



# AIA<sup>®</sup> Document C199<sup>™</sup> – 2010 Exhibit B

## Contract Sum Amendment

This Exhibit is incorporated into the accompanying Agreement dated the day of \_\_\_\_\_ in the year \_\_\_\_\_  
(In words, indicate day, month and year.)

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

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

### ARTICLE B.1 CONTRACT TIME

§ B.1.1 The Contract Time for the Construction Work shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Contract Documents.

§ B.1.2 The Contractor shall achieve Substantial Completion of This Portion of the Project not later than \_\_\_\_\_ ( \_\_\_\_\_ ) days from the date of commencement, or as follows:  
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Contractor's Work.)

Portion of the Work	Substantial Completion Date
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§ B.1.3 The issuance dates for the Implementation Documents, if not otherwise issued at the time this Amendment is executed, upon which the anticipated Substantial Completion date is based are as follows:

Document	Issuance Date
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### ARTICLE B.2 STIPULATED SUM

§ B.2.1 If the parties have elected a Stipulated Sum payment method in the Agreement, the Contract Sum shall be (\$ \_\_\_\_\_ ), subject to additions and deductions as provided in the Contract Documents.

§ B.2.1.1 The Contract Sum shall include amounts to be paid to the Contractor for Preconstruction Work provided after execution of the Target Cost Amendment in accordance with Section 3.1.2 of the Agreement.

§ B.2.1.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Company:

§ B.2.1.3 Unit prices, if any, are as follows:

Item	Units and Limitations	Price per Unit (\$0.00)
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§ B.2.1.4 Allowances, if any, are as follows:

Item	Price (\$0.00)
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§ B.2.1.5 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

#### ARTICLE B.3 GUARANTEED MAXIMUM PRICE

§ B.3.1 If the parties elected a Contract Sum based on the Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, the Contract Sum is guaranteed by the Contractor not to exceed

(\$ \_\_\_\_\_), subject to additions and deductions as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Company.

§ B.3.1.1 The Contractor's Fee shall be:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

§ B.3.1.2 The Cost of the Work is defined in Article B.4 of this Exhibit.

#### § B.3.1.3 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 Contractor's Fee, and other items that comprise the Guaranteed Maximum Price.

*(Provide below or reference an attachment.)*

§ B.3.1.4 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Company:  
*(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Company to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)*

§ B.3.1.5 Allowances included in the Guaranteed Maximum Price, if any:  
*(Identify allowance and state exclusions, if any, from the allowance price.)*

Item	Price (\$0.00)
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§ B.3.1.6 Assumptions, if any, on which the Guaranteed Maximum Price is based:

§ B.3.1.7 To the extent that the Contract Documents require further development by the Company and Contractor, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the documents upon which the Guaranteed Maximum Price is based and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ B.3.1.8 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ B.3.1.9 The Guaranteed Maximum Price is based upon the following Specifications:  
*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

Section	Title	Date	Pages
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§ B.3.1.10 The Guaranteed Maximum Price is based upon the following Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
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#### ARTICLE B.4 COST OF THE WORK

§ B.4.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work including any compensation for Contractor's Preconstruction Work following execution of the Target Cost Amendment as set forth in Section 3.1.2 of the Agreement. The Contractor's Fee shall not be applied to any element of the Cost of the Work representing amounts paid as compensation for the Contractor's Preconstruction Work in accordance with Section 3.1.2 of the Agreement, if such amounts included overhead and profit. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Company. The Cost of the Work shall include only the items set forth in this Article B.4.

§ B.4.2 Where any cost is subject to the Company's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Amendment.

#### § B.4.3 Labor Costs

§ B.4.3.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Company's prior approval, at off-site workshops.

§ B.4.3.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Company's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, set forth 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)
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§ B.4.3.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ B.4.3.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections B.4.3.1 through B.4.3.3.

§ B.4.3.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Company's prior approval.

#### § B.4.4 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

#### § B.4.5 Costs of Materials and Equipment Incorporated in the Completed Construction

§ B.4.5.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ B.4.5.2 Costs of materials described in the preceding Section B.4.5.1 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 Contractor. Any amounts realized from such sales shall be credited to the Company as a deduction from the Cost of the Work.

#### § B.4.6 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ B.4.6.1 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 Contractor 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 Contractor shall mean fair market value.

§ B.4.6.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Company's prior approval.

§ B.4.6.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ B.4.6.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ B.4.6.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Company's prior approval.

#### § B.4.7 Miscellaneous Costs

§ B.4.7.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Company's prior approval.

§ B.4.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ B.4.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ B.4.7.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section A.7.4.3 of Exhibit A, Terms and Conditions, or by other provisions of the Contract Documents, and which do not fall within the scope of Section B.4.8.3.

§ B.4.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Company's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.5.17 of Exhibit A, Terms and Conditions, or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ B.4.7.6 Costs for electronic equipment and software directly related to the Work, with the Company's prior approval.

§ B.4.7.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ B.4.7.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Company and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Company's prior approval, which shall not be unreasonably withheld.

§ B.4.7.9 Subject to the Company's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ B.4.7.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

#### § B.4.8 Other Costs and Emergencies

§ B.4.8.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Company.

§ B.4.8.2 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 Section A.5.24.4 of Exhibit A, Terms and Conditions.

§ B.4.8.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

#### § B.4.9 Related Party Transactions

§ B.4.9.1 For purposes of this Section B.4.9, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ B.4.9.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Company 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 Company, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Section B.4.12. If the Company fails to authorize the transaction, the Contractor 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.4.12.

#### § B.4.10 Costs Not Included in the Cost of the Work

§ B.4.10.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section B.4.3 or as may otherwise be provided;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article B.4;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section B.4.8.3 of this Exhibit, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article B.4; and
- .7 Costs, other than costs included in Change Orders approved by the Company, that would cause the Guaranteed Maximum Price to be exceeded.

#### § B.4.11 Discounts, Rebates and Refunds

§ B.4.11.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Company if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Company, or (2) the Company has deposited funds with the Contractor with which to make payments; otherwise, cash



discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Company, and the Contractor shall make provisions so that they can be obtained.

§ B.4.11.2 Amounts that accrue to the Company in accordance with the provisions of this Section B.4.11 shall be credited to the Company as a deduction from the Cost of the Work.

#### § B.4.12 Subcontracts and Other Agreements

§ B.4.12.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Company may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Company. The Company shall then determine which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ B.4.12.2 When a specific bidder (1) is recommended to the Company by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Company requires that another bid be accepted, then the Contractor 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 Company by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Company.

§ B.4.12.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Company. If the Subcontract is awarded on a cost plus a fee basis, the Contractor shall provide in the Subcontract for the Company to receive the same audit rights with regard to the Subcontractor as the Company receives with regard to the Contractor in Section B.4.13, below.

#### § B.4.13 Accounting Records

The Contractor 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 this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Company. The Company and the Company's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

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COMPANY (Signature)

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CONTRACTOR (Signature)

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(Printed name and title)

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(Printed name and title)

**CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.**