

## VILLAGE OF ROYAL PALM BEACH, FLORIDA

---

PROJECT NAME: **Renovate & Expand Recreation Center**

PROJECT NUMBER: **PR2201**

---

### **ADDENDUM NUMBER: TWO**

DATE OF ISSUANCE: Thursday, October 3, 2024

TO: Prospective Bidders

THIS ADDENDUM NO. **TWO** INCLUDES THE FOLLOWING:

Delete the following files:

- a. 01\_DWG\_04\_ArchPlans(9-22-23).pdf
- b. 02\_Spec\_23\_0914\_FinishIndex.pdf

Add the following files:

- a. 01\_DWG\_04\_ArchPlans(9-22-23)-ADD2.pdf
  - b. 01\_DWG\_06\_MEP\_Plans(9-22-23)ADD-2.pdf
  - c. 01\_DWG\_07\_FireAlarmWorkCompleted\_Plans(11-16-23)-Add2.pdf
  - d. 01\_DWG\_08\_PhasingPlan(9-23-24)-ADD2.pdf
  - e. 02\_Spec\_23\_0914\_FinishIndex-ADD2.pdf
- 3 Delete pages 3, 18, 41, 42, 53, 58, 104, 106, 107, 108 and 109 (upper right hand corner page number) from the proposal documents.

Add Addendum Two pages 3, 18, 41, 42, 53, 58, 104, 106, 107, 108 and 109 (upper right hand corner page number) to the proposal documents.

APPROVED BY: Christopher A. Marsh, P.E., Village Engineer

ACKNOWLEDGMENT OF RECEIPT: \_\_\_\_\_

Bidder

# INDEX OF FILES

Project: **RPB Recreation Center Renovations and Expansion Design Build Project**  
 Project No.: **PR2201**

Description	No. of Sheets	Date Created	File Name
60% Cover Page and Index of drawings	1	9/22/2023	01_DWG_00_CoverPage-DrawingIndex(9-22-23).pdf
90% Civil Plans	11	1/17/2024	01_DWG_01_CivilPlans(1-17-24).pdf
90% Landscape Plans	8	9/22/2023	01_DWG_02_LandscapePlans(9-22-23).pdf
60% Irrigation Plans	5	9/22/2023	01_DWG_03_IrrigationPlans(9-22-23).pdf
60% Architectural Plans	45	9/22/2023	01_DWG_04_ArchPlans(9-22-23)-ADD2.pdf
60% Structural Plans	22	9/22/2023	01_DWG_05_StructuralPlans(9-22-23).pdf
60% MEP Plans	45	9/22/2023	01_DWG_06_MEP_Plans(9-22-23)ADD-2.pdf
Fire Alarm Work that was recently completed and has not been incorporated into the MEP plans	117	11/16/23	01_DWG_07_FireAlarmWorkCompleted_Plans(11-16-23)-Add2.pdf
Current Recreation Center Programming Schedule	2	8/15/2024	02_24_0815_RECschedule.pdf
Phasing Plan	1	9/23/24	01_DWG_08_PhasingPlan(9-23-24)-ADD2.pdf
Finish Index	6	9/14/2023	02_Spec_23_0914_FinishIndex-ADD2.pdf
Asbuilt plans for the existing recreation center building and site	78	12/16/1991	03_App__91_1201_Asbuilt-RecCenterBuildingPlans.pdf
Topographic Survey	5	1/6/2023	03_App_23_0106_TopographicSurvey.pdf
Geotechnical Services Report	52	3/13/2023	03_App_23_0313_GeotechReport-GCME.pdf
Corrosion Test Results	5	3/15/2023	03_App_23_0315_CorrosionTestReport-GCME.pdf
Site Plan Approval - Resolution 23-17	7	6/15/2023	03_App_23_0615_SitePlanApproval.pdf
Site Plan presentation	16	6/15/2023	03_App_23_0615_SitePlanPowerPointPresentation.pdf

## ADDENDUM 2

PR2201

### 3.2.5 Staff Roles and Responsibilities

- Staff Assignments: Determine staff roles and responsibilities during each phase of construction.
- Training and Development: Provide necessary training to staff on safety, communication, and operational changes.
- Communication Channels: Establish effective communication channels between construction team, staff, and patrons.

### 3.2.6 Stakeholder Engagement

- Stakeholder Identification: Identify key stakeholders, including patrons, staff, community members, and government officials.
- Communication Strategy: Develop a communication plan to keep stakeholders informed about project progress and impacts.
- Feedback Mechanisms: Establish mechanisms for gathering and addressing stakeholder concerns.

### 3.2.7 Contingency Planning

- Risk Assessment: Identify potential risks and challenges that could impact the project.
- Mitigation Strategies: Develop contingency plans for addressing potential issues and disruptions.

## 3.3 \* Price & Completion Time Proposal Information – 35 Points

The Proposer shall submit the attached Price Proposal Pages (Exhibit A) filled out, and signed with either a corporate seal affixed or notarized

## 3.4. \*Technical Proposal – 30 Points

**The Technical Proposal may not be longer than 150 single spaced, 11 points font pages.**

Proposers should focus their discussions in the Technical Proposal on their approach to the Project and are encouraged to include and reference insights gained from the Confidential Individual Meetings.

### 3.4.1 Overall Management Approach

1. Describe the Proposer's overall management approach to the Project. In responding to this evaluation factor, Proposers should address the following:
  - a. What strategies will the Proposed Design-Build Team employ to achieve a thorough and clear understanding of the Owner's goals and objectives?
  - b. Based on the information provided in the RFQ, RFP, and Confidential Individual Meetings, what is the Proposed Design-Build Team's current understanding of the goals and objectives of this Project?
  - c. Identify three (3) key challenges to the Project, and for each challenge identified,

**6.2.2** For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

*[Check one box only.]*

☒ No additional reduction to account for Design-Builder's Fee or any other markup.

or

☐ An amount equal to the sum of: (a) \_\_\_\_\_ percent ( \_\_\_\_\_ %) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit \_\_\_\_\_ hereto applied to the direct costs of the net reduction.

### **6.3 Allowance Items and Allowance Values.**

**6.3.1** Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in an Exhibit hereto.

**6.3.2** Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

**6.3.3** No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

#### **6.3.4**

☒ In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with an Allowance Item is \_\_\_\_\_ five \_\_\_\_\_ percent ( 5%) greater than or less than the Allowance Value for such Allowance Item, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be adjusted in accordance with Section 6.2.

**6.3.5** Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

## **Article 7**

### **Procedure for Payment**

#### **7.1 Progress Payments.**

**ADDENDUM 2**

**7.1.1** Design-Builder shall submit to Owner on the \_\_\_\_\_ First \_\_\_\_\_ ( 1st ) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

**7.1.2** Owner shall make payment within ten (10) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

## **7.2 Retainage on Progress Payments.**

### **7.2.1**

☒ Owner will retain Five percent ( 5 %) from Design-Builder's Applications for Payment pursuant to applicable state law.

**7.2.2** Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion multiplied by one hundred and fifty percent (150%) and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

**7.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

**7.4 Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) thirty (30) days after payment is due at the rate of Half a percent ( 0.5 %) per month until paid.

**7.5 Record Keeping and Finance Controls.** With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

### **Price & Completion Time Proposal Information\***

#### **Indicators:**

**Indicator 1:** The Design-Build firms are to be scored on the project schedule and price proposal required by Exhibit A.

**Point Award:** 0-35 points

<b>Firm Name</b>						
<b>Subtotals</b>						

#### **Comments:**

### **Alternative Concepts or ATCs Price & Completion Time Proposal Information\***

#### **Indicators:**

**Indicator 1:** The Design-Build firms are to be scored on the ATCs project schedule and price proposal required by Exhibit A.

**Point Award:** 0-35 points

<b>Firm Name</b>						
<b>Subtotals</b>						

#### **Comments:**

**\*Committee members will vote on whether to use the original project schedule and price proposal score or the ATCs score for each bidder. Only one Price and Completion Time Proposal score (either the original or ATC) shall be utilized in the point tally and overall ranking.**

**INTERVIEW GUIDELINES POINT SUMMARY FOR  
Renovate & Expand Rec Center Design-Builder  
 (Exhibit B)**

<b>Firm Name</b>						
<b>Design-Build Firm Presentation (0-10 Points)</b>						
<b>Phasing and Contunity of Operations Plan (0-15 Points)</b>						
<b>Price &amp; Completion Time (0-35 Points)**</b>						
<b>ATCs Price &amp; Completion Time (0-35 Points)**</b>						
<b>Technical Proposal (0-30 Points)</b>						
<b>Financial/Business Stability/Previous Projects (0-10 Points)</b>						
<b>Total Points***</b>						
<b>Individual Rank Score*</b>						

\*The firm with the highest "Total Points" will receive an "Individual Rank Score" of 1, firm with second the highest "Total Points" will receive an "Individual Rank Score" of 2, etc.

\*\*Committee members will vote on whether to use the original project schedule and price proposal score or the ATCs score for each bidder. Only one **Price and Completion Time Proposal score (either the original or ATC)** shall be utilized in the overall ranking.

\*\*\* The maximum score is 100 points.

\_\_\_\_\_  
Committee Member Signature

\_\_\_\_\_  
Date

DESIGN-BUILDER shall purchase and maintain during the life of this contract Workers Compensation insurance, including Employers Liability, to comply with all applicable State and Federal laws covering all of its employees on the work site, and in accordance with all of the limits, terms and conditions set forth in the table below. If any work is sublet, DESIGN-BUILDER shall require all subcontractors to similarly comply with this requirement unless such subcontractor's employees are covered by DESIGN-BUILDER's Workers Compensation insurance policy.

DESIGN-BUILDER shall purchase and maintain during the life of this contract Comprehensive or Commercial General Liability insurance in accordance with all of the limits, terms and conditions set forth in the table below.

Should any of the work hereunder involve watercraft owned or operated by DESIGN-BUILDER or any subcontractor, such shall be insured under the Comprehensive or Commercial General Liability policy, or by other such liability insurance such as Protection and Indemnity.

DESIGN-BUILDER shall purchase and maintain during the life of this contract Comprehensive Automobile Liability insurance covering on all owned, non-owned and hired automobiles with all of the limits, terms and conditions set forth in table below.

~~Should any of the work include building, the DESIGN-BUILDER shall procure and maintain "all risk" Builder's Risk insurance, including, but not necessary limited to fire, flood, wind and other water damage, in accordance with all of the limits, terms and conditions set forth in the table below.~~

Should any of the work hereunder involve the hauling and/or rigging of property in excess of \$500,000.00 or \$250,000.00 in transit, DESIGN-BUILDER shall procure and maintain "all risk" Transit or Motor Truck Cargo insurance, or similar form of coverage, insuring against physical damage or loss to the property being transported, stored, moved or handled by DESIGN-BUILDER or any subcontractor pursuant to the terms of this contract, subject to the limits, terms and conditions set forth in the table below.

Should any of the work hereunder involve aircraft (fixed wing or helicopter) owned or operated by DESIGN-BUILDER or any subcontractor, DESIGN-BUILDER shall procure and maintain Aircraft Liability insurance in accordance with the terms and conditions of the table set forth below.

The requirements contained herein as to types and limits, as well as OWNER's approval of insurance coverage to be maintained by DESIGN-BUILDER are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by DESIGN-BUILDER under the contract.

The Certificates of Insurance must provide clear evidence that DESIGN-BUILDER's Insurance Policies contain the minimum limits of coverage and special provisions prescribed in this Article, in accordance with all of the limits, terms and conditions set forth in the table below. All



If work involves hauling and/or rigging of property in excess of \$500,000 "All Risk" Transit or Motor Truck Cargo or similar form of insurance	Replacement cost coverage for highest value involved. Must contain a Waiver of Subrogation in favor of Owner.	
If work involves any type of aircraft (fixed wing or helicopter) Aircraft Liability	\$5,000,000 each occurrence bodily injury (including passengers) and property damage	
<u>Comprehensive Auto Liability</u> Combined Single Limit Bodily Injury and Property Damage Must include all owned, hired and non-owned vehicles	\$500,000 per occurrence	\$1,000,000 per occurrence
<u>Builder's Risk</u> "All Risk" including flood, wind and water damage. Policy must specifically eliminate "Occupancy Clause" — must be endorsed to cover until final acceptance of project by the Owner.  Sub-limits for any coverages are not acceptable if they are less than the total value of the project.	Limits equal to total construction value of project. DESIGN-BUILDER assumes all deductibles as ongoing cost of doing business  Owner is not providing any insurance on behalf of DESIGN-BUILDER for loss or damage to work or to any other property of DESIGN-BUILDER. If DESIGN-BUILDER maintains any insurance for loss or damage to DESIGN-BUILDER's property, such must be endorsed to include a Waiver of Subrogation against Owner.	
<u>Certificates of Insurance</u>	a. Must list	

The Village of Royal Palm Beach, its Engineers, and its Engineers' Consultants shall be included as a named insured party under the DESIGN-BUILDER's Liability Insurance. The following paragraph is required to appear unaltered on the Certificate of Insurance.

"The Village of Royal Palm Beach is hereby named Additional Insured under the terms of this policy."

## 5.2 Owner's Liability Insurance.

Delete the following articles: 5.2, 5.2.1

## 5.3 Owner's Property Insurance.

Delete the following articles: 5.3, 5.3.1, 5.3.2, 5.3.3, 5.3.4, 5.3.5

## 8.2 Delays to the Work.

**Delete the following articles: 8.2.1, 8.2.2**

**Add the following to Article 8.2:**

#### **SC-8.2.1 Change of Contract Times**

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of Article 9.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 8.

#### **SC-8.2.2 Delays Beyond DESIGN-BUILDER's Control**

A. Where DESIGN-BUILDER is prevented from completing any part of the Work , as identified as being on the CRITICAL PATH, within the Contract Times (or Milestones) due to delay beyond the control of the DESIGN-BUILDER, The Contract times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefore as provided in Article 10. Delays beyond the control of the DESIGN-BUILDER shall include, but not be limited to, ~~acts or neglect by the OWNER,~~ acts or neglect of utility owners or other contractors performing work, ~~fires, floods, epidemics,~~ abnormal weather conditions, ~~or acts of God.~~ DESIGN-BUILDER hereby affirms that the extension of time granted herein is the DESIGN-BUILDER's sole and exclusive remedy. Apart from extension of time, no payment of claim for damages shall be made to the DESIGN-BUILDER as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the work whether such delay be avoidable or unavoidable.

#### **SC-8.2.3 Delays Within DESIGN-BUILDER's Control**

A. The Contract Times (or Milestones) will not be extended due to delays within the control of DESIGN-BUILDER. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of DESIGN-BUILDER.

#### **SC-8.2.4 Delays Beyond OWNER's and DESIGN-BUILDER's Control**

A. Where DESIGN-BUILDER is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and DESIGN-BUILDER, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be DESIGN-BUILDER's sole and exclusive remedy for such delay.

**ADDENDUM 2**

PR2201

### SC-8.2.5 Delay Damages

A. In no event shall OWNER be liable to DESIGN-BUILDER, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of DESIGN-BUILDER; or
2. delays beyond the control of both OWNER and DESIGN-BUILDER including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work.

**Delete articles: 9.4.1.4**

**Add the following to Article 9.4 Contract Price Adjustments:**

SC-9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including overhead and profit, as set forth in article SC-9.4.1.5.

SC-9.4.1.5 For changes in the Work, the maximum allowable cost for the combined overhead and profit included in the total cost to the Owner shall not exceed **twenty percent (20%)**, and shall be subject to the following maximums:

SC-9.4.1.5.1 For the Design Builder, for the total contract price adjustments due to changes in work, general conditions, insurance, and bond costs: **five percent (5%)** of the total cost.

SC-9.4.1.5.2 For the Contractor, for Work performed by the Contractor's own forces: **fifteen percent (15%)** of the cost.

SC-9.4.1.5.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces: **ten percent (10%)** of the cost.

SC-9.4.1.5.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors: **five percent (5%)** of the amount due the Sub-subcontractor.

SC-9.4.1.5.5 All proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized, and where major cost items are Subcontracts, they shall be itemized also.

**Delete Article 10.2 Dispute Avoidance and Resolution.**

**Delete Article 10.3 Arbitration.**

**Add Article SC-10.2 Claims and Disputes**

### SC-10.2 CLAIMS & DISPUTES

10.2.1 The Parties agree that before initiating mediation or any action for damages or other relief on account of any breach of this Agreement they will attempt in good faith to resolve their dispute in accordance with the procedures set forth in this Section 15.3.1. The Owner Representative and Contractor Representative will first attempt in good faith to resolve any dispute. If, in the opinion of either party, resolution by such representatives is unlikely or will result in undue delay, such party may make a written request to the other Party that the dispute be submitted to the level of Owner and Contractor management immediately above such representatives. Upon the delivery of such request, the Parties agree to submit the dispute to such level of management with decision

making authority who will attempt in good faith to resolve the dispute. In the event the foregoing level of management is unable to resolve the dispute within ten (10) days of delivery of such notice, the Parties agree to submit the dispute to non-binding mediation as provided in Section 15.3.2 prior to filing or asserting any claims, causes of action, demands, suits, rights, remedies, or defenses in a court proceeding.

**10.2.2** Mediation shall be initiated by any Party by serving a written request for same on the other Party. The Parties shall, by mutual agreement, select a mediator within fifteen (15) days from the date of the written request for mediation. If the Parties cannot agree on the selection of a mediator, then the Owner shall select the mediator. Mediation shall occur no later than ninety (90) days from the date of the written request for mediation. If the Parties cannot agree on a date and time for mediation, then the Owner shall select the date and time. The duration of the mediation shall be limited to one (1) business day unless the Parties agree otherwise. Both Parties shall attend mediation at the scheduled date and time, and shall have representatives present that have full authorization to negotiate. The representative for Contractor that attends the mediation also shall have full authorization to bind Contractor at the mediation.

**10.2.3** The Parties shall share the mediator's fee equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. The mediation shall be conducted pursuant to the laws and rules of the State of Florida. Agreements reached in mediation, and approved by the Village Council of the Village of Royal Palm Beach, shall be enforceable as settlement agreements in any court having jurisdiction thereof. If mediation is unsuccessful and court proceedings occur, this Agreement and all such proceedings shall be governed by Florida law, and the sole venue for any action under this Agreement shall be Palm Beach County, Florida.

**10.3.4** WITH RESPECT TO ANY CONTROVERSY SUBJECT TO LITIGATION, OWNER AND CONTRACTOR, FOR THEMSELVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, HEREBY (A) AGREE THAT NEITHER OF THEM SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT OR THE DEALINGS OR RELATIONSHIPS BETWEEN AND AMONG CONTRACTOR IN CONNECTION THEREWITH, (B) IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO ANY SUCH JURY TRIAL, AND (C) AGREE THAT NEITHER OF THEM SHALL SEEK TO CONSOLIDATE ANY SUCH LAWSUIT, ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION PROCEDURE AS TO WHICH JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER LAWSUIT, ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION PROCEDURE AS TO WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS SECTION HAS BEEN FULLY DISCUSSED BY OWNER AND CONTRACTOR EACH OF WHOM HAS BEEN REPRESENTED BY COUNSEL. THIS SECTION SHALL NOT BE SUBJECT TO ANY EXCEPTIONS, AND NO SUCH PERSON HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PERSON THAT THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

## **Article 13**

### **Miscellaneous**

#### **Add the following article:**

#### **SC-13.9a TESTS AND INSPECTIONS, CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

The DESIGN-BUILDER shall employ and pay; for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents, cost of testing and coordination associated with testing are to be included in the cost of materials and work being tested. There will be no separate payment for testing or coordination.