insert any conditions precedent to the release of all or a portion of the retainage, such as correction of the Construction Work, consent of surety, etc.)*

For any portion of the work the Owner determines is deficient by fault of the Contractor or its subcontractors.

#### **§ B.1.5.5 Final Payment**

**§ B.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:

- .1 the Design-Builder has fully performed the Agreement, except for the Design-Builder's responsibility to correct Construction Work as provided in Article 12 of the Tribe's AIA Document A141–2024, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Design-Builder has submitted a final Application for Payment and, if the Contract Sum is based on the Cost of the Work, a final accounting for the Cost of the Work;
- .3 a final Certificate for Payment has been issued by the Owner in accordance with Article 9 of the Tribe's AIA Document A141–2024;
- .4 other conditions precedent to the Owner's obligations to issue final payment to the Design-Builder:  
*(Insert any other conditions precedent to final payment.)*

**§ B.1.5.5.2** If the Contract Sum is based on the Cost of the Work, within 30 days of the Owner’s receipt of the Design-Builder’s final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Design-Builder that it will not conduct an audit.

**§ B.1.5.5.2.1** If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors’ findings to the Design-Builder.

**§ B.1.5.5.2.2** Within seven days after receipt of the written report described in Section B.1.5.5.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section B.1.5.5.1 have been met, the Owner will either issue a final Certificate for Payment to the Design-Builder, or notify the Design-Builder in writing of the Owner’s reasons for withholding a certificate. The time periods stated in this Section B.1.5.5.2.2 supersede those stated in Article 9 of AIA Document A141–2024. The Owner is not responsible for verifying the accuracy of the Design-Builder’s final accounting.

**§ B.1.5.5.2.3** If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Design-Builder’s final accounting, is less than the amount claimed by the Design-Builder, the Design-Builder shall be entitled to request mediation of the disputed amount pursuant to Article 15 of the Tribe’s AIA Document A141–2024, without seeking an initial resolution of the claim pursuant to Article 15 of Tribe’s AIA Document A141–2024. A request for mediation 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 request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Design-Builder. Pending a final resolution of the disputed amount, the Owner shall pay the Design-Builder the amount substantiated by the Owner’s auditors within 30 days or such shorter period required by law.

**§ B.1.5.5.3** If, subsequent to final payment, and at the Owner’s request, the Design-Builder incurs costs, described in Sections B.6.2, and not excluded by Section B.6.3, to correct defective or nonconforming Construction Work, the Owner shall reimburse the Design-Builder for such costs, and the Design-Builder’s Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if the Contract Sum is based on the Cost of the Work subject to a Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section B.1.4, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section B.1.5.5.3 in determining the net amount to be paid by the Owner to the Design-Builder.

**ARTICLE B.2 CONTRACT TIME**

**§ B.2.1** The date of commencement of the Construction Work shall be:  
(Check one of the following boxes.)

The date of execution of this Amendment.

Established as follows:  
(Insert a date or a means to determine the date of commencement of the Construction Work.)

If a date of commencement of the Construction Work is not selected, then the date of commencement of the Construction Work shall be the date of execution of this Amendment.

**§ B.2.1.1** Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Construction Work.

**§ B.2.2 Substantial Completion**

**§ B.2.2.1** Subject to adjustments of the Contract Time as provided in the Design-Build Documents, the Design-Builder shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

Not later than  (  ) calendar days from the date of commencement of the Work.

By the following date: September 18, 2026

§ B.2.2.2 Subject to adjustments of the Contract Time as provided in the Design-Build Documents, if portions of the Work are to be Substantially Complete prior to Substantial Completion of the entire Work, the Design-Builder shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ B.2.2.3 Other:

*(Insert provisions for bonus, shared savings, cost savings, or other incentives, if any, that might result in a change to the Contract Sum or Guaranteed Maximum Price.)*

**ARTICLE B.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

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

§ B.3.1.1 The following Supplementary and other Conditions of the Agreement:

Document	Title	Date	Pages

§ B.3.1.2 The following Specifications:

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

Section	Title	Date	Pages

§ B.3.1.3 The following Drawings:

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

Number	Title	Date

§ B.3.1.4 The Sustainability Plan, if any: Not Used

§ B.3.1.5 Assumptions and clarifications, if any:

*(Identify each assumption and clarification.)*

§ B.3.1.6 Deviations from the Owner’s Criteria as adjusted by a Modification:

§ B.3.1.7 To the extent the Design-Builder shall be required to submit any Submittals to the Owner for review, indicate any such submissions below:

(List any Submittals that the Design-Builder is required to submit to the Owner for review.)

[Redacted]

**§ B.3.1.8 Owner's Intended BIM Uses**

The Owner intends to utilize Building Information Modeling ("Model") on the Project for the following post construction uses. Any use in addition to those identified below shall be at the Owner's sole risk:

*(Examples include building system maintenance, building system analysis, asset management, space management and tracking, disaster planning, and record modeling.)*

[Redacted]

**§ B.3.1.8.1** The Owner agrees that the extent of its reliance on any Model, or a portion thereof, shall be in accordance with a BIM Execution Plan agreed to by the Parties. If the Parties do not agree to a BIM Execution Plan, the Owner's reliance on any Model shall be at the Owner's sole risk.

**ARTICLE B.4 DESIGN-BUILDER'S KEY PERSONNEL, CONSULTANTS, SUBCONTRACTORS, AND SUPPLIERS**

**§ B.4.1** The Design-Builder's key personnel are identified below:

*(Identify name, title, and contact information.)*

- .1 Superintendent

[Redacted]

- .2 Project Manager

[Redacted]

- .3 Others

[Redacted]

**§ B.4.2** In addition to the persons or entities identified in the Agreement, the Design-Builder shall retain the following Consultants, Subcontractors, and suppliers, identified below:

*(List name, discipline, address, and other information.)*

[Redacted]

**ARTICLE B.5 OWNER'S SEPARATE CONTRACTORS**

**§ B.5.1** The Owner shall retain the following Separate Contractors to perform construction or operations related to the Project:

*(List name, discipline, address, and other information for each Separate Contractor and identify the construction or operations to be performed by such Separate Contractor.)*

Geotechnical Engineer – Testing and Inspection

Code Review and Inspection

**ARTICLE B.6 COST OF THE WORK**

**§ B.6.1** The term Cost of the Work shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Section B.6.2.

**§ B.6.1.2** Where, pursuant to the Design-Build Documents, any cost is subject to the Owner's prior approval, the Design-Builder shall obtain such approval in writing prior to incurring the cost.

§ B.6.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

**§ B.6.2 Cost to Be Reimbursed as Part of the Contract**

**§ B.6.2.1 Labor Costs**

§ B.6.2.1.1 Wages or salaries of construction workers directly employed by the Design-Builder to perform the Construction Work at the site or, with the Owner's prior approval, at off-site workshops.

§ B.6.2.1.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site and performing Construction Work, with the Owner's prior approval.

§ B.6.2.1.3 Wages or salaries of the Design-Builder's supervisory and administrative personnel when performing Construction Work and stationed at a location other than the site, but only for that portion of time required for the Construction Work, and limited to the personnel and activities listed below:

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Construction Work.)*

■

§ B.6.2.1.4 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 Construction Work, but only for that portion of their time required for the Construction Work.

§ B.6.2.1.5 Costs paid or incurred by the Design-Builder, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining 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 B.6.2.1.

§ B.6.2.1.6 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

**§ B.6.2.2 Consultant and Subcontract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Subcontractors, and suppliers in accordance with the requirements of their subcontracts or similar agreements.

**§ B.6.2.3 Costs of Materials and Equipment Incorporated in the Completed Construction**

§ B.6.2.3.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ B.6.2.3.2 Costs of materials described in the preceding Section B.6.2.3.1 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 Construction 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.

**§ B.6.2.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ B.6.2.4.1 Costs of transportation, storage, installation, maintenance, dismantling, and removal of materials, supplies, temporary facilities, machinery, equipment, and costs of 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 Construction 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.

§ B.6.2.4.2 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, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Design-Builder, or a related party as defined in Section B.6.2.7 shall be subject to the Owner's prior

approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

**§ B.6.2.4.3** Costs of removal of debris from the site of the Construction Work and its proper and legal disposal.

**§ B.6.2.4.4** Costs of the Design-Builder's site office, including general office equipment and supplies.

**§ B.6.2.4.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

**§ B.6.2.5 Miscellaneous Costs**

**§ B.6.2.5.1** Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract.

**§ B.6.2.5.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Design-Build Documents, with the Owner's prior approval.

**§ B.6.2.5.1.2** Costs for insurance through a captive insurer owned or controlled by the Design-Builder, with the Owner's prior approval.

**§ B.6.2.5.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Design-Builder is liable.

**§ B.6.2.5.3** 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.

**§ B.6.2.5.4** Fees of laboratories for tests required by the Design-Build Documents; except those related to defective or nonconforming Construction Work for which reimbursement is excluded under Article 12 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section B.6.2.6.3.

**§ B.6.2.5.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Design-Build Documents.

**§ B.6.2.5.5.1** The cost of defending suits or claims for infringement of patent rights arising from Owner-imposed requirements in the Design-Build Documents, 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, unless the Design-Builder had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Design-Builder failed to promptly furnish such information to the Owner as required by Article 3 of the Tribe's AIA Document A141-2024. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Design-Builder's Fee or subject to the Guaranteed Maximum Price.

**§ B.6.2.5.6** Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

**§ B.6.2.5.7** Costs of document reproductions and delivery charges.

**§ B.6.2.5.8** Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

**§ B.6.2.5.9** 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 this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

**§ B.6.2.5.10** 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, with the Owner's prior approval.

§ B.6.2.5.11 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.

**§ B.6.2.6 Other Costs and Emergencies**

§ B.6.2.6.1 Other costs incurred in the performance of the Work, with the Owner’s prior approval.

§ B.6.2.6.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A141-2024.

§ B.6.2.6.3 Costs of repairing or correcting damaged or nonconforming Construction Work executed by the Design-Builder, Subcontractors, or suppliers, provided that such damaged or nonconforming Construction Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, 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, Subcontractors, suppliers, or others.

§ B.6.2.6.4 Costs of implementation of, and compliance with, protective safeguards that may be required under the Design-Builder’s or Owner’s builder’s risk policy.

**§ B.6.2.7 Related Party Transactions**

§ B.6.2.7.1 For purposes of this Section B.6.2.7, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Design-Builder; (2) any entity in which any stockholder in, or management employee of, the Design-Builder holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Design-Builder; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Design-Builder.

§ B.6.2.7.2 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 in writing, 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 Subcontractor, according to the terms of Section B.6.5. If the Owner fails to authorize the transaction in writing, 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 B.6.5.

**§ B.6.3 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 B.6.2.1 or as may be provided elsewhere in the Agreement;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Design-Builder or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Design-Builder's principal office and offices other than the site office;
- .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.6.4 Discounts, Rebates, and Refunds**

§ B.6.4.1 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 the amount to be paid, less such discount, 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.

**§ B.6.4.2** Amounts that accrue to the Owner in accordance with Section B.6.4.1 shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 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.

OWNER (Signature)

(Printed name and title)

DESIGN-BUILDER (Signature)

(Printed name and title)

TEBRA D