

ADDENDUM 1

REQUEST FOR PROPOSALS  
S-C00055-00005354  
for  
Design-Build Columbia County Courthouse

Date of Addendum: January 19, 2022

Issuing Office: Columbia County General Services  
Riley Baker, Director  
Columbia County Courthouse  
230 Strand St.  
St. Helens, OR 97051  
Phone: 503-397-7213  
E-mail: [riley.baker@columbiacountyor.gov](mailto:riley.baker@columbiacountyor.gov)

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This addendum is being issued for the following purposes:

1. Delete IV PROPOSAL REQUIREMENTS and replace with Exhibit A hereto.
2. Delete II SELECTION PROCESS and replace with Exhibit B hereto.
3. Delete Attachment A replace with Exhibit C hereto.
4. Delete Attachment B and replace with Exhibit D hereto.
5. Add new Attachment C.

All other sections of the original RFP issued March 7, 2022 remain unchanged.

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*End of Addendum 1*  
*RFP #C00055-00002340*

EXHIBIT A  
Modified Proposal Requirements

# **I. PROPOSAL REQUIREMENTS**

## **A. SUBMITTAL REQUIREMENTS**

1. Interested Proposers must submit their Proposals no later than February 9, 2023, at 4:00 PM Local Time. Submittals shall be mailed or delivered to:

Columbia County General Services  
C/O Columbia County Board of Commissioners' Office  
230 Strand St, St Helens, Oregon 97051  
ATTN: Riley Baker, Director of General Services

Late Submission: A Proposal shall be considered late if received at any time after 4:00 PM, February 9, 2023. Proposals received after the specified time shall be rejected.

2. Number and Form: Proposer shall submit (5) hard copies and a thumb drive with a PDF of its Proposal to the above-listed location. The Proposals shall be tabulated in separate sections with separator sheets in response to the detailed Proposal requirements. Proposals shall be limited to 25 double-sided 8 ½ by 11 inches pages.
3. Proposal Certification Statement: Attachment A: The Proposal Certification Statement shall be filled out and signed and shall be included at the beginning of each Proposal. The certification shall bind the Proposer to perform the Project services for no more than the maximum of the estimated fee ranges stated in their Proposal. Failure to submit a signed Proposal Certification Statement will result in disqualification of the Proposer.
4. Modification or Withdrawal of Proposal: Prior to the date and time designated for receipt of Proposals, any Proposal may be modified or withdrawn by notice to the County at the place designated for receipt of Proposals. Such notice shall be in writing over the signature of the Proposer and shall be delivered on or before the date and time set for receipt of Proposals.
5. Written Questions and Addenda: Questions regarding the information contained in this RFP must be submitted to the designated RFP contacts, no later than the time and date specified in this RFP. All questions must be submitted in writing and received by the specified date and time. No oral questions will be accepted other than at the mandatory pre-Proposal conference.
6. Emailed questions must be submitted to [riley.baker@columbiacountyor.gov](mailto:riley.baker@columbiacountyor.gov), Riley Baker, Director, Columbia County General Services. All questions received that materially affect this RFP will be answered by email or addenda. If possible, the anonymity of the source of the specific questions will be maintained in the written responses but confidentiality cannot be guaranteed.
7. Insurance Requirements: During the term of any Design-Build Agreement resulting from this RFP, the DBC shall maintain, in force, each policy required by the Design-Build Agreement and Contract Documents. A Design-Build Agreement will not be executed, and the County will not issue a Notice to Proceed (Design) until acceptable proof of insurance coverage is received.
8. Bid Bond/Bonding Capacity: No bid bond is required. Additionally, each Proposer must be capable of providing a 100% Performance Bond and 100% Payment Bond if selected for the Project in the amount of the DBC stated estimated maximum price for each cost range. A 100% Performance and 100% Payment Bond for the maximum amount of the Design Cost Range shall be provided at the time of Design-Build Agreement award and a 100% Performance Bond and a 100% Payment Bond for the maximum amount of the Construction Cost Range shall be provided at the conclusion of final Design Phase.

Performance and Payment Bonds are expected to be in place at the time of the issuance of the Notice to Proceed (Construction).

9. Use of recycled material is encouraged, and the County reserves the right to use recycled material provided the provisions of ORS 279.A.125 are met.

## **B. DETAILED PROPOSAL REQUIREMENTS**

**Every Proposal must reply to each of the following items. Responses must be in the same order listed below. Concise and direct answers are encouraged.**

By listing individuals in the Proposal, the Proposer guarantees that these individuals will be available to work on the Project at the approximate percentages shown. the County reserves the right to approve or reject any changes to the proposed personnel. the County further reserves the right to request a substitution of personnel if deemed to be in the best interest of the County.

In addition to the information required below Proposer must complete and return the forms that are attachment A and attachment C.

### **1. Background.**

- a. Provide a brief description of the Proposer's history and its capabilities. Include annual volume gross revenue amounts for the past five (5) years, and current bonding capacity. Include a description of its ownership structure of the business, and year of formation.
- b. Provide the name, address, telephone number, and e-mail address for each Proposed Design-Build Team Member and a brief description of the Team Member's history and its capabilities.
- c. Provide a general description of the Proposer's safety programs, as well as the Proposer's most recent Workers Compensation Insurance experience modifier.

### **2. Experience and Qualifications.**

a. Proposers must show recent experience in both the design and construction of a major (5,000 square feet or greater of floor area or greater than \$500,000 in cost) Design-Build project the size and types of finishes of which are similar to this Project. Please provide a brief description of at least three (3) like-type facilities that the Proposer has designed and constructed within the past five (5) years.

#### **1. References from projects of like size and dollar value:**

- a. Project Name.
- b. Contact name.
- c. Day time phone number.
- d. Email address.
- e. Project dollar value.
- f. Consultants used if any.
- g. Name of the Architect and phone number.
- h. Name of the construction contractor and phone number.
- i. Project location and completion date.

2. A brief description of the project including (i) amount of contract award or negotiated GMP if applicable, (ii) final contract amount including total number and amount of change orders, and

3. Explain any problems that arose on any of these projects, including but not limited to

total project claims going to litigation/arbitration and their final disposition.

4. Identify the key individuals on the referenced projects who will also be participating in this Project, including their roles and responsibilities on the referenced projects.

**3. History and Performance.**

- a. Years in business, office locations, and general work history.
- b. How long has the Proposer been in business in Oregon as a contractor under your present business name and license number?
- c. Statement of the number of years in business as a Design-Build Contractor.
- d. State whether the Proposer is a resident bidder as defined in ORS 279A.120.
- e. Confirm that the Proposer holds an Oregon Public Works Bond and its dollar value.
- f. Has Proposer, or any partner(s), or officer(s) or member(s) ever been licensed in Oregon under a different name or license number? If yes, please list all the name(s) and license number(s).
- g. Is Proposer connected with other organizations as a subsidiary, parent, holding, or affiliate? If so, please explain.
- h. Has the Proposer ever failed to enter into a contract after being selected for a construction or modernization project? If so, please explain.
- i. Has the Proposer ever failed to complete a construction or modernization contract in the past five years? If so, please explain.
- j. Has the Proposer ever failed to complete a contract in the past five years within the authorized contract time? If so, please explain, including any change orders.
- k. Has the Proposer been assessed liquidated damages in the past five years? If so, please explain.
- l. Has the Proposer ever been disqualified from submitting a Proposal or a bid on a State of Oregon, city, county, special district or other local government projects, public works project, or other public work? If so, please explain.
- m. Has the Proposer been unable to obtain a bond or been denied a bond for a contract in the past five years? If so, please explain.
- n. Has the Proposer ever defaulted on a contract forcing a surety to suffer a loss? If so, please explain.
- o. Has the Proposer declared bankruptcy or been placed in receivership in the past ten years? If so, please explain.
- p. Has the Proposer received a Notice of Default, or Notice of Intent to Terminate, on a public works project in the last five years? If so, please explain.
- q. Has the Proposer's contract on a public works project been terminated or canceled by the public entity in the last five years? If so, please explain.
- r. Are there currently any liens/stop notices for labor and/or materials filed against the Proposer? If so, please explain.
- s. Has there been any occasion during the last seven years in which the Proposer was required to pay either back wages or penalties for your own firm's failure to comply with the federal or state prevailing wage laws? If so, please explain.

#### 4. Performance (Preliminary) Drawing of Project

Provide a performance (preliminary) drawing of the Project as you see it incorporating the County's minimum requirements. Drawings to include elevations, floor plans, and selected details

#### 5. Staffing & Staff Qualifications

- a. Provide a Project organization chart showing the Proposer's proposed staff for this Project, including all professional staff in the following areas: professional design consultants, engineers, project management, corporate oversight and administration, estimating, construction and onsite construction supervision.
- b. Include resumes for all individuals listed in the chart. Indicate the proposed percentage that each person will work on this Project during Design Phase and an estimated amount of time for Construction Phase Services. The resumes must include each individual's education, work history, length of tenure with the Proposer, and prior work experience with similar projects and any experience working with public sector Design-Build and/or GMP projects. **NOTE: Clearly differentiate employees from sub-contractor/consultants.**
- c. For those individuals who are not full time, describe how and when they will work on the Project, as well as which Project responsibilities will fill their time. Additionally, describe the prior experience, if any, of the Proposer team members working together on projects (please be specific) and what roles they will fill on the proposed team for this Project.

#### 6. Project Approach

- a. Describe how the Proposer will approach the Design, Construction Documents, Construction, and Construction Management aspects of this Project and how will you ensure that the Project's needs are adequately met.
- b. Describe the Proposer's overall plan to complete the Project. Discuss in detail the Proposer's plan, identifying services and deliverables to the County during the Design Phase. These services shall include, but are not limited, to reviewing the Project and budget, recommendations on feasibility, alternate designs, drawings, constructability reviews, value engineering, scheduling, cost estimating, bidding market, etc. Discuss in detail the Proposer's plan during the Construction Phase Services, identifying the Proposer's services and deliverables to the County during this phase. These services shall include, but are not limited, to creating bid packages, bidding, scheduling the work, managing the construction meetings including meeting agendas and tracking action items developed in these meetings, written reports, and cost control etc., so as to provide the County with the best possible customer service and ensure the greatest possible value for the construction budget.
- c. Describe how the Proposer will ensure all critical systems (HVAC, mechanical, electrical, infrastructure and building systems, etc.) will operate and function to their full potential and will benefit the Project. Describe how each critical system meets the requirement of the Project criteria. Describe how operation and maintenance manuals as well as warranties of all of the Project's critical systems will be organized and provided to the County.
- d. Describe how the Design-Build Team will engage the Project Stakeholders and incorporate their input into the Project.
- e. Provide the Design-Builder's approach to conflict resolution between the Owner and the Design-Builder and among members of the Design-Build Team.

- f. Describe the Design-Builder's processes and tools for monitoring, reporting, and managing cost, including but not limited to Design to budget control and reporting processes, Scope, cost, and schedule baseline development and management/change control processes and the participation and interaction among the scheduling and estimating teams, project, design, construction, and operations management teams to execute these processes, risk management processes and how quantified risk cost and schedule values are factored into the cost and schedule baseline, projected cost and schedule performance, and cash flow reporting, and cash flow reporting processes and basis for monthly cash flow estimated values.
- g. Describe the Design-Builders approach to address as many of the items identified in the Invitation to Submit Proposals. Should all or some of the objectives be unattainable, the Proposer will should identify those objectives that will not be provided in the response to the Proposal

## **7. Project Sequencing and Scheduling**

- a. Provide a proposed schedule based on the Project Schedule and including all Project milestones and phases.
- b. Describe the Proposed Design-Build Team's overall approach to scheduling and construction sequencing for the Project. In addition to the overall approach, include a description as to how the Design-Build Team will address regulatory and stakeholder approvals for the permitting process.
- c. Identify the challenges in scheduling the construction for the Project and how the Design-Build Team will address those challenges.
- d. Describe the assumptions under which the proposed schedule was based, including proposed durations, sequencing and logic, and skilled labor availability for determining manpower projections.
- e. Can Proposer complete Construction Documents and a Final Construction Cost Estimate on or before May 1, 2023.

## **8. Estimated Design Cost Range and Construction Fees**

In attachment A the Proposer shall be required to include a statement as to the estimated Design Cost Range for the Design Phase, the DBC fee for design expressed as a percentage of the design fee and the DBC fee for the Construction Phase expressed as a percentage of the Guaranteed Maximum Price.

## **9. References**

Proposer shall provide a list of three different project references with the Offer that can be contacted regarding the quality of workmanship and service that the Offeror provided on projects of comparable size and scope. The list of three different project references shall include the following information: Title of Project, Name of contact person, phone number and email address for contact person.

## **C. PUBLIC RECORDS**

Proposals become public records upon submission and are subject to public inspection following contract award unless otherwise exempt under Oregon's Public Records Law (ORS Chapter 192). "Trade Secrets" are conditionally exempt under ORS 192.501(2) and will be protected to the extent permitted by the Public Records Law, provided that any trade secret is specifically identified as such by the Proposer.

1. This RFP and one copy of the subsequently selected Proposal(s), together with copies of all documents pertaining to the award of a Design-Build Agreement, shall be kept by the County and made a part of the RFP file or record, which shall be open to public inspection. If a Proposal contains any information that is considered a trade secret under ORS 192.345(2), such information shall be marked with the following legend: "This data constitutes a trade secret under ORS 192.345(2) and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."
2. The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only "unless the public interest requires disclosure in the particular instance." ORS 345. Therefore, nondisclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determinations made pursuant to the Public Records Law.
3. The above restriction may not include fee schedule information, which shall be open to public inspection.
4. Identifying the Proposal in total as a trade secret is not acceptable. Failure to identify a portion of the Proposal as a trade secret shall be deemed a waiver of any future claim of that information as a trade secret.
5. If the County receives a records request, including subpoena, covering information the bidder believes is covered by an applicable public records exemption, it is the Proposer's responsibility to defend and indemnify the County for any costs associated with establishing such an exemption.

#### **D. FINAL SELECTION**

Proposers that do not submit all required information and documents including all requested information for evaluation may be considered non-responsive and may be rejected. Each Proposal should contain the desired information in the specified format.

Based on the initial scoring, the County will determine the number of top ranked Proposers and whether any Proposers will be invited for interviews. If, in the County's reasonable discretion, the highest-ranking Proposer is clearly the best Proposer, then the County reserves the right to skip interviews and award to the highest ranking Proposer after initial scoring. If the County determines that interviews are required, during the interview process, the Proposers will be given the opportunity to further present their Proposal. Following the presentation, the evaluation committee will ask questions to supplement and clarify the Proposal. While the interview sessions will not be independently scored, the interview process will be used to supplement and clarify the information contained in the Proposal but not to modify the Proposal. Based upon the Proposal scoring, as clarified by information obtained during the interviews (if any) and results of reference checks, Proposers will be given final ranking by the evaluation committee.

the County reserves the right to make changes to and negotiate the final Design-Build Agreement and Contract Documents with the DBC, as long as the general scope of the Project work remains the same and the field of competition does not change as a result of any material changes to the Project requirements stated in the RFP.

the County will attempt to enter into a Design-Build Agreement for the Project with the top ranked Proposer. If negotiations are not successful the County, at its sole discretion, may then negotiate with the second ranked Proposer, and so forth.



EXHIBIT B  
Modified Selection Process

## **I. SELECTION PROCESS**

### **1) SELECTION OVERVIEW**

the County is seeking a qualified DBC with current relative experience for the services identified herein related to the design and construction of the Project, including but not limited to: The selection process will be conducted in a fair and impartial manner, where several qualified individuals will evaluate Proposals and presentations.

#### **EVALUATION AND AWARD CRITERIA:**

The following criteria will be used in evaluating all Proposals. A major deficiency in any one category can disqualify the Proposer. The Proposals shall be comprehensive in nature by addressing all criteria and requirements, the ability to complete the Project within the established timeframe, and the cost of providing the Project, complete and useable to Columbia County.

- a) **Responses to Evaluation Criteria (Total Points 0-175)**
  - i) Background (10 Points)
  - ii) Experience and Qualifications (25 Points)
  - iii) History and Performance (25 Points)
  - iv) Performance (preliminary) Drawing (10 Points)
  - v) Staffing & Staff Qualifications (15 Points)
  - vi) Project Approach (40 Points)
  - vii) Project Sequencing and Scheduling (20 Points)
  - viii) Estimated Design Cost Range and Construction Fees (30 Points)
- b) The County will review the Proposals to ensure that the Proposer meets the minimum qualifications required. Proposals that do not meet the minimum qualifications will not be ranked.

The County will convene an evaluation committee made up of three to five qualified members to evaluate all Proposals.

The evaluation committee will provide an initial ranking of the Proposers and reserves the right to interview one or more of the top ranked Proposers. Based on the results of the interviews (if any), the Proposals may be re-ranked.

### **2) SCHEDULE FOR SELECTION**

The milestones for the selection process are set forth below. Required dates for submittals and any other activities are provided elsewhere in this RFP.

<b>PROJECT MILESTONE</b>	<b>COMPLETION DATE</b>
Advertise RFP	January 4, 2023
Mandatory Pre-Proposal conference	January 19, 2023 10:00 AM
Deadline for Questions	January 30, 2023 4:00 PM
Deadline for Pre-Proposal protests	January 30, 2023 4:00 PM

Issue any final Addenda.	February 3, 2023 4:00 PM
Due Date for Submission of Proposals	February 9, 2023 4:00 PM
Interviews	Week of February 12
Notice of Tentative Intent to Award	February 22, 2023
Deadline for Selection Protests	March 1, 2023
Execute Contract	March 8, 2023
Notice to Proceed (Design)	March 9, 2023
Design Approval	To Be Determined
Permit applications	To Be Determined
Notice to Proceed (Construction)	Upon Approval of design
Substantial Completion	December 31, 2023
Final Completion	March 2024

EXHIBIT C  
Modified Attachment A

## **PROPOSER'S STATEMENTS AND CERTIFICATIONS**

Proposer's Legal Name:

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**RFP Title: For the Design and Construction of Improvements to the  
Columbia County Courthouse**

### **PROPOSER'S STATEMENTS**

Proposer offers to provide the required services in accordance with the requirements of the Request for Proposals (RFP) stated above and the enclosed proposal. The undersigned Proposer declares that the Proposer has carefully examined the above-named Request for Proposals, and that, if this proposal is accepted, Proposer will execute a contract with the County to furnish the services of the proposal submitted with this form. Proposer attests that the information provided is true and accurate to the best of the personal knowledge of the person signing this proposal, and that the person signing has the authority to represent the individual or organization in whose name this proposal is submitted.

By execution of this Form, the undersigned Proposer accepts all terms and conditions of this Request for Proposals except as modified in writing in its proposal, and that the offer made in will remain irrevocable for a period of forty-five (45) days from the date proposals are due.

By execution of this Form, the undersigned Proposer acknowledges that its entire proposal is subject to Oregon Public Records Law (ORS 192.410–192.505) and may be disclosed in its entirety to any person or organization making a records request, except for such information as may be exempt from disclosure under the law. Proposer agrees that all information included in this proposal that is claimed to be exempt from disclosure has been clearly identified either in the Proposer's Statement, or in an itemization attached hereto. Proposer further acknowledges its responsibility to defend and indemnify the County for any costs associated with establishing a claimed exemption.

### **DESIGN COST RANGE**

\$ \_\_\_\_\_ - \$ \_\_\_\_\_ DOLLARS (\$) Design Phase of the  
Project

DBC fee percentage for the Design Phase: \_\_\_\_\_ % of Design Fee

DBC fee percentage for the Construction Phase: \_\_\_\_\_ % of GMP

**TIME OF COMPLETION**

The undersigned agrees if awarded the Design-Build Agreement to complete all the Project work in an acceptable manner in conformance with the Design-Build Agreement and Contract Documents and within the time specified.

**ADDENDA**

Proposer has received and considered, in the accompanying proposal, the terms of the following addenda, if any:

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**CERTIFICATIONS**

By signing this Proposer's Certification form, Proposer certifies that:

1. Proposer is ☐ is not ☐ (check one) a resident as defined in ORS 279A.120.
2. Proposer has not discriminated and will not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a minority, women, or emerging small business enterprises certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.
3. This proposal is made without connection or agreement with any individual, firm, partnership, corporation, or other entity making a proposal for the same services and is in all respects fair and free from collusion or collaboration with any other proposer.
4. Proposer will comply with ORS 279C.838 or ORS 279C.840, regarding the payment of prevailing rates of wage.
5. Proposer is licensed by the Construction Contractors Board (CCB) and, in addition possesses all licenses required to perform the work of the specialty trade for which the proposal is made.  
Proposers CCB# is \_\_\_\_\_
6. ☐ Proposer is an Oregon licensed design professional.  
☐ Proposer is not an Oregon licensed design professional. The Oregon licensed design professional(s) who will be providing the design services required under this RFP is/are:  
  
\_\_\_\_\_  
\_\_\_\_\_

7. Proposer is able to furnish a performance bond and payment bond for the work of this RFP, has included all costs of such bonds in the proposal amount, and if awarded a contract will furnish such bonds in

accordance with ORS 279C.380(1)(a) and (b).

**The undersigned, by signature here, acknowledges, accepts, and certifies to the Proposer's Statements and Certifications as stated above.**

_____ Authorized signature	_____ Proposer's legal name
_____ Name of authorized signer	_____ Address
_____ Title	_____
_____ Date	

**CERTIFICATION UNDER OATH REGARDING COMPLIANCE WITH OREGON TAX LAWS**

**By my signature below, I hereby attest or affirm under penalty of perjury: that I am authorized to act on behalf of the Proposer in this matter, that I have authority and knowledge regarding the payment of taxes by the Proposer, and that Proposer is, to the best of my knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150; ORS 403.200 to 403.250; ORS Chapters 118, 314, 316, 317, 318, 320, 321, 323 and the elderly rental assistance program under ORS 310.630 to 310.706, and any local taxes administered by the Department of Revenue under ORS 305.620**

_____ Authorized signature	_____ Federal Tax ID number
_____ Name of authorized signer	
_____ Title	

EXHIBIT D  
Modified Attachment B



**PUBLIC WORKS EQUIPMENT BUILDING PROJECT**  
**DESIGN BUILD CONTRACT**

THIS CONTRACT ("Contract") is between Columbia County, a political subdivision of the State of Oregon, hereinafter referenced as ("County" or "Owner") and \_\_\_\_\_, hereinafter referenced as ("DBC").

IT IS HEREBY AGREED by and between the parties above-mentioned for and in consideration of the mutual promises hereinafter stated as follows:

**INTRODUCTORY INFORMATION**

**PROJECT:**

DESIGN BUILD SERVICES FOR THE COLUMBIA COUNTY COURTHOUSE IMPROVEMENT PROJECT

This Contract is for all services related to improvements to the Columbia County Courthouse located at:

230 Strand St  
St Helens, OR 97051

**TERM:**

This Contract shall become effective on the date that the Contract is fully executed by the Parties (the "Effective Date"). No Services shall be performed prior to the Effective Date.

**SERVICES:**

Generally, the services to be performed by DBC consist of the following (the "Services"):

Programming, design, pre-construction services, construction services, construction contract administration and warranty services.

The Services are more specifically described in **EXHIBIT D – Request for Proposals** and **EXHIBIT E – DBC'S PROPOSAL**.

**COMPENSATION:**

In accordance with Article 6, Owner agrees to pay DBC a sum not to exceed (\$ \_\_\_\_\_) for performance of Design Services, which shall include all allowable expenses. The not to exceed sum for Construction Services shall be set. Progress payments shall be made in accordance with Article 6, Compensation of the Design-Build Contractor.

## **SECTIONS AND EXHIBITS:**

This Contract consists of these introductory provisions and the signature page(s), the following Articles:

Article 1	Definitions
Article 2	Design Services
Article 3	Construction Services
Article 4	Relationship and Roles of the Parties
Article 5	Project Schedule
Article 6	Compensation of the Design-Build Contractor
Article 7	Changes in the Work
Article 8	Cost of Work
Article 9	Costs Excluded from the Work
Article 10	Discounts and Rebates
Article 11	Insurance Provisions
Article 12	Ownership and use of Work Product
Article 13	Project and Accounting Records
Article 14	Payments
Article 15	Termination or Suspension
Article 16	Enumeration of Contract Documents and Order of Precedence
Article 17	Statutory Provisions
Article 18	Miscellaneous Provisions

and the following exhibits attached hereto and incorporated herein by this reference:

Exhibit A	General Conditions
Exhibit B	Supplemental General Conditions
Exhibit C	Performance and Payment Bond Forms
Exhibit D	Request for Proposals [to be inserted in Final Contract]
Exhibit E	RFP Response [to be inserted in Final Contract]
Exhibit F	BOLI Prevailing Wage Rate and Davis Bacon Schedule
Exhibit G	Key Personnel and Consultants [to be inserted in Final Contract]
Exhibit H	Project Schedule [to be inserted in Final Contract]
Exhibit I	Accepted Proposal [to be inserted in Final Contract]
Exhibit J	Independent Contractor Certificate
Exhibit K	Schedule of Values [to be inserted in Final Contract]
Exhibit L	Additional Requirements

## **ARTICLE 1**

### **DEFINITIONS**

1. Defined Terms. Unless defined in this Section 1.4 or elsewhere in the body of this Contract, capitalized terms shall have the meaning set forth in Section A.1 of the General Conditions.

- 1.1. "Allowances" shall mean the allowance amounts shown in the Supporting Documents, together with such further allowances as may be developed by the Parties as the Project progresses.
- 1.2. "Authority" or "Authorities" means a government or quasi-governmental unit(s) or political subdivision(s) having jurisdiction over the Project, the Site, or the Work.
- 1.3. "Construction Documents" or "Construction Document" means the plans and specifications describing the requirements for construction of the Project, all of which must comply with the Design-Build Criteria and applicable Legal Requirements. Also referred to herein as the "Plans and Specifications".
- 1.4. "Construction Services" means all services identified in Article 3 of this Contract, as more fully described in the Design-Build Criteria and elsewhere in the Contract Documents.
- 1.5. "Consultants" mean individuals performing design and professional services for the DBC on the Project with the approval of County.
- 1.6. "Contract" or "Contract" means this document entitled, "Contract," including exhibits and material incorporated herein by reference.
- 1.7. "Contract Price" is defined in Article 6.1 of this Contract.
- 1.8. "Contract Period" means the total period of time beginning with the issuance of the Notice to Proceed (Design) and concluding upon Final Completion.
- 1.9. "Correction Period" means the time period more particularly described in the General Conditions for correction of non-conforming Work under the Contract.
- 1.10. "DBC's Representative" or "DBC Representative" means the individual identified in writing by the DBC to act on behalf of the DBC for this Project, and to give and receive all notices and communications required under the Contract.
- 1.11. "Design-Build Contractor" or "DBC" has the same meaning as "Contractor" wherever that term is used in the General Conditions or in any other part of the Contract.
- 1.12. "Design-Build Criteria" means the Project Specifications (as defined under 1.4.23) and including County's Minimum Requirements as provided in the Solicitation Documents.
- 1.13. "Design Development" means the process of determining the form, arrangement, size, and materials of the Work or a portion of the Work, as described in the terms of the Contract.
- 1.14. "Design Development Documents" means those interim submissions developed in conformity with the Special Provisions and Legal Requirements during the Design Development Services phase, including design concepts, Plans, and Specifications that have not yet been finalized after review provision of all testing and approval by Owner.

- 1.15. "Design Professional" shall have the meaning given in ORS 31.300(1) and shall be interchangeable with the terms "Architect/Engineer" "Architect" and "Engineer" as those terms are used in the General Conditions and other documents incorporated into this Contract.
- 1.16. "Design Services" means all services identified in Article 2 of this Contract, as more fully described in the Design-Build Criteria and elsewhere in the Contract Documents.
- 1.17. "Early Work" shall mean Construction Services authorized by Change Order that the Parties agree should be performed in advance of County's final approval of the Design Work Product. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities; and any other advance work related to critical components of the Project for which performance prior to County's final approval of the Design Work Product will materially affect the critical path schedule of the Project.
- 1.18. "Early Work Change Order" shall mean a Change Order executed by and between the Parties to authorize Early Work.
- 1.19. "General Conditions" means the General Conditions, as modified and included in this Contract as **Exhibit \_\_\_\_**.
- 1.20. "General Contractor" means the DBC.
- 1.21. "Guaranteed Maximum Price" or "GMP" means the maximum price to be paid to DBC under this Contract, as determined in accordance with Article 6, and as it may be adjusted from time to time pursuant to provisions of this Contract.
- 1.22. "Instruments of Service" means any manifestation of the DBC's Services produced by DBC or Consultants, required or incorporated by this Contract or as otherwise necessary to accomplish the Services including models, drawings, specifications, deliverables, communications, and other documents.
- 1.23. "Legal Requirements" or "Law" means all applicable Federal, State and local laws, codes, ordinances, rules, regulations, orders, permits, and decrees of any government or quasi-governmental unit or political subdivision having jurisdiction over the Project, the Site, or the Work.
- 1.24. "Notice to Proceed means County's written directive to the DBC to proceed with work (other than work authorized by an Early Work Change Order). There will be two notices to proceed under this Contract. The Notice to Proceed (Design) will direct the start of the Design Phase. The Notice to Proceed (Construction) will direct the start of the Construction Phase.
- 1.25. "Project Site" or "Site" means the geographical dimensions of the real property within the boundaries of which the Work is to be performed; including designated contiguous staging areas, if any.

- 1.26. "Project Specifications" means the specifications which are included in the Design-Build Criteria, together with all specifications developed subsequently by DBC and approved by County.
- 1.27. "Proposal" means the document attached hereto as Exhibit \_\_\_\_.
- 1.28. "Record Documents" mean the as-built Plans, Plans and Specifications, product data, samples, shop drawings, Change Orders, and other documents listed in the RFP.
- 1.29. "Request for Proposals" or "RFP" means the document attached hereto as Exhibit \_\_\_\_.
- 1.30. "Design" means the preliminary design development to be used as the basis for the Design Work Product to be provided by DBC under Section 5.3 of this Contract.
- 1.31. "Design Fee" is the amount stated in Attachment A of the Solicitation Documents and labeled as such, which is a maximum fee range and not a fixed fee.
- 1.32. "Design Phase" means the period of time commencing with the issuance of the first Notice to Proceed and ending with the issuance of the second Notice to Proceed.
- 1.33. "Scope of Work" includes the Design-Build Criteria, and all Work reasonably inferable there from. When DBC is developing the Design Work Product and the Construction Documents, DBC shall conform the Design Work Product and the Construction Documents with the concepts outlined in the Scope of Work.
- 1.34. "Services" means all Work required to be performed under the Contract, portions of which are sometimes herein designated as either "Design Services" or "Construction Services."
- 1.35. "Supporting Documents" are defined in Section 5.3 of this Contract.
- 1.36. "Value Engineering" means alterations in design, materials, methods, finishes, or techniques jointly agreed upon by County and the DBC regarding the design or construction of the Project and resulting in cost savings, improved efficiency, or sustainability, including any green energy technology requirements under ORS 279C.527 and 528.

## **ARTICLE 2**

### **DESIGN SERVICES**

#### **2.1. General Standards for Design Services.**

- 2.1.1. The DBC agrees to provide all Design Services necessary to enable the DBC to complete the Construction Services in accordance with the Contract Documents and shall perform all Design Services consistent with the Standard of Care and to achieve orderly progress of the Work.
- 2.1.2. The DBC shall prepare the Instruments of Service, consistent with the Standard of Care, to comply with and incorporate applicable laws, rules, and regulations enacted at the time of permitting, and to serve the purposes intended.
- 2.1.3. The DBC shall be responsible for correcting any inconsistencies, errors or omissions in the Instruments of Service at no additional cost to Owner.
- 2.1.4. Owner's review or acceptance of documents shall not be deemed as approval of the adequacy of the drawings, specifications, deliverables and other documents. Any review or acceptance by Owner will not relieve Consultant of any responsibility for complying with the Standard of Care.
- 2.1.5. All Design Services shall be performed by a duly qualified and Oregon licensed Design Professional either employed by the DBC or hired by the DBC to act as a Consultant. Because the expertise of the DBC's designated Design Professional was a material consideration in Owner's selection of the DBC, the DBC agrees that it shall not substitute its Design Professional without Owner's prior consent. The DBC also agrees to support Owner's efforts to create a collaborative and cooperative team between the DBC's Representative, Design Professional and Consultants, and the Owner's Representative. The DBC, however, shall remain solely liable to Owner for completion and timely delivery of all Design Services required under the Contract.
- 2.1.6. The DBC's Representative shall be reasonably available to Owner's Representative for the duration of the Project and shall have the expertise and experience required to supervise the Work. The DBC's Representative shall communicate regularly with Owner's Representative and shall have the authority to act on behalf of the DBC in all things relating to performance of the Contract. The DBC's Representative may not be replaced prior to Final Completion without Owner's prior consent.
- 2.1.7. The DBC shall meet with the Owner as necessary to keep the Project on schedule, on budget, and to update the Contract Administrator's representative or at the request of Owner for the duration of the Contract to review: 1) the Project Schedule; 2) design and construction questions, concerns and comments; 3) document submittal status; 4) design,

construction and as-built Plans and Record Documents; and 5) any and all questions that have arisen.

- 2.1.8. Owner's review of, approval of, or response to, any of the matters presented at Owner/DBC meetings shall not relieve the DBC of its sole responsibility for design or of its obligation to complete the Work within the time period required under the Contract and within the interim deadlines established in the Project Schedule and shall not be construed as relieving the DBC of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.
- 2.1.9. In the event the DBC failed to notify Owner prior to the Effective Date of the Contract of discrepancies, conflicts, or ambiguities among the Contract Documents, or within any particular Contract Document, that the DBC recognized or reasonably should have recognized, the DBC shall be responsible for correcting the affected Work to meet Owner's intended requirements at no additional charge, and without an extension of the required deadlines under the Contract and the Project Schedule.

## **2.2. Pre-Design Services.**

- 2.2.1. Schedule: Within fourteen (14) Days of issuance of Notice to Proceed, the DBC shall submit for Owner's approval the detailed schedule for the performance of Design Services (the "Project Design Schedule"). The Design Schedule shall be based upon the Project Schedule set forth in **Exhibit H** and shall include allowances of at least fourteen (14) Days for Owner's review and for approval of submittals by the Authorities. Once Owner has approved it, the DBC shall not exceed the time limits established in the Design Schedule. Within twenty-one (21) Days after Owner approves the Design Schedule, the DBC shall submit for Owner's approval the detailed and finalized schedule for the performance of the Construction Services (the "Construction Schedule"), which shall be based upon **Exhibit H**. Once Owner has approved it, the DBC shall not exceed the time limits established in the Construction Schedule. (The Design and Construction Schedule are collectively referred to hereafter from time to time as the "Project Schedule"). Both the Design Schedule and the Construction Schedule shall become Contract Documents upon their approval by Owner.
- 2.2.2. Pre-Design Conference: Within seven (7) Days of execution of the Contract, Owner and the DBC will hold a pre-design conference to review the DBC's Conceptual Design, the Owner's Requirements, the Contract Documents, and conditions affecting the Work. The conference will also cover: 1) the roles of the Owner, Design Professionals, Consultants, and DBC; 2) the procedures to be followed for handling administrative matters, including applications for payment; 3) the procedures to be followed for resolving design questions, scheduling reviews, and communicating approvals; 4) the Project Schedule; 5) confirmation of the scope of the

Work called for under the Contract Documents; and 6) such other matters as the Parties may wish to address. The location for the pre- design-build conference will be at a place designated by the Owner.

### **2.3. Schematic Design Services.**

- 2.3.1. The DBC shall progress with Schematic Design based upon DBC's Conceptual Design presented in its proposal and any input presented by the Owner at the Pre-Design Conference.
- 2.3.2. The DBC shall, consistent with the Standard of Care, provide those Services necessary to prepare schematic design documents consisting of drawings and other documents illustrating the general scope and scale of the Project, the relationship of Project components and preliminary materials and systems (the "Schematic Design Documents") for acceptance by Owner, including a Schematic Design Construction Cost Estimate.
- 2.3.3. The DBC shall present the Schematic Design to the Owner for review, comment and approval by the Owner. The DBC shall not commence Design Development without the Owner's prior written approval of the Schematic Design.

### **2.4. Design Development Services.**

- 2.4.1. The DBC shall, consistent with the Standard of Care, provide those Services necessary to prepare, from the Owner-approved Schematic Design Documents, the design development documents consisting of drawings and other documents to fix and describe the size and character of the entire Project, including architectural, structural, mechanical, electrical, and other systems, materials and such other elements as may be appropriate (the "Design Development Documents"). Consideration shall be given to availability of materials, equipment and labor, construction sequencing and scheduling, economic analysis of construction and operations, Owner's safety and maintenance requirements, sustainability and energy conservation.
- 2.4.2. Design Development Documents include:
  - 2.4.2.1. Drawings: The DBC shall provide drawings developed from the reviewed Schematic Design Documents to set and describe the size and character of the entire Project as to architectural, structural, mechanical, acoustical and electrical systems, materials and appearances, and such other essentials as may be applicable to the Project or required by or for compliance with governing codes and ordinances and other Laws;
  - 2.4.2.2. Specifications: The DBC shall continue to develop and provide specifications in accordance with CSI standards as may be necessary, all of which shall comply with and implement the Special Provisions and Legal Requirements.



- 2.4.2.3. Schedule: The DBC shall prepare an updated Design Schedules delineating the schedule for development, submittal, and review of all phases of Design Development Documents and Construction Documents.
- 2.4.2.4. Construction Cost Estimate: The DBC shall update and refine the Schematic Design Construction Cost Estimate of the Project taking into consideration: availability of materials and labor; Project deliveries procedures; construction sequencing and scheduling; changes in scope of the Project; and adjustments in quality standards. Completion of these Services shall result in the "Design Development Construction Cost Estimate."
- 2.4.3. In addition to the Design Development Documents requirements, the DBC shall also provide the following deliverables to the Owner:
  - 2.4.3.1. Legal Analysis: The DBC shall provide the Owner with an initial analysis of Legal Requirements applicable to the design of the Project, including a code analysis and itemization of required permits, approvals and authorizations pertaining to the Project, by the date established in the Project Schedule.
  - 2.4.3.2. Permitting: The DBC shall file with the proper Authorities all documents required for their review and approval, shall obtain all permits and authorizations, and shall pay for all filing, permit, review and other fees.
  - 2.4.3.3. ODOE: The DBC shall meet with the assigned Oregon Department of Energy ("ODOE") Energy Analyst, along with the DBC's design team, to review energy conservation measures ("ECMs") to be included in the DBC's design of the Project.
  - 2.4.3.4. Technical Requirements: The DBC shall provide any recommendations by its Consultants (including but not limited to structural, mechanical, and electrical) concerning technical requirements that are necessary to implement Owner Requirements or to comply with Legal Requirements, and that are not fully illustrated in the Design Development Documents.
- 2.4.4. The DBC shall otherwise provide all professional Design Services necessary for the Design Development phase of the Project. Such Design Services shall include, but are not limited to, the following:
  - 2.4.4.1. During development of the Design Development Documents and prior to final review of such documents, the DBC and Owner will collaborate on identifying, evaluating and implementing Value Engineering options that will have the effect of making the Project and the Facility more cost-effective, efficient, or sustainable for Owner.
  - 2.4.4.2. Ensure that the Project complies with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), latest

version, as interpreted and required by Authorities during the permit process.

- 2.4.5. Approval: The DBC shall provide the Owner with copies of the Design Development Documents for review, comment and approval by the Owner. The DBC shall not progress to the development of Construction Documents without the Owner's prior written approval of the Design Development Documents.

## 2.5. Construction Document Services.

- 2.5.1. The DBC shall, consistent with the Standard of Care, provide those Services necessary to prepare, from the approved Design Development Documents, construction documents consisting of drawings, specifications and other documents setting forth in detail the requirements for construction of the Project, as well as the documents pertaining to bidding and contracting for the construction of the Project (the "Construction Documents").

### 2.5.2. Construction Documents include:

- 2.5.2.1. Drawings: The DBC shall prepare final drawings based on the reviewed Design Development Documents, which shall set forth all details necessary for construction of the Project and for the location and installation of utilities on the Project Site, including but not limited to the architectural, structural, mechanical, and electrical details of the Project.
- 2.5.2.2. Specifications: The DBC shall provide finalized all specifications in accordance with CSI standards, all of which shall comply with and implement the Special Provisions and Legal Requirements.
- 2.5.2.3. Schedules: An updated Design Schedule delineating the schedule for the finalization, submittal, and review of the Construction Documents;
- 2.5.2.4. Estimate: The DBC shall update and refine the Design Development Construction Cost Estimate taking into consideration: availability of materials and labor; Project deliveries procedures; construction sequencing and scheduling; changes in scope of the Project; and adjustments in quality standards.

- 2.5.3. In addition to the Construction Documents and requirements, the DBC shall also provide the following deliverables to the Owner:

- 2.5.3.1. Legal Analysis: The DBC shall provide the Owner with a final analysis of Legal Requirements applicable to the design of the Project, including a code analysis and itemization of required permits, approvals and authorizations pertaining to the Project, by the date established in the Project Schedule.

- 2.5.3.2. Permitting: The DBC shall file with the proper Authorities any additional documents required for their approval, shall obtain all necessary permits

and authorizations, and shall pay for all filing, permit, review, and other fees.

- 2.5.3.3. ODOE: The DBC's design shall comply with the ODOE 1.5% Green Energy Technology in Public Building Construction Contracts requirement pursuant to OAR 330-135-0010 to 330-135-0055 if applicable.
- 2.5.3.4. Technical Requirements: The DBC shall provide any recommendations by its Consultants (structural, mechanical, electrical, etc.) concerning the technical requirements that are necessary to implement Owner Requirements or to comply with Legal Requirements, and that are not fully illustrated in the Construction Documents.
- 2.5.4. The DBC shall otherwise provide all necessary professional Design Services for the Construction Documents phase of the Project. Such Design Services shall include, but are not limited to, the following:
  - 2.5.4.1. During development of the Construction Documents and prior to final review of such documents, the DBC and Owner will collaborate on identifying, evaluating and implementing Value Engineering options that will have the effect of making the Project and the Facility more cost-effective, efficient, or sustainable for Owner. Finalization of the Construction Documents shall not preclude further identification and implementation by the DBC and Owner of additional Value Engineering options during construction.
  - 2.5.4.2. Assure that the Project continues to comply with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), latest version, as interpreted and required by Authorities during the permit process.
- 2.5.5. Approval: The DBC shall provide the Owner with copies of the Construction Documents for review, comment and approval by the Owner. The DBC shall not progress to the construction phase of the Project without the Owner's prior written approval of the Construction Documents.
- 2.5.6. Reimbursement for Extra Design Services. In addition to any Construction Services change order Work paid for pursuant to other provisions of the Contract, Owner will reimburse the DBC for expenses associated with extra Design Services under the following circumstances:
  - 2.5.6.1. Owner requests reproduction of documents in excess of the number required herein; reimbursement to be limited to the DBC's reproduction costs only.
  - 2.5.6.2. Owner requests Design Services in excess of those identified or necessarily implied in the Contract Documents, but within the scope of the solicitation; provided, however, Owner and the DBC must execute a Contract Amendment and obtain all necessary State approvals before

such extra Design Services shall be performed.

2.5.6.3. Owner requires a material change in design or construction after Owner has accepted the Plans and Specifications, which requires additional Design Services; provided, however, Owner and the DBC must execute a Contract Amendment and obtain all necessary State approvals before such extra Design Services shall be performed.

## 2.6. Pre-Construction Review.

2.6.1. The DBC shall provide finalized Construction Documents and a Final Construction Cost Estimate ("DBC's Estimate") for Owner's review and approval prior to the commencement of Construction Services. The Final Construction Cost Estimate shall include a Guaranteed Maximum Price for Construction Work as defined in Article 6 and a not to exceed

2.6.2. The Owner shall have the opportunity and right to contract for an independent construction cost estimate ("Owner's Estimate") based upon the finalized Construction Documents. If the Owner's Estimate exceeds 110% of DBC's Estimate, the DBC shall revise its design to meet DBC's Estimate at its own cost.

2.6.2.1. In the event the Owner and the DBC cannot, in good faith, negotiate value engineering of the Project to effect Contract between the Owner's Estimate and the DBC's Estimate, the Owner shall have the option to terminate this Contract under Article 12.1.

2.6.2.2. In the event either the Owner's Estimate or the DBC's Estimate indicate an inability to complete the Project within the project budget of \$2,000,000, the Owner shall have the option to terminate this Contract. In the event of such termination the DBC shall be owed no additional compensation beyond the Design Fee established under 6.1.2.

## ARTICLE 3 CONSTRUCTION SERVICES

3.1. **Construction Services—General.** Following Owner's authorization, the DBC shall perform the Construction Services described in the Contract Documents, in accordance and in compliance with the approved schedule for the Project. The DBC shall provide all Construction Services necessary to furnish Owner with a complete, fully functional Facility, including all utility services. The facility shall be capable of being legally occupied and fully used for the purposes described in the Contract. The DBC shall perform the Construction Services as follows:

3.1.1. Means and Methods: The DBC shall have complete control over and charge of, and shall be solely responsible for, construction means, methods, techniques, sequences and procedures in connection with the Work.

3.1.2. Schedules: The DBC shall be responsible for maintaining the Construction

Schedules and for carrying out the Construction Services in accordance with the Contract Documents.

- 3.1.3. Supervision: The DBC shall supervise and administer all activities associated with performance of the Construction Services.
- 3.1.4. Warranty: Contractor guarantees all work under this Contract against all defects in materials and workmanship. This guarantee shall extend from the date of completion by the Owner for the period of a minimum of one year, or longer, if so specified in the Contract Documents. Contractor shall promptly make all necessary repairs or replacements to correct any defects in workmanship or materials for which notice in writing has been sent to the Contractor from the Owner's Contract Representative within the guarantee period. In the event Contractor fails to take any action to correct conditions covered by this guarantee promptly after notice of such condition, Owner may do so, and Contractor and its surety shall be liable for the cost thereof. Normal wear and tear and the results of accidents not chargeable to Contractor or its agents are excepted from the above requirements.
- 3.1.5. Safety: The DBC shall take such precautions as may be required to ensure the safety of, and shall provide such protection as may be required to prevent damage, injury or loss to: 1) employees of Owner, employees of the DBC, and other persons who may be present on the Project Site or in a position to be affected by construction activities; 2) the Project Site, and all materials and equipment to be incorporated into the Project; and 3) other property at or adjacent to the Project Site.
- 3.1.6. Communication: Except as may otherwise be specified in this Contract or in the Special Provisions, Owner will direct its communications to the DBC regarding Construction Services through the DBC's Representative.
- 3.1.7. Material and Equipment: The DBC warrants to Owner those materials and equipment incorporated into the Project, and all Construction Services performed, shall be of good quality, free from faults and defects, and in conformance with the Contract Documents.
- 3.1.8. Site Maintenance: The DBC shall keep the Project Site free from accumulation of waste materials or rubbish caused by the DBC's operations. At the completion of the Construction Services, the DBC shall remove from and about the Project Site all the DBC's tools, equipment, machinery, surplus materials, waste materials and rubbish.
- 3.1.9. Acts and Omissions: The DBC shall be deemed to have complete control over and charge of acts and omissions of the Design Professional, Consultants, subcontractors, and their agents and employees, and of all other persons performing portions of the Construction Services or on the Project Site with DBC's knowledge or permission for any purpose related to the Project.
- 3.1.10. Corrections: At its own expense, the DBC shall correct Construction Services that do not conform to industry standard, the Special Provisions,

Construction Documents, and Legal Requirements.

- 3.1.11. Change Orders: The DBC shall prepare change orders for Owner's approval and execution and shall obtain Owner's written approval in the form of a change order, Contract amendment, or Owner's directive, for any changes, whether minor or material, within the scope of the Project that differs from that defined in Articles 2 and 3.
- 3.1.12. Written Amendment: The DBC's duties, responsibilities and scope of authority, as set forth in the Contract, cannot be modified except by written Contract amendment executed by the Parties, and including all required State of Oregon approvals, if any.
- 3.1.13. Legal Compliance: The DBC shall comply with all Laws relating to the Project, including but not limited to ORS 455.010 through ORS 455.897, as amended, and rules adopted pursuant to those statutes.
- 3.1.14. Prevailing Wage: In addition to constituting a "public improvement," Construction Services constitute a "public works" project for the purposes of the prevailing wage rate laws set forth at ORS 279C.800 through 279C.870. As required by ORS 279C.830, all workers performing Construction Services on the Project shall be paid not less than the specified minimum hourly rate of wage. A copy of the Oregon Bureau of Labor's current listings of the prevailing rates of wage applicable to the Construction Services to be performed has been attached hereto as **Exhibit F**.
- 3.1.15. Liability: The DBC shall be liable for injury to persons and damage or loss of property caused by the negligence, gross negligence, recklessness, willful, intentional, or otherwise wrongful acts or omissions of the DBC, anyone directly or indirectly employed by the DBC, the DBC's Consultants, subcontractors and agents, and all other persons performing portions of the Work or on the Project Site with DBC's knowledge or permission for any purpose related to performance of Design Services or Construction Services. This subparagraph shall in no way affect the applicability or diminish the scope of coverage of the bonds and insurance required under Subsections G.2 and G.3 of the General Conditions, as those coverages are modified by this Contract, or diminish the scope or allocation of responsibility or the indemnity provided for under Subsection G.1 of the General Conditions.
- 3.2. **Construction Services – Specific**. In addition to all requirements for the general administration of the Construction Services, the DBC shall perform the following specific services:
  - 3.2.1. Pre-Construction Conference: The DBC shall attend a pre-construction conference at a site to be determined by Owner;
  - 3.2.2. Record Documents: The DBC shall prepare and deliver Record Documents to Owner electronically and in hard copy upon completion of the Construction Services, and as a condition to final payment. The DBC acknowledges that it bears sole responsibility to Owner for the accuracy of

the information upon which the Record Documents are based. The Record Documents shall be provided in their native digital format and in the format typically used throughout the Project to convey similar files to the Owner.

- 3.2.3. Notice of Substantial Completion: DBC will issue to Owner's Representative the Notice of Substantial Completion as provided in the State's General Conditions.
- 3.2.4. Punch List: Owner's Representative will issue a complete Punch List of incomplete or defective items to the DBC within fourteen (14) Days after the DBC's submittal of the Notice of Substantial Completion. The DBC shall complete all Punch List items within fourteen (14) Days of receipt of the Punch List.

## **ARTICLE 4**

### **RELATIONSHIP AND ROLES OF THE PARTIES**

- 4.1. Independent Contractor. The DBC is an independent contractor under this Contract and not an officer, employee, or agent of County as those terms are used in ORS 30.265. The DBC will furnish all of the materials, supplies, tools, equipment, labor, and other services necessary for the design, construction, and completion of the Project as described in the Contract and Contract Documents.
- 4.2. Representatives. Contract representatives for this Contract shall be:

#### **County Representative**

Riley Baker  
Director of General Services  
Columbia County Courthouse  
230 Strand Street  
St. Helens, Oregon 97051  
telephone: 503-397-7213  
[riley.baker@columbiacountyor.gov](mailto:riley.baker@columbiacountyor.gov).

#### **DBC Representative**

All correspondence shall be sent to the above addressees when written notification is necessary. The DBC understands and agrees that only the County's Contract Representative is authorized to give DBC work authorizations, issue written approvals and notices to proceed. If any work is done by Contractor without prior written authorization by the County's Contract Representative, the County will not be obligated to pay for such work. Contract representatives can be changed by providing written notice to the other party at the address listed.

- 4.3. DBC's Key Personnel. The DBC's personnel identified in Exhibit G shall be considered unique, key personnel and shall not be replaced during the Project without the written permission of County, which shall not be unreasonably withheld. If the DBC intends to substitute key personnel, a request must be given to County at least 30 days prior to the intended time of substitution. When County has approved replacements, the DBC shall provide a transition period of at least 15 working days during which the original and replacement personnel shall be working on the Project concurrently.
- 4.4. The DBC's Consultants. The DBC's Consultants identified in Exhibit G shall be considered unique and shall not be replaced during the Project without the written permission of County. If the DBC intends to substitute a Consultant, it must submit a request to County at least 30 days prior to the intended time of substitution and include the identity of the proposed replacement. County shall be deemed to have consented to the employment of such Consultant unless County objects to the employment of such Consultant in writing within such 30-Day period; provided that if County subsequently discovers information, which leads County to reasonably believe a Consultant selected by the DBC and approved by County is unqualified to perform the Work, the DBC shall replace such Consultant upon the request of County.
- 4.5. The DBC's Design Professional. If the DBC intends to substitute its Design Professional, the DBC must submit a written request to County at least 30 days prior to the intended date of substitution. Upon County's approval, the original and replacement Design Professionals shall work concurrently during a transition period of at least 10 working days. County has sole discretion to approve subsequent replacements.

## **ARTICLE 5**

### **PROJECT SCHEDULE**

- 5.1. Project Schedule. Finalized Construction Documents and a Final Construction Cost Estimate shall be provided to Owner by May 1, 2023. The Construction Schedule based on Exhibit H and approved by Owner (collectively the "Project Schedule") shall establish the deadlines for performance and milestones for completion of Construction Services under the Contract.
- 5.2. Commencement of Services. The DBC shall commence the Work contemplated by this Contract upon complete execution of this Contract and receipt of the Notice to Proceed (Design).
- 5.3. Completion of Project. The DBC will complete the Design Work Product and Construction Documents (the permit set) on or before the dates set therefor in the Project Schedule accepted by County. The DBC shall achieve Substantial



Completion and Final Completion of the Construction Services by no later than the dates set therefor in the Project Schedule accepted by County.

- 5.4. Notices to Proceed. County will issue its Notice to Proceed (Design) at time of Contract execution. County will issue its Notice to Proceed (Construction) after completion of Construction Documents sufficient to enable construction based thereon.
- 5.5. Time is of the Essence. All time limits stated in this Contract and the Contract Documents are of the essence. No provision of the Contract shall preclude recovery of actual damages for delay by the DBC. It is agreed that any delay in the completion of the Project would cause County to suffer substantial damages, but that those damages would be extremely difficult and impracticable to precisely compute, and therefore the parties have agreed that a reasonable measure of such damages is the sum of \$500.00 per Day, which sum the DBC will pay to County for each Day of delay in achieving Substantial Completion of the Project that is not excused by an extension of time granted by County under the provisions of this Contract. This amount is estimated by County and the DBC to be a reasonable approximation of County's actual damages in the event of a delay and is agreed to as liquidated damages and not as a penalty.
- 5.6. Time for Performance. This Contract shall take effect on the Effective Date and the DBC shall perform this Contract through Final Completion, in accordance with the Project Schedule.

## **ARTICLE 6**

### **COMPENSATION OF THE DESIGN-BUILD CONTRACTOR**

- 6.1. The "Contract Price" is the maximum, not-to-exceed, total amount payable under this Design and Construction Contract unless it is increased or decreased by the price of approved change orders. The Contract Price is the sum of the Guaranteed Maximum Price for Construction Work plus the Design Fee plus the DBC Fee. These amounts are calculated as follows:
  - 6.1.1. Guaranteed Maximum Price For Construction Work (GMP). DBC agrees that the portion of the Contract Price attributable to the Construction Work shall not exceed the Guaranteed Maximum Price for Construction Work agreed to by the parties through the Pre-Construction Review process provided under section 2.6. The Guaranteed Maximum Price for Construction Work is composed of:
    - 6.1.1.1. Cost of the Work. The Guaranteed Maximum Price For Construction Work includes the Cost of the Work, more particularly described in **Section 8** herein.

- 6.1.1.2. Bonding. The Guaranteed Maximum Price For Construction Work includes the cost of Bonding.
- 6.1.1.3. Contingency. The Guaranteed Maximum Price For Construction Work includes a contingency amount which is available for costs that are incurred in performing the Construction Work that are not included in a specific line item of the Cost of the Work, or the basis for a Change Order under the Contract Documents (the "Contingency").
- 6.1.1.4. Changes to the GMP. Increases in the GMP may only be authorized by written amendment signed by the parties. Reductions in the GMP may be made at Owner's discretion based on approval of funding for the Project
- 6.1.1.5. GMP Savings. In the event that the actual and final GMP is less than the GMP stated in Article 6.1.1, the difference shall accrue to Owner.
- 6.1.2. Design Fee. The Design Fee shall be payable to DBC on a cost-reimbursement basis up to a maximum sum of \$XXXXXX. The Design Fee shall cover constructability review, value engineering, cost estimating, identification of cost-effective energy conservation measures, including but not limited to green energy technologies, program refinement, Design Development, and all other services necessary to develop the Design Work Product, as described in this Article 2. If the DBC's costs for the provision of Design Services during the Design Phase exceed the maximum sum above, the DBC shall pay such additional cost without reimbursement. The DBC shall not be entitled to any added DBC Fee or markup upon the maximum sum above. County shall pay the actual Design Fee on a cost-reimbursement basis following receipt, review, and approval of each application for payment up to the time the Notice to Proceed (Construction) is issued. No Design Fee or other related fees, costs, compensation, or reimbursement for Design Services shall be payable to DBC after issuance of the Notice to Proceed (Construction).
- 6.1.3. DBC Fee. DBC's overhead and profit for the Design Phase shall be \_\_\_\_% of the amounts actually paid under 6.1.2. DBC's overhead and profit for the Construction phase shall be \_\_\_\_% of the GMP actually paid.
- 6.2. Owner Savings. If the Contract Price is less than the sum of the amount actually incurred for GMP, the Design Fee and the DCB Fee, the savings will accrue to the Owner.

## **ARTICLE 7**

### **CHANGES IN THE WORK**

- 7.1. Price Adjustments. Adjustments to the GMP and Contract Price required by changes in the Work beyond the stated scope may be determined by any of the methods listed in Section D of the General Conditions, except that the overhead and profit markup for ESCO shall be limited to the Overhead and Profit percentage as noted in Section 9.7 of this Design and Construction Contract and the other firm fixed fees at the same percentage of the Cost of Work as the original scope.
- 7.2. Execution by County. Only the duly authorized personnel of County have the authority to execute Change Orders.

## **ARTICLE 8**

### **COST OF THE WORK (To be reimbursed)**

The term "Cost of the Work" shall mean the following costs. The Cost of the Work shall include only those items necessarily and reasonably incurred by the DBC in the proper performance of the Construction Services portion of the Work and specifically identified and agreed to below in this Contract, and only to the extent that they are directly related to the Project.

- 8.1. Labor Cost.
  - 8.1.1. Wages of construction workers directly employed by the DBC to perform the Construction Services portion of the Work at the Site.
  - 8.1.2. Wages and salaries of DBC's supervisory and administrative personnel stationed at the site, and for such personnel off the site when specifically related to the Project and with Owner's Contract after review of any information and Documents required by Owner.
- 8.2. Subcontract Cost. Payments made by DBC to Subcontractors in accordance with the requirements of the subcontracts toward completion of the Construction Work.
- 8.3. Cost of Materials and Equipment Incorporated in the Work or Stored On-Site.
  - 8.3.1. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed Work.

- 8.3.2. Costs of materials in excess of those actually installed but required to provide a reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to County at the completion of the Work or, at County's option, shall be sold by the DBC. Any sale shall be commercially reasonable and the DBC shall provide accounting for such a sale within 15 Days of the transaction. Net amounts realized if any, from such sales shall be credited to County as a deduction from the Cost of the Work.

#### 8.4. Costs of Miscellaneous Equipment and Other Items

- 8.4.1. Costs, including transportation, installation, maintenance, dismantling, and removal, of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the DBC at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the DBC; provided that County at County's option may require that the DBC deliver to County (at no charge) at the end of the Project any of such items procured for this Project. Cost for items previously used by the DBC shall mean fair market value.

- 8.4.2. Costs of removal of debris from the Site.

- 8.4.3. That portion of the reasonable travel and subsistence expenses of DBC's personnel, at County approved rates, but not in excess of the rates allowed State Employees, incurred while traveling in discharge of duties connected with the Construction Work. Main office staff travel shall not be reimbursed unless approved in advance by Owner.

#### 8.5. Other Costs.

- 8.5.1. Fees and assessments for the building permit and for other permits, licenses and inspections for which the DBC is required by the Contract and Contract Documents to pay.
- 8.5.2. Sales, use or similar excise taxes imposed by a governmental authority which are directly related to the Construction Work and for which DBC is liable
- 8.5.3. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by County.
- 8.5.4. Repairs to Damaged, Defective or Nonconforming Work. The Cost of the Work shall also include costs which are incurred by the DBC in taking

action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

## **ARTICLE 9**

### **COSTS EXCLUDED FROM THE WORK (Not To Be Reimbursed)**

- 9.1. Costs Excluded from Cost of Work. The following shall not be included in the Cost of the Work and are considered part of DBC's overhead and profit:
- 9.1.1. Salaries and other compensation of the DBC's personnel stationed at the DBC's principal office or offices other than the site office.
  - 9.1.2. Expenses of the DBC's principal office and offices other than the site office.
  - 9.1.3. Any overhead and general expenses, except as may be expressly included in Article 8.
  - 9.1.4. Any cost associated with the Project not specifically and expressly described in Section 8 of this Contract.
  - 9.1.5. The DBC's capital expenses, including interest on the DBC's capital employed for the Work.
  - 9.1.6. Rental cost of machinery and equipment.
  - 9.1.7. Costs due to the fault or negligence of the DBC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
  - 9.1.8. The cost of correction of any repair work, nonconforming or defective work, or warranty work.
  - 9.1.9. Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith.
  - 9.1.10. Fines and penalties.
  - 9.1.11. Except for Early Work, the cost of Design Phase Services.
  - 9.1.12. Any costs in excess of the GMP.

## **ARTICLE 10**

### **DISCOUNTS, REBATES AND REFUNDS**

- 10.1. Discounts, Rebates and Refunds. Cash discounts obtained on payments made by the DBC shall accrue to County. Trade discounts, rebates, refunds, and net amounts received from sales of surplus materials and equipment shall accrue to County, and the DBC shall make provisions so that they can be secured.
- 10.2. Amounts Credited to County. Amounts that accrue to County in accordance with the provisions of Article 10.1 shall be credited to County as a deduction from the Cost of the Work.

## **ARTICLE 11**

### **INSURANCE PROVISIONS**

Prior to performing under this Contract, the DBC shall obtain at DBC's expense the insurance specified in this Section and shall maintain this insurance in full force throughout the duration of this Contract, as required by any extended reporting period or tail coverage requirements and through all warranty periods that apply. The DBC shall obtain this insurance from insurance companies or other entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon that have an A.M. Best rating of "A-" or better and which otherwise are acceptable to the County. Coverage must be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation coverage. The DBC shall pay for all deductibles, self-insured retention and self-insurance, if any.

- 11.1. Workers' Compensation and Employers' Liability. All employers, including DBC, that employ subject workers, as defined in ORS 656.027, shall provide workers' compensation insurance coverage for those workers in the amount required under state and federal law. If DBC is a subject employer, as defined in ORS 656.023, DBC shall also obtain employers' liability insurance coverage with limits not less than \$1,000,000 each accident.
- 11.2. Commercial General Liability. Commercial General Liability Insurance covering bodily injury and property damage written on an ISO CG 00 01 10 01 (or equivalent). This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract and shall have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$2,000,000 per occurrence.

- 11.3. Automobile Liability. Automobile Liability Insurance covering DBC's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$2,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability)
- 11.4. DBC's Professional Liability. Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the work, including design services, to be provided under this Contract by the DBC and DBC's subcontractors, agents, officers or employees in an amount not less than \$2,000,000 per claim. Annual aggregate limit shall not be less than \$2,000,000. If coverage is on a claim made basis, the retroactive date of the policy must be prior to the inception of the work and an extended reporting period equal to the statute of ultimate repose shall be included in the Professional Liability insurance coverage.
- 11.5. DBC Equipment Coverage. DBC and Subcontractors are responsible for their tools and equipment including, but not limited to, tools, construction trailers and their contents, temporary fencing, temporary structures, scaffolding, staging forms, and other personal property and/or equipment that is used in performance of the Work but are not actually incorporated into the Work, whether owned, leased, rented or borrowed or in the care, custody or control of DBC or any Subcontractor. DBC acknowledges and agrees that County will not be responsible for any loss or damage to their tools and equipment. If insured, the DBC's insurance policies covering tools and equipment will include a waiver of subrogation and any other rights of recovery in favor of County, their designated indemnitees, and all Subcontractors by endorsement. If uninsured, the DBC will hold harmless County, their designated indemnitees and all Subcontractors for loss or damage to their tools, materials, and equipment.
- 11.6. Waiver of Subrogation. DBC grants to County a waiver of any right to subrogation that the DBC or its insurers may acquire against the County by virtue of the payment of any loss under any property insurance policy required under this Contract, including Builder's Risk Insurance and Builder's Risk Installation Floater Insurance. DBC agrees to obtain from their insurer(s) any endorsements necessary to affect this waiver of subrogation.
- 11.7. Additional Insureds. All liability insurance, except for Workers' Compensation and Professional Liability (if applicable), required under this Contract must include the Columbia County, its officers, employees, and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to DBC's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other

insurance and self-insurance. For Commercial General Liability, the Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

- 11.8. Certificate(s) and Proof of Insurance. DBC shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the Columbia County, its officers, employees, and agents as a Certificate holder and as an endorsed Additional Insured and include copies of all required additional insured endorsements (or equivalent).
- 11.9. Notice of Change or Cancellation. The DBC or its insurer must provide at least 30 days' written notice to the County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
- 11.10. Insurance Requirement Review. DBC agrees to periodic review of insurance requirements by County under this Contract and to provide updated requirements as mutually agreed upon by DBC and County.
- 11.11. County Acceptance. All insurance providers are subject to County acceptance. If requested by County, DBC shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to County's representatives responsible for verification of the insurance coverages required under this Contract.
- 11.12. County-Contractor Relationship. Further, notwithstanding anything to the contrary, the DBC agrees that it has a special relationship with County because, in part, of the design-build obligations of the DBC, and that County is placing its potential monetary liability in the DBC's hands and has authorized the DBC to exercise independent judgment on behalf of County. DBC shall exercise such own independent judgment to further County's economic interests and County shall, without limiting County's claims, be entitled to commence, maintain and recover on not only contract but tort-based claims against the DBC for all aspects of the DBC's obligations hereunder.



## **ARTICLE 12**

### **OWNERSHIP AND USE OF WORK PRODUCT**

- 12.1. Ownership of Contract Documents. Copies of the Contract Documents, Design and Construction documents, Plans, Specifications, reports, or other materials required elsewhere in the Contract to be delivered to County, including without limitation materials identified as “instruments of service” in any Contract between the DBC and any of its Consultants or Subcontractors (“Work Product” or “Work Products”) shall be the exclusive property of County. County and the DBC intend that such Work Product be deemed “work made for hire,” for which County shall be deemed the author. If for any reason such Work Products are not deemed “work made for hire,” the DBC hereby irrevocably assigns to County all of its right, title and interest in and to any and all of such Work Products, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. The DBC shall ensure and shall confirm to County that the DBC’s Contracts with its Consultants, Subcontractors, employees and agents conform to the requirements of this section and agrees further to execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. The DBC forever waives, for itself, its Consultants, Subcontractors, employees and agents, any and all rights relating to such Work Product, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use of subsequent modifications.
- 12.2. Right of Use. The DBC, despite other conditions of this Article, shall have the right to use such Work Product in its brochures or other literature that it may employ for its sales and in addition, unless specifically otherwise prohibited, the DBC may use standard line drawings, specifications and calculations on other unrelated projects.

## **ARTICLE 13**

### **PROJECT AND ACCOUNTING RECORDS**

The DBC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract; the accounting and control systems shall be satisfactory to County. County and County's Representative shall be afforded reasonable and regular access to the DBC’s records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract, and the DBC shall preserve these for a period of ten (10) years after final payment, or until the resolution of any dispute, if any, involving the Contract, or for such longer period as may be required by law.

## **ARTICLE 14**

### **PAYMENTS**

- 14.1. Schedule of Payments. County shall make payments to the DBC on the dates listed below:

14.1.1. Design Services. On the first (1st) day of each month following execution of the Contract, the DBC shall submit its application for payment to County for Design Services performed during the prior month. Any application for payment submitted by the DBC after the first day of a calendar month shall be deemed received by County on the first day of the following calendar month. County will make payment of the amount rightfully due and payable to the DBC within 30 Days of receipt, review and approval of an application for payment. Provided, however, no retainage shall be withheld from payments for Design Services.

All requests for payments shall be prepared on a standard "AIA G742-2015 Application and Certification for Payment for a Design-Build Project" and "AIA G743-2015 Continuation Sheet for a Design-Build Project".

- 14.1.2. Construction Services. On the first (1st) day of each month following commencement of Construction Services, the DBC shall submit its application for payment to County for Construction Services performed during the prior month in compliance with the terms and conditions of Section E of the General Conditions. Any application for payment submitted by the DBC after the first day of a calendar month shall be deemed received by County on the first day of the following calendar month. County will make payment of the amount rightfully due and payable to the DBC within 30 Days of receipt, review and approval of each application for payment.
- 14.1.3. Retainage. County shall withhold retainage in the amount of 5% from all payments relating to Construction Services in accordance with the provisions of Section E.5 of the General Conditions.
- 14.1.4. Draft Application for Payment. At least ten (10) days prior to the first (1st) day of each month following commencement of Design Services, and thereafter throughout the Project until final payment, the DBC shall submit to County's Representative a draft application for payment containing the DBC's best approximation of the contents and amount of the pay application which will follow.

## **ARTICLE 15**

### **TERMINATION OR SUSPENSION**

Section J of the General Conditions governs Contract termination and duties of the Parties in the event of Contract termination, modified only to the extent set forth below:

#### **15.1. County's Termination.**

15.1.1. For Convenience. County may terminate the Contract without penalty for convenience pursuant to Section J.5 of the General Conditions; payment in such case shall be governed by Section E of the General Conditions. However, the amount to be paid to the DBC under the General Conditions shall not, in any case, exceed the Contract Price.

15.1.2. Funding/Authority. County may terminate the Contract, in whole or in part, immediately upon notice to the DBC, or at such later date as County may establish in such notice, upon:

15.1.2.1. County's failure to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient to pay for the DBC's Design Services or Construction Services; or

15.1.2.2. Modification or interpretation of Federal or state laws, regulations or guidelines in such a way that either the Design Services or Construction Services performed under the Contract are prohibited or County is prohibited from paying for such Design Services or Construction Services from the planned funding source.

15.1.3. For Cause. County may terminate the Contract, in whole or in part, immediately upon notice to the DBC, or at such later date as County may establish in such notice, in the event:

15.1.3.1. The DBC or its Consultants no longer hold any license or certificate that is required to perform the Work; or

15.1.3.2. The DBC commits any material breach or default of any covenant, warranty, obligation or Contract under the Contract, fails to perform the Design Services or Construction Services under the Contract within the time specified herein or any extension thereof, or so fails to perform the Design Services or Construction Services as to endanger the DBC's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of County's notice, or such longer period of cure as County may specify in such notice.

#### **15.2. DBC's Termination.**

15.2.1. In Event of Suspension of the Work. The DBC may terminate the Contract for cause if the Work is stopped for 120 Days through no act or fault of the DBC or a Consultant, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the DBC, for any of the following reasons:

15.2.1.1. Issuance of an order of a court or other public authority having jurisdiction; or

15.2.1.2. An act of government, such as a declaration of national emergency, making material unavailable.

15.2.2. DBC may terminate the Contract for cause in the event County has failed to make timely payments of amounts not in dispute in accordance with Section E of the General Conditions, following notice as provided below and 10 Days' opportunity to cure.

15.3. Payment upon termination. Payment upon termination shall be governed by Section E of the General Conditions. Notwithstanding the foregoing, neither Party shall be entitled to consequential damages, exemplary damages, compensation for lost opportunity, or lost profits. This provision does not impair or otherwise affect County's entitlement to recover liquidated damages in accordance with Section 5.5 of this Contract.

## **ARTICLE 16**

### **ENUMERATION OF CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE**

The Contract Documents are listed below and are intended to be complementary. However, in the event of conflicts or discrepancies among the Contract Documents, interpretation will be based on the descending order of precedence in which the Contract Documents are listed.

16.1. Contract amendments and change orders, with those of later date having precedence over those of an earlier date;

16.2. Supplemental General Conditions (Exhibit B);

16.3. This Design-Build Contract, minus all Exhibits, documents and material incorporated herein by reference;

16.4. The General Conditions found in (Exhibit A);

16.5. Applicable Permits and Orders issued by any Authority;

- 16.6. The Request for Proposal (“RFP”) and addenda, including without limitation all technical and performance specifications and requirements included therein (Exhibit D);
- 16.7. Plans and Specifications by the DBC that are compliant with the RFP and approved by Owner;
- 16.8. Project Schedule;
- 16.9. DBC’s Accepted Proposal (Exhibit E);
- 16.10. Any other remaining Exhibits, documents and material incorporated in this Contract or the RFP by reference.

The General Conditions, to the extent not inconsistent with this Contract, shall also apply to the work of all Subcontractors, and the DBC shall include equivalent provisions in each of its Consultant contracts and subcontracts.

## **ARTICLE 17**

### **STATUTORY PROVISIONS**

Pursuant to the requirements of ORS 279C.500 through 279C.530 and Article XI, Section 10 of the Oregon Constitution, the following terms and conditions are made a part of this Agreement:

17.1. Contractor shall:

- 17.1.1. Make payment promptly, as due, to all persons supplying to Contractor labor or material for the performance of the work provided for in this Agreement. [ORS 279C.505 (1)(a)]
- 17.1.2. Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any subcontractor incurred in the performance of this Agreement. [ORS 279C.505 (1)(b)]
- 17.1.3. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished. [ORS 279C.505 (1)(c)]
- 17.1.4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167. [ORS 279C.505 (1)(d)]
- 17.1.5. Demonstrate that an employee drug testing program is in place. [ORS 279C.505 (2)]

- 17.2. If Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to Contractor or a subcontractor in connection with this Agreement as the claim becomes due, the proper officer that represents County may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of this Agreement. The County reserves the right to make payments directly or by multiple-payee check payments. Upon County's request, Contractor shall furnish to County the information required to facilitate such payments with each application for payment, including (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons. [ORS 279C.515 (1)]
- 17.3. If Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived. [ORS 279C.515 (2)]
- 17.4. If the Contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with this Agreement, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. [ORS 279C.515 (3)]
- 17.5. The County paying a claim in the manner authorized in this paragraph shall not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim.
- 17.6. Contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires otherwise, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, Contractor shall pay the employee at least time and a half pay for:
- 17.6.1. All overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or [ORS 279C.520 (1)(a)(A)(i)]

17.6.2. All overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and [ORS 279C.520 (1)(a)(A)(ii)]

17.6.3. All work the employee performs on Saturday and on any legal holiday specified in ORS 279C.540. [ORS 279C.520 (1)(a)(B)]

Contractor shall comply with the prohibition set forth in ORS 652.220, that compliance is a material element of the contract and that a failure to comply is a breach that entitles the contracting agency to terminate the contract for cause. [ORS 279C.520 (1)(b)]

Contractor may not prohibit any of contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person. [ORS 279C.520 (1)(c)]

Contractor and any employer under this Agreement shall give notice in writing to employees who work on this Agreement, either at the time of hire or before work begins on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week, that Contractor may require the employees to work, along with the prevailing wage rate information and any fringe benefit information. If Contractor fails to give written notice of the workers' schedule, the work schedule will be presumed to be a five-day schedule. The schedule may only be changed if the change is intended to be permanent and is not designed to evade the Prevailing Wage Rate overtime requirement. [ORS 279C.520 (2)]

17.7. When Contractor or subcontractor provides for or contributes to a health and welfare plan or a pension plan, or both, for contractor or subcontractor's employees who are working under this Agreement, Contractor shall post a notice describing the plan and containing information on how and where to make claims and where to make further information. The notice must be posted in a conspicuous and accessible place at the work site, preferably in the same location as the prevailing wage rates. [ORS 279C.840 (5)]

17.8. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness and injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collects or deducts from the wages of employees under any law, contract or agreement for the purpose of providing or paying for such services. [ORS 279C.530 (1)]

17.9. All subject employers working under this Agreement, including Contractor, shall comply with ORS 656.017 and provide the required Workers'

Compensation coverage, unless such employers that are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. [ORS 279C.530 (2)]

17.10. Any worker employed by Contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the Contractor within 90 days from the completion of the contract, providing the Contractor has:

17.10.1. Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work.

17.10.2. Maintained the circular continuously posted from the inception to the completion of the contract on which workers are or have been employed. [ORS 279C.545]

17.11. Contractor must include in each subcontract for property or services Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:

17.11.1. A payment clause that obligates the Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within 10 days out of amounts Owner pays to the Contractor under this Agreement; and [ORS 279C.580 (3)(a)]

17.11.2. A clause that requires Contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from Contractor. [ORS 279C.580 (3)(b)]

17.11.3. A clause that requires Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. Contractor may change the form, or the regular administrative procedures Contractor uses for processing payments if Contractor notifies the subcontractor in writing at least 45 days before the date on which Contractor makes the change; and includes with the written notice a copy of the new or changed form or a description of the new or changed procedure. [ORS 279C.580 (3)(c)]

17.11.4. An interest penalty clause that obligates the Contractor, if the contractor does not pay the first-tier subcontractor within 30 days after receiving payment from Owner, to pay to the first-tier subcontractor an interest



penalty on amounts due in each payment Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (1) of this subsection. Contractor or any first-tier subcontractor is not obligated to pay an interest penalty if the only reason that Contractor or the first-tier subcontractor did not make payment when payment was due is that Contractor or first-tier subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty: [ORS 279C.580 (3)(d)]

17.11.4.1. Applies to the period that begins on the day after the required payment date and that ends on the date on which payment of the amount due is paid; and [ORS 279C.580 (3)(d)(A)]

17.11.4.2. Is computed at the rate specified in ORS 279C.515(2). [ORS 279C.580 (3)(d)(B)]

17.12. Contractor, in each of Contractor's subcontracts, shall require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection (K) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier. [ORS 279C.580 (4)]

17.13. The provisions of this Section are not intended to impair the right of Contractor or a subcontractor at any tier to negotiate, and to include in the subcontract, provisions as allowed by ORS 279C.580(5). Such clauses and provisions are subject to the provisions of ORS 279C.580(6) through (10). [ORS 279C.580 (5)]

17.14. Persons claiming to have supplied labor or materials for the performance of the work provided for in this Agreement, including any person having a direct contractual relationship with Contractor or direct contractual relationship with any subcontractor, or an assignee of such person, or a person claiming moneys due the State Accident Insurance Fund Corporation, the Unemployment Compensation Trust Fund or the Department of Revenue in connection with the performance of this Agreement, has a right of action on Contractor's payment bond as provided for in ORS 279C.380 and 279C.400 only if:

17.14.1. The person or the assignee of the person has not been paid in full; and

17.14.2. The person gives written notice of claim, as prescribed in ORS 279C.605, to the Contractor and Owner. [ORS 279C.600 (1)]

17.15. Contractor shall comply with the July 1, 2022, Prevailing Wage Rates for Public Works Contracts in Oregon, which may be accessed at:

<http://www.oregon.gov/boli/WHD/PWR/Pages/index.aspx>. The prevailing rate of wage must be paid to workers in each trade or occupation required for the Project employed in the performance of this Agreement either by the Contractor or any subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by this Agreement. All workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840. [ORS 279C.830 (1)] Contractor and any subcontractor engaged on a project under this Agreement shall keep the prevailing rates of wage posted in a conspicuous and accessible place in or about the project. [ORS 279C.840 (4)]

- 17.16. Contractor must have filed with the Construction Contractors Board a public works bond in the amount of \$30,000, with a corporate surety authorized to do business in this state, before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8), or (9). The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under this section, unless the surety sooner cancels the bond. Contractor shall require in every subcontract that the subcontractor have a public works bond filed with the Construction Contractors Board before starting on the project, unless exempt under ORS 279C.836 (4), (7), (8), or (9), and verify compliance before permitting a subcontractor to start work on this Agreement. [ORS 279C.830(2) and ORS 279C.836 (1)]
- 17.17. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 17.18. Contractor shall salvage or recycle construction and demolition debris, if feasible and cost effective. [ORS 279C.510 (1)]

## **ARTICLE 18**

### **MISCELLANEOUS PROVISIONS**

- 18.1. Governing Law; Jurisdiction; Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between County and the DBC that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court of the State of Oregon for Columbia

County; provided, however, if a Claim must be brought in a Federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for District of Oregon. In no event shall this Section be construed as a waiver by County of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. DBC, by execution of this Contract, consents to the Personal Jurisdiction of such courts.

- 18.2. Notices. Except as otherwise expressly provided in the Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, e-mail, or mailing the same, postage prepaid, to the DBC Representative or County Representative at the addresses or numbers provided in Article 4.2 of this Contract or as either party may hereafter indicate pursuant to that Article. Any notice so addressed and mailed shall be deemed to be given five (5) calendar days after the date of mailing. Any notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's Representative. Any notice delivered by e-mail shall be deemed to be given when the sender receives electronic confirmation of delivery. To be effective against County, such e-mail message must be confirmed by telephone notice to County's Representative. Any notice by personal delivery shall be deemed to be given when actually delivered. Regular, day-to-day communications may be transmitted through one of the methods set forth above, in person, by e-mail, or by other similar electronic transmission.
- 18.3. Disclosure of Tax Identification Number. The DBC shall provide its Federal Tax ID number to County. This number is required pursuant to ORS 305.385. The Tax Identification Number provided pursuant to this authority will be used for the administration of state, federal and local tax laws.
- 18.4. Severability. The Parties agree that if any term or provision of the Contract is declared by a court of competent jurisdiction to be illegal, in conflict with any law, or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 18.5. Waiver. The failure of County to enforce any provision of the Contract shall not constitute a waiver by County of that provision, or any other provision of the Contract.
- 18.6. Media Contacts; Confidentiality. The DBC shall provide no news release, press release, or any other statement to a member of the news media

regarding this Project, without County's prior written authorization. Furthermore, except in the case where County specifically authorizes disclosure of County's confidential information in writing, the DBC shall maintain the confidentiality of County's information pertaining to the Project, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the DBC from establishing a claim or defense in an adjudicatory proceeding. The DBC shall require all of its Subcontractors to maintain a similar level of confidentiality of County's information.

- 18.7. Conflict of Interest. Except with County's prior written consent, the DBC shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise the DBC's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.
- 18.8. Counterparts. This Agreement may be executed in several counterparts (facsimile or otherwise), all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original
- 18.9. Merger Clause. THE CONTRACT, WHICH INCLUDES THIS AGREEMENT AND THE REMAINING CONTRACT DOCUMENTS, CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THE CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO OTHER UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THE CONTRACT. DBC, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THE AGREEMENT AND THE REST OF THE CONTRACT DOCUMENTS, UNDERSTANDS THEM, AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE REMAINING CONTRACT DOCUMENTS.

IN WITNESS WHEREOF, the parties have executed this Contract that shall be effective as of the last date written below.

**DESIGN-BUILD CONTRACTOR**

**BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Office of County Counsel

By: \_\_\_\_\_

Henry Heimuller, Chair

By: \_\_\_\_\_

Casey Garrett, Commissioner

By: \_\_\_\_\_

Margaret Magruder, Commissioner

Date: \_\_\_\_\_

**EXHIBIT I**  
**GENERAL CONDITIONS**

# **GENERAL CONDITIONS**

## **Design-Build Contract**

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# **General Conditions Design-Build Contract**

## **SECTION A GENERAL PROVISIONS**

### **A.1 DEFINITION OF TERMS**

In the Contract Documents the following terms shall be as defined below:

**ARCHITECT/ENGINEER**, means the person whom Owner may appoint to undertake certain duties under the Contract. Since Design/Builder is providing design services under the Contract, Owner has not employed an Architect/Engineer to perform those design services. However, Owner may employ an Architect/Engineer to perform other duties described in the General Conditions, including contract administration and project management, or Owner may employ the Owner's Authorized Representative to perform those duties in lieu of an Architect/Engineer, in accordance with Subsection B.18.7 of the General Conditions.

**CHANGE ORDER**, means a written order issued by the Owner's Authorized Representative to the Contractor requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.1 including Owner's written change directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work.

**CLAIM**, means a demand by Contractor pursuant to Section D.3 for review of the denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these General Conditions.

**CONTRACT**, means the written agreement between the Owner and the Contractor comprised of the Contract Documents which describe the Work to be done and the obligations between the parties.

**CONTRACT PERIOD**, as set forth in the Contract Documents, means the total period of time beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

**CONTRACT TIME**, means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule.

**CONTRACTOR**, means the Person awarded the Contract for the Work contemplated. "Contractor", "Design-Build Contractor", "Design-Builder", and "DBC" are used interchangeably in the Contract Documents.

**DAYS**, are calendar days, including weekdays, weekends and holidays, unless otherwise specified.

**DIRECT COSTS**, means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance (including, without limitation, Builder's Risk Insurance and Builder's Risk Installation Floater); bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.

**FINAL COMPLETION**, means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K but excluding Warranty Work as described in Section I.2, and the final payment and release of all retainage, if any, released.

**FORCE MAJEURE** means an act, event or occurrence caused by strikes, freight embargoes, riot, fire, flood, acts of war, insurrection, accident, order of any court or governmental authority, act of God, terrorist act, pandemic, epidemic, declared state of emergency, public health emergency, or any other act, event or occurrence that is beyond the control of the party to this Contract who is asserting Force Majeure.

**NOTICE TO PROCEED**, means the official written notice from the Owner stating that the Contractor is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.

**OFFER**, means a bid in connection with an invitation to bid and a proposal in connection with a request for proposals.

**OFFEROR**, means a bidder in connection with an invitation to bid and a proposer in connection with a request for proposals.

**OVERHEAD**, means those items which may be included in the Contractor's markup (general and administrative expense and profit) and that shall not be charged as Direct Cost of the Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of foreman (i.e., superintendents and project managers), expenses of Contractor's offices at the job site (e.g. job trailer) including expenses of personnel staffing the job site office, and Commercial General Liability Insurance and Automobile Liability Insurance.

**ON-SITE WORK**, means any Work taking place on the Project Site, including designated staging areas adjacent to the Project Site, except for installation of covered temporary signs according to Section 00225 of the Oregon Standard Specifications for Construction.

**OWNER**, means Columbia County, Oregon.

**OWNER'S AUTHORIZED REPRESENTATIVE**, means those individuals identified in writing by the Owner to act on behalf of the Owner for this project. Owner may elect, by written notice to Contractor, to delegate certain duties of the Owner's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

**PERSON**, means an entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.

**PLANS**, means the drawings which show the location, type, dimensions, and details of the Work to be done under the Contract.

**PROJECT SITE**, means the geographical dimensions of the real property on which the Work is to be performed, including designated contiguous staging areas.

**PROPOSAL REQUEST ("PR")**, as initiated by Owner, means a written request by Owner to Contractor to quote a change to the Contract Price or Contract Period, or both, caused by a proposed change to the Contract Documents. As initiated by Contractor, PR means a written request by Contractor to the Owner's Authorized Representative proposing a change to Contract Documents accompanied by a quotation for change to the Contract Price or Contract Period, or both.

**PUNCHLIST**, means the list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Contract.

**RECORD DOCUMENT**, means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

**REQUEST FOR INFORMATION ("RFI")**, means a written request submitted by Contractor to the Owner's Authorized Representative on a standard form requesting interpretation of Contract Documents. An RFI may only be used as a vehicle for confirming or verifying an issue through an interpretation of the Contract Documents when the Contractor is unable to determine from the Contract Documents the material, process, system, or Work to be installed; responses that result in change to Contract Documents and adjustment to the Contract Price or Contract Period must be documented in a written Amendment.

**SOLICITATION DOCUMENT**, means an invitation to bid or request for proposal or request for quotes.

**SPECIFICATION**, means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

**SUBCONTRACTOR**, means a Person having a direct

contract with the Contractor, or another Subcontractor, to perform one or more items of the Work.

**SUBSTANTIAL COMPLETION**, means the date when the Owner accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.4.2.

**SUBSTITUTIONS**, means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by the Owner's Authorized Representative. The decision of the Owner's Authorized Representative is final.

**SUPPLEMENTAL GENERAL CONDITIONS**, means those conditions that remove from, add to, or modify these General Conditions. Supplemental General Conditions may be included in the Solicitation Document or may be a separate attachment to the Contract.

**WORK**, means the furnishing of all materials, equipment, labor, transportation, services and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out of duties and obligations imposed by the Contract Documents.

## **A.2 SCOPE OF WORK**

The Work contemplated under this Contract includes all labor, materials, transportation, equipment and services for, and incidental to, the completion of all construction work in connection with the project described in the Contract Documents. The Contractor shall perform all Work necessary so that the project can be legally occupied and fully used for the intended use as set forth in the Contract Documents.

## **A.3 INTERPRETATION OF CONTRACT DOCUMENTS**

A.3.1 Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all.

A.3.2 In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner or Owner's Authorized Representative's interpretation in writing.

A.3.3 If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or Owner's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by the Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness.

Interpretations and decisions of the Owner's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Contract Documents. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative (or Architect/Engineer).

A.3.4 References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated. Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the "Enumeration of Contract Documents and Order of Precedence" provisions of Article 12 of the Design-Build Agreement.

A.3.5 The characterization of provisions of the Contract as material provisions or the failure to comply with certain provisions as a material breach of the Contract shall in no way be construed to mean that any other provisions of the Contract are not material or that failure to comply with any other provisions is not a material breach of the Contract.

A.3.6 Should any Plans or Specifications provided by the Owner, that Contractor is required to utilize for any aspect of the Work, fail to particularly describe the materials, kind of goods, or details of construction, Contractor shall inquire of the Owner as to what is required, prior to utilization of the Plans and Specifications in performing the affected Work. Absent Owner-supplied Specifications to the contrary, the materials, construction methods, and processes that would normally be used by the Contractor to produce first-quality finished Work are considered a part of the Contract requirements.

A.3.7 **Electronic Signatures.** Contractor and Owner agree that signatures showing on PDF documents, including but not limited to PDF copies of the Contract, bonds, Change Orders and amendments, submitted or received via email, when submittal or receipt in that manner is required or allowed by Owner are "Electronic Signatures" under ORS Chapter 84 and bind the signing party and are intended to be and can be relied upon by the parties. Owner reserves the right at any time to require Contractor to deliver the hard copy originals of any documents.

#### **A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE**

A.4.1 It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work

and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to make inquiry of the Owner and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.

A.4.3 Any design errors or omissions noted by the Contractor shall be reported promptly to the Owner's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.

A.4.4 If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative (or Architect/Engineer) in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Owner's Authorized Representative denies Contractor's request for additional compensation, additional Contract Time, or other relief that Contractor believes results from the clarifications or instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

#### **A.5 INDEPENDENT CONTRACTOR STATUS**

The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee or agent of the Owner.

#### **A.6 RETIREMENT SYSTEM STATUS AND TAXES**

Contractor represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under this Contract. Contractor will not be eligible for any benefits from these Contract payments of federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual. Unless the Contractor is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Contractor's federal or state tax obligations.

## **A.7 GOVERNMENT EMPLOYMENT STATUS**

- A.7.1 If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.
- A.7.2 Contractor represents and warrants that Contractor is not an employee of the State of Oregon for purposes of performing Work under this Contract.

## **SECTION B ADMINISTRATION OF THE CONTRACT**

### **B.1 OWNER'S ADMINISTRATION OF THE CONTRACT**

- B.1.1 The Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents (1) during construction (2) until final payment is due and (3) during the one-year period for correction of Work. The Owner's Authorized Representative will act on behalf of the Owner to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the Owner's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.
- B.1.2 The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.
- B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner's Authorized Representative.
- B.1.4 Based upon the Architect/Engineer's evaluations of the Contractor's Application for Payment, or unless otherwise stipulated by the Owner's Authorized Representative, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

### **B.2 CONTRACTOR'S MEANS AND METHODS: MITIGATION OF IMPACTS**

- B.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.
- B.2.2 The Contractor is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.
- B.2.3 The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.

### **B.3 MATERIALS AND WORKMANSHIP**

- B.3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.
- B.3.2 The Contractor is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the Contractor's expense.
- B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by the Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the Owner's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.
- B.3.4 Contractor shall furnish adequate facilities, as required, for the Owner's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.
- B.3.5 The Contractor shall furnish Samples of materials for testing by the Owner's Authorized Representative and include the cost of the Samples in the Contract Price.

- B.3.6 Material requiring weighing to be weighed by scale. Allowable scales with Engineer's approval are commercial vehicle weigh scales, plant automatic weight batching and mixing control printer system, or plant weight hopper printer system.

Pay Items to be measured by weight shall include all Contractor costs for furnishing appropriate weight tickets and transporting Materials to the scales or to check weighing.

The scales shall conform to ORS 618, and NIST Handbook 44, and shall be:

- Licensed by the Oregon Department of Agriculture;
- Technically suitable for weighing the Materials;
- Properly installed and maintained; and
- Accurate to the required tolerances.

The Owner may periodically have a representative at the scales to observe the weighing procedures

#### **B.4 PERMITS**

Contractor shall obtain and pay for all necessary permits and licenses, except for those specifically excluded in the Supplemental General Conditions, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental Work, etc., as required for the project. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. Contractor shall give all requisite notices to public authorities. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, Columbia County, and its departments, divisions, members and employees. "Permits and licenses" include all submittals and fees required by any jurisdiction as a condition of their approval to construct the project for its intended purpose as described in the solicitation document and Contract.

#### **B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS**

- B.5.1 Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following as applicable: i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Owner's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated by reference herein. All rights and remedies available to Owner under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the

#### **Contract**

- B.5.2 Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and

- (a) Pursuant to ORS 279A.110, Contractor shall not discriminate against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business, in the awarding of subcontracts.

- (b) Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.

- (c) Compliance with ORS 279C.520 also includes:

- i. As required by ORS 279C.520, the Contractor must comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. The Contractor's compliance with this section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles Owner to terminate this Contract for cause.

- ii. The Contractor shall not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits and other compensation with another employee or another person and shall not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person

- (d) Respecting certification as a disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or an emerging small business under ORS 200.055, as and when applicable, the Contractor shall maintain the certifications, and require in its subcontracts that subcontractors maintain the certifications required by ORS 279A.107.

- (e) It is a material term of the Contract that the Contractor certifies by entering into the Contract that Contractor has a written policy and practice that meets the requirements described in ORS 279A.112 (HB 3060, 2017) for preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class, and that the Contractor shall maintain the policy and practice in force during the entire term of the Contract.

- B.5.3 Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.

- B.5.4 Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.
- B.5.5 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.
- B.5.6 Contractor shall comply with all Oregon Tax Laws, consistent with the Contractor's Certificate of Compliance with Tax Laws and the Contractor's warranty that the Contractor has complied with the Oregon Tax Laws. Any violation of the Contractor's Certificate of Compliance or warranty will constitute a material breach of the Contract.
- B.5.7 Failure to comply with any or all of the requirements of B.5.1 through B.5.6 shall be a material breach of Contract entitling the Owner to pursue and recover any and all of its available remedies at law or in equity that arise from the breach, including, but not limited to, recovery of damages, the termination of the Contract, and the exercise of the right of setoff, garnishment if applicable and the withholding of amounts otherwise due and owing to the Contractor without penalty. Damages or costs resulting from such non-compliance shall be the responsibility of the Contractor.

## **B.6 SUPERINTENDENCE**

Contractor shall keep on the site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the Owner and who shall represent the Contractor on the site. Directions given to the superintendent by the Owner's Authorized Representative shall be confirmed in writing to the Contractor.

## **B.7 INSPECTION**

- B.7.1 Owner's Authorized Representative shall have access to the Work at all times.
- B.7.2 Inspection of the Work will be made by the Owner's Authorized Representative at its discretion. The Owner's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's expense.
- B.7.3 Contractor shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. The Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity retained by the Owner, or with the appropriate public authority. The Owner shall furnish and pay for special testing and inspection required by the governing jurisdictions and not resulting from the Contractor's deficiencies, shop fabrication or

means and methods. The Contractor shall be responsible for any and all inspection costs resulting from the Contractor's acceleration of the construction schedule. The Contractor shall give the Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that the Owner's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner's Authorized Representative.

- B.7.4 As required by the Contract Documents, Work done or material used without inspection or testing by the Owner's Authorized Representative may be ordered removed at the Contractor's expense.
- B.7.5 If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized Representative, the uncovering and restoration will be paid for as a Change Order.
- B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's Authorized Representative's and Architect/Engineer's services and expenses, shall be at the Contractor's expense.
- B.7.7 When the United States government participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner's Authorized Representative.

## **B.8 SEVERABILITY**

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and reenforced as if the Contract did not contain the particular provision held to be invalid.

## **B.9 ACCESS TO RECORDS**

- B.9.1 Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner's Authorized Representative access

thereto.

- B.9.2 Contractor shall retain and the Owner and its duly authorized representatives shall have access to, for a period not less than ten (10) years, all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor which are pertinent to the Contract including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts.
- B.9.3 If any part of the Contract is involved in any dispute under any theory, Contractor shall retain all such records until all disputes are resolved, regardless of the 10-year period stated in B.9.2. The Owner or its agents shall continue to be provided full access to the records during all disputes.

#### **B.10 WAIVER**

Failure of the Owner to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

#### **B.11 SUBCONTRACTS AND ASSIGNMENT**

- B.11.1 Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Owner thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.
- B.11.2 At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.
- B.11.3 Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

#### **B.12 SUCCESSORS IN INTEREST**

The provisions of this Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective permitted successors and assigns.

#### **B.13 OWNER'S RIGHT TO DO WORK**

Owner reserves the right to perform other or additional work at or near the project site with other forces than those of the Contractor. If such work takes place within or next to the project site, Contractor will coordinate work with the other contractors or forces, cooperate with all other contractors or forces, carry out the Work in a way that will minimize interference and delay for all forces involved, place and dispose of materials being used so as not to interfere with the operations of another, and join the Work with the work of the others in an acceptable manner and perform it in proper sequence to that of the others. The Owner's Authorized Representative will resolve any disagreements that may arise between or among Contractor and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, the Owner's Authorized Representative will establish work priority (including the Work) which generally will be in the sequence that the contracts were awarded.

#### **B.14 OTHER CONTRACTS**

In all cases and at any time, the Owner has the right to execute other contracts related to or unrelated to the Work of this Contract. The Contractor of this Contract will fully cooperate with any and all other contractors without additional cost to the Owner in the manner described in section B.13.

#### **B.15 GOVERNING LAW**

This RFP and resulting Contract shall be governed by and construed and enforced in accordance with the laws of the State of Oregon without regard to principles of conflicts of laws.

#### **B.16 LITIGATION**

Any Claim or dispute between Owner and Contractor that arises from or relates to this Contract regardless of legal theory, and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Columbia County for the State of Oregon; provided, however, if a Claim or dispute must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by Columbia County on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

#### **B.17 ALLOWANCES**

- B.17.1 The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.
- B.17.2 Unless otherwise provided in the Contract Documents:
- (a) when finally reconciled, allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

- (b) Contractor's costs for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;
- (c) whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (i) the difference between actual costs and the allowances under Section B.17.2(a) and (2) changes in Contractor's costs under Section B.17.2(b).
- (d) Unless Owner requests otherwise, Contractor shall provide to Owner a proposed fixed price for any allowance work prior to its performance.

#### **B.18 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

B.18.1 The Contractor shall prepare and keep current, for the Architect's/Engineer's approval (or for the approval of Owner's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals. Owner reserves the right to finally approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:

- (a) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Work.
- (b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- (c) Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

B.18.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's

review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.

B.18.3 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.

B.18.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

B.18.5 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer.

B.18.6 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order has been executed by Owner authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect/Engineer's review or approval thereof.

B.18.7 In the event that Owner elects not to have the obligations and duties described under this Section B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner's Authorized Representative.

#### **B.19 SUBSTITUTIONS**

B.19.1 The Contractor may make Substitutions only with the consent of the Owner, after evaluation by the Owner's Authorized Representative and only in accordance with a Change Order. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, the Contractor represents



that the Contractor has personally investigated the proposed substitute product; certifies that the proposed product will meet the requirements of the specified product for quality, utility, durability, function, appearance, and purpose unless approved otherwise; represents that the Contractor will provide the same warranty for the Substitution that the Contractor would for the specified product unless approved otherwise; certifies that the cost data presented is complete and includes all related costs under this Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent; and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

- B.19.2 The consent of the Owner to a Substitution shall not absolve the Contractor of sole liability related to the proposed product's failure to meet the minimum requirements of the Specifications or the standard set by the specified product, for but not limited to, quality, utility, durability, function, appearance, and purpose.

## **B.20 USE OF PLANS AND SPECIFICATIONS**

Plans, Specifications and related Contract Documents furnished to Contractor by Owner or Owner's Architect/Engineer shall be used solely for the performance of the Work under this Contract. Contractor and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim any ownership or other interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by Owner.

## **B.21 FUNDS AVAILABLE AND AUTHORIZED**

Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of **Phase I** of this Contract within the Owner's appropriation or limitation. Contractor understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Owner's payment of amounts under this Contract attributable to Services performed after the last day of the current biennium **fiscal year** is contingent on Owner receiving from the Oregon Legislative Assembly appropriations, limitations or other expenditure authority sufficient to allow Owner, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

## **B.22 NO THIRD PARTY BENEFICIARIES**

Owner and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

## **SECTION C WAGES AND LABOR**

### **C.1 MINIMUM WAGE RATES ON PUBLIC WORKS**

Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to or are incorporated by reference in the Contract Documents. Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts.

### **C.2 PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS**

- C.2.1 In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Owner's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read the certified statement, that the Contractor or Subcontractor knows the contents of the certified statement and that to the Contractor's or Subcontractor's best knowledge and belief the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month.

The Contractor and Subcontractors shall preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.

- C.2.2 Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by section C.2.1. The Owner shall pay to the Contractor the amount retained under this subsection within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.
- C.2.3 Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Owner the certified statements required by C.2.1. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within 14 days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection.

- C.2.4 In accordance with statutory requirements, and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

### **C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS**

- C.3.1 Pursuant to ORS 279C.505 and as a condition to Owner's performance hereunder, the Contractor shall:

C.3.1.1 Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.

C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.

C.3.1.3 Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Owner, or assign any sums due by Owner, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the Owner.

C.3.1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

C.3.1.5 Demonstrate that an employee drug testing program is in place as follows:

- (a) Contractor represents and warrants that Contractor has in place at the time of the execution of this Contract, and shall maintain during the term of this Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following:

- (1) A written employee drug testing policy,
- (2) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
- (3) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

A drug testing program that meets the above requirements will be deemed a "Qualifying Employee Drug Testing Program." For the purposes of this section, an employee is a "Subject Employee" only if that employee will be working on the project job site.

- (b) Contractor shall require each Subcontractor providing labor for the project to:

- (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug Testing Program for the Subcontractor's Subject Employees,

and represent and warrant to the Contractor that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or

- (2) Require that the Subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug Testing Program for the duration of the subcontract.

C.3.2 Pursuant to ORS 279C.515, and as a condition to Owner's performance hereunder, Contractor agrees:

C.3.2.1 If Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the Contractor or a Subcontractor in connection with the project as such claim becomes due, the proper officer that represents the Owner may pay the amount of the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Paying a claim in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim.

C.3.2.2 If the Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public contract for a public improvement within thirty (30) Days after receiving payment from Owner or a contractor, the contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-Day period within which payment is due under ORS 279C.580(3) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

C.3.2.3 If the Contractor or a Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every contract related to this Contract must contain a similar clause.

C.3.3 Pursuant to ORS 279C.580, Contractor shall include in each subcontract for property or services the Contractor enters into with a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

- (a) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within ten (10) Days out of amounts the Owner pays to the Contractor under the Contract;
- (b) A clause that requires the Contractor to provide the first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor;

- (c) A clause that requires the Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:

- (1) Notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change; and
- (2) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

- (d) An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier Subcontractor within thirty (30) Days after receiving payment from Owner, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. Contractor or first-tier Subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and is computed at the rate specified in ORS 279C.515(2).

- (e) A clause which requires each of Contractor's Subcontractors to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of paragraphs (a) through (d) above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

C.3.4 All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

#### **C.4 PAYMENT FOR MEDICAL CARE**

Pursuant to ORS 279C.530, and as a condition to Owner's performance hereunder, Contractor shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, all sums of which the Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

#### **C.5 HOURS OF LABOR**

As a condition to Owner's performance hereunder, Contractor shall comply with ORS 279C.520, as amended from time to time and incorporated herein by this reference:

Pursuant to ORS 279C.520 and as a condition to Owner's performance hereunder, no person shall be employed to perform Work under this Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:

- (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; or
- (b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and
- (c) For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

This section C.5 will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization.

This Section C.5 shall not excuse Contractor from completion of the Work within the time required under this Contract.

### **SECTION D** **CHANGES IN THE WORK**

#### **D.1 CHANGES IN WORK**

D.1.1 The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Owner's Authorized Representative, and then only in a manner consistent with the Change Order provisions of this Section D.1 and after any necessary approvals required by public contracting laws have been obtained. Otherwise, a formal contract amendment is required, which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws have been obtained.

D.1.2 It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Contract, the Owner's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section D.1. All Change Order Work shall be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:

- (a) Modification of specifications and design.
- (b) Increases or decreases in quantities.
- (c) Increases or decreases to the amount of Work.

- (d) Addition or elimination of any Work item.
- (e) Change in the duration of the project.
- (f) Acceleration or delay in performance of Work.
- (g) Deductive changes.

On Labor ..... 15%  
 On Equipment ..... 10%  
 On Materials ..... 10%

When Change Order Work under D.1.3(c) is invoiced by an authorized Subcontractor at any level, each ascending tier Subcontractor or Contractor will be allowed a 5% supplemental mark-up on each piece of subcontract Work covered by such Change Order.

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible, as determined by Owner. In cases of suspension or partial termination under Section J, Owner reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of B.13 (Owner's Right to Do Work) shall then apply.

Adjustments in compensation shall be made under the provisions of D.1.3, in which costs for deductive changes shall be based upon a Direct Costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by Owner.

D.1.3 The Owner and Contractor agree that Change Order Work shall be administered and compensated according to the following:

- (a) *Unit pricing* may be utilized at the Owner's option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional Work.
- (b) If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, *fixed pricing* may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3(c) shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by Owner without adequate justification. Cost and price data relating to Change Orders shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.
- (c) In the event that unit pricing and fixed pricing are not utilized, then Change Order Work shall be performed on a *cost reimbursement* basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Contractor's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor's or Subcontractor's own forces:

Payments made to the Contractor shall be complete compensation for Overhead, profit, and all costs that were incurred by the Contractor or by other forces furnished by the Contractor, including Subcontractors, for Change Order Work. Owner may establish a maximum cost for Change Order Work under this Section D.1.3(c), which shall not be exceeded for reimbursement without additional written authorization from Owner. Contractor shall not be required to complete such Change Order Work without additional authorization.

D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment. Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) day time limit, Contractor's requests pertaining to that Change Order are barred. The thirty (30) day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.

D.1.5 If any Change Order Work under Section D.1.3 causes an increase or decrease in the Contractor's cost of, or the Contract Time required for the performance of, any other part of the Work under this Contract, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of the Change Order by Contractor.

The thirty (30) day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order and that request additional compensation or an extension of Contract Time to perform; Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) day time limit, and including their requests with Contractor's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors,

suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to the Owner's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. The Owner's Authorized Representative and the Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against Columbia County, whether in this claims process, in litigation, or in any dispute resolution process.

If the Owner's Authorized Representative denies the Contractor's request for additional compensation or an extension of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

D.1.6 No request or Claim by the Contractor for additional costs or an extension of Contract Time shall be allowed if made after receipt of final payment application under this Contract. Contractor agrees to submit its final payment application within ninety (90) days after Substantial Completion, unless written extension is granted by Owner. Contractor shall not delay final payment application for any reason, including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final payment application within ninety (90) days after Substantial Completion, and Contractor has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Contract Time shall be waived.

D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The Contractor is notified that numerous changes may be required and that there will be no compensation made to the Contractor directly related to the number of changes. Each change will be evaluated for extension of Contract Time and increase or decrease in compensation based on its own merit.

## **D.2 DELAYS**

D.2.1 Delays in construction include "Avoidable Delays", which are defined in Section D.2.1.1, and "Unavoidable Delays", which are defined in Section

D.2.1.2. The effect of Avoidable Delays is described in Section D.2.2 and the effect of Unavoidable Delays is described in Section D.2.3.

D.2.1.1 Avoidable Delays include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:

- (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract Time.
- (c) Do not impact activities on the accepted critical path schedule.
- (d) Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.

D.2.1.2 Unavoidable Delays include delays other than Avoidable Delays that are:

- (a) Caused by any actions of the Owner, Owner's Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner.
- (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. The Contractor shall notify the Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed. The Owner's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If the Owner's Authorized Representative disagrees that a differing site condition exists and denies Contractor's request for additional compensation or Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process.
- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be

construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:

- (i) Daily rainfall equal to, or greater than,  
0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25 %) or more.
- (ii) daily rainfall equal to, or greater than,  
0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the project site shall be considered the official agency of record for weather information.

D.2.2 Except as otherwise provided in ORS 279C.315, Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

D.2.3 In the event of Unavoidable Delays, based on principles of equitable adjustment, Contractor may be entitled to the following:

- (a) Contractor may be entitled to additional compensation or additional Contract Time, or both, for Unavoidable Delays described in Section D.2.1.2 (a) and (b).
- (b) Contractor may be entitled to additional Contract Time for Unavoidable Delays described in Section D.2.1.2(c) and (d).

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section D.2.1.2 (b), Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

If Contractor does not timely submit the notices required under this Section D.2., then unless otherwise prohibited by law, Contractor's Claim shall be barred.

### **D.3 CLAIMS REVIEW PROCESS**

D.3.1 All Contractor Claims shall be referred to the Owner's Authorized Representative for review. Contractor's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by Contractor to the Owner's Authorized Representative within five (5) Days after a denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in these General Conditions. Within thirty (30) Days after the initial Claim, Contractor shall submit to the Owner's Authorized Representative, a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.

D.3.2 The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner's Authorized Representative. The Owner's Authorized Representative and the Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.

D.3.3 The Owner's Authorized Representative will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and Owner in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.

D.3.4 The Owner's Authorized Representative's decision shall be final and binding on the Contractor unless appealed by written notice to the Owner within fifteen (15) Days of receipt of the decision. The Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, the Owner shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.

D.3.5 The decision of the Owner shall be final and binding unless the Contractor delivers to the Owner its requests for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of the Owner's decision. The mediation process will be considered to have commenced as of the date the Contractor delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.

In the event that a lawsuit must be filed within this sixty (60) day period in order to preserve a cause of action, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.

D.3.6 The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Owner and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to comply with Owner's administrative rules governing the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

D.3.7 Owner may at any time and at its discretion issue a construction change directive adding to, modifying or reducing the scope of Work. Contractor and Owner shall negotiate the need for any additional compensation or additional Contract Time related to the change, subject to the procedures for submitting requests or Claims for additional compensation or additional Contract Time established in this Section D. Unless otherwise directed by Owner's Authorized Representative, Contractor shall proceed with the Work while any request or Claim is pending, including but not limited to, a request or Claim for additional compensation or additional Contract Time resulting from Work under a Change Order or construction change directive. Regardless of the review period or the final decision of the Owner's Authorized Representative, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease Work without a written stop work order from the Owner or Owner's Authorized Representative.

#### **D.4 FALSE CLAIMS (OREGON FALSE CLAIMS ACT)**

D.4.1 Contractor understands and acknowledges it is subject to the Oregon False Claims Act (ORS

180.750 to 180.785) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Contract, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Contract or the Project for which the services are being performed, including but not limited to Contractor's statement of proposal and any invoices, reports, or other deliverables.

D.4.2 Contractor shall immediately disclose (in writing) to Owner whenever, in connection with the award, performance or closeout of the Contract, or any subcontract thereunder, Contractor has credible evidence that a principal, employee, agent, or subcontractor of Contractor has committed—  
(a) A violation of the Oregon False Claims Act; or  
(b) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.

D.4.3 Contractor must include subsections D.4.1 and D.4.2 of this section in each subcontract Contractor may award in connection with the performance of the Contract. In doing so, Contractor may not modify the terms of those subsections, except to identify the subcontractors or subgrantee that will be subject to those provisions.

### **SECTION E PAYMENTS**

#### **E.1 SCHEDULE OF VALUES**

The Contractor shall submit, at least ten (10) Days prior to submission of its first application for progress payment, a schedule of values ("Schedule of Values") for the contracted Work. This schedule will provide a breakdown of values for the contracted Work and will be the basis for progress payments. The breakdown will demonstrate reasonable, identifiable, and measurable components of the Work. Unless objected to by the Owner's Authorized Representative, this schedule shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Owner's Authorized Representative, Contractor shall revise the schedule of values and resubmit the same for approval of Owner's Authorized Representative.

#### **E.2 APPLICATIONS FOR PAYMENT**

E.2.1 Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by the Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) Days after the receipt of invoice ("application for payment") from the Contractor or fifteen (15) Days after the payment is approved by the Owner's Authorized Representative, whichever is the earlier date. The rate of interest shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) Days after receipt of the application for payment from the Contractor or fifteen (15) Days after the payment is approved by the Owner, whichever is the earlier date, but the rate of interest shall not exceed thirty (30) percent. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner

shall so notify the Contractor within fifteen (15) Days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) Days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective or improper application for payment, to reject the defective or improper portion of the application for payment and pay the remainder of the application for payment that is correct and proper.

Owner, upon written notice to the Contractor, may elect to make payments to the Contractor only by means of Electronic Funds Transfers (EFT) through Automated Clearing House (ACH) payments. If Owner makes this election, the Contractor will be required to arrange to receive EFT/ACH payments.

E.2.2 Contractor shall submit to the Owner's Authorized Representative, an application for each payment and, if required, receipts or other vouchers showing payments for materials and labor, including payments to Subcontractors. Contractor shall include, in its application for payment, a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore, has not been received.

Signed: \_\_\_\_\_ "

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted at Owner's sole discretion. Such a payment, if made, will be subject to the following conditions:

- (a) The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- (b) The Contractor shall submit applications for payment showing the quantity and cost of the material stored.
- (c) The material shall be stored in a bonded warehouse and Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.

- (d) The Contractor shall name the Owner as co- insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.
- (e) Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.
- (f) Within sixty (60) Days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.
- (g) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents. All required documentation must be submitted with the respective application for payment.

E.2.4 The Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because of:

- (a) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,
- (b) third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Contractor;
- (c) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment (in which case Owner may issue checks made payable jointly to Owner and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section C.3.2.1);
- (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (e) damage to the Owner or another contractor;
- (f) reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- (g) failure to carry out the Work in accordance with the Contract Documents; or
- (h) assessment of liquidated damages, when withholding is made for offset purposes.

E.2.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule



of Values, less retainage as provided in Section E.5. Pending final determination of cost to the Owner of changes in the Work, no amounts for changes in the Work can be included in application for payment until the Contract Price has been adjusted by Change Order;

- (b) Add that portion of the Contract 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 advance by the Owner pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;
- (c) Subtract the aggregate of previous payments made by the Owner; and
- (d) Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

E.2.6 Contractor's applications for payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.

E.2.7 The Contractor warrants to Owner that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

E.2.8 If Contractor disputes any determination by Owner's Authorized Representative with regard to any application for payment, Contractor nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.

### **E.3 PAYROLL CERTIFICATION REQUIREMENT**

Payroll certification is required before payments are made on the Contract. Refer to Section C.2 for this information.

### **E.4 DUAL PAYMENT SOURCES**

(Reserved for future use)

### **E.5 RETAINAGE**

E.5.1 Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

E.5.1.1 Owner reserves the right in its sole discretion to withhold or to not withhold retainage from progress payments or to

begin withholding retainage at any time. If Owner withholds retainage from progress payments the amount to be retained will not exceed five percent of the payment. Upon written application by the Contractor, including written approval of Contractor's surety, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining progress payments after 50 percent of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time. When the Work is 97-1/2 percent completed, the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done.

E.5.1.2 Notwithstanding E.5.1.4, for a contract of \$500,000 or less, if retainage is withheld and the Contractor requests that the Owner deposit the retainage in an interest-bearing account under ORS 279C.560(5), the Owner will use an interest-bearing account (in a bank, savings bank, trust company or savings association) as provided under ORS 279C.560(5). The Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment.

E.5.1.3 Notwithstanding E.5.1.4, for a contract over \$500,000, if retainage is withheld, the Owner will deposit the retainage in an interest-bearing escrow account as required by ORS 279C.570(2).

The Contractor shall execute such documentation and instructions respecting the interest-bearing escrow account as the Owner may require to protect its interests, including but not limited to a provision that no funds may be paid from the account to anyone without the Owner's advance written authorization.

E.5.1.4 In accordance with the provisions of ORS 279C.560 and any applicable administrative rules, the Contractor may request alternative forms of retainage. Unless the Owner finds in writing that accepting bonds, securities or other instruments described in option (a) below or a security bond described in option (b) below poses an extraordinary risk that is not typically associated with the bond, security or instrument, the Owner will approve the Contractor's written request:

- (a) to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds, securities or other instruments of equal value with Owner or in a custodial account or other mutually agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner. Interest or earnings on the bonds, securities or other instruments shall accrue to the Contractor. To be permissible the bonds, securities and other instruments must be of a character approved by the Columbia County Director of Finance, including but not limited to:
  - (i) Bills, certificates, notes or bonds of the United States.
  - (ii) Other obligations of the United States or agencies of the United States.
  - (iii) Obligations of a corporation wholly owned by the federal government.
  - (iv) Indebtedness of the Federal National Mortgage Association.
  - (v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

- (vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008; or

**The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Owner may require to protect its interests.**

- (b) that the Contractor be allowed, with the approval of the Owner, to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.625.

Where the Owner has accepted the Contractor's election of option (a) or (b) above, Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Owner has agreed to Contractor's request to deposit a surety bond under option (b), Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainage.

- E.5.1.5 In accordance with the provisions of ORS 279C.560, if the Owner accepts bonds, securities or other instruments deposited as provided in paragraph (a) of subsection E.5.1.4, the Owner shall reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount of the reduction to the Contractor in accordance with ORS 279C.570.

- E.5.1.6 The retainage held by Owner shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent per month on the final payment due Contractor, interest to commence thirty (30) Days after the Work under the Contract has been completed and accepted and to run until the date Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) Days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not, within the time allowed, notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) Days after the end of the 15-Day period.

- E.5.1.7 Contractor agrees that if Contractor elects to reserve retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to, and the Contractor shall comply, with all applicable legal requirements, including but not limited to those in ORS Chapters 279C and

701, and 49 CFR 26.29.

- E.5.2 As provided in Sections C.2.2 and C.2.3, additional withholding in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when the Contractor fails to file certified statements as required by Section C.2.1.

## **E.6 FINAL PAYMENT**

- E.6.1 Upon completion of all the Work under this Contract, the Contractor shall notify the Owner's Authorized Representative, in writing, that Contractor has completed Contractor's part of the Contract and shall request final payment. Upon receipt of such notice the Owner's Authorized Representative will inspect the Work, and if acceptable, submit to the Owner a recommendation as to acceptance of the completed Work and the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) Days of Contractor's request for final payment. Upon approval of this final estimate by the Owner and compliance by the Contractor with provisions in Section K. 3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, the Owner shall pay to the Contractor all monies due under the provisions of these Contract Documents.

- E.6.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

- E.6.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

## **SECTION F JOB SITE CONDITIONS**

### **F.1 USE OF PREMISES**

Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents,

law, ordinances, permits or directions of the Owner's Authorized Representative. Contractor shall follow the Owner's Authorized Representative's instructions regarding use of premises, if any.

Under Oregon's Indoor Clean Air Act all Columbia County properties are smoke, aerosol and vapor free (ORS 433.835-870, effective January 1, 2016.) A person may not smoke, aerosolize or vaporize an inhalant or carry a lighted smoking instrument within 10 feet of the following parts of public places or places of employment: Entrances; Exits; windows that open; and Ventilation intakes that serve an enclosed area.

## **F.2 PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC**

- F.2.1 Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the Owner's Authorized Representative, workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.
- F.2.2 Contractor shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.
- F.2.3 Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall immediately and in writing, report to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.
- F.2.4 Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities,

and materials on the site.

- F.2.5 Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.
- F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with Section D.
- F.2.7 **UTILITY FACILITIES:** This Project is located within the Oregon Utility Notification Center area which is a notification system for notifying owners of utility facilities about Work being performed in the vicinity of their facilities. The utilities notification system telephone number is 811 (or 1-800-332-2344). Contractor shall request a locate from the center prior to any excavation.

## **F.3 CUTTING AND PATCHING**

- F.3.1 Contractor shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents.
- F.3.2 Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

## **F.4 CLEANING UP**

From time to time as may be ordered by the Owner the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. If Contractor fails to do so within twenty-four hours after notification by the Owner the work may be done by others and the cost charged to the Contractor and deducted from payment due the Contractor.

## **F.5 ENVIRONMENTAL CONTAMINATION**

- F.5.1 Contractor will be held responsible for and shall indemnify, defend (with counsel of Owner's choice) and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 shall limit Contractor's responsibility for obtaining insurance coverages required under Section G.3 of these General Conditions, and Contractor shall take no action that would void or impair such coverages
- F.5.1.1 Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and proper regulatory agencies in a manner

that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner and be performed by properly qualified personnel.

F.5.1.2 Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any

(i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:

- (a) properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
- (b) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and
- (c) promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

F.5.2 Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR 340-142-0050 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

- (a) Description of items released (identity, quantity, manifest no., and all other documentation required by law.)
- (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
- (c) Exact time and location of release, including a description of the area involved.
- (d) Containment procedures initiated.
- (e) Summary of communications about the release Contractor has had with members of the press or State officials other than Owner.
- (f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- (g) Personnel injuries, if any, resulting from, or

aggravated by, the release.

## **F.6 ENVIRONMENTAL CLEAN-UP**

F.6.1 Unless disposition of environmental pollution is specifically a part of this Contract, or was caused by the Contractor (reference F.5 Environmental Contamination), Contractor shall immediately notify Owner of any hazardous substance(s) which Contractor discovers or encounters during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any hazardous substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or well being of Contractor's or any Subcontractor's work force.

F.6.2 Upon being notified by Contractor of the presence of hazardous substance(s) on the project site, Owner shall arrange for the proper disposition of such hazardous substance(s).

## **F.7 FORCE MAJEURE**

A party to this Contract shall not be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. The Owner may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract.

## **F.8 MATERIAL SALVAGE FOR DEMOLITION CONTRACTS**

Pursuant to ORS 279C.510 the Contractor and all subcontractors involved in demolition work are required to salvage or recycle construction and demolition debris, if feasible and cost-effective.

## **SECTION G INDEMNITY, BONDING, AND INSURANCE**

### **G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY**

G.1.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.

G.1.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner, Owner's Authorized Representative, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to, (a) any damage, injury, loss, expense, inconvenience or delay described in this Section G.1.2, (b)

any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects, (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract, (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140), and (e) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section G.1.2.

Included among the entities and persons covered by the indemnification provision in Section G.1.2 of the General Conditions is the "Architect/Engineer". Given that this Contract is a Design-Build Contract, Owner agrees that the Section G.1.2 indemnification would not include the "Architect/Engineer", as that term is defined in Section A.1 of the General Conditions, to the extent Design-Builder or its Consultants are performing the design services; provided, however, the indemnification provision does apply to the "Architect/Engineer" to the extent an employee or agent of Owner, including the "Owner's Authorized Representative", is performing other functions or duties of the "Architect/Engineer", including contract administration and Project management.

G.1.3 In claims against any person or entity indemnified under this Section G.1.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section G.1.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **G.2 PERFORMANCE AND PAYMENT SECURITY: PUBLIC WORKS BOND**

G.2.1 When the Contract Price is \$100,000 or more (or \$50,000 or more in the case of Contracts for highways, bridges and other transportation projects) the Contractor shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than the above thresholds, if required by the Contract Documents.

G.2.2 Bond forms furnished by the Owner and notarized by awarded Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

G.2.3 Before execution of the Contract Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Laws 2005, Chapter 360, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

**G.3 INSURANCE** The Contractor shall comply with the Insurance Requirements included in Article 8 of the Design-Build Contract for the Project

## **SECTION H SCHEDULE OF WORK**

### **H.1 CONTRACT PERIOD**

H.1.1 **Time is of the essence on this Contract.** The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence Work on the site within fifteen (15) Days of Notice to Proceed, unless directed otherwise.

H.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents. The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2 (f) and shall be subject to the Change Order process of Section D.1.

H.1.3 The Owner shall not waive any rights under the Contract by permitting the Contractor to continue or complete in whole or in part the Work after the date described in Section H.1.2 above.

### **H.2 SCHEDULE**

H.2.1 Contractor shall provide, by or before the pre-construction conference, a detailed schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, long lead items, broken down by building and/or floor where applicable. Each schedule item shall account for no greater than 5 % of the monetary value of the project or 5 % of the available Contract Time. Schedules with activities of less than one day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to the Contractor's sequencing, means, methods, or allocated Contract Time. Any positive difference between the Contractor's scheduled completion and the Contract completion date is float owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to do so. In no case shall the Contractor make a request for additional compensation for delays if the Work is completed within the

Contract Time but after Contractor's scheduled completion.

- H.2.2 The Project Work schedule is essential to the Owner. The Contractor's failure to provide the schedule, schedule information, progress reports, or schedule updates when required will because to suspend the Work, or to withhold Contract payments as necessary to protect the Owner, until the Contractor provides the required information to the Owner's Authorized Representative.

### **H.3 PARTIAL OCCUPANCY OR USE**

- H.3.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work.

Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work. Approval by the Contractor to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **SECTION I CORRECTION OF WORK**

### **I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT**

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than thirty (30) Days after Substantial Completion for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by the Contractor, Owner shall arrange for inspection of the Work by the

Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the Contractor. If Contractor fails to complete the punch list work within the above time period, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) days after demand without affecting Contractor's obligations.

### **I.2 WARRANTY WORK**

- I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective Work and, unless a longer period is specified, Contractor shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of Substantial Completion by the Owner except for latent defects which will be remedied by the Contractor at any time they become apparent.

The Owner shall give Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand without affecting Contractors obligations.

- I.2.2 This provision does not negate guarantees or warranties for periods longer than one year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.

- I.2.3 In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative.

- I.2.4 The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work corrected. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

- I.2.5 Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

- I.2.6 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

**SECTION J**  
**SUSPENSION AND/OR TERMINATION OF THE**  
**WORK**

**J.1 OWNER'S RIGHT TO SUSPEND THE WORK**

- J.1.1 The Owner and/or the Owner's Authorized Representative has the authority to suspend portions or all of the Work due to the following causes:
- (a) Failure of the Contractor to correct unsafe conditions;
  - (b) Failure of the Contractor to carry out any provision of the Contract;
  - (c) Failure of the Contractor to carry out orders;
  - (d) Conditions, in the opinion of the Owner's Authorized Representative, which are unsuitable for performing the Work;
  - (e) Time required to investigate differing site conditions;
  - (f) Any reason considered to be in the public interest.
- J.1.2 The Owner shall notify Contractor and the Contractor's Surety in writing of the effective date and time of the suspension and Owner shall notify Contractor and Contractor's surety in writing to resume Work.

**J.2 CONTRACTOR'S RESPONSIBILITIES**

- J.2.1 During the period of the suspension, Contractor is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.
- J.2.2 When the Work is recommenced after the suspension, the Contractor shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

**J.3 COMPENSATION FOR SUSPENSION**

- J.3.1 Depending on the reason for suspension of the Work, the Contractor or the Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Contractor, the Owner may assess the Contractor actual costs of the suspension in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of the Owner, the Contractor shall be due compensation which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of the Contractor or the Owner, neither party owes

the other for the impact.

**J.4 OWNER'S RIGHT TO TERMINATE CONTRACT**

- J.4.1 The Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) Days' written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:
- (a) If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in- possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
  - (b) If Contractor should make a general assignment for the benefit of Contractor's creditors;
  - (c) If a receiver should be appointed on account of Contractor's insolvency;
  - (d) If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
  - (e) If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its Authorized Representative; or
  - (f) If Contractor is otherwise in material breach of any part of the Contract.

- J.4.2 At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to the Owner.

**J.5 TERMINATION FOR CONVENIENCE**

- J.5.1 Owner may terminate the Contract in whole or in part whenever Owner determines that termination of the Contract is in the best interest of the public.
- J.5.2 The Owner will provide the Contractor with seven (7) Days' prior written notice of a termination for public convenience. After such notice, the Contractor shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Contractor received progress payment under Section E. Compensation for Work terminated by the Owner under this provision will be according to Section E. In no circumstance shall Contractor be entitled to lost profits for Work not performed due to termination.

**J.6 ACTION UPON TERMINATION**

- J.6.1 Upon receiving a notice of termination, and except as directed otherwise by the Owner, Contractor shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of

subcontracts and orders.

- J.6.2 As directed by the Owner, Contractor shall upon termination transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.

## **SECTION K CONTRACT CLOSE OUT**

### **K.1 RECORD DOCUMENTS**

As a condition of final payment, Contractor shall complete and sign the Contract Closeout Checklist form provided by Owner. If accepted by Owner, Contractor's delivery of the certification as required in K.3 of the Checklist will be deemed to be compliance with the requirements of Section K.3 below and Contractor's delivery of the information required in K.7 of the Checklist will be deemed to be compliance with the requirements of Section K.7 below.

As a condition of final payment (refer also to section E.6), Contractor shall comply with the following: Contractor shall provide to Owner's Authorized Representative, Record Documents of the entire project. Record Documents shall depict the project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

### **K.2 OPERATION AND MAINTENANCE MANUALS**

As part of the Work, Contractor shall submit two completed operation and maintenance manuals ("O & M Manuals") for review by the Owner's Authorized Representative prior to submission of any pay request for more than 75% of the Work. No payments beyond 75% will be made by the Owner until the O & M Manuals have been received. The O & M Manuals shall contain a complete set of all submittals, all product data as required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Owner's Authorized Representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, Contractor shall deliver three (3) complete and approved sets of O & M Manuals to the Owner's Authorized Representative.

### **K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS**

As a condition of final payment, the Contractor shall submit to the Owner's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to Owner, which states that all Subcontractors and suppliers have been paid in full, all disputes with property owners have been resolved, all obligations on the project have been satisfied, all monetary claims and indebtedness have been paid, and that, to the best of the Contractor's knowledge, there are no claims of any kind outstanding against the project. The Contractor shall indemnify, defend (with counsel of Owner's choice) and hold harmless the Owner from all

claims for labor and materials finished under this Contract. The Contractor shall furnish complete and valid releases or waivers, satisfactory to the Owner, of all liens arising out of or filed in connection with the Work.

### **K.4 COMPLETION NOTICES**

- K.4.1 Contractor shall provide Owner notice of both Substantial and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the Contractor shall finish all items on the punchlist accompanying the Certificate. Both completion notices must be signed by the Contractor and the Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date they are signed by the Owner.

- K.4.2 Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Owner's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The Contractor may request that a punch list be prepared by the Owner's Authorized Representative with submission of the request for the Substantial Completion notice.

### **K.5 TRAINING**

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. Contractor shall schedule training sessions at least two weeks in advance of the date of training to allow Owner personnel adequate notice.

The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment.

### **K.6 EXTRA MATERIALS**

As part of the Work, Contractor shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the specifications, prior to final payment. Delivery point for extra materials shall be designated by the Owner's Authorized Representative.

### **K.7 ENVIRONMENTAL CLEAN-UP**

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the Contractor shall notify the Owner that all environmental pollution clean-up performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above.

### **K.8 CERTIFICATE OF OCCUPANCY**

The Contractor shall not be granted Final Completion or receive final payment if the Owner has not received an unconditioned certificate of occupancy from the appropriate state



and/or local building officials, unless failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of Owner.

#### **K.9 OTHER CONTRACTOR RESPONSIBILITIES**

The Contractor shall be responsible for returning to the Owner all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. The Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Contractor to the Owner. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion, if the Owner does not take beneficial use of the facility and the Contractor's forces continue with the Work.

#### **K.10 SURVIVAL**

All warranty and indemnification provisions of this Contract, and all of Contractor's other obligations under this Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract

### **SECTION L**

#### ***LEGAL RELATIONS & RESPONSIBILITIES***

#### **L.1 LAWS TO BE OBSERVED**

In compliance with ORS 279C.525, Sections L.2 through L.4 contain lists of federal, state and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

#### **L.2 FEDERAL AGENCIES**

Agriculture, Department of  
Forest Service  
Soil Conservation Service  
Coast Guard  
Defense, Department of Army Corps of Engineers  
Energy, Department of  
Federal Energy Regulatory Commission  
Environmental Protection Agency  
Health and Human Services, Department of  
Housing and Urban Development, Department of  
Solar Energy and Energy Conservation Bank  
Interior, Department of  
Bureau of Land Management  
Bureau of Indian Affairs  
Bureau of Mines  
Bureau of Reclamation  
Geological Survey Minerals Management Service  
U.S. Fish and Wildlife Service  
Labor, Department of  
Mine Safety and Health Administration  
Occupation Safety and Health Administration  
Transportation, Department of  
Federal Highway Administration  
Water Resources Council

#### **L.3 STATE AGENCIES**

Administrative Services, Department of  
Agriculture, Department of  
Soil and Water Conservation Commission

Columbia River Gorge Commission Energy,  
Department of Environmental Quality,  
Department of Fish and Wildlife,  
Department of Forestry,  
Department of Geology and Mineral Industries,  
Department of Human Resources,  
Department of Consumer and Business Services,  
Department of Land Conservation and Development  
Commission Parks and Recreation,  
Department of State Lands,  
Division of Water Resources Department of

#### **L.1 LOCAL AGENCIES**

City Councils  
County Courts  
County Commissioner,  
Board of Design Commissions  
Historical Preservation Commission  
Planning Commissions

EXHIBIT E  
New Attachment C

## ATTACHMENT C - KEY PERSONNEL AND CONSULTANTS FORM

### 1.1 DESIGN-BUILDER PERSONNEL

Title	Name	Phone #
Contract Authority		
Project Manager		
Superintendent		
Cost Estimator		

### 1.2 DESIGN & ENGINEERING

Title	Company Name	Person Assigned	Phone #
Architect of Record			
Landscape Architect			
Structural Engineer			
Mechanical Engineer			
Electrical Engineer			
Civil Engineer			
Geotechnical Engineer			

### 1.3 KEY CONSULTANTS

Title	Company Name	Person Assigned	Phone #
Commissioning Agent			
Special Inspections Firm			
Enter Trade Discipline			
Enter Trade Discipline			
Enter Trade Discipline			

**1.4 KEY SUBCONTRACTORS**

Title	Company Name	Person Assigned	Phone #
Enter Trade Discipline			
Enter Trade Discipline			
Enter Trade Discipline			