

Event Summary - Pre-Construction and CM/GC Services for the Multnomah County Downtown Behavioral Health Resource Ctr

Type	Request for Proposal (RFP)	Number	RFP-13-2020
Stage Title	Written Evaluation	Organization	Multnomah
Currency	US Dollar	Event Status	Stage Complete
Work Group	Department of County Assets	Exported on	8/11/2020
Exported by	Tessa Paul	Estimated Value	12,000,000.00 USD
Payment Terms	0% 0, Net 30		

Bid and Evaluation

Respond by Proxy	Allow	Use Panel Questionnaire	Yes
Sealed Bid	Yes	Auto Score	No
		Cost Analysis	No
Alternate Items	No	Confidential Pricing	No

Visibility and Communication

Visible to Public Yes

Enter a short description for this public event

Pre-construction and construction services for the Multnomah County Downtown Behavioral Health Resource Center.

Commodity Codes

Commodity Code	Description
72140100	Heavy construction services
72120100	General Building Construction

Event Dates

Time Zone	PDT/PST - Pacific Standard Time (US/Pacific)
Released	-
Open	7/16/2019 8:00 AM PDT
Close	8/6/2019 4:00 PM PDT
Sealed Until	8/6/2019 4:00 PM
	 Show Sealed Bid Open Date to Supplier
Q&A Close	8/2/2019 4:00 PM PDT

Description

PRE-PROPOSAL CONFERENCE:

There will not be a pre-proposal conference for this sourcing event.

SERVICE DESCRIPTION, FUNDING AND CONTRACTING INFORMATION

PURPOSE AND OVERVIEW

This Request for Proposals is part of a process to secure services of a Construction Manager / General Contractor (CM/GC) Service Provider for pre-construction services and CM/GC services for construction of the new Multnomah County Behavioral Health Resource Center.

The Facilities and Property Management Division of the Department of County Assets, Multnomah County Oregon (the "County") requests Proposals (individually, a "Proposal", and collectively, "Proposals") for pre- construction services and Construction Manager / General Contractor services (the "CM/GC Services") from qualified firms (the "CM/GC Service Provider" or "Proposer" or "Contractor"). Proposals will be considered for CM/GC Services related to the proposed Multnomah County Behavioral Health Resource Center Project in Portland, Oregon (the "Project"). The purpose of the solicitation is to secure Proposals from CM/GC Service Providers who have prior experience in pre-construction services and CM/GC Services for projects similar in scope and scale.

The County recently purchased the existing 4 ½ story, 24,000 sq ft building, located at 333 SW Park Avenue in downtown Portland, and intends to renovate the building to support the critical service needs of the Multnomah County Behavioral Health Resource Center program. This center will provide critical services to the community of Multnomah County. The need for these services has been declared an emergency and Multnomah County is seeking a partner who is committed to exploring and providing creative, cost effective, and innovative approaches to opening this center in the next 18 - 24 months. Multnomah County has developed the programming and will further refine the program as the building design takes shape.

Additionally, the County purchased the adjacent parking lot to the north of the building, located at 810 SW Oak Street, and will develop this exterior space to support the program. The sequencing of the building and the parking lot work is yet to be determined by will likely be permitted separately.

The proposed Behavioral Health Resource Center include, at a minimum, the following features:

- Day center/intake areas;
- laundry facilities;
- shower facilities;
- resource center;
- shelter;
- transitional housing;
- food preparation area;
- gathering space;
- office Area;
- exterior storage;
- vertical circulation; and
- security support areas.

Additional items to be considered in the final design of the Behavioral Health Resource Center include:

- The County has selected the CM/GC delivery method for the Project. The County has already procured Architect & Engineer (A/E) Services through Carleton Hart Architects and Owner's Representative Services through Kloth Group, Inc.
- The County, A/E Service Provider and CM/GC will work with the adjacent building owners through the design and construction phases to minimize impacts to their operations. The County and adjacent building owners will work with the CM/GC and A/E Service Provider's landscape architect to design landscaping and hardscapes to fit the neighborhood context of the adjacent building occupants including possible remodeling efforts.
- Safety of both bicyclists and pedestrians during construction and final operation of the Behavioral Health Resource Center is critical to the success of the Project and must be addressed by the CM/GC during construction.

INTRODUCTION AND PROGRAM HISTORY

Multnomah County is experiencing an unprecedented number of people accessing our shelters and living on the streets. Homeless camping is becoming more visible throughout the entire County as more people cannot access affordable housing.

The population experiencing homelessness are among the most vulnerable residents of the County. Experiencing homelessness causes tremendous human suffering. The substantial threats posed by homelessness to personal and public health, welfare, safety, and property are undisputed, well-documented, and recognized nationally.

Moreover, the number of people experiencing homelessness in the County who also report disabling conditions, including behavioral health issues such as mental illness and substance abuse, has continued to grow faster than the number of people experiencing homelessness overall. Those experiencing behavioral health issues often face additional barriers to accessing shelter and housing and participating in services.

There is a pressing need in Multnomah County for facilities and services to serve this population. Currently, services and facilities specifically serving this population are limited, which leaves these individuals to seek assistance through hospitals and crisis services, and increases their contact with law enforcement and jail. Serving this population through these systems is not the most effective or efficient approach and inappropriately strains the capacity of those systems.

This housing emergency in Multnomah County poses a substantial threat to personal and public health, welfare, safety, and property, and, in particular, there is an extreme necessity for additional dedicated behavioral health facilities and services. Remodeling the Project Site will provide shelter capacity and services to address this situation.

GOALS AND VALUES AND OTHER IMPORTANT CONSIDERATIONS

Important Project objectives include, but are not limited to, the following:

- The building must reflect the prominence and importance of Multnomah County's commitment to providing dignified services to all members of the community, while demonstrating fiscal responsibility to the taxpayers with the use of durable, sensible materials and systems, focused on efficiency, flexibility, and sustainability.
- The facility must be flexible, efficient, durable, and economical to operate and maintain. The facility is intended to be an 80 year facility.
- The County is committed to achieving a high level of participation from COBID Certified Subcontractors, vendors and suppliers. The County has achieved at least 20% participation by COBID Certified firms on its construction projects. An aspirational goal of 20% or more for MWSDVESB participation is encouraged under this contract. See link for more information on the County's Supplier Diversity program: <https://multco.us/purchasing/minority-women-and-emerging-small-business>
- The Behavioral Health Resource Center floor plan, systems and configuration need to protect the safety of the public, clients, and the staff.
- The facility will achieve LEED Gold Certification or better. The facility will strive to achieve Architecture 2030 goals (<http://architecture2030.org/>), 2009 Climate Action Plan (<https://multco.us/climate-action-plan-0>) and relevant portions of the material elements of the Living Building Challenge (<http://living-future.org/lbc>).
- The Project will be completed on time and within budget.
- The original construction costs will be balanced with the need to keep life-cycle costs low.
- The County is committed to achieving overall apprentice workforce participation of 20% during the construction phase.
- The County is committed to creating opportunities for Workforce Training and Hiring and obtaining a high level of participation from local businesses and local workers, in particular MWSDVESB firms. The selected CM/GC will be required to comply with the [County's Workforce Training and Hiring Program](#) requirements.
- The County seeks to conduct business with vendors who demonstrate responsible business practices through [sustainability and social equity innovations](#).

FUNDING

The County has budgeted approximately \$12 - \$15 million for the project. It is 100% local funding. Multnomah County will fund this project through general fund contributions along with any grant or contributions from partnership agencies.

SCOPE OF SERVICE

The CM/GC Service Provider will be responsible for working with various County representatives, the A/E Service Provider, various consultants, and the Owner's Representative Firm (collectively, the "Project Team") on this Project.

The selected Proposer is expected to possess strong experience in the following areas:

- Pre-construction services;
- CM/GC construction services;

- seismic retrofit of unreinforced masonry buildings;
- accurate cost estimating
- detailed value engineering analysis and life-cycle cost studies analyzing alternative designs;
- studying labor conditions, understanding construction methods and techniques;
- understanding local climate conditions and requirements for weather protection during construction
- performing constructability reviews;
- sequencing of work;
- coordinating and communicating the activities of the CM/GC's team throughout the design and construction phases to all members of the Project Team;
- management of construction schedules and site logistics in an urban context;
- management and coordination of Building Information Modeling (BIM) process and protocols;
- management of Diversity and Equity(COBID certified), and WorkForce Hiring Training programs and bidding procedures;
- involvement in development and execution of sustainable building practices; and
- management, execution and development of best-practice construction practices.

The selected Proposer will be engaged at a very early stage in the development of the design and will be expected to provide informed recommendations and opinions regarding detailed elements of the Project and to assist in the Owner's decision-making process.

The County is looking to develop a collaborative team approach to manage all phases of the Project. In CM/GC project delivery this is particularly important on projects of great complexity like the Multnomah County Behavioral Health Resource Center.

INTEGRATED PROJECT TEAM

The County is looking for a fully integrated Project Team between the A/E Service Provider/County/Owner's Representative, the CM/GC and Subcontractors.

The Project involves multiple stakeholders, committees, groups and team members including those detailed below.

- Board of County Commissioners (BCC):

The BCC is composed of the elected Chair and four elected Commissioners of Multnomah County. The BCC is the Project owner and has the ultimate responsibility to taxpayers for the success of the Project.

- Executive Steering Committee (ESC):

The Executive Steering Committee is composed of Project Sponsors, Department Leadership and other Key County Stakeholders. This team meets monthly with PMT Representatives to review the status of the project development. The ESC will meet monthly.

- Project Leadership Team (PLT):

The Project Leadership Team is composed of the Chief Operating Officer, Chief Financial Officer, Department Directors to provide the Project Management Team (PMT) with direction on decisions that impact the delivery of the project. The PLT will meet monthly.

- Project Executive Team (PET):

This team consists of Executive Leadership representatives from the agencies and companies directly involved in the project. It provides executive level communication and guidance, and to monitor the overall progress and performance of the PMT and other partners as needed. The PET will meet as needed.

- Project Management Team (PMT):

The main responsibility of the PMT is to manage the Project. The PMT will be composed of County staff, Owner's Representative, the A/E Service Provider and the selected CM/GC. The required members will generally be the lead manager of each staff plus any specialists significant to the current issues. The PMT will meet weekly.

- Technical Working Groups (TWGs):

The County will form specialized TWGs composed of technical experts in specialized fields to advise the PMT and the County on recommendations on specific issues. This may include County staff from the Facilities Division and IT. TWGs will meet as needed.

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KEY PERSONNEL

If a proposer is awarded a contract under this RFP, but is subsequently unable to provide staff with the training, education, and experience of those staff whose résumés were submitted as part of its proposal, then proposer acknowledges that the County may elect to terminate the contract immediately upon such a finding.

CM/GC BEST PRACTICES

The selected Proposer shall follow CM/GC “Best Practices.” CM/GC “Best Practices” require that all Project participants embrace the following principles of an integrated process for the management and execution of the Project:

- Mutual respect and trust;
- mutual benefit and reward;
- collaborative innovation and decision making;
- early involvement of key participants;
- early goal definition;
- intensified planning;
- enhanced communications;
- open and transparent communication;
- appropriate technology; and
- high performance organization and leadership.

CONTRACT PROCESS

The Contractor selected under this RFP will be expected to sign the CM/GC Contract and will, at a minimum, perform the Phase 1 pre-construction services scope of work set forth in that contract. Thereafter, the County retains the right to:

Proceed with construction of the Project utilizing the CM/GC Services of the Contractor, in which case the County will negotiate the following terms of the CM/GC Contract with the Contractor: The Guaranteed Maximum Price (GMP), insurance requirements, the construction schedule, the dollar amount assigned and any other details related to liquidated damages. All other terms and conditions of the CM/GC Contract are non-negotiable.

- Terminate the CM/GC Contract and issue a new solicitation for CM/GC Services.
- Issue an Invitation to Bid for construction of the Project
- Take any action that may be in the County’s best interest, including termination of the Contract for convenience.

PROJECT PHASES

The work on this Project is divided into three phases:

- Phase 1 – Pre-construction Services: Phase 1 is for pre-construction services.
- Phase 2 – CM/GC Construction Services: Phase 2 includes construction, management and completion of all construction work elements necessary to deliver the entire Project within the required schedule at the agreed upon Guaranteed Maximum Price (GMP).
- Phase 3 – Warranty period: A two-year warranty period

PHASE 1 - SCOPE OF PRE-CONSTRUCTION SERVICES

The following tasks, supporting efforts, deliverables, and reviews are intended to be a part of the pre-construction phase of the Project, prior to the issuance of the GMP. The descriptions of these tasks may be similar to items undertaken by the CM/GC during construction but the subject phase is intended for pre-construction period services only. The CM/GC Service Provider will be expected to:

- Participate as a member of the Project team to advise, assist, and provide recommendations on all aspects of the Project throughout the design and documentation phases.
- Contribute to public presentations and provide information for the Multnomah County website, updating the Project throughout design and construction for the benefit of the public.
- Provide recommendations regarding construction phasing, temporary facilities, site use, and worker and public safety.
- Provide recommendations regarding current industry construction practices, building materials, building systems, products, equipment, labor market and materials availability.
- Review and comment on the drawings and specifications, as they are developed and periodically released for general review, regarding suitability for supporting proper cost estimating, suitability for proper bidding, constructability and work sequence issues, and impact to the Project schedule.
- Provide continuous in-progress review of design documents, including the documents generally described in the industry as schematic development documents, design development documents, and construction documents and provide input and advice on construction feasibility, alternative materials, and availability. The CM/GC shall review these completed schematic development documents, design development documents, and construction documents and make timely suggested modifications to improve completeness and clarity.
- Advise on work phasing options to facilitate bidding and award of subcontracts and early work amendment packages, in order to minimize impacts to Work and to accelerate the schedule whenever practical.
- Develop procedures for timely and accurate coordination for processing shop drawings and other similar Project documentation.
- Develop an effective quality control program for all Work to ensure that materials furnished satisfy the quality control plan and Work is performed in accordance with the contract documents.
- Provide information and advice at all times on ways to reduce costs of the Project and the duration of the Project schedule.
- Develop a Project Site Management Plan consisting of a site plan showing work activity locations, security and safety features, secure materials storage, parking, temporary facilities, cranes and equipment, demolition, recycling, adjacent property access and other various activities.
- Develop a Project Safety and Security Plan and a Quality Control Plan to be used for the Project.
- Develop a proposed Contractor's Construction Schedule using Microsoft Project or other software approved by the County.
- Provide supporting documentation for the proposed Contractor's Construction Schedule, including but not limited to; schedule of values, manpower resource loading, assumed progress rates, equipment and labor.
- Identify the critical path activities for monitoring the Project progress and managing the work.
- Monitor and update the proposed Contractor's Construction Schedule.
- Provide construction cost estimating services throughout the course of design including, at a minimum, the following:
 - Prepare comprehensive cost estimates for major milestones of design, including Schematic Design, Design Development, Intermediate Construction Documents (% completion to be determined) and Final Construction Documents. (The comprehensive cost estimate format will be determined in conjunction with the Owner's consulting cost estimator, to ensure that the same format is used for major milestone cost estimates.)
 - At each major milestone described above, provide estimates to the Owner and work with the Owner's consulting cost estimator to reconcile the estimate to produce a single cost estimate for that major milestone.
 - As needed, provide general advice and information about materials, costs, systems, and products.
 - Value Engineering: Advise and inform the Owner to support timely decision-making regarding products, systems and materials that need to be comparatively analyzed not only for cost, but other factors such as schedule impact, constructability, quality, performance, maintenance and long-term operational life-cycle costs.
 - Track and keep the Project Team informed of new products, changes in market conditions, labor practices and laws, legislation and other factors that may affect Project materials, systems and products being considered.
- Develop an Aspirational Target plan for participation of COBID Certified Contractors, vendors, and suppliers.
- Develop with the Owner a mutually agreeable list of subcontracting opportunities, including identification of scope of each subcontracting opportunity; estimating cost/value of work; identifying specialty needs and schedule requirements; and identifying subcontracting opportunities and needs that should be addressed or acquired during Pre-Construction Services and before Construction commences.

- In collaboration and coordination with the Owner, develop a mutually agreeable Subcontracting Plan to be implemented under the Contract with the goal of maximizing the utilization of COBID Certified Subcontractors. The MWSDVESB Subcontracting Plan will address the following:
 - Identify all divisions of the work (including supplies, materials, and services) in a way that offers viable subcontracting opportunities for MWSDVESB companies, regardless of the subcontracting tier in which the division of the work is to be performed .
 - Develop outreach procedures designed to generate the submission of competitive bid Proposals from MWSDVESB Subcontractors at all subcontracting tiers.
 - Develop with the Owner mutually agreeable procurement procedures to solicit and award subcontracts at all subcontracting tiers to maximize MWSDVESB Subcontractor participation.
 - Develop with the Owner a mutually agreeable reporting plan to track progress toward and achievement of the MWSDVESB Subcontracting Plan objectives.

The MWSDVESB Plan must become an integral part of Contractor's overall approach and management plan for performance of the work. The MWSDVESB Subcontracting Plan shall include the requirement that Contractor make additional efforts to maximize participation beyond the Aspirational Target level throughout Project construction by procuring unanticipated and/or unscheduled materials, services, etc. from MWSDVESB Subcontractors, whenever possible.

- Develop a Workforce Training & Hiring Program Plan in collaboration and in coordination with the Owner that:
 - Provides apprenticeship hours in each trade throughout the Project on all subcontract awards of \$100,000 or more.
 - Ensures that a minimum of 20% of labor hours in each apprenticeable trade performed by the Contractor and Subcontractors, of \$100,000 or more, are worked by state-registered apprentices.
 - Employs a workforce that reflects the diversity of Multnomah County with the expectations to successfully recruit, train, retain and graduate participants.
 - Ensures Subcontractors submit monthly employment reports.

PHASE 2 - SCOPE OF CONSTRUCTION SERVICES:

The Phase 2 Construction Services work includes construction management and completion of all construction necessary to deliver the Project.

ESTIMATED PROJECT SCHEDULE

Due to the emergency nature of this project, we anticipate early construction to start in the Fall of 2019 and that it will overlap with design and permitting activities. We intend to have the building open for services by early Summer 2021. Specific construction milestones will be negotiated with project team once the GM/GC has been selected.

See Buyer Attachment 1 - CM/GC Contract, Section 3.2, for more information on Construction Phase Services requirements.

FEE / PRICE PROPOSAL REQUIREMENTS

Proposer should include a Fee / Price Proposal in the Appendix Section of their proposal response based on the deliverable requirements outlined in this RFP solicitation and supporting documents. The first part of the fee proposal will be a list of your firm's hourly rates, for personnel by job classification. The second part will be to provide a Not to Exceed Fee Proposal for Pre-Construction Services. The total Not-to-Exceed (NTE) Fee amount for this contract is subject to separate evaluation by the County and Owner's Rep and final negotiations with the successful Proposer.

Price Proposals must be firm for a period of one hundred and twenty (120) days from the deadline for Proposal submission.

SCOPE OF LEED® - RELATED SERVICES:

Selected Proposer shall perform all services to LEED Gold Standard. **See Buyer Attachment 2 - Board Resolution 08-004 LEED Gold High Performance Buildings.**

Specifically, the LEED® program requires a comprehensive and coordinated approach to Contractor-required documentation throughout Phases 1, 2 and 3 of the Project. This includes:

- Participation in meetings or work sessions related to the establishment and documentation of LEED® elements including sustainable demolition and construction practices to be pursued in the Project.

- Consulting with the A/E Service Provider and County, research applicable criteria, attend Project meetings and workshops, communicate with members of the Project team, and coordinate with the A/E Service Provider in relation to the A/E Service Provider's provision of LEED®- based services for sustainable design and construction.
- Supplying documentation and research as necessary to the A/E Service Provider to meet LEED® certification documentation for "points" at appropriate intervals for purposes of certification (such LEED® "points" may include, but are not limited to, (i) storage and collection of recyclables, (ii) origin of Materials, (iii) construction waste management, (iv) location of material manufacture; and (v) enhanced commissioning.
- Providing comparative cost estimates for multiple Project elements to support the evaluation of options as they are identified, including LEED elements and options.

FISCAL REQUIREMENTS AND REPORTING

The County will negotiate final reports with the selected Proposer during contract negotiations.

PERFORMANCE MEASURES/PERFORMANCE CONTRACTING

Performance measures will be negotiated during contracting.

CONTRACT NEGOTIATION

Time is of the essence in successfully delivering this project on an expedited schedule. The County intends to enter into a contract with the successful proposer within 7 days of award. The contract is attached to this sourcing event. **See Buyer Attachment 1 CM/GC Contract.** Proposers must identify any material changes to this contract and upload them as a Supplier Attachment. Any material changes requested during the contract negotiation process that were not identified, in a Supplier Attachment will not be considered.

CONTRACT AWARD

Through this RFP process, the County is seeking to award one contract. Award, as determined by the County, will be made to the responsible Proposer whose Proposal the County determines is most advantageous to the County based on the evaluation process and evaluation factors described in this RFP. Specific procurement authority for awarding this contract via an expedited procurement process is the Emergency Exemption approved by the Chair per PCRB Rule 47-0280.

Multnomah County strongly encourages the participation of Minority-Owned, Women-Owned, and Emerging Small Businesses and Organizations in providing these services.

CONTRACT TERM

The contract term shall be five (5) years with an option to renew for two additional one (1) year periods.

COMPENSATION AND METHOD OF PAYMENT

The Oregon Bureau of Labor and Industries (BOLI) prevailing wage rates that will apply to the Contract shall be the prevailing wage rates that were in effect at the time the RFP was advertised.

Pre-construction Fee Proposal for Phase 1 Services:

The selected Proposer will perform all the Pre-Construction Phase 1 Services for a Not to Exceed Fee provided in the RFP Proposal. The Proposer will bill monthly, on a time and materials basis, per the rates, agreed to by the County, in the Contract. The County will not pay any rates that do not match the fee proposal from the Proposer nor will the County pay any invoices that total more than the Not to Exceed Fee without an amendment executed by both parties.

Guaranteed Maximum Price (GMP) for Construction Phase Services:

The County must complete construction within the available funding. The Project Team will be responsible for developing the design and construction of the Project within the County's budget. The County has not yet determined the final scope of construction work. For purposes of this RFP only, the Proposer should assume that the County's current estimate for the capital construction of the Project is \$12 - 15 million.

- The County intends to negotiate the GMP with the awarded Proposer prior to the commencement of any construction work on the Project. The construction work would be authorized by the County under a Guaranteed Maximum Price Amendment for Construction Phase Services. The County, at its sole discretion, may elect to execute one or more Early Work Amendment(s) for Construction Phase Services if the County determines it to be in the County's best interests.
- The County will not pay any amount that exceeds the GMP as negotiated between the County and awarded Proposer under the Contract terms unless (i) the amount results from material changes to the scope of Work set forth in the Contract Amendment and (ii) the County issues a Contract Change Order to compensate the awarded Proposer for the material changes.
- The Contract shall specify the terms and conditions that govern how the Guaranteed Maximum Price set forth in an Amendment for Construction Phase Services will be determined. Further, the Contract Amendment will specify whether the price includes or is based upon unit pricing. Any savings that the awarded Proposer realizes in performing the Work will accrue to the County unless the Contract provides otherwise. Savings means a positive difference between a fixed price, GMP or other Guaranteed Maximum Price set forth in an Amendment for Construction Phase Services and the actual cost of the Work, including costs for which the County reimburses the awarded Proposer and fees or profits the awarded Proposer earns. **See Buyer Attachment 1 - CM/GC Contract.**

INSURANCE REQUIREMENTS

Phase I - Insurance Requirements

The table below reflects the minimum insurance required of a Contractor to provide services in Phase I. Final insurance requirements will be subject to negotiation between, and mutual agreement of the parties prior to contract execution.

Types of Insurance	Per Occurrence	Aggregate
Professional Liability	\$5,000,000	\$5,000,000
Commercial General Liability	\$1,000,000	\$2,000,000
Commercial Auto Liability	\$1,000,000	\$2,000,000
Workers Compensation	Required	

Phase II Insurance Requirements

Refer to Buyer Attachment 1 - CM/GC Contract Exhibit E.2, for additional insurance coverage that may be required. Final insurance requirements will be subject to negotiation between, and mutual agreement of the parties prior to contract execution.

The County will purchase Builder's Risk insurance for this Project.

JOINT PROPOSALS

The County will not accept joint proposals

MULTIPLE OR ALTERNATE PROPOSALS

The County will not accept multiple or alternate proposals for this sourcing event.

MINIMUM REQUIREMENTS

At the time of proposal submission, Proposers must meet the following minimum requirements. Failure to provide any of the required documents or meet any of the below requirements may result in rejection of the proposal.

1. The Proposal response must be received by Multnomah County Purchasing no later than 4:00 P.M. local Portland time on the proposal submission deadline.
2. The Proposer must certify that they agree to the Proposers Representation and Certification terms in the Pre-requisite page of the Sourcing Event.
3. In the event the County holds Oral interviews, they would be on Thursday, August 22, 2019. Proposers must certify they will attend this session, if selected. Failure to attend may result in rejection of the proposal. *Place a statement in your proposal as follows: "I certify that if selected, [insert Proposer entity name] will attend the oral interviews on [Insert Date]." – include as a Supplier Attachment. This will not count towards the page limits.*

At the time of Contracting, Proposers must meet the following minimum requirements. Failure to provide any of the required documents or meet any of the below requirements shall result in cancellation of the contract

1. Proposers must be legal entities, currently registered to do business in the State of Oregon (per ORS 60.701).

2. Proposers must submit verification that all insurance requirements are met.

Proposer's Checklist

1. Complete all Prerequisites
2. Answer all Questions in the Questions section. Upload one Proposal document, as a Supplier Attachment that includes all questions and documents required in the Appendix section and type the page number in the Text (Single Line) field where each answer can be found in the proposal response.
3. Include in the Proposal Appendix, all resumes of key staff.
4. Include in the Proposal Appendix, a letter from your Surety company to show bonding capacity.
5. Include in the Proposal Appendix, an Hourly Rate of Personnel sheet.
6. Include in the Proposal Appendix, a Not to Exceed (NTE) Fee proposal for Pre-construction services per the Fee / Price Proposal Requirements section above.
7. Enter the Pre-construction Services Fee into the Items tab as a Service Line Item.
8. Carefully review Buyer Attachment 1 - CM/GC Contract. Proposers must identify any material changes to this contract and upload them as a Supplier Attachment. Any material changes requested during the contract negotiation process that were not identified, in a Supplier Attachment, as part of the RFP proposal, will not be considered.
9. Provide a statement as a Supplier Attachment certifying your firm can attend the Oral Interview on August 22, 2019 if County chooses to offer one.
10. Click the "I Certify" button and submit your proposal.

Stage Description

PROPOSAL SUBMISSION INSTRUCTIONS

The written proposal response will require a two-step process in order for the response to be accepted:

Step 1. The Proposer is required to submit a written narrative for each question asked in the Proposal Questions and Evaluation Criteria section of the RFP. For Group 2.1: Programmatic Questions - Firm Qualifications, Group 2.2: Programmatic Questions - Similar Projects, Group 2.3: Programmatic Questions - Project Approach for Pre-Construction Services, Group 2.4: Programmatic Questions - Project Approach for Construction Services, and Group 2.5: Responsible Business Practice Questions - COBID Subcontracting Plan. The Proposal response must include all twelve (12) of the Programmatic Questions (Groups 2.1 - 2.4) and the one (1) Responsible Business Practice Question (Group 2.5). Appendix Section: The Appendix section will not count towards your page limits and must include: 1) Resumes of Key Staff 2) Bonding Capacity Letter 3) Hourly Rates of Personnel 4) Not to Exceed (NTE) Fee Proposal for Pre-construction services. Submit response as a complete proposal response and upload as a "Supplier Attachment" in the Sourcing Event.

Step 2.

The Proposer is required to provide the page number in the Text (Single Line) field of where the question is located in the proposal response. Failure to provide a response to either of the Supplier Attachments or the Text Single Line field may deem the proposal to be non-responsive and rejected.

The total number of pages, excluding Appendix section, **must not exceed fifteen (15) pages**. No penalty will be given for proposals that are less than the maximum page limit. Attachments and supporting documents not specifically required by the RFP will not be evaluated. Pages in excess of the page limitation will not be evaluated. Unless otherwise specified, pages exceeding the standard page size of 8.5" x 11" will be counted as two (2) pages.

Proposals must be computer generated or typewritten, single spaced, space-and-a-half or typewritten, single spaced, space-and-a-half or double-spaced, on 8.5" x 11" paper. All pages should be numbered. Margins should be at least ½ inch on all sides. Font size can be no smaller than 10pt. Proposals using smaller font sizes or smaller margins may be rejected.

Supplier Attachments (3 total) will include the following:

- 1) Written narrative for each question 2.1 - 2.5 including Appendix section items 1-4 listed above
- 2) Any material changes to CM/GC Contract
- 3) Statement certifying attendance to Oral Evaluation session if County chooses to offer one.

EVALUATION PROCESS FOR WRITTEN RESPONSE AND OPTIONAL ORAL EVALUATION

Proposals will be evaluated by an evaluation committee of individuals with experience in, knowledge of and program responsibility for program services and financing. Each evaluator shall independently review the written information provided by Proposers. Proposers who are determined to be most likely to be able to satisfactorily meet the County's requirements will be invited to an oral interview.

Optional Oral interviews if conducted will be on Thursday, August 22, 2019. The County will notify Proposers of the specific time on that day they will be scheduled as soon as possible after proposals are submitted. We require your proposed Project Manager attend this oral interview. The maximum number of attendees is 6 to include the Project Manager.

Each evaluator shall independently score the oral interviews. The oral and written evaluation scores will then be combined resulting in a final total score. The award will be made to the responsible proposer with the highest combined score.

Questions

★ Supplier Response Is Required

Company Certification Information - This section is not scored

Group 1.1: Company Certification Information - This section is not scored

- 1.1.1 State of Incorporation
Text (Single Line)
- 1.1.2 Date of Incorporation
Date
- 1.1.3 ASSURANCES - Proposer attests that Proposer is a resident proposer, as described in ORS 279A.120, of the State of (ENTER STATE) and has not discriminated against any 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 in obtaining any required subcontracts, in accordance with ORS 279A.110. Enter State: ★
Text (Single Line)
- 1.1.4 Where Proposer is unable to certify to any of the statements in Proposer Representations and Certifications of the pre-requisite, Proposer shall provide an explanation to their offer here.
Text (Multi-Line)
- 1.1.5 The Proposer certifies to the best of its knowledge and believe that neither it nor any of its principal participants and agents has or has had the following relationships with the specific firm(s)/individual(s), identified below, which may be determined to be an organizational conflict of interest. I understand that based on the information provided by Proposer, Multnomah County may exclude the Proposer from further consideration and may withdraw its selection if the real or apparent organizational conflict of interest cannot be avoided or mitigated. Proposer further certifies that the degree and extent of the relationship of the Proposer with these named firm(s)/individual(s) will be fully disclosed:
Text (Multi-Line)
- 1.1.6 Upload additional explanation as needed
File Upload
- 1.1.7 Name of person submitting the Proposal: ★
Text (Single Line)
- 1.1.8 Title of person submitting the Proposal: ★
Text (Single Line)
- 1.1.9 I represent that I am at least eighteen (18) years of age. ★
Yes/No
- 1.1.10 I represent that the printing of my name and the submittal of a Proposal is intended to authenticate this writing and to have the same force and effect as my manual signature. ★
Yes/No
- 1.1.11 I represent that I am either authorized to bind the Proposer, or that I am submitting the Proposal on behalf of and at the direction of the Proposer's representative authorized to contractually bind the Proposer. ★
Yes/No
- 1.1.12 I represent that the Proposer and/or its applicable representative(s) has reviewed the information contained in this Proposal and that the information submitted is accurate. ★
Yes/No

Proposal Questions & Evaluation Criteria

Group 2.1: Programmatic Questions - Firm Qualifications (15%)

2.1.1 Firm Qualifications and Safety Record | 70% *** 1. Provide a description of your firm's qualifications, experience and organizational structure. Provide information on the number of years of continuous operation and annual gross dollar volume for construction work per calendar year. 2. Describe your current workload and ability to commit staffing resources to this project. 3. Provide your firm's Accident Injury Incident Rate [Emergency Modification Rating (EMR)] for the past five years. Describe any OSHA violations and abatement efforts within the last five (5) years. ★

*** Suggested Page limit: 3 Proposer must identify page number(s) where this information is located within the proposal document within the text box. *** Evaluation Criteria: 1. Requested information is supplied.
2. Proposer demonstrates it has depth and capacity to provide Services contemplated in the RFP. 3. Proposer has demonstrated a strong safety record in the past five (5) years.

Text (Single Line)

2.1.2 Personnel Resumes | 20% *** Provide resume(s) of the key staff committed to this project. Resume(s) to be limited to 1 page per staff member. Resumes do not count against the page limit for this section but please include as an Appendix to your Proposal response.. Proposer must provide résumés for all proposer staff who will perform the services described within the RFP. Proposer staff résumés must provide a concise and detailed description of staff training, education, and professional experience directly relevant to services in the RFP. ★

*** Proposer must identify page number(s) where this information is located within the proposal document within the text box. *** Evaluation criteria: 1. Individuals have relevant experience.

Text (Single Line)

2.1.3 Bonding Capacity | 10% *** 1. Provide a letter from your Surety stating the bonding capacity of the company or entity submitting a response to this RFP. The surety letter is to be included in the Appendix section, and will not count as part of the total page limit for the Proposal. ★

*** Proposer must identify page number(s) where this information is located within the proposal document within the text box. *** Evaluation criteria: 1. Company is able to provide sufficient Bonding Capacity for level of work being performed on this project.

Text (Single Line)

Group 2.2: Programmatic Questions - Similar Projects (15%)

2.2.1 Similar Projects | 75% *** 1. List three (3) projects that best describe your firm's experience and expertise in renovating government or health facilities. A. Briefly describe the scope, scale, type and complexity of each project and the date of completion. B. Indicate the final project cost and final construction cost for each project listed. C. Describe your firm's specific responsibility or role and list all project team members and/or the stakeholders providing services to the projects. *** Suggested page limit: 3. Proposer must identify page number(s) where this information is located within the proposal document within the text box. *** Evaluation criteria: 1. Proposer has demonstrated experience in government or health facilities renovations in a similar climate and urban context to Portland. 2. Proposer provides all requested information. 3. Proposer shows specific relevant experience. ★

Text (Single Line)

2.2.2 MWSDVESB Participation for Similar Projects | 25% *** 1. Identify the level of MWSDVESB participation achieved in the three projects listed and described in Question 2.2.1. Clarify your firm's specific role during pre-construction and construction to facilitate MWSDVESB participation. *** Suggested page limit: 1. Proposer must identify page number(s) where this information is located within the proposal document within the text box. *** Evaluation criteria: 1. Proposer demonstrates a high level of MWSDVESB participation. ★

Text (Single Line)

Group 2.3: Programmatic Questions - Project Approach for Pre-Construction Services (25%)

2.3.1 Project Understanding 1 of 2 | 25% *** 1. Describe your understanding of the Downtown Behavioral Health Resource Center remodel project and the approach and Management philosophy you would take if selected to perform this work. Proposer will provide a detailed narrative of its Project Approach to services, duties, and responsibilities described below: Provide a list of Project challenges you have identified that will require special attention to ensure the Project's successful completion. For each item, list specific actions you will take to mitigate the problem. *** Suggested page limit: 1 Proposer must identify page number(s) where this information is located within the Proposal document within the text box. *** Evaluation criteria: 1. Proposer's demonstrates a good understanding of what it takes to deliver this type of project including valid mitigation strategies for project challenges. ★

Text (Single Line)

2.3.2 Project Understanding 2 of 2 | 25% *** 1. Describe the specific procedures and tools that would be implemented by the Proposer to establish and maintain the budget, and to garner opportunities to lower overall Project costs. 2. Describe your firm's experience and approach in assisting the Architect in the planning and permitting with the local Authority having Jurisdiction (AHJ). *** Suggested page limit: 1 Proposer must identify page number(s) where this information is located within the Proposal document within the text box. *** Evaluation criteria: 1. Proposer demonstrates an ability to establish and maintain the budget, and to garner opportunities to lower overall Project costs. 2. Proposer has experience and understanding the level of effort required to satisfy the permitting with the local AHJ. ★

Text (Single Line)

2.3.3 Pre-Construction Services Hourly Rates | 25% *** 1. Provide hourly rates of firm's personnel by classification. Hourly Rates Proposal does not count against the page limit for this section but please include as an Appendix to your Proposal response. *Proposer must identify page number(s) where this information is located within the Proposal document within the text box. *** Evaluation criteria: 1. Hourly rates by classification are reasonable. ★

Text (Single Line)

2.3.4 Pre-Construction Not to Exceed Fee | 25% *** 1. Provide a Not to Exceed Fee proposal for Pre-Construction Services. Fee Proposal does not count against the page limit for this section but please include as an Appendix to your Proposal response. Proposer must identify page number(s) where this information is located within the Proposal document within the text box. *** Evaluation criteria: 1. Not to Exceed Fee proposal is comprehensive and the price is reasonable. ★

Text (Single Line)

Group 2.4: Programmatic Questions - Project Approach for Construction Services (25%)

2.4.1 Project Understanding 1 of 4 | 25% *** 1. Describe your approach for establishing and maintaining a contingency fund to ensure that the Project budget is not exceeded, your proposed methodology for documenting the line item components of the GMP, your proposed method for determining whether Project changes are within or outside the scope of the GMP, and how this Project could potentially be managed as a \$0 change order Project. *** Suggested page limit: 1. Proposer must identify page number(s) where this information is located within the Proposal document within the text box*** Evaluation criteria: 1. Proposer provides a detailed approach for establishing and maintaining a contingency fund and provides a detailed method for documenting the line item components of the GMP and method for determining when Project charges are within or outside the scope of the GMP. ★

Text (Single Line)

2.4.2 Project Understanding 2 of 4 | 25% *** 1. Provide narrative and optional graphic tools to describe your firm's approach to cost estimating, resource utilization, and procedures for staying current on costs, and project forecasting, etc. 2. Describe the programs and procedures your firm will implement to ensure safety of the public and all construction workers at and near the Project site. *** Suggested page limit: 1. Proposer must identify page number(s) where this information is located within the Proposal document within the text box. *** Evaluation criteria: 1. Proposer has the necessary tools for staying on cost. 2. Proposer provides a program to ensure safety of the public and all construction workers at and near the Project site. ★

Text (Single Line)

2.4.3 Project Understanding 3 of 4 | 25% *** 1. Describe your approach to managing the construction schedule. Include a description of the elements of this Project that are likely to put the schedule at risk and how they would be proactively managed. Include descriptions of schedule tracking tools and summary reports. 2. Describe your expectations for labor and materials availability on this Project. Describe how anticipated challenges with availability of labor or materials could be mitigated. Explain your plan to generate sufficient Subcontractor and material supplier competition in the bidding to minimize Project costs. *** Suggested page limit: 1. Identify page number(s) where this information can be located in the Proposal document. *** Evaluation criteria: 1. Proposer provides a detailed approach to managing the construction schedule and understands the Project risks and how to manage them. 2. Proposer demonstrates an understanding of the local labor and materials market. ★

Text (Single Line)

- 2.4.4 Project Understanding 4 of 4 | 25% *** 1. Describe in detail your Subcontractor and supplier procurement/selection process. Address what criteria you would propose to use in evaluating Subcontractor/supplier bids before making Subcontractor and supplier selections on this Project. Discuss how your firm mitigates project risks due to potential Subcontractor insolvency. *** Suggested page limit: 1. Proposer must identify page number(s) where this information is located within the Proposal document within the text box. *** Evaluation criteria: 1. Proposer has a detailed Subcontractor and supplier procurement/selection process. ★
- Text (Single Line)

Group 2.5: Responsible Business Practice Questions - COBID Subcontracting Plan (20%)

- 2.5.1 Subcontracting Plan-COBID - | 100% *** 1. The County is committed to providing COBID firms with bidding opportunities & subcontracts. Provide a subcontracting plan that describes activities to be performed for Pre-Construction/Construction services in support of County values. The plan should include methods for identifying subcontracting opportunities, outreach, mentoring of COBID Certified firms, tracking utilization and reporting. The plan should present Proposer's anticipated subcontracting outcomes in terms of overall percent utilization and anticipated utilization by certification (e.g.: 30% overall, with 12% MBE, 10% WBE, 2% SDV and 6% ESB). *** Suggested page limit: 2. Please identify page number(s) where this information can be located in the Proposal document. *** Evaluation Criteria: 1. Proposer has a detailed approach during Phase 1 to achieve maximum MWESB Contractor utilization. 2. Proposer has a detailed approach during Phase 2 to a achieve maximum MWESB use. ★
- Text (Single Line)

Event Summary - Pre-Construction and CM/GC Services for the Multnomah County Downtown Behavioral Health Resource Ctr

Type	Request for Proposal (RFP)	Number	RFP-13-2020
Stage Title	Stage 2 - Oral Interview	Organization	Multnomah
Currency	US Dollar	Event Status	Awarded
Work Group	Department of County Assets	Exported on	8/11/2020
Exported by	Tessa Paul	Estimated Value	12,000,000.00 USD
Payment Terms	0% 0, Net 30		

Bid and Evaluation

Respond by Proxy	Allow	Use Panel Questionnaire	Yes
Sealed Bid	Yes	Auto Score	No
		Cost Analysis	No
Alternate Items	No	Confidential Pricing	No

Visibility and Communication

Visible to Public Yes

Enter a short description for this public event

Pre-construction and construction services for the Multnomah County Downtown Behavioral Health Resource Center.

Commodity Codes

Commodity Code	Description
72140100	Heavy construction services
72120100	General Building Construction

Event Dates

Time Zone	PDT/PST - Pacific Standard Time (US/Pacific)
Released	-
Open	8/19/2019 10:00 AM PDT
Close	8/21/2019 4:00 PM PDT
Sealed Until	8/21/2019 4:00 PM
	 Show Sealed Bid Open Date to Supplier
Q&A Close	8/21/2019 4:00 PM PDT

Description

ORAL EVALUATION PROCESS

Multnomah County is offering an oral evaluation session on August 22nd. Proposers invited to this Stage received a formal invitation letter through Stage 1 Q&A Board. Please refer to Stage 1 invitation letter for details regarding specific time and location of the meeting. The Interview will be for 45 minutes and will be structured as follows:

Introductions: Firms will be given 5 minutes for Introductions and should use this time to provide a brief overview of their organizations. All attendees should be introduced, title provided and their involvement in the project.

Clarifying Questions: Firms will receive a set of questions generated from their written proposal response. These questions will be provided as an attachment to their formal invitation. Firms will be given 30 minutes total to address the questions.

Wrap Up and Questions from Panel: Firms will be given 5 minutes to provide the Panel why they are the best fit for the County and the last 5 minutes should be designated for follow up questions and answers from the evaluation Panel.

Oral interviews will be evaluated by the same panel who reviewed and scored the written proposals.

Each stage is worth 100%. The combination of all stages will equal 100% of the available value of the sourcing event. For example: Stage 1 (100%) + Stage 2 (100%) + Stage 3 (100%), the combined sourcing event value is 300%. The award will be made to the responsible proposer with the highest combined score for all stages of the sourcing event.

Stage Description

1. Answer the question, in the question section.
2. Answer yes or no to the prerequisite.
3. Click the "I Certify" button and submit the response.

Questions

★ Supplier Response Is Required

Proposal Questions & Evaluation Criteria

Group 1: Programmatic Questions (100%)

1.1	Have you received and reviewed the oral interview questions? Yes/No	★
-----	--	---

ATTACHMENT 1

Contract # _____

MULTNOMAH COUNTY
EMERGENCY CONSTRUCTION SERVICES CONTRACT

(PRE-CONSTRUCTION & CM/GC SERVICES – DOWNTOWN
BEHAVIORAL HEALTH RESOURCE CENTER)

THE CONTRACT IS BETWEEN:

OWNER: This Contract is between **Multnomah County**, an Oregon political subdivision, 501 SE Hawthorne Blvd, Portland, OR 97214 (“**Owner**”) and _____, _____, OR _____ (“**Contractor**”).

The Project is: Bushong Building Renovation, 333 SW Park Avenue and 810 SW Oak Street, for Multnomah County Downtown Behavioral Health Resource Center

The Architect is: Carleton Hart Architecture PC, 830 SW 10th Avenue, #200, Portland, OR 97205 (the “Architect”)

The Owner’s Authorized Representative is: Klosh Group Inc., 4752 SW42nd Avenue, Portland, OR 97221 “Owner’s Authorized Representative”)

The Owner’s Target GMP Range for the Guaranteed Maximum Price is: \$ _____ to _____ million

**MULTNOMAH COUNTY
EMERGENCY PRE-CONSTRUCTION & CM/GC SERVICES
CONTRACT**

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RECITALS:

- A.** Owner desires to engage Contractor to provide design and construction services for the renovation of the Bushong Building, a vacant, 4 ½-story building located at 333 SW Park Avenue, in Portland, Oregon (the “**Building**”), and an adjoining parking lot located at 810 SW Oak Street (the “**Properties**”). Both of the Properties are owned by County. The Building is constructed of unreinforced masonry and requires a seismic retrofit for residential occupancy. As evidenced in an earlier report, the roof permits storm water infiltration and needs to be replaced. The Building’s elevator and mechanical, electrical, and plumbing systems are nearing the end of their useful life.
- B.** The project scope will repurpose the Building for occupancy and use as Owner’s Downtown Behavioral Health Resource Center and will include envelope repair, window replacements, seismic upgrades and foundation and structural renovation, elevator and MEP system replacements, full interior remodel, and ancillary service areas (secure outdoor smoking area for County clients) on the adjoining parking lot (the “**Project**”). The Project will seek, at a minimum, LEED® Gold (Remodel) certification. The Building is an over 100-year-old building but is neither an Historic Landmark nor a contributing structure in a City historic district.
- C.** Contractor is the successful proposer in response to Owner’s request for proposals (the “**RFP**”), and Contractor desires to perform the Project services for Owner.
- D.** The work of the Project (the “**Work**”) will be performed in three phases:
- (i) During the Preconstruction Phase, Contractor will perform the preconstruction services (the “**Preconstruction Services**”) described in **Article 3.1**. During the Preconstruction Phase, Contractor will comply with all terms of the Contract, except those requirements of the General Conditions applicable only to Construction Phase Services.
 - (ii) During the Construction Phase, Contractor will perform all portions of the Work (the “**Construction Phase Services**”), described in **Article 3.2**. During the Construction Phase, Contractor will comply with all terms of the Contract, without exception. Until Owner and Contractor successfully negotiate and execute an Early Work Amendment or the GMP Amendment described in **Article 6**, Contractor has not been awarded the Construction Phase portion of the Work.
 - (iii) During the Warranty Phase, Contractor will perform all portions of the work (the “**Warranty Phase Services**”), described in **Article 3.3.19** and **Section I.2** of the General Conditions.
- E.** One essential goal for the Project will be to improve significantly the efficiency and functionality of the Building as a workplace and behavioral health resource center and to

Contract # _____

reduce maintenance and operational costs for the Building.

F. The Project also seeks to utilize comprehensive strategies to support Minority-Owned, Women-Owned, Service Disabled Veteran-Owned, and Emerging Small Businesses (“MWSDVESBs” or “Certified Firms”) through subcontracting and through adherence to County’s Workforce Training & Hiring Program (“WFTH”) for minority and women apprentices.

AGREEMENTS:

Owner and Contractor agree to give effect to the recitals above by mutually establishing the terms and conditions below, and the promises so exchanged constitute adequate consideration for this Contract.

ARTICLE 1 - DEFINITIONS

Except as expressly defined or modified below or elsewhere in this agreement (the “Contract” or this “Contract”), all capitalized terms shall have the meanings set forth in Section A.1 of County’s General Conditions, attached as Exhibit A (the “General Conditions”). The terms below are expressly defined as follows:

1.1 Affiliate. Affiliate means any subsidiary of Contractor, and any other entity in which Contractor has a financial interest or which has a financial interest in Contractor (including, without limitation, parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or that controls Contractor).

1.2 Allowances. Allowances means the allowance amounts shown in the GMP Supporting Documents, together with any further allowances the parties may develop as the Project progresses.

1.3 Amendment. Amendment means a written modification of the Contract (including, without limitation, any change in the GMP to which the parties agree), that is identified as an Amendment, is executed by Contractor and Owner’s Authorized Representative (as identified on the cover page of this Contract), and, if required, approved in writing on behalf of Owner by the County Attorney.

1.4 Business Days. Business Days means every day except Saturday, Sunday, and legal holidays recognized for employees of Owner.

1.5 Change Order. Change Order means a written modification of the Contract under Section D of the General Conditions (including, without limitation, any change in the GMP to which the parties agree), that is identified as a Change Order, is executed by Owner’s Authorized Representative and Contractor, if applicable, and, if required, approved in writing by the County Attorney.

1.6 INTENTIONALLY OMITTED.

1.7 CM Services. Construction Management Services as defined in Article 3.3 below.

1.8 Construction Documents. Construction Documents has the meaning given in the Multnomah County Standard Professional Services Contract for Architectural, Engineering & Related Services (the “A/E Contract”) for this Project.

1.9 Construction Phase. Construction Phase means the period that begins when Owner executes a GMP Amendment or Early Work Amendment, together with the earlier of (i) issuance by Owner of a Notice to Proceed with any on-site construction or (ii) execution of a subcontract or issuance of a purchase order for materials or equipment required for the Work.

1.10 Construction Phase Services. Construction Phase Services means all of the Work other than the Preconstruction Phase Services, including Early Work.

1.11 Contract Documents. Contract Documents has the meaning given in **Section A.1 and A.3** of the General Conditions, and as supplemented by **Article 2.1** below.

1.12 Contractor Field Work. Contractor Field Work means customary layout, clean up, supervision, and portions of the Work of a minor nature that are not feasibly part of the subcontracted work because of: exclusions by the Subcontractor that are not resolved through the process described in **Article 11.3.3**, undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, or other similar reasons typically providing cause for “pick-up” or GC Work (as defined in **Article 1.18**) under industry standards; provided, however, that (i) Contractor has reasonably determined that Contractor doing such portion of the Work using staff and direct resources of Contractor is in the best interests of Owner, (ii) the Work is identified as Contractor Field Work in monthly billings and (iii) Contractor receives prior approval of Owner’s Authorized Representative as to the scope of Contractor Field Work.

1.13 Design Development Documents. Design Development Documents has the meaning given in the A/E Contract for the Project.

1.14 [Intentionally Omitted.]

1.15 Early Work. Early Work means Construction Phase Services authorized by Amendment that the parties agree should be performed before establishing the GMP. Permissible Early Work is 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 before establishing the GMP will materially affect the critical path schedule of the Project.

1.16 Early Work Amendment. Early Work Amendment means an Amendment to the Contract executed by and between the parties to authorize Early Work.

1.17 Fixed Cost for General Conditions Work. Fixed Cost for General Conditions Work or GC Work means a fixed sum identified in **Article 8.8**. Owner may decide not to fix General Conditions Work costs, but instead may wish to treat them as reimbursable items like all other costs of the Work. If so, this section, and all related sections will be deleted or amended as

Contract # _____

instructed in Section 8.8. Final evaluation of General Conditions Work will be done as part of the GMP Amendment, defined in **Section 1.20**.

1.18 General Conditions Work. General Conditions Work (“**GC Work**”) means (i) the portion of the Work required to support construction operations that is not included within overhead or general expense, and (ii) any other specific categories of Work approved in writing by Owner’s Authorized Representative as forming a part of GC Work.

1.19 Guaranteed Maximum Price (the “GMP”). The GMP means the Guaranteed Maximum Price of this Contract, as stated in dollars in the GMP Amendment, as determined in accordance with **Article 6**, and as the price may be adjusted from time to time pursuant to the provisions of the Contract.

1.20 GMP Amendment. The GMP Amendment means an Amendment to the Contract, issued in the form of **Exhibit B** and executed by and between the parties, to establish the GMP and identify the GMP Supporting Documents for Construction Phase Services.

1.21 GMP Supporting Documents. The GMP Supporting Documents means the documents referenced in the GMP Amendment as the basis for establishing the GMP and that expressly identify the plans and specifications, assumptions, qualifications, exclusions, conditions, allowances, unit prices, and alternatives that form the basis for the GMP.

1.22 Preconstruction Phase. Preconstruction Phase means the period that begins on the date of this Contract and ends upon commencement of the Construction Phase; provided that if Owner and Contractor agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.

1.23 Preconstruction Phase Services. Preconstruction Phase Services means all services described in **Article 3.1**, and any similar services described in Owner’s RFP, including such similar services as are described in Contractor’s response to Owner’s RFP, to the extent that Owner agrees to the services, but excluding any Early Work.

1.24 Schematic Design Documents. Schematic Design Documents has the meaning given in the A/E Contract for the Project.

1.25 Scope Change. Scope Change means (i) changed site or building conditions not reasonably inferable from information available to Contractor at the time of execution of the GMP Amendment, and (ii) significant Work modifications (including additions, substitutions and deletions), application of Allowances, and selection of alternatives, all as approved by Owner under the Contract, beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowances items, the GMP will increase only if the cost to Owner of the Allowances items exceeds the total amount of the Allowances).

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 Contract Documents. This Contract includes all exhibits attached hereto, which by this reference are incorporated herein

2.2 Effective Date. The Contract becomes effective on the first date on which every party has signed the Contract and Owner has received all necessary approvals, including approval for legal sufficiency by the County Attorney.

2.3 The Contract; Order of Precedence. This Contract, together with the other Contract Documents, forms the entire agreement between the parties. Except as otherwise expressly provided herein, the order of precedence of the Contract Documents is as established in **Section A.3.1** of the General Conditions. The parties shall look to this order of precedence to resolve inconsistent or conflicting terms among the Contract Documents.

2.4 INTENTIONALLY OMITTED

ARTICLE 3 - WORK OF THE CONTRACT

3.1 Preconstruction Phase Services. Contractor agrees to provide all of the Preconstruction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the RFP. Commencement of the Construction Phase does not excuse Contractor from completion of the Preconstruction Phase Services, if such services have not been fully performed at commencement of the Construction Phase. Preconstruction Phase Services include CM Services performed during the Preconstruction Phase.

3.1.1 Contractor shall provide a preliminary evaluation of Owner's program and budget requirements, each in terms of the other.

3.1.2 Contractor shall provide the following services relating to preconstruction tasks:

(a) Contractor shall consult with, advise, assist, and provide recommendations to Owner and the design team on all aspects of the planning and design of the Work.

(b) Contractor shall jointly schedule and attend regular meetings with the Architect and Owner's Authorized Representative. Contractor shall consult with Owner, the Architect and Owner's Authorized Representative regarding site use and improvements, and the selection of materials, building systems and equipment.

(c) Contractor shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

- (d) Contractor shall provide continuous in-progress review of design documents, including the documents generally described in the industry as schematic development documents, design development documents, and construction documents and provide input and advice on construction feasibility, alternative materials, and availability. Contractor shall review these completed schematic development documents, design development documents, and construction documents and timely suggest modifications to improve completeness and clarity.

For background and further information, the parties shall refer to the outline of anticipated design phases and the description of collaboration tools and processes. To the extent specified here, the outline and description from RFP-13-2020 (the “RFP”) are by this reference incorporated into the Contract.

3.1.3 Contractor shall provide the following services related to the Project schedule:

- (a) Contractor shall prepare and periodically update a preliminary Project schedule for the Architect and Owner’s Authorized Representative to review and for Owner’s Authorized Representative to approve.
- (b) Contractor shall coordinate and integrate the preliminary Project schedule with the services and activities of Owner, the Architect, and Contractor. As design proceeds, Contractor shall update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submission of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and Owner’s occupancy requirements showing portions of the Project that have occupancy priority, provided that the date(s) of substantial completion shall not be modified without Owner’s prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, Contractor shall make appropriate recommendations to Owner’s Authorized Representative and the Architect.

3.1.4 Contractor shall make recommendations to the Architect and Owner’s Authorized Representative regarding the phased issuance of plans and specifications to facilitate phased construction of the Work, if phased construction is appropriate for the Project, taking into consideration such factors as economics, time of performance, availability of labor and materials, and provisions for temporary facilities. The parties anticipate that, at a minimum, there will be early procurement packages for Project site Work, foundations, structural steel, roof replacement, and other material and equipment procurements. Contractor shall prepare a “Procurement and Subcontracting Plan” for Owner to review and approve. Contractor shall identify all procurement packages for which Contractor intends to submit a bid to self-perform the Work.

3.1.5 Contractor shall provide the following services relating to cost estimating using “Target Value Design” estimating principles and techniques:

- (a) Contractor shall prepare, for the Architect and Owner’s Authorized Representative to review and for Owner to approve, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.
- (b) Contractor shall provide real time, iterative virtual design and construction (“**VDC**”) cost modeling and estimate updates in accordance with the RFP and supporting RFP documents, utilizing collaboration tools and processes throughout the duration of the planning and design phases.

After the Architect prepares and Owner approves schematic design documents, Contractor shall prepare for a more detailed estimate with supporting data for the Architect and Owner’s Authorized Representative to review and for Owner to approve. During the preparation of the Design Development Documents, Contractor shall update and refine this estimate at appropriate intervals agreed to by Owner, the Architect, Owner’s Authorized Representative and Contractor.

- (c) After the Architect prepares and Owner approves design development documents, Contractor shall prepare a detailed estimate with supporting data for the Architect and Owner’s Authorized Representative to review and for Owner to approve. During the preparation of the construction documents, Contractor shall update and refine the detailed estimate at appropriate intervals agreed to by Owner, the Architect, Owner’s Authorized Representative and Contractor.
- (d) If any estimate submitted to Owner exceeds previously approved estimates or Owner’s budget, Contractor shall make appropriate recommendations to the Architect and Owner’s Authorized Representative.
- (e) Contractor shall notify Owner and the design team immediately if any construction cost estimate appears to exceed the construction budget.
- (f) Contractor shall actively participate in an ongoing, iterative value engineering (“**VE**”) analysis and studies that the parties expect to conduct at intervals consistent with the collaborative best practices and processes outlined in the RFP. Contractor acknowledges that VE services are intended to improve the value received by Owner with respect to the first cost and life cycle cost of the Project;
- (g) Contractor otherwise shall work with the Architect and Owner to develop a GMP within Owner’s Target GMP Range (stated on the cover page of this Contract) and within Owner’s schedule.
- (h) Contractor shall prepare and update cash flow forecasts that cover the entire duration of the Project.

For background and further information, the parties shall refer to the outline of anticipated design phases, Target Value Design, cost estimating and the description of collaboration tools and processes. To the extent specified here, the outline and description from the RFP are by this reference incorporated into the Contract.

3.1.6 Contractor shall perform the following services relating to Subcontractors and suppliers:

- (a) Contractor shall seek to develop Subcontractor and supplier interest in the Project, consistent with applicable legal requirements, and shall furnish to Owner's Authorized Representative and the Architect a list of possible Subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "**Offers**") will be requested for each principal portion of the Work. The parties acknowledge and agree that Contractor's submission of the list of possible Subcontractors and suppliers is for information and discussion purposes only and not for prequalification. The receipt of such list does not require Owner, Owner's Authorized Representative or the Architect to investigate the qualifications of proposed Subcontractors and suppliers. Owner or the Architect do not, as a consequence of receiving the list, waive any rights to object later to or reject any proposed Subcontractor, supplier, or method of procurement.
- (b) Contractor shall provide input to Owner and the design team regarding the current construction market bidding climate, the status of key subcontract markets, and other local economic conditions. Contractor shall determine the division of work to facilitate bidding for and awarding of trade contracts, considering such factors as the bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues.
- (c) Contractor shall advise Owner on subcontracting opportunities for State of Oregon COBID-certified minority-owned, women-owned, disabled service veteran-owned and emerging small business firms ("**DMSDVESBs**" or "**Certified Firms**") and work with Owner to finalize an **Economic Participation Plan** that maximizes participation of Certified Firms and supports the objectives of Owner's Workforce Training and Hiring program and workforce diversity policy. The Economic Participation Plan shall require Contractor to perform the following:
 - (i) Identify all divisions of the Work (including supplies, materials, and services) in a way that offers viable subcontracting opportunities for Certified Firms, regardless of the subcontracting tier in which the division of the Work is to be performed.

- (ii) Develop outreach procedures designed to generate the submission of competitive bid proposals from Certified Firm Subcontractors at all subcontracting tiers.
 - (iii) Develop with Owner mutually agreeable procurement procedures to solicit and award subcontracts at all subcontracting tiers to maximize Certified Firm Subcontractor participation.
 - (iv) Implement the Economic Participation Plan as an integral part of Contractor's overall approach and management plan for performance of the Work.
 - (v) Make additional efforts to maximize participation beyond Owner's aspirational target level throughout the Project construction by procuring unanticipated and/or unscheduled materials, services, etc. from Certified Firm Subcontractors, whenever possible.
 - (vi) Include a list of all Certified Firms to be utilized on the Project, their respective certifications, and the portions of the Work to be performed by such Certified Firms. The information submitted by Contractor shall be sufficient to allow Owner to determine the percentage of Work subcontracted to Certified Firms for purposes of complying with Owner's Certified Firm Policy.
- (d) Contractor shall develop a Workforce Training & Hiring Program Plan in collaboration and in coordination with Owner that:
- (i) Provides apprenticeship hours in each trade throughout the Project on all subcontract awards of \$100,000 or more.
 - (ii) Ensures that a minimum of 20% of labor hours in each apprenticeable trade performed by Contractor and Subcontractors, of \$100,000 or more, are worked by state-registered apprentices.
 - (iii) Employs a workforce that reflects the diversity of Multnomah County with the expectations to successfully recruit, train, retain and graduate participants.
 - (iv) Ensures Subcontractors submit monthly employment reports.
- 3.1.7** Contractor shall recommend to Owner's Authorized Representative and the Architect a schedule for procuring long-lead time items that will constitute part of the Work required to meet the Project schedule, which shall be procured by Contractor upon execution of either a GMP Amendment or Early Work Amendment covering the procurement and approval of the schedule by Owner's Authorized Representative. Contractor shall expedite the delivery of long-lead time items.
- 3.1.8** Contractor shall work with Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalifying offerors or alternative contracting methods.
- 3.1.9** Contractor shall work with Owner and the design team to maximize energy efficiency in the Project, including without limitation providing, estimating, and VE support to Owner's analysis and application for energy-related incentive

programs offered by local utilities. Contractor shall participate in meetings or work sessions related to the establishment and documentation of LEED® elements and shall supply documentation and research as necessary to the Architect to meet LEED® certification documentation for “points” at appropriate intervals for purposes of certification (such LEED® “points” may include, but are not limited to: (i) storage and collection of recyclables, (ii) origin of materials, (iii) construction waste management, (iv) location of material manufacture; and (v) enhanced commissioning.

3.1.10 Contractor shall work with Owner and the design team to facilitate changes to the Project that are necessary to allow incorporation of works of art to meet Owner’s obligations under the Regional Art & Culture Council’s 2% for Art program into the design and construction of the Project. Owner’s cost of the art objects is not included in the Cost of the Work or the GMP, but Contractor’s costs relating to facilitating changes to accommodate the handling and installation of the art are part of the Cost of the Work and are included in the GMP.

3.2 Construction Phase Services.

3.2.1 Upon execution of an Early Work Amendment or GMP Amendment, Contractor shall provide Construction Phase Services as provided in the Contract Documents, including, without limitation, providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents; and to furnish to Owner a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Contract (or, with respect to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment). Construction Phase Services include CM Services performed during the Construction Phase.

3.2.2 Notwithstanding any other references to Construction Phase Services in this Contract, the Contract includes Preconstruction Phase Services only, unless (i) the parties execute a GMP Amendment or (ii) the parties execute an Early Work Amendment of the character described below.

3.2.3 The parties may execute one or more Early Work Amendments that identify specific Construction Phase Services that must be performed before establishing the GMP, without exceeding a not-to-exceed budget, a maximum not-to-exceed price, or a fixed price (“**Early Work Price**”) that is stated in the Early Work Amendment. The Early Work Amendment must include all necessary governmental approvals required for the Early Work. If the Early Work Price is a not-to-exceed budget, then Contractor shall perform the Early Work only to the extent that the Cost of the Work, together with Contractor Fee, does not exceed the Early Work Price. If Contractor performs Early Work in

accordance with a maximum not-to-exceed price or a fixed price and Contractor incurs a cost in excess of the maximum not-to-exceed price or fixed price, respectively, Contractor shall complete the Early Work and pay the excess cost without reimbursement. If one or more Early Work Amendments are executed, Contractor shall diligently continue to work toward developing a GMP Amendment that is acceptable to Owner and incorporates the Early Work Amendments. If Owner thereafter terminates the Contract before executing a GMP Amendment, the provisions of **Section J** of the General Conditions apply.

- 3.2.4** Before the Construction Phase begins, and in any event not later than the parties execute the GMP Amendment, Contractor shall provide to Owner a full performance bond and a payment security bond as required by **Section G.2** of the General Conditions that together are equivalent to the amount of the GMP. If an Early Work Amendment is executed, Contractor shall provide a bond in the amount of the Early Work Price under the Early Work Amendment. Contractor shall provide to Owner additional or replacement bonds at the time the parties execute any subsequent Early Work Amendment or GMP Amendment, in each case before executing the Amendment and before any labor or materials are supplied to perform the Work covered by the Amendment, and in each case in an amount that equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change (as defined in Section 1.25 of this Contract) that increases the GMP, Contractor shall provide to Owner an additional or supplemental bond in the amount of the increase before performing the additional Work.
- 3.2.5** As provided in **Section C** of the General Conditions, Contractor and all subcontractors shall comply with ORS 279C.800 through 279C.870. The Oregon Bureau of Labor and Industries (BOLI) prevailing wage rates that will apply to the Contract shall be the prevailing wage rates that were in effect at the time the RFP was advertised on July 16, 2019. Once established, the prevailing wage rates are in effect for the remainder of the Contract. The prevailing wage rates that apply are “July 1, 2019 Prevailing Wage Rates for Public Contracts in Oregon” For purposes of calculating the prevailing wage rates for the Project, the Construction Phase Services take place in Multnomah County, Oregon.
- 3.2.6** Contractor shall perform services needed to satisfy the Oregon Department of Energy 1.5% Solar Energy in Public Building Construction Contracts requirements pursuant to ORS 279C.527 and Oregon Administrative Rules 330-135-0010 to 330-135-0055.

3.3 Construction Management (CM) Services. Throughout the Preconstruction Phase and Construction Phase of the Project, Contractor shall provide CM Services, generally consisting of coordinating and managing the building process as an independent contractor, in cooperation with Owner, Owner’s Authorized Representative, the Architect and other designated Project consultants. CM Services include, but are not limited to:

- 3.3.2** Providing all Preconstruction Phase Services described above and as outlined in the RFP documents.
- 3.3.3** Implementing the Contractor Safety Plan, including ensuring that all Subcontractors, suppliers, and other participants in the Project comply with the plan and reporting any incidents promptly to Owner.
- 3.3.4** Allowing access to the Project site for tours by representatives of Owner, the Architect, the engineer, and other personnel as approved by Owner and providing personal protective equipment for tour participants.
- 3.3.5** Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions, coordinating and communicating the activities of each of the construction principals (including Owner, Owner's Authorized Representative, the A/E Service Provider, Subcontractors, suppliers and governmental agency representatives assigned to the Project (the "**Construction Principals**") throughout the Construction Phase to other Construction Principals.
- 3.3.6** Continuously monitoring the Project schedule and recommending adjustments to ensure completion of the Project in the most expeditious manner possible.
- 3.3.7** Working with Owner, Owner's Authorized Representative, and the Architect to analyze the design, participate in decisions regarding construction materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing Owner with the highest quality Project within the budget, GMP and schedule.
- 3.3.8** Providing ongoing VE services throughout the Project. Contractor shall develop cost proposals, in the form of additions to or deductions from the GMP, including detailed documentation to support such adjustments, and shall submit such proposals to Owner and the Construction Principals for approval. Contractor acknowledges that VE services are intended to improve the value received by Owner with respect to the first cost and life cycle cost of the Project. Contractor shall hold and conduct periodic meetings with Owner and the Architect to coordinate, update and ensure progress of the Work.
- 3.3.9** Submitting monthly written report(s) to Owner's Authorized Representative. Each report must include, but not be limited to, Project updates including: (i) actual costs and progress for the reporting period as compared to the estimate of costs; (ii) explanations of significant variations; (iii) work completed; (iv) a monthly Project schedule update, with a narrative explaining any line item changes in the Project schedule and a recovery plan for recuperating schedule delays; (v) work in progress; (vi) changes in the Work; (vii) material and equipment delivery status; (viii) man-loading information; and (ix) other information as Owner determines is appropriate. Contractor shall provide oral

or written updates to Owner as Contractor deems appropriate or as Owner requests.

- 3.3.10** Maintaining a daily log containing a record of weather, Subcontractors working on the site, the total number of workers on the site, Work accomplished, problems encountered, safety violations and incidents of personal injury and property damage, and other similar relevant data as Owner may reasonably require. The daily log shall be available to Owner and the Architect on request.
- 3.3.11** Developing and implementing a system of cost control for the Work that is acceptable to Owner's Authorized Representative, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Contractor shall identify variances between actual and estimated costs and report the variances to Owner, the Architect and the engineer at regular intervals; maintaining an accurate system to propose and account for contingency utilization throughout the Project; maintaining an accurate system to account for usage of Allowances included in the GMP; providing detailed cost information, contingency utilization and Allowances usage to Owner on a minimum of a monthly basis.
- 3.3.12** Cooperating with any and all consultants hired by Owner.
- 3.3.13** Cooperating with inspection authorities and working with Owner to obtain necessary permits for construction; insuring close-out of all permits; obtaining temporary certificate(s) of occupancy and a final certificate of occupancy for the Project.
- 3.3.14** Preparing and submitting monthly payment applications for the Architect, engineer and Owner to review in accordance with Owner's accounting standards and Project procedures and participating in reviews and reconciliations of monthly payment applications with Owner's staff.
- 3.3.15** [Intentionally Omitted.]
- 3.3.16** Performing start-up of the Project. Contractor acknowledges that start-up may occur in phases because of phased occupancy requirements and shall make plans accordingly. Owner and the design team shall participate in start-up activities, as requested by Contractor.
- 3.3.17** Preparing, implementing, and documenting Owner's training program for all building systems and features.
- 3.3.18** Facilitating and participating in Owner's move-in to the Project as required by the Contract Documents.
- 3.3.19** At Owner's request, cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period(s).

- 3.3.20** Incorporating commissioning and inspection agents' activities into the Project schedule and coordinating Subcontractors required to participate in the commissioning and inspection process. Cooperating with and supporting the activities of Owner's commissioning agent. Identifying a commissioning team that consists of a Contractor test engineer and representatives of the major Subcontractors to plan, execute, and document commissioning activities in accordance with the Contract Documents.
- 3.3.21** Implementing all other testing activities required by the Contract Documents.
- 3.3.22** Providing LEED record-keeping and documentation throughout the Project and keeping Owner, the Architect and the engineer up-to-date on the status of the construction phase LEED credits.
- 3.3.23** Performing all other obligations and providing all other services set forth in the Contract Documents; and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract.

4 - RELATIONSHIP AND ROLES OF THE PARTIES

4.1 Independent Contractor. Contractor is an independent contractor and not an officer, employee, or agent of Owner as those terms are used in ORS 30.265.

4.2 Performance of Work. Contractor covenants with Owner to cooperate with the Architect and Owner's Authorized Representative and to utilize Contractor's professional skill, efforts and judgment in furthering the interests of Owner; to furnish efficient business administration and supervision; to furnish, at all times, an adequate supply of workers and materials; and to perform the Work in conformance with the terms and conditions of the Contract Documents and in an expeditious and economical manner consistent with the interests of Owner.

4.3 Design Consultants. Owner has a separate contract with the Architect related to the Project. Both Contractor and the Architect shall be given direction by Owner through Owner's Authorized Representative. Contractor agrees to support Owner's efforts to create a collaborative and cooperative relationship among Contractor, the Architect, other Project consultants, and Owner's Authorized Representative.

4.4 Forms and Procedures. Owner has developed or may develop procedures and forms for the administration and tracking of the Contract. Contractor agrees to abide by those procedures and use those forms.

4.5 Contractor's Project Staff. Contractor's Project staff shall consist of the following personnel:

- 4.5.1 Project Director and Project Manager:** _____ shall be Contractor's Project Director, and _____ shall be Contractor's Project Manager. One or both will supervise and coordinate all Construction Phase and Preconstruction Phase Services of Contractor and participate in all

meetings throughout the Project term, unless otherwise directed by Owner. Contractor represents that each of the Project Director and Project Manager has authority to execute Change Orders and Contract Amendments on behalf of Contractor.

4.5.2 Job Superintendent: If Construction Phase Services are requested and accepted by Owner, _____ shall be Contractor's on-site job superintendent throughout the Project term.

4.6 Key Persons. Contractor's personnel identified in Article 4.5 shall be considered Key Persons and shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld. If Contractor intends to substitute personnel, a request must be given to Owner at least 30 days (or such shorter period as permitted by Owner) prior to the intended time of substitution. When replacements have been approved by Owner, Contractor shall provide a transition period of at least 10 Business Days, during which the original and replacement personnel shall be working on the Project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. County, at its sole discretion, may deduct up to \$10,000 from Contractor's invoice for each occurrence of replacement of key staff to account for the learning curve to bring new staff up to speed on the project.

ARTICLE 5 - DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION

5.1 Notice to Proceed. If Construction Phase Services are added to the Contract as set forth in **Article 3.2**, then a notice to proceed will be issued by Owner to begin the designated or full Construction Phase Services ("**Notice to Proceed**"). It is anticipated that the Notice to Proceed will be issued in or about the 1st quarter of 2020. A separate Notice to Proceed shall be issued for any and every Early Work Amendment.

5.2 Completion of Project. Contractor shall achieve Substantial Completion (as defined in **Section A** of the General Conditions) of the entire Work not later than _____, 20__ and shall achieve Final Completion (as defined in **Sections A** and **K** of the General Conditions) not later than ninety (90) days after the earlier of (i) Substantial Completion or (ii) the required date for Substantial Completion. Owner shall have the right to take possession and occupancy of the Project in phases, and Contractor agrees that such partial occupancy shall not be grounds for adjustment of the GMP or the Substantial or Final Completion Dates.

5.3 Time is of the Essence. All time limits stated in the Contract Documents are of the essence.

5.4 Time Extensions. Notwithstanding provisions for Contract time extensions in **Section D.2** of the General Conditions, Owner and Contractor agree that timely completion of the Work is essential to the success of the Project, and that approval for a time extension shall be granted only as a last resort. Contractor agrees to make every effort to recover "lost" time.

5.5 Liquidated Damages. Contractor acknowledges that Owner will sustain damages as a result of Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to, delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities. Contractor and Owner acknowledge that the actual amount of damages would be difficult to determine accurately and agree that the following liquidated damages figure represents a reasonable estimate of such damages and is not a penalty:

5.5.1 Liquidated Damages shall be imposed for each day that Substantial Completion occurs after the required date of Substantial Completion (to be finalized with GMP Amendment) and for each day that Final Completion occurs after the required date of Final Completion (to be finalized with GMP amendment). Liquidated Damages are sequenced at \$3,500 for the 1st 15 days, then \$5,000 for the next 15 days, and \$6,500 per day thereafter.

5.5.2 If Owner and Contractor agree to phased completion for phased occupancy, they may negotiate liquidated damages for each such phase.

5.5.3 Contractor agrees to pay to Owner the liquidated damage sums set forth above for each day of delay or any fraction thereof and further agrees that Owner may deduct such sums from payments Owner otherwise owes to Contractor under the Contract. If such deduction does not result in payment to Owner of the assessed liquidated damages in full, Contractor shall promptly pay any and all remaining sums due to Owner upon demand.

5.6 *RESERVED*

5.7 INTENTIONALLY OMITTED

ARTICLE 6- FEES, CONTRACT SUM AND GMP

6.1 Fees; Contract Sum; GMP. Owner shall pay Contractor the Preconstruction Fee described in **Article 6.2**. In addition, for each Early Work Amendment executed by Contractor and Owner, Owner shall pay Contractor, as payment for the Early Work, an amount equal to the sum of Contractor Fee attributable to the Early Work, and the actual cost of all Early Work completed and accepted by Owner, but not exceeding the Early Work Price.

If a GMP Amendment is executed, Owner shall pay Contractor, as payment for the Work, the "Contract Sum" which shall equal the sum of the Preconstruction Fee, Contractor Fee, the actual Cost of the Work including any Early Work, but not exceeding the GMP.

The GMP shall be determined in accordance with the formula set forth below and as described in **Article 6.4**. The "Cost of the Work" is defined in **Article 8**. Costs in excess of the GMP shall be paid by Contractor without reimbursement by Owner. Changes to the GMP shall only be authorized by Amendment or Change Order that includes any necessary governmental approvals, including any approvals by the County Attorney.

Contract # _____

Preconstruction Fee + CONTRACTOR Fee + Estimated Cost of the Work (“ECOW”) = GMP*
 Cost Reimbursement _____% of ECOW Includes CONTRACTOR’s Contingency and the
 \$_____Maximum Becomes Lump Sum Maximum Cost for GC Work

(Note: Bonds, Insurance, & Builder’s Risk are not considered part of the ECOW when Calculating Contractor Fee)

Cost Calculator FEES: EXAMPLE
 Direct Construction ECOW

Subtotal Direct construction costs		\$ 1,000,000
General Conditions/Requirements	6%	\$ 60,000
GMP - Contingency	5.0%	\$ 50,000
Subtotal w/ Contingency /GC's:(ECOW)		\$ 1,110,000
CONTRACTOR Fee: (Calculated from (ECOW)	2.000%	\$ 22,200
Subtotal with CONTRACTOR Fee		\$ 1,132,200
Bonds and Insurance		
Builder’s Risk Insurance	0.40%	\$ 4,617
Commercial General Liability Insurance	0.75%	\$ 8,656
Performance and Payment Bonds	0.755%	\$ 8,714
Subtotal: Bonds, Insurance, Builder’s Risk		\$ 21,987
Total GMP (Excluding Preconstruction Services)		\$ 1,154,187
Preconstruction Services Fee		\$ 15,000
TOTAL GMP (Including Preconstruction Services Fee)		\$ 1,169,187

6.2 Preconstruction Fee. The Preconstruction Fee shall be payable to Contractor on a lump sum hourly rate as listed in **Exhibit C.1** up to a maximum sum of \$_____, which shall cover constructability review, VE, cost estimating, development of the GMP, and all other Preconstruction Phase Services, as described in **Article 3** (the “**Preconstruction Fee**”). If Contractor’s costs for provision of Preconstruction Phase Services exceed the maximum Preconstruction Fee, Contractor shall pay such additional cost without reimbursement. Contractor shall not be entitled to any Contractor Fee upon the Preconstruction Fee. Owner shall pay the Preconstruction Fee on a lump sum hourly rate with each application for payment during the Preconstruction Phase. If the total actual Preconstruction Fee is less than the maximum Preconstruction Fee used for initial calculation of the GMP as provided above, the GMP shall be reduced by the difference; provided that Owner may direct, instead, that any unapplied portion of the maximum Preconstruction Fee be applied to Construction Phase Services, in which case the GMP shall not be reduced by the portion so applied. Except to the extent the parties may expressly agree to the contrary in the GMP Amendment, no Preconstruction Fee or other fee, compensation or reimbursement shall be payable to Contractor with respect to Preconstruction Services performed after execution of the GMP Amendment.

6.3 Establishment of Contractor Fee; Adjustments to Contractor Fee.

6.3.1 The “**Contractor Fee**” shall be a fixed dollar lump sum to be identified in the GMP Amendment, and shall be calculated as _____% of the ECOW at the time of establishment of the GMP. In making such calculation, the ECOW shall

exclude the Preconstruction Fee, Performance and Payment Bonds, Commercial General Liability “CCIP”, Professional Liability Insurance, Builder’s Risk Insurance, the Contractor Fee itself, and any other cost or charge that this Contract states is not to be included in calculating the Contractor Fee, but shall include Allowances, selected alternates, Maximum Cost for GC Work, and reasonable Contractor contingencies as designated in the GMP Supporting Documents. The Contractor Fee is inclusive of profit, overhead, and all other indirect or non-reimbursable costs. No additional markup will be paid to Contractor for change order or force account work or for subcontracted labor or materials, notwithstanding anything to the contrary in the General Conditions. Owner shall pay the Contractor Fee ratably with each application for payment during the Construction Phase. In the case of Early Work, the Contractor Fee shall be the above percentage multiplied by the actual Cost of the Early Work, until such time as a GMP Amendment is executed, at which time such Contractor Fee payments shall be credited against Contractor Fee fixed therein.

6.3.2 Notwithstanding any provision of **Section D.1** of the General Conditions to the contrary, and unless the parties agree in writing to the contrary, any Amendment or Change Order that increases or decreases the GMP shall adjust the Contractor Fee then in effect by multiplying the percentage shown in **Article 6.3.1** by the change in the ECOW reflected in such approved Amendment or Change Order. In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the Contractor Fee shall be limited to the total Contractor Fee multiplied by the percentage of Work completed and accepted at the time of termination.

6.4 Determination of GMP.

6.4.1 Contractor shall deliver to Owner a proposed GMP and GMP Supporting Documents at a time designated by Owner during the Preconstruction Phase. If any actual subcontract Offers (as defined in **Article 3.1.6[a]**) are available at the time the GMP is being established, Contractor shall use those subcontract Offers in establishing the GMP.

6.4.2 As the Plans and Specifications (as defined in **Section A.1** of the General Conditions) may not be developed to the stage of biddable design documents at the time the GMP proposal is prepared, Contractor shall provide in the GMP for further development of the Plans and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding GMP adjustment.

6.4.3 Contractor shall include with the GMP proposal a written statement of its basis (the “**GMP Supporting Documents**”), which shall include:

- (a) A list of the Plans and Specifications, including all addenda thereto, and the General Conditions of the Contract, which were used in preparation of the GMP proposal.
- (b) A list of Allowances and a statement of their basis.
- (c) A list of the clarifications and assumptions made by Contractor in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications.
- (d) The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and the other items and associated fees that comprise the GMP.
- (e) The Date of Substantial Completion upon which the proposed GMP is based and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

6.4.4 Contractor shall meet with Owner and the Architect to review the GMP proposal and the written statement of its basis. If Owner or the Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify Contractor, which shall make appropriate adjustments to the GMP proposal, its basis or both.

6.4.5 Prior to Owner's acceptance of Contractor's GMP proposal and issuance of a Notice to Proceed, Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in an Early Work Amendment.

6.4.6 Owner shall authorize and cause the Architect to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised Plans and Specifications shall be furnished to Contractor in accordance with schedules agreed to by Owner, the Architect and Contractor. Contractor shall promptly notify the Architect and Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

6.4.7 The GMP shall include in the ECOW only those taxes that are enacted at the time the GMP is established.

6.4.8 The ECOW shall include Contractor's contingency, a sum established by Contractor for Contractor's exclusive use to cover additional development of Plans and Specifications and unanticipated costs and unforeseen conditions which are properly reimbursable as a Cost of the Work but which are not the basis for a Change Order. For purposes of Contractor's contingency, unanticipated costs and unforeseen conditions include Work within the scope of the Project and any conditions that Contractor reasonably should have anticipated might be encountered in a project of this size and complexity.

Contractor shall provide advance, written notice to Owner each time Contractor proposes to use its contingency and shall include in the notice the proposed purpose for such use and those approved for use in advance by Owner.

6.4.9 Contractor shall work with the Architect and Owner to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project. Owner will direct the Architect to complete the final Construction Documents in accordance with the Project scope agreed upon by all parties at the time the GMP is established.

6.4.10 Notwithstanding the level of detail represented in the GMP Supporting Documents, Contractor shall represent and warrant, at the time that it submits the GMP, that the GMP includes the entire cost of all components and systems required for a complete, fully functional Project.

6.4.11 In developing the GMP, Contractor shall include and identify such contingencies within the GMP as may be necessary to pay for unanticipated costs and unforeseen conditions that are required for a complete, fully functional Project.

6.5 Failure to Furnish an Acceptable GMP. If Contractor does not furnish a GMP acceptable to Owner within Owner's **Target GMP Range** (stated on the cover page of this Contract), or if Owner determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to Owner, Owner may terminate the Contract without liability, and Contractor shall not receive additional compensation beyond the Preconstruction Fee under the Contract and sums due under any Early Work Amendment. Termination under this provision shall proceed under **Section J** of the General Conditions as a termination for Owner's convenience. Contractor further agrees that Owner shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision.

6.6 Acceptance of GMP. Upon acceptance of the GMP by Owner, the parties shall execute a GMP Amendment.

6.7 Owner Savings. If the sum of the Preconstruction Fee, plus the Contractor Fee, plus the actual and final Cost of the Work (the Contract Sum as defined in **Article 6.1**), is less than the GMP, the savings shall accrue to Owner.

6.8 Allowance Work.

6.8.1 Contractor shall not perform any Allowance Work without prior execution by Owner of a Change Order approving the Specifications for the Allowance Work and the price thereof.

6.8.2 Owner shall be entitled to apply any Allowance line items that have not been fully expended to other line item Allowances that have been fully expended, without any resulting increase in the GMP.

- 6.8.3** If the total Cost of the Allowance Work exceeds the total Allowances within the GMP, Contractor shall not perform any Allowance Work in excess of such amount until either (i) the parties agree that the additional Allowance work will be performed within the then-current GMP or (ii) a GMP Amendment is executed to increase the GMP by the excess cost of the Allowance work.
- 6.8.4** The Contract Sum shall not include any Allowance items not identified in the GMP Amendment or the GMP Supporting Documents until such allowance item is reduced to a fixed price by Change Order or Amendment.
- 6.8.5** If, at the Final Completion of the Project, any portion of the Allowance funds remains unexpended, the GMP shall be reduced by a corresponding amount via a Change Order or Amendment.

6.9 Reallocating Projected Cost Underruns after Bid (Offer) Buyout. As soon as possible after the awarding of the Work to the primary Subcontractors, Contractor shall review projected costs and provide Owner with a buy-out status report showing any projected cost underruns, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by Contractor to establish the GMP. Contractor shall include with its report any underlying documentation requested by Owner and used to develop or support such report. Contractor shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of Contractor's Contingency. The parties shall negotiate in good faith to execute a Change Order transferring an appropriate portion of any projected cost underruns to an Owner-controlled contingency fund to be held within the GMP to pay for additional costs arising from (a) any Owner-directed or approved change to the Work, (b) schedule changes that would otherwise entitle Contractor to an increase in the GMP, (c) Allowance items after exhaustion of all Allowances, (d) selection by Owner of more expensive alternates than those used for calculation of the GMP, (e) Owner selection of substitutions that increase the Cost of the Work, or (f) any other costs which otherwise would entitle Contractor to an increase in the GMP. Any transfer of projected cost underruns from Contractor's contingency to the Owner-controlled contingency fund will not affect Contractor's obligation to furnish Owner with a complete, fully functional Project ready for its intended use within the GMP, without use of the funds transferred to the Owner-controlled contingency fund, unless such funds are released by Owner for the purposes set forth in (a) through (f) of this **Article 6.9**. Any transfer of funds to the Owner-controlled contingency fund will not reduce the Contractor Fee, nor will any subsequent release and use of funds from the Owner-controlled contingency fund for the purposes set forth in (a) through (f) of this **Article 6.9** increase the Contractor Fee.

ARTICLE 7 - CHANGES IN THE WORK

7.1 Price Adjustments. Adjustments to the Estimated Cost of the Work required by changes in the Work shall be determined by any of the methods listed in **Section D** of the General Conditions, except that, unless the adjustment is based upon fixed pricing or unit pricing:

- 7.1.1** The overhead and profit markup for Contractor shall be limited to Contractor Fee adjustment, if any, permitted under **Article 6.3.2** of this Contract;

- 7.1.2 The increase or decrease in the Estimated Cost of the Work, other than for subcontract work, shall be calculated pursuant to **Articles 8 and 9** of this Contract, instead of being based on Contractor's Direct Costs as defined in the General Conditions; and
- 7.1.3 In calculating adjustments to subcontracts, unless the parties agree otherwise, the change shall be limited to the Subcontractor's Direct Costs plus the supplemental mark-up provided in **Section D** of the General Conditions and shall not be modified by **Articles 8 and 9** of this Contract.

7.2 Adjustments to GMP. Adjustments to the GMP after execution of the GMP Amendment may be made only (i) in the event of Scope Changes or (ii) as otherwise expressly provided in this Contract, and then only in accordance with the following procedure:

- 7.2.1 Contractor shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of Contractor, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.
- 7.2.2 Changes to the GMP shall be initiated by written notice by one party to the other ("**GMP Change Request**"). Contractor shall deliver any such GMP Change Request to the Architect and Owner's Authorized Representative promptly after becoming aware of any Scope Change if, in Contractor's opinion, it constitutes grounds for adjustment of the GMP. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.
- 7.2.3 Contractor shall submit its GMP Change Requests as soon as possible, and Contractor shall not be entitled to claim a GMP increase unless Contractor submitted a GMP Change Request to Owner's Authorized Representative and to Architect within the earlier of (a) 14 days after Contractor has received the information constituting the basis for the claim, or (b) as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which Contractor intends to claim a Scope Change; and (c) in any event, prior to Contractor's signing of a Change Order for the Scope Change.
- 7.2.4 Owner may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include Owner's basis for such request, which may include, for example, reduction of Contractor's Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, and/or unused Allowances.
- 7.2.5 Contractor shall work with Architect to reconcile all differences in its GMP Change Request with the Architect within seven days from the date of submission of the GMP Change Request. "Reconciled" means that Contractor and the Architect have verified that their assumptions about the various

categories are the same, and that they have identified the reason for differences in the GMP Change Request and the Architect's position. Contractor shall submit the Reconciled GMP Change Request to Owner, which submission shall be a condition to any Contractor claim for a GMP increase.

- 7.2.6** If the Reconciled GMP Change Request is not acceptable to Owner, Contractor agrees to work with Owner and the Architect to provide a GMP Change Request that is acceptable to Owner.
- 7.2.7** Contractor agrees to make all records, calculations, drawings and similar items relating to GMP Change Request available to Owner and to allow the Architect and Owner access and opportunity to view such documents at Contractor's offices. Upon Owner's reasonable notice, Contractor shall deliver two copies of such documents to Owner and the Architect at any regular meeting or at the Site.
- 7.2.8** GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated Cost of the Work increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus Contractor Fee applicable to such change in the Cost of the Work.
- 7.2.9** Except as provided in this **Article 7.2**, adjustments to the GMP shall be reconciled in accordance with **Section D** of the General Conditions.

7.3 Execution by Owner. The Architect has no authority to execute Change Orders or Amendments on behalf of Owner, and only duly authorized personnel of Owner may do so.

ARTICLE 8 - COST OF THE WORK (To Be Reimbursed)

8.1 Cost of the Work. The term "Cost of the Work" means, and the costs properly reimbursable as a Cost of the Work are, those costs that are directly related to the Project, necessarily and reasonably incurred by Contractor in the proper performance of the Work, and specifically and expressly described in this **Article 8**. Cost of the Work does not include the Costs for GC Work as defined in **Article 1.12** or Costs Excluded from Cost of the Work as set forth in **Article 9**.

8.2 Labor Costs. The Cost of the Work includes the following Labor Costs:

- 8.2.1** Wages of construction workers directly employed by Contractor to perform the construction of the Work at the site.
- 8.2.2** Wages and salaries of Contractor's supervisory and administrative personnel (i) stationed at the site, or (ii) engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work with Owner, or otherwise engaged and off the site when specifically related to the Project, and (iii) under either clause (i) or (ii), only

with Owner's prior written approval and only for that portion of their time directly required for the Work.

8.2.3 Fringe benefit costs paid or incurred by Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining contracts and, for personnel not covered by such contracts, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under **Articles 8.2.1** and **8.2.2**.

8.3 Subcontract Costs. The Cost of the Work includes the following Subcontract Costs:

8.3.1 Contractor's actual payment to Subcontractors pursuant to Contractor's contract with such Subcontractor for the Work on the Project. No amount paid by or payable to any such Subcontractor other than the fixed or cost reimbursement price of its subcontract shall be included in the Cost of the Work, unless otherwise approved in writing by Owner.

8.4 Costs of Materials and Equipment Incorporated in the Work or Stored On Site. The Cost of the Work includes the following Incorporated Materials and Equipment Costs:

8.4.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed Work.

8.4.2 Costs of materials in excess of those actually installed, but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to Owner at the completion of the Work or, at Owner's option, shall be sold or otherwise disposed of by Contractor. Any sale shall be commercially reasonable, and Contractor 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 Owner as a deduction from the Cost of the Work.

8.5 Costs of Miscellaneous Equipment and Other Items; Equipment Rental Charges. The Cost of the Work includes the following Miscellaneous Equipment Costs and Equipment Rental Charges:

8.5.1 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 Contractor 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 Contractor; provided that Owner at Owner's option may require that Contractor deliver to Owner (at no charge) at the end of the Project any of such items procured for this Project. Cost for items previously used by Contractor shall mean fair market value. Contractor shall charge no additional administrative or other mark-up for purchased items. Contractor shall document all small tools purchased for the Project via invoices in monthly billing, and shall document the disposition of small tools which have an

individual price that exceeds \$500. A copy of such disposition log shall accompany the payment application whenever these items are included in the application.

- 8.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Contractor at the site, whether rented from Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be according to industry standards, shall not exceed customary local rates or the rental rates published from time to time in the Rental Rate Blue Book for Construction Equipment, prepared by Machinery Information Division of Primedia at the time of rental. Equipment rented from Contractor shall not exceed 75% of Blue Book rates and shall not exceed acquisition costs without Owner's prior approval. Information incorporated in effect at the time of rental, shall not exceed acquisition costs, and for individual items exceeding \$500.00, will be subject to Owner's prior approval. Contractor shall deliver to Owner a list of published rates from time to time at Owner's request. For all items rented or leased, Contractor shall charge Owner only the rental charge incurred by Contractor with no additional administrative or other mark-up. Contractor shall make efforts and use its best skills and judgment to procure equipment in the most expeditious and economical manner consistent with the interest of Owner. Efforts shall include, but not be limited to, providing Owner with a rent/buy analysis so that Owner may elect for Contractor to procure the item in lieu of rental if the facility, machinery or equipment at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, where available, a leasing rate commensurate with the expected term of rental of the facility, machinery or equipment at issue.
- 8.5.3** Costs of removal of debris from the site.
- 8.5.4** Cost of long-distance telephone calls, communication devices, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, which are solely for the benefit of the Work.
- 8.5.5** That portion of the travel and subsistence expenses of Contractor's personnel determined by Owner to be reasonable and necessary as approved by Owner, at Owner approved rates, incurred while traveling in discharge of duties connected with the Work. Main office staff travel shall not be reimbursed unless approved in advance by Owner. These travel costs shall be reimbursed only to the extent allowed under the State of Oregon travel reimbursement guidelines ("State Travel Rules") applicable to Owner and only at approved State travel rates. Contractor personnel who are scheduled to work at the Project site for less than six months may receive a subsistence per diem, if approved by Owner, in accordance with State Travel Rules, if their place of residence is greater than 60 miles from the Project site; provided no such personnel shall be entitled to such per diem reimbursement beyond such six-month period. Contractor

personnel who live within a 60 mile radius from the Project site shall not be eligible for travel and subsistence expenses.

8.6 Other Costs. The Cost of the Work includes the following Other Costs:

8.6.1 The cost of that portion of premiums for insurance directly attributable to the Contract, including the deductible for builder's all risk insurance, and payment and performance bonds as required by Section G of the General Conditions. That portion of the premiums for Contractor's contractor controlled insurance program ("CCIP") directly attributable to the Contract (as limited by **Article 8.6.1.1**), premiums for insurance directly attributable to the Contract that are not included in the CCIP, the premium for Contractor's "Sub-Guard" policy (in lieu of performance and payment bonds to be provided by Contractor's subcontractors) (the "SUBGUARD"), as limited by **Article 8.6.1.2**, and premiums for the payment, performance and public works bonds as required by Section G of the General Conditions, as adjusted in the Supplemental General Conditions. Contractor's charge to Owner for all insurance, and bonds, shall be as detailed in **Exhibit E.2** (Insurance requirements for Phase 2, reserved for the GMP Amendment) and RFP solicitation Attachment 10 Fee/Price Proposal.

8.6.1.1 The reimbursable costs for the CCIP, including all direct and indirect costs necessary for the implementation and administration of the CCIP shall be determined with the final GMP amendment to be a percentage of the actual and final GMP amount. Any costs for the CCIP incurred in excess of this maximum amount shall be considered covered by Contractor Fee. The CCIP rate shall include Commercial General Liability Insurance coverage and Excess Umbrella Liability Insurance coverage in at least the amounts required by the Contract. The other insurance coverages required by the Contract, including workers' compensation, employer's liability, automobile liability, builder's risk, and contractor's pollution liability insurance if required by Owner, shall be provided outside the CCIP program and until such time as Contractor's CCIP is in place. Section G.3 of the General Conditions, is revised to permit Contractor's CCIP program, but the requirements of that Section of the General Conditions, shall otherwise apply. The Section G.3.5 requirement to name Additional Insureds shall apply for coverages under the CCIP, as well as for coverages outside the CCIP. Contractor shall remain responsible at all times, including for the 6-year tail coverage period required by **Exhibit E.2** (Insurance requirements for Phase 2 reserved for the GMP Amendment) to ensure that, between the CCIP and the coverages provided outside the CCIP, all required insurance coverages are in place and remain in place, as required by the terms of the Contract.

8.6.1.2 The maximum allowable reimbursable costs for the SUBGUARD program will be established at the time of the GMP amendment to be a percentage of the actual and final direct Cost of the Work of those

subcontractors covered by the SUBGUARD program. Any costs respecting the SUBGUARD program in excess of the maximum allowable reimbursable costs for SUBGUARD set forth above shall be considered covered by Contractor Fee (or considered as a cost excluded from the Work, under **Article 9**). The SUBGUARD shall include an “Additional Financial Interest” endorsement in favor of Owner. As a condition of Owner’s consent for Contractor to use the SUBGUARD program, Contractor shall use its best efforts to select reliable subcontractors and monitor the work of its subcontractors to avoid delays or defaults that impact the critical path schedule for the Project. Contractor shall take appropriate action when needed to avoid such delays or defaults, and shall investigate any such potential delays or defaults brought to Contractor’s attention by Owner, those acting for the benefit of Owner or other third parties, in which event Contractor shall, within fourteen (14) days of receiving notice of such potential delays or defaults, deliver to Owner a written assessment of the subcontractor’s performance, lack of performance or other actions, including and corrective action taken by Contractor, any resolution reached, or any proposed plan of action to address the delays or defaults.

8.6.2 Sales, use or similar excise taxes imposed by a governmental authority which are directly related to the Work and for which Contractor is liable.

8.6.2.1 Fees and assessments for other permits, licenses and inspections for which Contractor is required by the Contract Documents to pay.

8.6.2.2 Contractor deposits lost for causes other than Contractor’s fault or negligence.

8.6.3 Costs of drawings, Specifications and other documents required to complete the Work, except as provided by Owner or the Architect.

8.6.4 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Owner.

8.7 Costs to Prevent Damage or Injury in Emergencies. The Cost of the Work includes costs which are incurred by Contractor in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

8.8 Costs For General Conditions Work. Contractor shall be paid on a cost reimbursable maximum not-to-exceed price basis as payment for the GC Work, including all labor, materials, and direct and indirect costs thereof. The maximum not-to-exceed amount for GC Work shall be established in each Early Work Amendment or the GMP Amendment, as applicable. To the extent any GC Work is otherwise described above in this **Article 8**, Contractor’s compensation for the same is included in the Cost for GC Work and shall not otherwise be charged as Cost of the Work. The Cost for GC Work, less 5% retainage thereon, shall be paid monthly on a reimbursable basis over the number of months of the scheduled Construction Phase, including any period of Early

Work, commencing with the first progress billing after commencement of the scheduled Construction Phase or Early Work Period. However, no adjustment in the maximum amount payable for GC Work will be made if the actual construction period or Early Work period is shorter or longer than the number of months scheduled for the Construction Phase or Early Work period, unless such period is extended because of an Owner-requested delay.

**ARTICLE 9- COSTS EXCLUDED FROM COST OF WORK
(Not To Be Reimbursed)**

9.1 Costs Excluded from Cost of Work. The Cost of the Work does not include the costs set forth in this Article 9, and Owner shall not reimburse Contractor for the costs herein:

- 9.1.1** Salaries and other compensation of Contractor's personnel stationed at Contractor's principal office or offices other than the site office, except as allowed under Articles 8.2.2 and 8.2.3.
- 9.1.2** Expenses of Contractor's principal office and offices other than the site office.
- 9.1.3** Any overhead and general expenses, except as specifically and expressly described in Article 8.
- 9.1.4** Contractor's capital expenses, including interest on Contractor's capital employed for the Work.
- 9.1.5** [Intentionally Omitted.]
- 9.1.6** Costs due to the fault or negligence of Contractor, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- 9.1.7** The cost of correction of any repair work, nonconforming or defective work, or warranty work due to the negligence of Contractor.
- 9.1.8** Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith, except as otherwise provided in Article 8.
- 9.1.9** Fines and penalties.
- 9.1.10** Except for Early Work, the cost of Preconstruction Phase Services.
- 9.1.11** The Cost of the Work for GC Work in excess of the Fixed Cost for GC Work.
- 9.1.12** Any costs in excess of the GMP.

9.1.13 Any costs associated with travel expenses within a 60 mile radius of the Project.

ARTICLE 10 - DISCOUNTS, REBATES AND REFUNDS

10.1 Discounts, Rebates and Refunds. Cash discounts obtained on payments made by Contractor shall accrue to Owner if Owner has provided funding in advance; otherwise discounts shall accrue to Contractor. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they can be secured.

10.2 Amounts Credited to Owner. Amounts which accrue to Owner in accordance with the provisions of **Article 10.1** shall be credited to Owner as a deduction from the Cost of the Work.

ARTICLE 11 - SUBCONTRACTS AND OTHER CONTRACTS

11.1 General Subcontracting Requirements.

11.1.1 Other than Work performed pursuant to **Articles 11.4** or **11.5** of this Contract, Contractor shall subcontract the Work to Subcontractors other than Contractor and its Affiliates. If Contractor elects to bid on any Work, Contractor shall inform Owner of its intention to do so prior to the bid date for that Work.

11.1.2 Contractor shall comply with Oregon Administrative Rules (“**OAR**”) 580-061-0030, and OAR 580-061-0035 in all respects regarding Certified Firms. Contractor shall take the actions specified in ORS 200.045(2) and (3) to make good faith efforts to subcontract with Certified Firms.

11.1.3 Contractor shall report to Owner on the results of the good faith efforts of compliance required in **Article 11.1.2** following award of all subcontracts. Contractor shall also submit monthly reports to Owner listing Work contracted to date with Certified Firms.

11.2 Contractor’s Obligations under Subcontracts.

11.2.1 No use of a Subcontractor or supplier shall relieve Contractor of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in the Contract, Contractor shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. Contractor shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between Contractor and any such Subcontractor or supplier.

11.2.2 Contractor shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, all provisions necessary to make all of the provisions of the Contract Documents, including the General

Conditions, fully effective as applied to Subcontractors. Contractor shall indemnify Owner for any additional cost based on a subcontractor claim which results from the failure of Contractor to incorporate the provisions of this Contract into each subcontract. Contractor shall provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their work.

11.2.3 Retainage from Subcontractors. Except with Owner's prior approval, payments to Subcontractors shall be subject to retainage of five percent (5%). Owner and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

11.3 Subcontractor Selection.

11.3.1 Unless otherwise provided under this **Article 11**, the selection of all Subcontractors and suppliers shall be made by competitive Offers in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279C, the process shall conform to the following procedures, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.

11.3.2 Contractor shall submit to Owner's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. Contractor shall consider and respond to all Owner comments regarding any proposed Offer packages. As Offers are received, Contractor shall submit to Owner an Offer comparison in a mutually agreeable form, together with any specific back-up documentation requested by Owner. The competitive process used to award subcontracts by Contractor may be monitored by Owner's Authorized Representative; provided that such monitoring shall not excuse Contractor from compliance with the subcontracting requirements of this Contract. Contractor shall cooperate in all respects with Owner's monitoring. Owner's Authorized Representative shall be advised in advance of and be given the opportunity to be present at Offer openings, and Contractor shall provide him or her with a summary or abstract of all Offers in form acceptable to Owner's Authorized Representative, and copies of particular Offers if requested, prior to Contractor's selection of offerors. Prior to opening Offers, Contractor agrees to disclose in writing to Owner any financial interest it has in any such Subcontractor, supplier or other contracting party whenever such Subcontractor, supplier or contracting party intends to compete on any Project work, directly or indirectly, including whether such party is an Affiliate of Contractor.

11.3.3 The following minimum requirements apply to the Subcontract solicitation process:

11.3.3.1 Solicitations will be advertised at least 10 days prior to opening in The Portland Tribune and at least one other newspaper specifically targeted to reach the Certified Firm audience. Contractor also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.

11.3.3.2 Unless specific other prior arrangement has been made with Owner, all Offers will be written, and submitted to a specific location at a specific time. Contractor shall time-stamp all Offers as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.

11.3.3.3 If fewer than three (3) Offers are submitted in response to any solicitation (inclusive of any Offer submitted by Contractor), prior written approval by Owner shall be required to accept an Offer.

11.3.3.4 Contractor may develop and implement a prequalification process for particular solicitations (Earthwork, Concrete, Seismic, Structural, Drywall, Roofing, Millwork & Cabinetry, Elevators, Floor Coverings, Painting, Exterior Envelope (storefront, exterior glazing, etc.), Mechanical, Fire Protection, Electrical (General), Electrical (Data & Low Voltage), Fire Alarm, Access Control, security, any package involving installation of Specialized Equipment, plus any other Subcontract for which Contractor estimate exceeds \$1,000,000), followed by selection of successful Offers among those offerors that Contractor determines meet the prequalification standards. Contractor may develop and implement a prequalification process for other solicitations, followed by selection of successful Offers among those offerors that Contractor determines meet the prequalification standards, with Owner's prior written approval of such prequalification process.

11.3.3.5 Contractor shall comply, and require Subcontractor compliance with, State of Oregon Bureau of Labor & Industries prevailing wage rates as specified in the RFP.

11.3.3.6 Owner may at its sole discretion, require Contractor to re-solicit for Offers based on the same or modified documents.

11.3.3.7 Contractor shall review all Offers and shall work with offerors to clarify Offers, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.

11.3.3.8 Contractor will document any and all discussions, questions and answers, modifications and responses to or from any offeror and ensure that the same are distributed to all offerors, and Owner shall be entitled to inspect such documentation on request.

11.3.3.9 Contractor shall determine the lowest Offer for each solicitation that meets Contractor's reasonable performance standards for the components of the Work at issue; provided that if Contractor determines it is unable to execute a suitable subcontract with such offeror, Contractor may, with Owner's prior approval, execute a subcontract with the second-lowest offeror pursuant to **Article 11.3.4** below.

11.3.4 Under special circumstances and only with prior written authorization by Owner, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, Owner may require Contractor's agreement to establish and implement qualification and performance criteria for offerors, including a scoring system within requests for proposals. Special circumstances include, without limitation, the following: instances where only a single fabricator of materials exists; special packaging requirements for Subcontractor work; design-build work; and instances in which an alternative contracting method can be demonstrated to clearly benefit Owner.

11.3.5 Contractor shall notify Owner in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to Owner of all Offers received for the Subcontract at issue. Owner reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility.

11.3.6 Contractor's subcontracting records shall not be considered public records; provided, however, that Owner shall retain the right to audit and monitor the subcontracting process in order to protect Owner's interests.

11.4 Contractor Field Work.

11.4.1 Contractor or its Affiliate may provide Contractor Field Work required to complete the Project with its own forces, without the necessity of subcontracting such work.

11.4.2 Except as provided in **Article 11.4.1**, any other portion of the Work proposed to be performed by Contractor or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of **Article 11.5**.

11.5 Subcontracting by Contractor.

11.5.1 Except to the extent otherwise approved in advance in writing by Owner's Authorized Representative, Contractor or its Affiliates may submit an Offer in accordance with **Article 11.3** to do Work with its own forces, provided at least 50% of the labor by such work unit is performed by employees of Contractor or such Affiliate. If Contractor is selected to perform the work, the overhead and markup paid to Contractor shall be limited to the markups applicable to Change Order Work set forth in the General Conditions.

11.5.2 For those items for which Contractor or any of its subsidiaries intends to submit an Offer, such intent must be publicly announced with the solicitation for Offers required by **Article 11.3.1**, and Owner shall be notified in writing. All Offers for this work shall be delivered to Owner and publicly opened by Owner at an announced time, date, and place.

11.6 Protests. Contractor, acting as an independent contractor, shall include in the competitive process to award all subcontracts, a protest process for Subcontractors and suppliers that are competing offerors, which process shall be subject to approval by Owner. Contractor shall be solely responsible for resolving the procurement protests of Subcontractors and suppliers. Contractor shall indemnify, defend, protect and hold harmless Owner and Owner's Authorized Representative from and against any such procurement protests and resulting claims or litigation. Contractor shall act as an independent contractor, and not an agent of Owner, in connection with any procurement protest. The provisions of this **Article 11** are solely for the benefit of Owner and do not grant any rights or remedies (including third party beneficiary rights) to any offeror or other protester, in connection with any procurement protest or claim.

12 ACCOUNTING RECORDS

12.1 Accounting; Audit Access. Contractor 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 Owner. Owner and Owner's representatives, including accountants and auditors employed by or under contract with Owner, shall be afforded reasonable and regular access to Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract, and Contractor shall preserve these for a period of six (6) years after final payment, or for such longer period as may be required by law.

12.2 Periodic and Final Audits. Owner may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. Owner intends to conduct a final audit of reimbursable costs prior to the Contract closeout. Contractor shall cooperate fully with Owner in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in **Article 14.4**.

13 PROGRESS PAYMENTS

13.1 Progress Payments. Based upon applications for payment submitted pursuant to **Section E** of the General Conditions, Owner shall make progress payments on account of the Preconstruction Fee, the Cost of the Work, and associated Contractor Fee, less 5% retainage, to Contractor as provided below and elsewhere in the Contract Documents. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein.

13.2 Percentage of Completion. All applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion shall be the lesser of (i) the percentage of that portion of the Work which has actually been completed; or (ii) the percentage obtained by dividing (a) the expense that has actually been incurred by Contractor on account of that portion of the Work for which Contractor has made or intends to make actual payment prior to the next application for payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.

13.3 Calculation of Payment. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- 13.3.1** Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work under the Schedule of Values by the share of the GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to Owner of changes in the Work, any amounts in dispute shall not be included;
- 13.3.2** Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with **Section E.2.4** of the General Conditions;
- 13.3.3** Add Contractor's Fee. The portion of Contractor's Fee payable shall be an amount that bears the same ratio to Contractor Fee as the sum of the amounts in **Article 13.3.1** and **13.3.2** bears to the estimated probable Cost of the Work described in **Article 6.1**, but in no event causing total Contractor Fee payments to exceed the total Contractor Fee;
- 13.3.4** Subtract the aggregate of previous payments made by and retained by Owner;
- 13.3.5** Subtract the shortfall, if any, detailed by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by Owner in such documentation;
- 13.3.6** Subtract any amounts for which Owner's Authorized Representative has withheld or denied payment as provided in the Contract Documents; and
- 13.3.7** Subtract 5% retainage on the entire progress payment.

14 FINAL PAYMENT

14.1 Final Payment Accounting. Contractor shall submit to Owner a final detailed accounting of the Cost of the Work together with Contractor's final application for payment.

14.2 Calculation of Final Payment. The amount of the final payment shall be calculated as follows:

- 14.2.1** Take the sum of Contractor Fee, plus the Preconstruction Fee, plus the actual Cost of the Work substantiated by Contractor's final accounting. Said sum shall not exceed the GMP.
- 14.2.2** Subtract amounts, if any, for which Owner's Authorized Representative withholds, in whole or in part, approval of payment.
- 14.2.3** Subtract the aggregate of previous payments made by Owner to Contractor. If the aggregate of previous payments made by Owner exceeds the amount due Contractor, Contractor shall reimburse the difference to Owner within 30 days, with interest at the rate applicable to Owner payments under **Section E.5.1.3** of the General Conditions.

14.3 Final Payment Review. Owner or its accountants will review and report in writing on Contractor's final accounting within 30 days after it is submitted to Owner by Contractor. Contingent upon the other conditions of the Contract having been met, Owner's Authorized Representative will, within 10 Business Days after receipt of the written report of Owner's accountants, either issue to Owner an approval of Contractor's final application for payment with a copy to Contractor, or notify Contractor and Owner in writing of Owner's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval shall include Owner's Authorized Representative's estimate of the amount that is due Contractor under the application for payment.

14.4 Payment Disputes. If Owner's accountants report the Cost of the Work as substantiated by Contractor's final accounting to be less than claimed by Contractor or if Owner's Authorized Representative declines to approve any duly submitted payment request by Contractor, or any portion thereof, Contractor shall be entitled to demand a review by Owner's Director of Facilities & Property Management of the disputed amount. Such demand shall be made by Contractor within 30 days after Contractor's receipt of a copy of the rejection of the application for payment or any portion thereof. Failure to demand review within this 30-day period shall result in a waiver of Contractor's right to demand review under this Article, and the substantiated amount as reported by Owner's accountants becoming binding on Contractor. In addition, if Owner or any other governmental agency performs a subsequent audit of the Cost of the Work and determines any item therein to have been unsubstantiated or that Contractor was otherwise overpaid, Owner may submit a request for reimbursement to Contractor for the amount of overpayment. Contractor shall have 30 days after delivery of the request for reimbursement by Owner to demand additional review by Owner's Director of Facilities & Property Management. Failure to make such demand within this 30 day period shall result in waiver of the right to demand review under this Article, and the requested reimbursement becoming unconditionally due and payable by Contractor. If

Contractor timely submits a demand for review to Owner's Director of Facilities & Property Management, Contractor's claim shall be subject to the claims review process in **Section D.3** of the General Conditions. Pending a final resolution, Owner shall pay Contractor any outstanding amounts of the application for payment approved by Owner's Authorized Representative.

14.5 Effect of Payment. Neither approval of an application for payment, a progress payment, release of retainage, final payment, or partial or entire use or occupancy of the Project by Owner shall constitute acceptance of Work not conforming to the Contract Documents, or waiver of the right to assert overpayment.

15 TERMINATION OR SUSPENSION

15.1 Owner's Right to Terminate Prior to Execution of GMP Amendment. Prior to execution of the GMP Amendment by both parties, Owner may terminate the Contract at any time without cause. Upon such termination, the amount to be paid to Contractor shall not exceed the Preconstruction Fee payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed. If Owner terminates for convenience during the Preconstruction Phase, Owner shall be entitled to copies of, and shall have the right to use, all work product of Contractor and its Subcontractors and suppliers performed to the date of termination, and Contractor shall deliver copies of the same to Owner on request.

15.2 Owner's Termination for Convenience after GMP Amendment. After the GMP Amendment is executed by both parties, the Contract may be terminated by Owner without penalty for convenience pursuant to **Section J.5** of the General Conditions, in which case Contractor shall be entitled to payment of the amount stated in **Article 15.1**, together with the actual Cost of the Work completed, plus Contractor's Fee prorated based on the actual Cost of the Work completed prior to the date of termination, but in any event not in excess of the GMP.

15.3 Owner's Termination for Cause. In the event of termination of this Agreement by Owner for cause pursuant to **Section J.4** of the General Conditions, the amount, if any, to be paid to Contractor, after application of the General Conditions and of Owner's rights and remedies under the Contract, shall not exceed the amount Contractor would be entitled to receive under **Article 15.2**.

15.4 Contractor Termination for Cause. Contractor acknowledges that disputes regarding payments and Change Orders may occur as part of Contractor process, and that Owner's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by Contractor. If Contractor terminates the Contract for Owner's material breach, the amount to be paid to Contractor shall not exceed the amount Contractor would have been entitled to receive under **Article 13** above through termination and demobilization from the Project, with Contractor Fee prorated based on the actual Cost of the Work through the date of termination.

15.5 Assignment of Subcontracts. In the event that Owner terminates the Contract with Contractor, each subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by Contractor to Owner, effective from the date of termination. This assignment is effective only for those subcontracts and supply contracts that Owner accepts by notifying the Subcontractor/supplier and Contractor in writing. For those subcontracts and supply contracts

accepted by Owner, if the Work has been suspended for more than 30 days, the Subcontractor's/supplier's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Such adjustments shall be subtracted from the amounts owed by Owner to Contractor. Contractor shall include a provision in each subcontract and supply agreement whereby the Subcontractor/supplier acknowledges Owner's rights under this **Article 15.5**. With respect to any subcontracts/supply contracts that are not accepted by Owner, the provisions of **Section J.6.1** of the General Conditions shall apply.

16 REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS

16.1 Representations and Warranties. Contractor represents and warrants to Owner as of the effective date of the Contract:

- 16.1.1** Contractor is qualified to do business as a licensed general contractor under the laws of the State of Oregon, and has all requisite corporate power and corporate authority to carry on its business as now being conducted;
- 16.1.2** Contractor has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; Contractor has duly and validly executed and delivered this Contract to Owner and the Contract constitutes the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);
- 16.1.3** Contractor's execution and delivery of this Contract and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, (i) Contractor's Articles of Incorporation or Bylaws; (ii) any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which Contractor is a party or by which Contractor may be bound; or (iii) any statute, order, writ, injunction, decree, rule or regulation applicable to Contractor;
- 16.1.4** No material consent, approval, authorization, declaration or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery and performance of the Contract by Contractor or its consummation of the transactions contemplated hereby;
- 16.1.5** There is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby; and

16.1.6 Contractor’s Project Director and Project Manager identified in **Article 4** are duly appointed representatives, and each has the authority to bind Contractor to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto.

16.2 Tax Compliance Certification. The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor’s payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws. For purposes of this certification, “Oregon tax laws” means a state tax imposed by ORS 401.792 to 401.816, ORS 320.005 to 320.150 and 403.200 to 403.250, and ORS chapters 118, 314, 316, 317, 318, 320, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620.

16.3 Federal and State Program Eligibility: Contractor represents and warrants that it is not excluded from participation, and is not otherwise ineligible to participate, in a “Federal health care program” as defined in 42 U.S.C. Section 1320a-7b (f) or in any other government payment program. In the event Contractor is excluded from participation, or becomes otherwise ineligible to participate in any such program during the term of the Contract, Contractor will notify Owner in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to Owner, Owner may immediately terminate this Contract for cause pursuant to **Article 15.3** upon written notice to Contractor. Owner will not make any payments under this Contract during any period of Contractor’s debarment, ineligibility or exclusion from participation.

17 MISCELLANEOUS

17.1 Headings. The headings used in this Contract are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.

17.2 Merger. The Contract Documents constitute the entire contract between the parties. No waiver, consent, modification or change of terms of the Contract shall bind either party unless made 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 understandings, agreements, or representations, oral or written, not specified herein, regarding the Contract. Contractor, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.

17.3 Exemption from Competitive Bidding. The parties acknowledge that the Contract has been awarded under an emergency declaration by the County Chair dated July __, 2019, which qualifies the Contract award for an exemption from competitive bidding requirements pursuant to ORS 279C.335, as authorized by the Legislative Assembly, acting by and through the Legislative Administrator under ORS 173.720.

17.4 INTENTIONALLY OMITTED

17.5 INTENTIONALLY OMITTED

17.6 Anti-discrimination Clause. Contractor shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or political affiliation in programs, activities, services, benefits or employment. Contractor shall not discriminate against minority owned, women owned or emerging small businesses.

17.7 EEO Compliance. Contractor agrees that if, at any time under the term of the Contract, it has employees and will earn more than \$75,000 as a result of the Contract, Contractor will not:

- 17.7.1** Discriminate against employees or applicants based on race, color, religion, sex, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, or source of income;
- 17.7.2** Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
- 17.7.3** Coerce the political activity of any person;
- 17.7.4** Deceive or willfully obstruct anyone from competing for employment;
- 17.7.5** Influence anyone to withdraw from competition for any position so as to improve or injure the employment prospects of any other person; or
- 17.7.6** Give improper preference or advantage to anyone so as to improve or injure the employment prospects of that person or any other employee or applicant.

17.8 Non-appropriation Clause. If payment for the Work under this Contract extends into Owner's next fiscal year, Owner's obligation to pay for such Work is subject to approval of future appropriations to fund the Contract by the Board of County Commissioners of Multnomah County, Oregon.

Contract # _____

THIS CONTRACT is executed in four original copies, of which one is to be delivered to Contractor and the remainder to Owner.

CONTRACTOR:

Name of Firm: _____,
A(n) _____ corporation

Address: _____, _____, OR _____

CONTRACTOR's Federal Tax I.D. #: _____

Construction Contractor's Board Registration No.: _____

Signature of Authorized Representative of CONTRACTOR

Name & Title _____

Date _____

OWNER:

Multnomah County, an Oregon political subdivision

Deborah Kafoury, Chair

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

Jenny M. Madkour, Multnomah County Attorney

By: _____

Assistant County Attorney

Date _____

EXHIBIT A
MULTNOMAH COUNTY GENERAL CONDITIONS
FOR PUBLIC IMPROVEMENT CONTRACTS

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COUNTY GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS

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 Consultant in the Multnomah County Standard Professional Services Contract for Architectural, Engineering & Related Services ("A/E Contract") for the Project.

CHANGE ORDER, means a written order issued by Owner's Authorized Representative to 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, is formed by the Contract Documents, defined below. The Contract represents the entire and integrated agreement between the Parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than Owner and Contractor.

CONTRACT DOCUMENTS, consist of those documents listed in the Multnomah County Public Improvement Contract (the "Contract"), including Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both Parties, (2) a Change Order, (3) a Construction Change Directive, (4) a written order for a minor change in the Work issued by the Architect/Engineer or the Owner's Representative, or (5) a Field Directive.

CONTRACT PERIOD, means the total period of time beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

CONTRACT PRICE, means the total of the awarded Offer amount, as increased or decreased by the price of approved alternates and Change Orders.

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.

DAYS, are partial or full calendar days, including weekdays, weekends and holidays, unless otherwise specified.

DIRECT COSTS, means 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.

EMERGENCY REPAIRS, means those repairs, at the Project site which, if not repaired immediately, will cause further damage to the Project and/or pose a health or safety risk to the staff and/or public.

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.

FORCE MAJEURE, means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes 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 Owner stating that Contractor is to proceed with the Work. 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 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.

OWNER, means Multnomah County, an Oregon political subdivision.

OWNER'S AUTHORIZED REPRESENTATIVE, means that individual or those individuals identified in writing by Owner to act on behalf of Owner for this Project. Owner may elect, by written notice to Contractor, to delegate certain duties of 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, means the Project identified in the Contract Documents.

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, operation 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 INTERPRETATION ("RFI"), means a written request, submitted by Contractor to Owner's Authorized Representative on a standard form, requesting interpretation of Contract Documents.

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

SUBSTANTIAL COMPLETION, means the date when Owner accepts in writing that the Work, or portion thereof, is sufficiently complete and in conformance with the Contract Documents that the Project may be used or occupied for its intended purpose. The Work is not sufficiently complete and in conformance with the Contract Documents unless: (1) Owner has received a temporary or final certificate of occupancy and all other governmental approvals as necessary and required for Owner to use or occupy the Project, or portion thereof, for its intended purpose; or (2) No further performance by Contractor is required for issuance of the temporary or permanent certificate of occupancy and the certificate has not been issued solely because of factors beyond Contractor's reasonable control. A delay of normal duration in the applicable governmental agency's issuance of a certificate of occupancy shall not be deemed a factor beyond Contractor's reasonable control. 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 Owner's Authorized Representative. The decision of 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.

URGENT REPAIRS, means those repairs, at the Project site, to fix defects which interfere with Owner's ability to use the Project for its intended purpose.

WORK, means the furnishing of all materials, equipment, labor, transportation, services and incidentals necessary to successfully complete any individual item of or the entirety of the Contract and the carrying out of any or all duties and obligations imposed on Contractor through the Contract Documents, as well as any or all duties and obligations reasonably inferable therefrom.

A.2 SCOPE OF WORK

Contractor shall perform all Work so that the Project may be timely and legally occupied and fully used for its intended use.

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. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

- (a) Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date;

- (b) The Multnomah County Public Improvement Contract Form;
- (c) The Multnomah County General Conditions for Public Improvement Contracts;
- (d) Multnomah County Supplemental Conditions for Public Improvement Contracts, if applicable;
- (e) The Plans and Specifications, whether included in the Project Manual or otherwise;
- (f) The Solicitation Document and any addenda thereto; and
- (g) The accepted Offer.

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 Owner or Owner's Authorized Representative's interpretation in writing.

A.3.3 If Contractor finds discrepancies in, or omissions from the Contract Documents, or if Contractor is in doubt as to their meaning, Contractor shall at once notify Owner or Owner's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by 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 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 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 published date of the Solicitation Document, except as may be otherwise specifically stated.

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 In the event Owner provides any Plans or Specifications that Contractor is required to utilize for any aspect of the Work, should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction, Contractor shall have the duty to make inquiry of Owner as to what is required, prior to utilization of the Plans and Specifications in performing the Work. Absent Owner-supplied Specifications to the contrary, the materials, construction methods, and processes that would normally be used by Contractor to produce quality finished Work shall be considered a part of the Contract requirements.

A.3.7 RFIs shall clearly and concisely set forth the issues for which the clarification or interpretation is sought, and why a response is needed. Prior to submitting an RFI from a Subcontractor, Contractor shall review the RFI for appropriateness and completeness and, if needed, obtain clarifications from the Subcontractor. Owner's Authorized Representative will review each RFI and determine whether or not the document qualifies as a Request For Interpretation. If Owner's Authorized Representative determines that the document is not a legitimate RFI, it will be returned to Contractor unreviewed as to content.

Owner's Authorized Representative will respond to RFIs within seven (7) Days of receipt from Contractor, unless a longer time will be required to provide an adequate response. If a longer time is determined necessary, Owner's Authorized Representative will, within seven (7) Days, notify Contractor of the anticipated response time. An extension to the Contract Period will not be considered unless Contractor submits a written request for extension to Owner's Authorized Representative within seven (7) Days thereafter.

An RFI shall only be used as a vehicle for confirming or verifying an issue through an interpretation of the Contract Documents; responses that result in changes to Contract Documents and adjustments to the Contract Price or Contract Time must be documented in a Change Order.

Owner shall be entitled to deduct from the Contract Price amounts, as compensation, for Owner's Authorized Representative to evaluate and respond to Contractor's RFIs, where such information was available to Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, prior correspondence or other documentation.

- A.3.8 As used in these General Conditions, "Section" means, unless expressly stated otherwise, a section of these General Conditions.

A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE

- A.4.1 It is understood that 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. Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by Contractor as a result of 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 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 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 quality finished Work shall be considered a part of the Contract requirements.
- A.4.3 Any design errors or omissions noted by Contractor shall be reported promptly to Owner's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.
- A.4.4 If Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by Owner's Authorized Representative (or Architect/Engineer) in response to Contractor's notices or requests for information, Contractor must submit a written request to 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 seven (7) Days after receipt by Contractor of the clarifications or instructions issued. If 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, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, Contractor shall pay such costs and damages to Owner as

would have been avoided if Contractor had performed such obligations.

A.5 INDEPENDENT CONTRACTOR STATUS

Contractor represents and warrants that it is an independent contractor, and the service or services to be performed under this Contract by Contractor 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 Owner, and the service or services to be performed under this Contract by Contractor are not those of an officer, employee or agent of Owner, as those terms are used in ORS 30.265.

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 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 payment of Contractor 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 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.

A.8 FACILITY COMPLIANCE REQUIREMENTS

- A.8.1 Prior to receiving access to any Multnomah County Sheriff's Office facility, all individuals shall submit a criminal history records check to determine access eligibility. Access eligibility is determined by the individual's ability to obtain unescorted access within non-jail Sheriff's Office facilities, and is verified through the submission of the applicant's fingerprints to the Federal Bureau of Investigation. Any felony conviction would disqualify an applicant from obtaining unescorted access. There is no charge for this process.

Once approved, the Multnomah County Sheriff's Office will provide written access and security procedures to each individual. Each individual must read and sign statements verifying they have read and understand the information provided. Access will not be granted until the signed statements have been received. This process is performed when fingerprinted, and takes approximately 20-30 minutes. Individuals may request copies of the access and security procedures, or signed statements, at any time.

Failure to follow access and/or security procedures may result in the termination of this Contract.

- A.8.2 If one of the facilities where Contractor performs Work is a health clinic accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), then Contractor must comply with the JCAHO Safety Measures for Contractors attached as the Exhibit titled JCAHO Interim Life Safety Measures when providing services to those facilities.

SECTION B ADMINISTRATION OF THE CONTRACT

B.1 OWNER'S ADMINISTRATION OF THE CONTRACT

B.1.1 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. Owner's Authorized Representative will act on behalf of 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, Owner's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.

B.1.2 Owner's Authorized Representative will visit the site at intervals appropriate to the stage of Contractor's operations (1) to become generally familiar with and to keep Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard 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. Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. 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, Owner and Contractor shall endeavor to communicate with each other through 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 Contractor. Communications by and with separate contractors shall be through Owner's Authorized Representative.

B.1.4 Based upon the Architect/Engineer's evaluations of Contractor's Application for Payment, or unless otherwise stipulated by Owner's Authorized Representative, the Architect/Engineer will review and certify the amounts due Contractor and will issue Certificates for Payment in such amounts.

B.1.5 Owner has developed or may develop procedures and forms for the administration and tracking of the Contract, and Contractor agrees to abide by those procedures and use those forms.

B.2 CONTRACTOR'S MEANS AND METHODS; MITIGATION OF IMPACTS

B.2.1 Contractor shall supervise and direct the Work, using Contractor's best skill and attention. 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, 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 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 Contractor is responsible for the actions and omissions of all its personnel, laborers, suppliers and their employees, and Subcontractors and their employees, and all other persons or entities performing, or facilitating the performance of, any portion of the Work for or on behalf of Contractor or its Subcontractors of any tier on the Project. Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. Contractor shall not permit

employment of persons who are unfit or unskilled for the tasks assigned to them. Upon receipt of written notice from Owner's Authorized Representative that Owner finds that a Subcontractor's work does not meet the standards set forth in the Contract Documents for the tasks assigned to the Subcontractor, Contractor shall take the action demanded by Owner in such notice, including dismissal of such Subcontractor if requested by Owner.

B.2.4 Contractor shall inspect all portions of the Work performed and shall not allow a portion of the Work already performed to receive further Work which would have to be replaced or redone until such time as the Work already performed is in the condition required under the Contract. If Contractor requests Owner's assistance in performing any Work included in the Contract Documents, and if Owner, at Owner's discretion, agrees to provide assistance, Owner may, at its sole discretion, provide assistance using Owner's own forces or by engaging another contractor. If Owner performs Work using Owner's own forces, Contractor shall pay Owner at the rate of one and one-half (1½) times the standard hourly rate of Owner's forces, plus related overhead and any direct non-salary costs. If Owner performs the Work using another contractor, Contractor shall pay Owner the amount of Owner's direct costs billed by the other contractor for the Work performed, plus the direct salary costs and related overhead and direct non-salary expenses of Owner's forces who are required to monitor the other contractor's work. Contractor is responsible for supervising and directing all Work performed by Owner using Owner's own forces or another contractor's forces, and this does not affect Contractor's contractual duties under these provisions, including warranty provisions

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. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trade.

B.3.2 Contractor is responsible to perform the Work as required by, and reasonably inferable from, the Contract Documents. Defective Work shall be corrected at Contractor's expense.

B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by Owner's Authorized Representative does not relieve Contractor of responsibility for the Work in accordance with the Contract Documents.

B.3.4 Contractor shall furnish adequate facilities, as required, for 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 Contractor shall furnish samples of materials for testing by Owner's Authorized Representative and include the cost of the samples in the Contract Price.

B.3.6 Materials, workmanship, and equipment shall conform to applicable specifications and standards and shall comply with size, make, type, and quantity specified, unless otherwise approved in writing. Like parts of duplicate units shall be manufactured to standard sizes and gauges and shall be interchangeable. Two or more items of the same kind shall be identical and by the same manufacturer. Materials shall be suitable for Project conditions. Equipment shall comply with capacity, sizes, and dimensions shown or specified unless otherwise approved in writing. Contractor shall not use materials or equipment for any purpose other than that for which it is designed or specified.

B.3.7 Contractor shall perform Work in accordance with manufacturers' instructions. Contractor shall not omit preparatory or installation procedures required by the manufacturer, unless specifically modified or exempted by Contract Documents. When Contract Documents require Work to comply with manufacturers' instructions, Contractor shall obtain and distribute such instructions to Parties performing Work including two (2) copies to Owner's Authorized Representative. Contractor shall maintain one (1) set at the jobsite during installation and until acceptance. Contractor shall handle, install, connect, clean, condition, and adjust materials in strict accordance with such instructions and in conformance with specified requirements. Should job conditions or specified requirements conflict with manufacturers' instructions, Contractor shall consult Owner's Authorized Representative for further instructions. Contractor shall not proceed with Work without clear instructions.

B.3.8 Contractor shall arrange material deliveries in accordance with the schedule and shall coordinate to avoid conflicts with Work and site conditions. Contractor shall deliver materials undamaged, in manufacturer's original containers or packaging, and with legible identifying labels intact. Immediately upon delivery, Contractor shall inspect shipments to assure compliance with Contract Documents and requirements of approved submittals, and assure that materials are properly protected and undamaged.

B.3.9 Contractor shall follow manufacturer's instructions for storage and protection of materials. Contractor shall maintain material identity labels intact. Contractor shall store materials subject to weather-damage in weather-tight enclosures. Contractor shall maintain storage room temperature and humidity within ranges required by manufacturer's instructions. Contractor shall maintain reasonable protection against material theft and vandalism. Contractor shall arrange storage to permit easy access for inspection. Contractor shall make periodic inspections of stored materials to assure that materials are maintained as specified and are free from damage, discoloration, and deterioration. Contractor shall provide substantial coverings as necessary to protect installed materials against damage and discoloration after installation. Contractor shall remove covering when no longer needed.

B.4 PERMITS

B.4.1 PERMITS Owner shall pay or reimburse Contractor for building permits as a Direct Cost of the Work. Contractor shall obtain and pay for all other necessary permits and licenses for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, crane arc easements, 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 notices required by law, statute, ordinance, code, rule, regulation, or lawful order. Contractor shall pay all royalties and license fees.

B.4.2 INTELLECTUAL PROPERTY Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and hold harmless and blameless from loss, on account thereof, Multnomah County, and their departments, divisions, members and employees, unless the claim arises from Contractor's authorized performance of the Work in strict accordance with the Architect/Engineer's Construction Documents. Contractor's indemnity obligation shall not be construed to relieve the Architect/Engineer of its responsibility for the Construction Documents.

B.5 COMPLIANCE WITH APPLICABLE LAW

B.5.1 In performance of the Contract, Contractor shall comply with all federal, state and local laws applicable to the Work under this Contract, including but not limited to all statutes, rules, ordinances, codes, and other regulations; and Contractor shall comply with all applicable industry standards, including but not limited to those relating to safety, labor, health, materials,

equipment, the environment, and construction practices and procedures. Contractor's failure to comply with this Section B.5.1 shall constitute a material breach of the Contract. Without limiting the laws encompassed by the provisions of this Section B.5.1, Contractor shall comply with the following as applicable:

- (a) Title VI and VII of Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color or national origin;
- (b) Section 503 and 504 of the Rehabilitation Act of 1973, as amended;
- (c) the Health Insurance Portability and Accountability Act of 1996;
- (d) the Americans with Disabilities Act of 1990, as amended;
- (e) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
- (f) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
- (g) Wages, Hours and Records Laws (ORS Chapter 652);
- (h) Conditions of Employment Laws (ORS Chapter 653);
- (i) Safety and Health Regulations (ORS Chapter 654);
- (j) Workers' Compensation Laws (ORS Chapter 656); and Unemployment Insurance (ORS Chapter 657);
- (k) Discrimination against disabled persons (ORS Chapter 659A, as amended);
- (l) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92.255) as amended, relating to nondiscrimination on the basis of drug abuse;
- (m) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91.616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (n) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd.3 and 290 ee-34), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (o) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
- (p) 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.
- (q) any and all other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made;
- (r) any and all other applicable requirements of federal, state, and local civil rights and rehabilitation statutes, rules and regulations.
- (s) ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530;
- (t) all regulations and administrative rules established pursuant to the foregoing laws; and
- (u) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations not set forth in this Section B.5.1.

- B.5.2 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.5.3 Contractor shall maintain, in current and valid form, all licenses, permits, certificates, and other certifications required by law or this Contract when performing the Work.
- B.5.4 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, Contractor shall maintain the certification, and require in its subcontracts that subcontractors maintain the certification required by Section 2, Chapter 325, Oregon Laws 2015, as amended by Section 26, Chapter 565, Oregon Laws 2015. Owner may require Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions
- B.5.5 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 Contractor.
- B.5.6 Unless contrary to federal law, Contractor shall certify that each landscape construction professional or landscape contracting business, as defined in ORS 671.520(1) or (2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.
- B.5.7 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.5.8 Contractor shall include, in all contracts and subcontracts for Project services, work, equipment or materials resulting from this Contract, the terms of this Section B.5 and shall require its contractors, subcontractors of whatever tier, consultants, and equipment and materials suppliers to comply with the terms of this Section B.5.
- B.5.9 Failure to comply with any or all of the requirements of this Section B.5. shall be a material breach of the Contract.
- B.7.2 Inspection of the Work will be made by Owner's Authorized Representative at its discretion. 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 Owner's Authorized Representative, shall be removed and replaced at 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. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. Contractor shall give Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that 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 Contractor and promptly delivered to Owner's Authorized Representative.
- B.7.4 As required by the Contract Documents, Work done or material used without inspection or testing by Owner's Authorized Representative may be ordered removed at Contractor's expense.
- B.7.5 If directed to do so any time before the Work is accepted, Contractor shall uncover portions of the completed Work for inspection. After inspection, 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 Owner's Authorized Representative, the uncovering and restoration shall be done at Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to 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 Owner's Authorized Representative's and Architect/Engineer's services and expenses, shall be at Contractor's expense.
- B.7.7 When the United States government participates in the cost of the Work, or 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 Contractor, through Owner's Authorized Representative.
- B.7.8 Upon Contractor's request, Owner's Authorized Representative or other duly authorized agent of Owner will inspect portions of the Work prior to job-site delivery. In such case, Contractor shall reimburse reasonable per diem, travel, and lodging expenses incurred by Owner's Authorized Representative, or other duly authorized agent of Owner, while making the inspection.

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 Owner and who shall represent Contractor on the site. Directions given to the superintendent by Owner's Authorized Representative shall be confirmed in writing to Contractor by the superintendent. Contractor shall employ a superintendent or an assistant to the superintendent who will perform as a coordinator for all Work. The superintendent shall be knowledgeable in mechanical and electrical systems and capable of reading, interpreting and coordinating Plans, Specifications, and Shop Drawings pertaining to such systems. The superintendent shall assist the Subcontractors in arranging space conditions to eliminate interference between the mechanical and electrical systems and other Work and shall supervise the preparation of coordination drawings documenting the spatial arrangements for such systems within restricted spaces. The superintendent shall assist in planning and expediting the proper sequence of delivery of mechanical and electrical equipment to the site.

B.7 INSPECTION

B.7.1 Owner's Authorized Representative shall have access to the Work at all times.

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 enforced 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 Owner's Authorized Representative access thereto.
- B.9.2 Contractor shall maintain all records necessary to clearly document Contractor's performance of the Work and any claims arising from or relating to Contractor's performance, including 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. Contractor shall maintain all fiscal records in accordance with generally accepted accounting principles. Contractor shall retain at its expense all such records for the longer of: (1) six (6) years after Final Completion; (2) if any part of the Contract is involved in litigation, until the litigation is resolved; or (3) such longer period as provided by law. Throughout the applicable retention period, Owner and its duly authorized representatives shall have access to all such records for the purpose of making audit, examination, excerpts and transcripts. Owner Owner

B.10 WAIVER

Failure of Owner to enforce any provision of this Contract shall not constitute a waiver or relinquishment by 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 Contractor all of the obligations and responsibilities which Contractor assumes toward 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 Contract 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 Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of 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, transfer, or delegation had occurred.
- B.11.4 No use of a Subcontractor or supplier shall relieve Contractor of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in the Contract, Contractor shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. Contractor shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between Contractor and any such Subcontractor or supplier.

- B.11.5 Contractor shall take the actions specified in ORS 200.045(2) and (3) to make good faith efforts to subcontract with disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that a service-disabled veteran owns or emerging small businesses under ORS 200.055. Contractor shall report to Owner on the results of the good faith efforts of compliance required in Section B.11.5 following award of all subcontracts. Contractor shall also submit monthly reports to Owner listing Work contracted to date with disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that a service-disabled veteran owns or emerging small businesses.
- B.11.6 Before commencing Work, and as necessary from time to time thereafter to maintain a current list with Owner and Architect, Contractor shall provide to Owner and Architect a list of all subcontractors and suppliers to be involved on the Project. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors and suppliers, nor shall it waive the right of the Owner to later object to or reject any proposed subcontractor or supplier. It shall be the responsibility of the Contractor to assure that all subcontractors are duly registered with the Oregon State Construction Contractors Board and have not been declared ineligible to work on a public contract.

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

B.15 GOVERNING LAW

The Contract shall be construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws, as well as the ordinances of Multnomah County and all other applicable local laws, rules or other regulations.

B.16 LITIGATION

Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively by bench trial within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively by bench trial within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by Owner of 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:

- (a) TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16; AND
- (b) TO WAIVER OF TRIAL BY JURY.

B.17 ALLOWANCES

B.17.1 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 Owner may direct.

B.17.2 Unless otherwise provided in the Contract Documents:

- (a) when finally reconciled, allowances shall cover the cost to 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 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 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 defined below:

- (a) "Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Work by 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 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 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 Contractor as required by the Contract Documents. The Architect/Engineer's review of Contractor's submittals shall not relieve 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 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 Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by 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, Contractor represents that 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 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 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 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. 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 Owner's Authorized Representative.

B.18.8 Contractor shall make those revisions to a Submittal reasonably requested by the Architect/Engineer and shall resubmit the revised Submittal in accordance with the requirements for Submittals in this Section B.18.

B.18.9 Contractor shall provide to Owner and to the Architect/Engineer written notice of those revisions to a Submittal or re-Submittal that were not requested by the Architect/Engineer. If such notice is not provided, the Architect/Engineer's approval of a Submittal or re-Submittal shall not apply to such revisions.

B.18.10 Review by Owner's Authorized Representative of Contractor's submittals will be limited to examination of an initial submittal and one resubmittal. Review by Owner's Authorized Representative of additional resubmittals will be made only with the consent of Owner after notification by Owner's Authorized Representative. Owner shall be entitled to deduct from the Contract Price amounts paid to Owner's Authorized

Representative or Owner's consultants for evaluation of such additional resubmittals.

shall be supplied by inference in same manner as they are in a note on Plans. Contractor shall provide all items listed and perform all operations required, in accordance with the Contract Documents, if and as modified in the Specifications.

B.19 SUBSTITUTIONS

B.19.1 Contractor may make Substitutions only with the consent of Owner, after evaluation by 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, Contractor represents that Contractor has personally investigated the proposed substitute product; represents that Contractor will provide the same warranty for the Substitution that Contractor would for the product originally specified 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.20.4 In the interest of brevity the Contract Documents frequently omit modifying words such as "all", "each", and "every" and articles such as "the", "a", and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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 this Contract within Owner's appropriation or limitation. If payment for Work under this Contract extends into Owner's next fiscal year, Owner's obligation to pay for such Work is subject to approval of future appropriations to fund this Contract by the Board of County Commissioners of Multnomah County, Oregon.

B.19.2 Each request for substitution approval shall include:

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.

- (a) Identity of product for which substitution is requested; Contractor shall include specification page and paragraph number.
- (b) Identity of substitution including complete product description, drawings, photographs, performance and test data, and all other information necessary for evaluation.
- (c) Quality comparison of proposed substitution with specified product.
- (d) Changes in other Work required because of substitution.
- (e) Effect on schedule.
- (f) Cost of proposed substitution compared with specified product.
- (g) Any required license fees or royalties.
- (h) Availability of maintenance service.
- (i) Source of replacement materials.

B.23 WRITTEN NOTICE

Written notice is served upon delivery in person to the individual to whom the notice was intended or upon deposit in the U.S. Mail, sent by registered or certified mail, or with courier service providing proof of deposit therewith and addressed to the Party's address identified in the Contract Documents.

B.19.3 Approval will be granted only when recommended by Owner's Authorized Representative, when approved by Owner, and when the specified product: cannot be delivered without Project delay; has been discontinued; has been replaced by a superior product; cannot be guaranteed as specified; will not perform properly; will not fit within designated space; does not comply with governing codes; or will clearly be in Owner's interest to replace.

B.24 SALVAGE; COMPOSTING; RECYCLED MATERIALS

B.24.1 To the extent the scope of the Work for this Contract requires demolition, Contractor must salvage or recycle construction and demolition debris, if feasible and cost-effective.

B.24.2 To the extent the scope of the Work for this Agreement requires lawn and landscape maintenance, the Contractor must compost or mulch yard waste material at an approved site, if feasible and cost-effective.

B.24.3 The Contractor, in performance of the Work, shall use recycled paper as defined in ORS 279A.010, recycled PETE products as defined in ORS 279A.010, and other recycled plastic resin products to the maximum extent economically feasible.

B.20 USE OF PLANS AND SPECIFICATIONS

B.20.1 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.20.2 Numbering or lettering of divisions, sections, and paragraphs in the Specifications are merely for identification and may not be consecutive. The divisions and sections included are listed in the table of contents. Contractor shall check its copies of the Specifications to be sure that the Specifications are complete.

B.20.3 The Specifications are of abbreviated or streamlined type and frequently include incomplete sentences. Words such as "shall", "shall be", "Contractor shall", and similar mandatory phrases

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, Contractor and every Subcontractor shall submit written certified statements to 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 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 Contractor or the Subcontractor that Contractor or Subcontractor has read the certified statement, that Contractor or Subcontractor knows the contents of the certified statement and that to 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 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.

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), Owner shall retain 25 percent of any amount earned by Contractor on this public works project until Contractor has filed the certified statements required by Section C.2.1. Owner shall pay to Contractor the amount retained under this section within 14 Days after 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), 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 Owner the certified statements required by Section C.2.1. Before paying any amount retained under this subsection, 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, Contractor shall pay the first-tier Subcontractor any amount retained under this section.

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, 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 Contractor or a Subcontractor incurred in the performance of the Contract.

C.3.1.3 Not permit any lien or claim to be filed or prosecuted against Owner or the state or any county, school district, municipality, municipal corporation, or any subdivision thereof, 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 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 Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

(b) Contractor represents and warrants that Contractor has 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.

(c) Contractor shall require each Subcontractor providing labor for the Project to:

(1) Demonstrate to Contractor that it has a Qualifying Employee Drug Testing Program for the Subcontractor's Subject Employees, and represent and warrant to 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 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 Contractor or a Subcontractor in connection with the Project as such claim becomes due, the proper officer that represents 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. If the funds due or to become due are insufficient to result in recovery by Owner of the full amount paid on a claim, Contractor shall pay any and all remaining sums due to Owner within ten (10) Business Days following Contractor's receipt of Owner's written demand for such payment. Paying a claim in this manner shall not relieve Contractor or Contractor's surety from obligation with respect to an unpaid claim. Owner reserves the right to make payments directly or by multiple-payee check and Contractor hereby consents to such direct and multiple-payee check payments. Upon Owner's request, Contractor shall furnish to Owner 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.

C.3.2.2 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 contract for a public improvement within thirty (30) Days after receiving payment from Owner or Contractor, Contractor or, as applicable, the first-tier Subcontractor shall owe 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 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 that 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 Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within ten (10) Days out of amounts Owner pays to Contractor under the Contract;
- (b) A clause that requires 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 Contractor;
- (c) 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:
 - (1) Notifies the Subcontractor in writing at least 45 Days before the date on which 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 Contractor, if 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 Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this Section. Contractor or first-tier Subcontractor is not obligated to pay an interest penalty if the only reason that Contractor or 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 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, copartnership, 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 Contractor agrees to pay for such services and all moneys and sums which 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

C.5.1 As a condition to Owner's performance hereunder, Contractor shall comply with ORS 279C.520, as amended from time to time.

C.5.2 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.

C.5.3 Contractor shall, and shall require each subcontractor and each lower-tier subcontractor to, give notice to its employees in writing, either at the time of hire or before commencement of work, or by posting a notice in a location frequented by its employees, of the number of hours per day and days per week that the employees may be required to work and that any worker employed by the 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: (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 which is readily available and freely visible to any or all workers employed on the Work; (2) Maintained such circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.

C.5.4 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.

C.5.4 This Section C.5 shall not excuse Contractor from completion of the Work within the time required under this Contract.

C.5.5 Compliance with ORS 279C.520 includes not prohibiting employees from discussing wages, salaries, benefits and other compensation, and compliance with the wage related prohibitions in ORS 652.220, violation of which is a breach entitling Owner to terminate the Contract for cause.

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 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.

On Materials..... 10%

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

Payments made to Contractor shall be complete compensation for Overhead, profit, and all costs that were incurred by Contractor or by other forces furnished by 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.1.2 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. Owner and the Architect/Engineer may order Minor Changes in the Work, meaning changes in the Work that are consistent with the intent of the Contract Documents and may not warrant an adjustment in the Contract Price or an extension of the Contract Time. Such orders shall be in writing and are binding on Owner and Contractor. Within the general scope of this Contract, Owner's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, also require changes consistent with this Section D.1. All Change Order Work shall be executed under the conditions of the Contract Documents. Change Order Work may include, but is 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, meaning changes that reduce the scope of the Work. Deductive changes 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 Section B.13 of these General Conditions (Owner's Right to Do Work) shall then apply.

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

- (a) *Unit pricing* may be utilized at 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 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 Section 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 Subcontractors' Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with Contractor's or Subcontractor's own forces:

On Labor..... 10%
On Equipment..... 10%

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 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 Contractor's cost of, or the Contract Time required for the performance of, any other part of the Work under this Contract, Contractor must submit a written request to 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 Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. 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 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. Owner's Authorized Representative and 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 Owner, whether in this claims process, in litigation, or in any dispute resolution process.

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

D.1.6 No request or Claim by 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. Contractor is notified that numerous changes may be required and that there will be no compensation made to 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 shortage or inadequacy of labor or equipment, as well as 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 Contractor or its Subcontractors; or
- (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; or
- (c) Do not impact activities on the accepted critical path schedule; or
- (d) Are associated with the reasonable interference of other contractors employed by 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 Owner, Owner's Authorized Representative, or any other employee or agent of Owner, or by separate contractor employed by Owner, or
- (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. Contractor shall notify Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed. 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 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 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, or

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

D.2.4 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 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, Contractor shall submit to 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 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.

- D.2.5 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 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 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 Owner's Authorized Representative, a complete and detailed description of the Claim ("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, Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to Owner's Authorized Representative. Owner's Authorized Representative and 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 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 Contractor; (2) inform 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 Owner's Authorized Representative's decision shall be final and binding on Contractor unless appealed by written notice to Owner within fifteen (15) Days of receipt of the decision. Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, Owner shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.

- D.3.5 The decision of Owner shall be final and binding unless Contractor delivers to Owner its requests for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of Owner's decision. The mediation process will be considered to have commenced as of the date 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 Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. The schedule and time for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. 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 Owner and Contractor. 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. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- D.3.7 Any Claim, dispute, or other matter in question arising out of or related to the Contract and not resolved by mediation shall be decided by arbitration with the Arbitration Service of Portland. The demand for arbitration shall be filed in writing with the other Party to the Contract. The Parties agree to arbitration before a single arbitrator for claims up to \$2,000,000, and before three arbitrators for claims in excess of that amount. Arbitration shall include, by consolidation or joinder or in any other manner, any additional persons or entities if such persons or entities are materially involved in a common issue of law or fact in dispute, and/or necessary for a full and final resolution of any disputes (Involved Parties). Contractor shall contractually bind its Subcontractors to be subject to this binding arbitration, but if an Involved Party will not consent to arbitration, Owner, in its sole discretion, has the option to elect consolidated litigation in court to resolve the dispute, subject to Section B.16. It is understood that the purpose of this provision is to allow Owner to determine the best means of achieving a single, consolidated proceeding that will minimize duplicative processes and minimize the risk of inconsistent results, in the following order of preference: (1) a consolidated arbitration of all Involved Parties, if possible, or (2) alternatively, at Owner's discretion, consolidated litigation in court of all Involved Parties. The agreements contained in Sections D.3.6 and D.3.7 shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

- D.3.8 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 Owner's Authorized Representative, Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is Contractor justified or allowed to cease Work without a written stop work order from Owner or Owner's Authorized Representative.

SECTION E PAYMENTS

E.1 SCHEDULE OF VALUES

Contractor shall submit, at least ten (10) Days prior to submission of its 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 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 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 Contractor. The J.5

shall commence thirty (30) Days after the receipt of invoice ("application for payment") from Contractor or fifteen (15) Days after the payment is approved by 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 Contract or fifteen (15) Days after the payment is approved by Owner, whichever is the earlier date, but the rate of interest shall not exceed twelve (12) 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 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 Contractor within seven (7) Days of being notified by 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 Owner and Contractor.

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

E.2.2 Contractor shall submit applications for payment with the following information clearly written on the front page:

- (a) "INVOICE", not Statement or any other title, or lack a title.
- (b) Name of the Project: ["insert project name here"].
- (c) Contract Number.
- (d) Named and addressed as the envelope address indicated above.
- (e) The beginning or original contract amount.
- (f) Any authorized changes in the original contract amount. Changes shall be indicated by listing the executed Change Orders and their respective amounts.
- (g) Partial invoices shall have a brief description of the work performed, and the beginning and ending dates which bracket the period during which that work was performed.
- (h) The total of all previous invoices, regardless of payment status. If a previous invoice has been properly submitted and payment has still not been received, the invoice should be marked as a line item, "Unpaid as of this Invoice," however, the amount will still be in the combined total of previous invoices.
- (i) An accurate and correct bottom-line figure indicating, "Amount Due This Invoice."
- (j) Invoices, which are properly submitted, will be stamped with the receiving stamp indicating the date it arrived. It is that date from which the limitation on time for Contract payments under the Section E.2.1, will be calculated.
- (k) Invoices failing to have the proper information as described above will be discarded and Contractor will be notified that a new invoice, with proper information must be resubmitted.

E.2.3 Contractor shall submit to 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.2.4 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) 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) Contractor shall name Owner as co-insured on the insurance policy covering the full value of the property while

in the care and custody of Contractor until it is installed. A certificate noting this coverage shall be issued to Owner.

agreed upon in writing), less retainage as provided in Section E.5;

- (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 Contractor.
 - (f) Within sixty (60) Days of the application for payment, 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.
 - (h) All required documentation must be submitted with the respective application for payment.
- E.2.5 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 Owner's opinion to protect Owner from any loss damage or claim which may result from Contractor's performance or failure to perform under this Contract or the failure of Contractor to make proper payment to any suppliers or subcontractors, including, but not limited to:
- (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 Owner is provided by Contractor;
 - (c) failure of 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 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.2.6 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 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 Owner pursuant to Section E.2.4, suitably stored off the site at a location

- (c) Subtract the aggregate of previous payments made by Owner; and
- (d) Subtract any amounts for which Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

- E.2.7 Contractor's applications for payment may not include requests for payment for portions of the Work for which Contractor does not intend to pay to a Subcontractor or material supplier.
- E.2.8 Contractor warrants to Owner that title to all Work covered by an application for payment will pass to Owner no later than the time of payment. Contractor further warrants that upon submittal of an application for payment all Work for which payments are received from Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of 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.2.9 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.2.10 Contractor shall submit as applications for payment AIA Document G702, Application and Certificate for payment and include AIA Document G702a, Continuation Sheet, or other equivalent or better forms approved by Owner.

Contractor shall prepare the Schedule of Values to show each major item of Work and each subcontracted item of Work as a line item cost, broken down to correspond to the Project construction schedule as detailed in Section H.2 of the General Conditions, on AIA Document G702a, Application and Certification of Payment, and Continuation Sheet. The Continuation Sheet is the minimum Schedule of Values breakdown.

Contractor shall confer with Owner prior to submitting the Application and Certification for Payment, Contractor shall complete and forward three (3) copies of the Application and Certification for Payment to Owner by the tenth (10th) Day of each month.

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

Contractor shall not be compensated for Work performed under this Contract by any party, person, or source other than Owner.

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 may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by Contractor, which application shall include

written approval of Contractor's surety; except that when the Work is 97-1/2 percent completed Owner may, at its discretion and without application by Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by Contractor, Owner shall respond in writing within a reasonable time.

E.5.1.2 In accordance with the provisions of ORS 279C.560 and any applicable administrative rules, unless Owner finds in writing that accepting a bond, security or other instrument described in options (a) or (c) below poses an extraordinary risk that is not typically associated with the bond, security or instrument, Owner will approve 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 Contractor. Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as Owner may require to protect its interests. To be permissible the bonds, securities and other instruments must be of a character approved by Owner's, 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.

(b) that retainage be deposited in an interest bearing account, established through the State Treasurer for state agencies, in a bank, savings bank, trust company or savings association for the benefit of Owner, with interest from such account accruing to Contractor; or

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

E.5.1.3 The retainage held by Owner shall be included in and paid to Contractor as part of the final payment of the Contract Price. 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 Contractor considers the Work

complete and Owner shall, within fifteen (15) Days after receiving the written notice, either accept the Work or notify Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this Section shall commence to run thirty (30) Days after the end of the 15-Day period.

E.5.1.4 In accordance with the provisions of ORS 279C.560, if Owner accepts bonds, securities or other instruments deposited as provided in paragraphs (a) and (c) of Section E.5.1.2, 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 Contractor in accordance with ORS 279C.570.

E.5.1.5 Except with Owner's Authorized Representative's prior approval, payments to Subcontractors and suppliers shall be subject to retainage of five percent (5%). Owner and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors and suppliers, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Section E.5 as apply to Owner's retainage from any progress payment due to Contractor. Provided, however, if in accordance with the provisions of ORS 279C.560 Contractor has deposited bonds, securities or other instruments or has elected to have Owner deposit accumulated retainage in an interest-bearing account, Contractor shall comply with the provisions of ORS 701.435 respecting the deposit of bonds, securities or other instruments by Subcontractors and suppliers and the sharing of interest earnings with Subcontractors and suppliers.

E.5.1.6 Whenever Contractor pays a Subcontractor in full, including the five percent (5%) retainage, and notifies Owner as provided in ORS 701.420, Owner shall, within 15 days after receiving the notice, reimburse Contractor, out of Owner's retainage withheld from Contractor or release funds from securities held in escrow in lieu of retainage, a sum equal to the retainage Contractor paid to the Subcontractor. Interest on the amount due Contractor at the rate of one percent (1%) per month shall commence 30 days after Owner receives notice of full payment to the Subcontractor.

E.5.2 As provided in Sections C.2.2 and C.2.3, additional retainage in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when 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, Contractor shall notify 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 Owner's Authorized Representative will inspect the Work, and if acceptable, submit to Owner a recommendation as to acceptance of the completed Work and the final estimate of the amount due 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 Owner and compliance by Contractor with provisions in Section K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, Owner shall pay to Contractor all monies due under the provisions of these Contract Documents.

E.6.2 If Owner's Authorized Representative determines that Work is not Substantially Complete, Owner's Authorized Representative will promptly notify Contractor in writing, giving reasons therefore. Contractor shall remedy Work deficiencies, and send a second notice of Substantial Completion to Owner's Authorized Representative. Owner's Authorized Representative will then reinspect Work. Owner's Authorized Representative will make one Substantial Completion inspection to determine any

Work deficiencies and one Final Completion inspection to ascertain that deficiencies have been satisfactorily completed. If Owner's Authorized Representative is required to make more than two inspections, Owner will compensate Owner's Authorized Representative and required consultants for such additional services, and will deduct such compensation amount from Contractor's final payment.

- E.6.3 Neither final payment nor any remaining retained percentage shall become due until Contractor submits to 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 Owner or 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 Owner, (3) a written statement that 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 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 Owner. If a Subcontractor refuses to furnish a release or waiver required by Owner, Contractor may furnish a bond satisfactory to Owner to indemnify Owner against such lien. If such lien remains unsatisfied after payments are made, Contractor shall refund to Owner all money that Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.
- E.6.4 Acceptance of final payment by 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.
- E.6.5 The making of final payment does not waive Owner's right to Contractor's performance of all Contractor obligations under this Contract nor Owner's right to enforce any provision of this Contract.

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 Owner's Authorized Representative. Contractor shall follow Owner's Authorized Representative's instructions regarding use of premises, if any.

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 Owner's Authorized Representative, workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to 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 Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.
- F.2.2 Contractor shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes and shall take all other reasonable precautions for the safety of all employees, personnel and other 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 erect and maintain safety barriers as needed to prevent public access to the Work area. 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 Owner's Authorized Representative. Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of Contractor. Contractor and Contractor's employees shall interact with other Project personnel and the public in a polite and respectful manner.

- F.2.3 Contractor shall not enter upon private property without 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 Contractor damages any property, Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall immediately and in writing, report to 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, Contractor, without special instruction or authorization from Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by Owner's Authorized Representative. Any compensation claimed by Contractor on account of emergency work shall be determined in accordance with Section D.
- F.2.7 **Hazard Communication.** Contractor shall strictly adhere to, coordinate with the County and document full compliance with the policies and procedures of the Oregon Occupational Safety and Health Code, OAR Chapter 437, Division 2, Hazard Communication. Contractor and all subcontractors and suppliers within Contractor's control shall notify County of all hazardous materials to which Contractor, County staff or the public may be exposed on site, all measures that will be taken to lessen the possibility of exposure and reduce risk of exposure, and all procedures to follow if exposed. Contractor shall provide the County with all Material Safety Data Sheets (MSDS) prior to delivery or introduction of hazardous materials on site.
- ### **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.3.3 Contractor shall submit a written request for cutting approval to Owner's Authorized Representative in advance of any cutting which affects the waterproof integrity of any weather-exposed or

moisture-resistant Work, visual qualities of any sight-exposed Work or the efficiency, operational life, maintenance, structural integrity or safety of any complete or existing Work. Contractor's request shall include the identification, location and description of affected Work, necessity for cutting or alteration, effect upon the Work, effect upon other contractors' Work, the extent of cutting, patching, alteration, or excavation, products proposed for use, the extent of required refinishing, and alternatives to cutting and patching, including cost, when applicable. Contractor shall obtain written permission of any affected separate contractor. Contractor shall include the date and time that the cutting Work is proposed to be performed.

F.3.4 Contractor shall maintain the adequate temporary support necessary to assure structural integrity of affected Work when cutting is performed. Contractor shall protect other portions of Work against damage and discoloration. When cutting concrete and other rigid materials, Contractor shall use a masonry saw or core drill. Contractor shall not over-cut at corners. Where patching occurs, Contractor shall refinish the entire surface to provide an even finish to match adjacent Work. Contractor shall refinish continuous surfaces to the nearest intersection.

F.4 CLEANING UP

F.4.1 Throughout the term of this Contract, Contractor shall keep the Project site and surrounding area free from accumulation of trash, debris, rubbish, refuse, and other waste materials (collectively "Waste Materials") resulting from operations under the Contract. At completion of the Work, Contractor shall, in accordance with the Contract, remove from the Project site and surrounding area: Waste Materials resulting from operations under the Contract, Contractor's tools, construction equipment, machinery (whether owned or leased); and surplus materials. Contractor shall clean the Work area and remove all Waste Materials and tools at least daily prior to leaving the job site and as needed to maintain a safe Work area. Prior to completion of the Work, from time to time as may be ordered by Owner, Contractor shall, at its own expense, clean up and remove all Waste Materials of any kind resulting from the Work. If, at any time, Contractor fails to comply with the requirements of this Section F.4.1 within twenty-four hours after written demand for compliance by Owner, the work may be done by others and the cost charged to Contractor and deducted from payment due Contractor.

F.4.2 Contractor shall maintain building entrances and walkways free of debris, stockpiled products, and vehicles. Contractor shall provide on-site containers for collection of waste, debris, and rubbish. Contractor shall remove any waste, debris, or surplus material from site and adjacent property and place in collection containers. Contractor shall periodically remove and legally dispose of container contents away from the site. In addition to debris-removal and cleaning specified in other sections, Contractor shall clean exposed-to-view surfaces. Contractor shall clean surfaces prior to painting and continue cleaning as needed until painting is complete. Contractor shall schedule cleaning so that resultant dust and contaminants will not fall on wet or newly-coated surfaces.

F.4.3 Contractor shall remove grease, adhesive, mastic, dust, dirt, stains, fingerprints, and other foreign substances from sight-exposed surfaces. Contractor shall clean glazing. Contractor shall polish glossy surfaces to a clear shine. Contractor shall vacuum-clean carpet and similar soft materials. Contractor shall clean equipment surfaces and remove excess lubricants. If a ventilating system is used during construction, Contractor shall replace disposable filters and clean permanent filters, ducts, blowers, and coils.

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 Owner and be performed by properly qualified personnel.

F.5.1.2 Contractor shall obtain 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 Owner, 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 Owner, such spills, releases, discharges, or leaks to 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 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 Contractor (reference Section 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. 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.

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 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 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 arising out of, resulting from, or otherwise related to the following, except to the extent any of the same is caused in whole or in part by the negligence of the Indemnitees or any of them: (a) any damage, injury, loss, expense, inconvenience or delay described in this Section G; (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 Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by Contractor, or any breach of any agreement, representation or warranty of Contractor contained in the Contract Documents or in any subcontract; (d) the acts or omissions of 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; 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.

G.1.2.1 Contractor is responsible for Contractor's own actions and omissions on Owner's property, as well as the actions and omissions of Contractor's subcontractors, sub-consultants and suppliers on Owner's property. This responsibility

includes responsibility for the safety of Contractor's employees, subcontractors, sub-consultants and suppliers. Contractor remains responsible for protecting the Work, for Project site safety and for the safety of the public pursuant to Section F.2.

G.1.2.2 In performing the Work, Contractor shall take reasonable care to avoid damage to underground structures or utilities. Owner agrees, subject to the limits and conditions of the Oregon Tort Claims Act (ORS 30.260 through 30.300), as applicable to a "local public body" as defined therein, and Article XI, Section 7 of the Oregon Constitution, to indemnify and hold Contractor harmless from and against all liability, claims, demands, losses, expenses, and costs including attorney fees and damage to or consequential loss from damage to any underground structures or utilities that were not shown on plans or other materials furnished to Contractor by Owner, unless the damage arises in whole or in part from Contractor's negligence, willful or wanton misconduct or intentional misconduct.

G.1.3 In claims against any person or entity indemnified under this Section G.1.2 by an employee of 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 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) 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 Contractor must provide payment and performance bond riders when there is a 10% or more increase in the Contract Price due to change orders or amendments.

G.2.3 Bond forms furnished by 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.2.4 Before starting Work, Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by ORS 279C.836, unless otherwise exempt under those provisions. Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board in compliance with ORS 279C.836 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

G.3.1 Primary Coverage: Insurance carried by Contractor under this Contract shall be the primary coverage and non-contributory with any other insurance and self-insurance, and Owner's insurance is excess and solely for damages or losses for which Owner is responsible. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

G.3.2 Workers' Compensation: 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. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 for each accident. Contractors who perform the Work

without the assistance or labor of any employee need not obtain such coverage if Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either Contractor or its Subcontractors.

G.3.3 Builder's Risk Insurance:

G.3.3.1 Builder's Risk: During the term of this Contract, for new construction, at Owner's election and cost, Contractor shall obtain insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The policy shall include as loss payees Owner, Contractor and its Subcontractors as their interests may appear.

G.3.4 Liability Insurance:

G.3.4.1 Commercial General Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, commercial general liability Insurance with coverages satisfactory to Owner, on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage, with an annual aggregate limit of \$2,000,000. Coverage may be written in combination with automobile liability insurance (with separate limits). The aggregate limit can be met with excess/umbrella liability coverage.

G.3.4.2 Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, automobile liability insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the commercial general liability insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.

G.3.4.3 Professional Liability: Before beginning work on any design-build components of the Project, Contractor shall provide to Owner certificates of insurance for commercial general liability in an amount not less than \$5,000,000, including product liability and completed operations, from the manufacturers of the design-build components, unless the design-build components are "off-the-shelf" products purchased from a supplier. All such certificates must comply with Owner's contract requirements.

For elements that require design or calculations performed by a professional engineer, Contractor shall obtain from the engineer, if the engineer is not an employee of Contractor, and provide to Owner, similar certificates of commercial general liability coverage. The engineer shall also provide Owner with proof of coverage for professional liability insurance covering any damages caused by any negligent error, omission, or any act for the Project, the Project drawings and project manual and all related work products of the engineer. The policy may be either a trade specific policy or a policy pertaining to the specific project. Professional liability insurance that the engineer provides must have a combined single limit of \$5,000,000 and combined multiple claimant's limit of \$5,000,000.

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the Services to be provided under this Contract, but Contractor's professional liability, and applicable insurance under the paragraph, is expressly limited only to the extent of: 1) Contractor's vicarious liability resulting from design-build elements of the Work required by the Contract Documents and performed by Contractor or its subcontractors; or 2) Contractor's design services necessary in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences

and procedures. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

Professional Liability Insurance is not required for this Contract.

Professional Liability Insurance is required at \$5,000,000 per claim or claims made limit for any single claimant.

Professional Liability Insurance is required per claim or claims made limit for multiple claimants.

G.3.4.4 Contractor's Pollution Liability: Contractor may be required to obtain, at Contractor's expense, and shall keep in effect during the term of the Contract contractor's pollution liability Insurance that covers bodily injury, property damage, defense costs and environmental remediation costs resulting from environmental contamination caused by Contractor's activities under the Contract. The policy or policies must be in a form and have coverages and only have exclusions that are satisfactory to Owner.

Pollution Insurance is not required for this Contract.

Pollution Insurance is required for this contract. The combined single limit per occurrence and aggregate limits may not be less than the following amounts:

\$5,000,000 per occurrence combined single limit
\$10,000,000 general aggregate

Contractor may obtain insurance for the limits described in this Section G.3.4.4 by using umbrella or excess policies.

G.3.4.5 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of 24 months or the maximum time period reasonably available in the marketplace if less than 24 months. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Final Completion. Continuous "claims made" coverage is acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the Effective Date of this Contract. This will be a condition of the final acceptance of Work or services and related warranty (if any).

G.3.5 Excess/Umbrella Insurance: A combination of primary and excess/umbrella insurance is acceptable to meet the minimum coverage requirements for commercial general liability and automobile liability insurance. In such case, the insurance certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is "The Excess/Umbrella policy is excess over primary Commercial General Liability and primary Automobile Liability Insurance."

G.3.6 Additional Insured: Owner, Owner's Authorized Representative, and Owner's departments, divisions, officers and employees must be listed as Additional Insureds by Endorsement on any General Liability Policy on a primary and non-contributory basis. Such coverage will specifically include products and completed operations coverage. The Certificate shall state the following in the description of operations: "Additional Insured Form (include form number) attached. This form is subject to policy terms, conditions and exclusions." A copy of the additional insured endorsement shall be attached to the certificate of insurance required by this Contract. If requested, complete copies of insurance policies shall be provided to Owner. **Certificate holder should be: Multnomah County Risk Management, 501 SE Hawthorne Blvd. Suite 125, Portland, OR 97214.**

G.3.7 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, Contractor shall furnish certificate(s) of insurance to Owner prior to execution of the

Contract. The certificate(s) will specify all of the Parties who are Additional Insureds or Loss Payees. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by Owner. Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$50,000 shall be approved by Owner in writing prior to execution of the Contract and is subject to Owner's approval. Contractor shall immediately notify Owner in writing of any change in insurance coverage. Contractor shall provide renewal Certificates of Insurance upon expiration of any of the required insurance coverages. Send Certificates of Insurance to Risk Management at insurance@multco.us. Additional originals, hard copies, or faxes are not necessary.

G.3.8. Additional Requirements: Coverage must be provided by an insurance company authorized to do business in Oregon or rated A- or better by Best's Insurance Rating. Contractor shall pay all deductibles and retentions. Contractor's coverage will be primary in the event of loss.

SECTION H SCHEDULE OF WORK

H.1 CONTRACT PERIOD

H.1.1 **TIME IS OF THE ESSENCE IN THIS CONTRACT.** All time limits stated in the Contract Documents are of the essence in performance of this Contract and 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. 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 Owner shall not waive any rights under the Contract by permitting 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 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 Owner does not constitute agreement by Owner, as to Contractor's sequencing, means, methods, or allocated Contract Time. Any positive difference between Contractor's scheduled completion and the Contract completion date is float owned by 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 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 schedule shall be bar-graph type with a horizontal time scale that identifies the Day of each week. Contractor shall allow space for notations and future revisions. Contractor shall include separate headings for each specification, section, title, and section number listed in the specification table of contents. Contractor shall show the complete sequence of construction by activity, including any work performed by Owner. Contractor shall show dates for beginning, and completion, of each major element of the Work and shall show lead times for products delivery. Contractor shall show delivery dates for products and tasks furnished by Owner.

H.3 PARTIAL OCCUPANCY OR USE

H.3.1 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 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 Contractor to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, 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

Contractor warrants to 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 Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to 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 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 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. At Owner's discretion, Contractor's reimbursement may be provided for costs of work performed by Owner by Owner's unilateral deductive change order, if sufficient retainage remains.

I.2 WARRANTY WORK

I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve 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 two years from the date of issuance of the written

notice of Final Completion by Owner except for latent defects which will be remedied by Contractor at any time they become apparent.

For defects found in the warranty period, 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 Contractor's obligations. For Urgent Repairs, Owner shall give notice to Contractor, who shall have twenty-four (24) hours to commence such repairs and shall pursue the Urgent Repairs with due diligence until completed. If Urgent Repairs are not commenced and completed in this time frame, 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.2.2 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 Owner and shall not take effect until affected Work has been accepted in writing by Owner's Authorized Representative. Contractor shall assign all manufacturers' warranties to Owner and all guarantees and warranties of goods supplied under this Contract shall be deemed to run to the benefit of Owner. Contractor shall provide Owner with all manufacturer's warranty documentation.

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 Contractor pursuant to this Section, as to the Work corrected. 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 Contractor nor accepted by 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 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 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 Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

I.2.6 If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, 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 Owner and/or Owner's Authorized Representative has the authority to suspend portions or all of the Work due to the following causes:

- (a) Failure of Contractor to correct unsafe conditions;
- (b) Failure of Contractor to carry out any provision of the Contract;
- (c) Failure of Contractor to carry out orders;
- (d) Conditions, in the opinion of Owner's Authorized Representative, which are unsuitable for performing the Work;
- (e) Time required to investigate differing site conditions; or
- (f) Any reason considered to be in the public interest.

J.1.2 Owner shall notify Contractor and 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, 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, Contractor or Owner may be due compensation by the other Party. If the suspension was required due to acts or omissions of Contractor, Owner may assess Contractor actual costs of the suspension including but not limited to Contract administration, remedial work by 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 Owner, Contractor shall be due compensation which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of Contractor or Owner, neither Party owes the other for the impact.

J.4 OWNER'S RIGHT TO TERMINATE CONTRACT

J.4.1 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 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, Contractor shall not be entitled to receive further payment until the Work is completed. If Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to 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 Owner will provide Contractor with seven (7) Days prior written notice of a termination for public convenience. After such notice, Contractor shall provide Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which Contractor received progress payment under Section E. Compensation for Work terminated by 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 Owner, Contractor shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, upon Owner's request, Contractor shall terminate all subcontracts or orders to the extent the subcontracts or orders relate to the Work terminated and, with the prior written approval of Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders. Furthermore, Contractor agrees to include in Contractor's subcontracts and major supplier contracts a provision that conditionally assigns to Owner the subcontracts and major supplier contracts, if Owner terminates the Contract and assumes the subcontracts and major supplier contracts.

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

SECTION K CONTRACT CLOSE OUT

K.1 RECORD DOCUMENTS

K.1.1 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 Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

K.1.2 Throughout the duration of Work, Contractor shall assure that Record Documents, including those prepared by

Subcontractors, are accurately maintained and up to date with progress of Work. Contractor shall maintain one complete set of Contract Documents as a work-set. Contractor shall include other written documents such as Product Data, Shop Drawings, Change Orders, supplemental instructions, and similar written modifications issued during course of the Work.

K.1.3 Contractor shall show actual conditions where installation varies substantially from Work shown on the Contract Documents. Contractor shall include any variations in installed products or in manufacturer's installation instructions. Contractor shall give particular attention to concealed Work that would be difficult or impossible to record at a later date. Contractor shall indicate field changes of dimensions and details, changes made by Change Order, and details not shown on original drawings. Contractor shall legibly mark specifications and any addenda with the name of manufacturer, trade name, catalog number, and supplier of each product actually installed.

K.1.4 Contractor shall mark whichever portion of the Contract Documents is most appropriate and most capable of accurately and clearly showing actual "field conditions". Where applicable, Contractor shall indicate Change Order numbers with each change. Contractor shall note related specification or product data revisions, where applicable. Upon Final Completion, Contractor shall transfer recorded information to three (3) additional sets of Contract Documents for submission to Owner. Contractor may retain one work-set for its records.

K.2 OPERATION AND MAINTENANCE MANUALS

K.2.1 As part of the Work, Contractor shall submit two completed operation and maintenance manuals ("O & M Manuals") for review by 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 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. 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 Owner's Authorized Representative.

K.2.2 Contractor shall submit O & M Manuals in standard 3-ring binders. Sheet size shall be 8-1/2 x 11 inches punched for binder. Contractor shall fold larger sheets to fit into binders. Drawings shall have reinforced edges to protect against tear-out and shall be bound in with text. Contractor shall fold larger drawings to match size of text sheets. Contractor shall provide fly-leaf for each separate product. Contractor shall identify each fly-leaf with labeled tabs. When necessary, Contractor shall split data into 2 or more volumes, and assemble data into related consistent groupings. At binder face and spine, Contractor shall identify each volume with typed or printed title "Operating and Maintenance Instructions", list Project title and Owner's Project number (if any), and identify general subject matter contained in the manual.

K.2.3 Contractor shall prepare O & M Manuals in the form of an instructional manual for use by Owner. Contractor shall neatly type the table of contents for each volume, arranged in systematic order. Contractor shall list the name of Contractor, the name of the responsible principal of Contractor, address, and telephone number. Contractor shall identify each product including name, address, and telephone number of Subcontractor, recommended maintenance Contractor, and local source for replacement parts. Contractor shall list product name and other identifying symbols as set forth in the Contract Documents. Contractor shall include only those product data sheets which are pertinent to specific product. Contractor shall annotate each sheet to clearly identify specific product or part installed. Contractor shall clearly identify data applicable to installation. Contractor shall delete references to inapplicable

data. Contractor shall supplement product data with drawings where necessary to clearly illustrate relations of component parts. Contractor shall include control and flow diagrams. Contractor shall provide written text where necessary to supplement product data and drawings. Contractor shall provide one original signed copy of bonds, warranties, and service and maintenance contracts for each volume of Owner's O & M Manual.

K.2.4. Contractor shall provide manufacturer's data for architectural materials and finishes including catalog number, size, and composition. Contractor shall list color & texture designations. Contractor shall state required reordering information, recommended cleaning materials and methods, cautions against detrimental cleaning materials & methods, and recommended cleaning & maintenance schedule. Contractor shall submit specified information for door hardware, acoustic panels, painting and finishing.

K.2.5. Contractor shall provide manufacturer's data for mechanical equipment and systems. Contractor shall include descriptions of unit and component parts including function, normal operating characteristics, and limiting conditions. Contractor shall provide performance curves, engineering data, and tests. Contractor shall list complete nomenclature and commercial number of replaceable parts. Contractor shall describe operating procedures including start-up, break-in routine, normal operating instructions, regulation, control, stopping, shut-down, and emergency instructions. Contractor shall state summer and winter operating instructions and special operating instructions. Contractor shall include maintenance procedures for routine operations, disassembly, repair, reassembly, alignment, adjusting, and checking. Contractor shall provide servicing and lubricating schedule, including recommended lubricants and trouble-shooting guide. Contractor shall attach manufacturer's printed operating and maintenance instructions. Contractor shall provide control systems operation sequences. Contractor shall incorporate into manual parts list, illustrations, assembly drawings, and diagrams necessary for maintenance, including life expectancy of parts subject to wear, items recommended to be stocked as spare parts, as-installed control systems diagrams, color-code legend if any, and valve tag number chart with location and function of each valve.

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

As a condition of final payment, Contractor shall submit to 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 Contractor's knowledge, there are no claims of any kind outstanding against the Project. Contractor shall indemnify, defend (with counsel of Owner's choice) and hold harmless Owner from all claims for labor and materials finished under this Contract. Contractor shall furnish complete and valid releases or waivers, satisfactory to 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 Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which Contractor shall finish all items on the punchlist accompanying the Certificate. Both completion notices must be signed by Contractor and Owner to be valid. Owner shall provide the final signature on the notices. The notices shall take effect on the date they are signed by Owner. If inspection, observation, and/or testing pursuant to Section B.3.3 of these General Conditions reveals any item, whether or not included on the Punch list, not sufficiently complete within the meaning of the term "Substantial Completion" or the term "Final Completion," as applicable, Contractor shall, upon notice from Owner, complete or correct such item, and any applicable warranty period for such item or associated systems shall be extended, effective with the

completion or correction, for the portion of the warranty period remaining when Owner discovered the incomplete or incorrect item.

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 Owner's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. Contractor may request that a punch list be prepared by 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, Contractor shall schedule with 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 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, Contractor shall notify 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

Contractor shall not be granted Final Completion or receive final payment if 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

Contractor shall be responsible for returning to Owner all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from Contractor to Owner. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion, if Owner does not take beneficial use of the facility and 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 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, provided such lists may not include all such agencies that have enacted ordinances or regulations relating to the environmental pollution and preservation of natural resources:

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 Services, Department of
- Consumer and Business Services, Department of
- Land Conservation and Development Commission
- Parks and Recreation, Department of
- State Fire Marshal
- State Lands, Division of
- Water Resources, Department of
- Oregon Occupational Safety and Health Division

L.4 LOCAL AGENCIES

- City Councils
- County Courts
- County Commissioner, Board of
- Design Commissions
- Historical Preservation Commissions
- Planning Commissions
- Fire Districts

EXHIBIT B

**MULTNOMAH COUNTY
GMP AMENDMENT TO CONTRACT**

THIS AMENDMENT IS BETWEEN:

OWNER: **Multnomah County,**
an Oregon political subdivision

And

**CONSTRUCTION MANAGER/
GENERAL CONTRACTOR ("the CM/GC"):**

The Project is: Downtown Behavioral Health Resource Center

Date of Original CM/GC Contract: _____, 201_

Date of this Amendment: _____, 201_

Owner and the CM/GC hereby amend the Contract as set forth below. Capitalized terms used but not defined herein shall have the meanings given in the Contract Documents. Except as amended hereby, the Contract remains in full force and effect.

1. **GMP.** The parties agree that the GMP for the Project is \$_____, consisting of the Preconstruction Fee, the Estimated Cost of the Work and the CM/GC Fee (stated as a fixed dollar lump sum amount), as follows:

Preconstruction Fee:	\$ _____
Estimated Cost of Work (“ECOW):	\$ _____
CM/GC Fee (___ % of ECOW):	\$ _____
Bonds, Insurance (CCIP), Builder’s Risk	\$ _____
GMP (Total of above categories):	\$ _____

For purposes of determining the GMP, the ECOW includes the CM/GC’s Contingency, the Fixed Cost for GC Work, and the costs of all components and systems required for a complete, fully functional facility.

2. **Basis of GMP.** The GMP is based on the GMP Supporting Documents attached as Attachments A-F (____ pages) including the Allowances, assumptions, exclusions, unit prices, and alternates designated therein.

3. **Plans and Specifications.** The Plans and Specifications for the Project are as listed in the GMP Supporting Documents. The CM/GC shall perform Construction Phase Services in accordance with the Plans and Specifications and the other Contract Documents.

4. **Substantial Completion Date.** Notwithstanding any provision in the GMP Supporting Documents to the contrary, the required date for Substantial Completion is: *[Select one of the following (insert new date if different Substantial Completion date has been agreed upon): the date stated in the Contract/ month xxx_____, 20XX_ .]*

5. **Tax Compliance Certification.** The individual signing on behalf of the CM/GC hereby certifies and swears under penalty of perjury that s/he is authorized to act on behalf of the CM/GC, s/he has authority and knowledge regarding the CM/GC’s payment of taxes, and to the best of her/his knowledge, the CM/GC is not in violation of any Oregon tax laws. For purposes of this certification, "Oregon tax laws" means a state tax imposed by ORS 401.792 to 401.816, ORS 320.005 to 320.150 and 403.200 to 403.250, and ORS chapters 118, 314, 316, 317, 318, 320, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620.

THIS AMENDMENT is executed in four original copies, of which one is to be delivered to the CM/GC and the remainder to Owner.

CM/GC:

Name of Firm: _____

Address: _____

CM/GC's Federal Tax I.D. #: _____

Construction Contractor's Board Registration No.: _____

Signature of Authorized Representative of CM/GC

Title _____

Date _____

OWNER:

Multnomah County, an Oregon political subdivision

Signature of Deborah Kafoury, Chair

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

Jenny M. Madkour, Multnomah County Attorney

Assistant County Attorney

Date _____

Attachment A Plans, Specifications, Supplementary Conditions of the Contract, on which the Guaranteed Maximum Price is based, pages ____ through ____ dated _____.

Attachment B Allowance items, pages ____ through ____ dated _____.

Attachment C Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages ____ through _____, dated _____.

Attachment D Completion schedule, pages ____ through _____, dated _____.

Attachment E Alternate prices, pages ____ through _____, dated _____.

Attachment F Unit prices, pages ____ through _____, dated _____.

Exhibit D

MULTNOMAH COUNTY SHERIFF'S OFFICE
501 SE HAWTHORNE BLVD., SUITE 350 • PORTLAND, OR 97214

Exemplary service for a safe, livable community

503 988-4300 PHONE
503 988-4500 TTY
www.sheriff-mcso.org



AUTHORIZATION OF RECORDS CHECK

I understand that a check of criminal history records will be made before any employment by or association with Multnomah County Sheriff's Office. I hereby authorize such check and agree that a record of convictions or pending criminal court action may exclude me from employment or association with the Multnomah County Sheriff's Office.

TYPE OR PRINT: Illegible or incomplete forms will not be processed. SUBMITTAL DATE: / /

NAME: / / DATE OF BIRTH: / /
LAST FIRST MIDDLE

OTHER NAMES USED: / /
LAST FIRST MIDDLE

CURRENT ADDRESS: / / /
CITY STATE ZIP

SOCIAL SECURITY #: PLACE OF BIRTH: /
CITY STATE

DRIVER'S LICENSE: / / / PHONE # /
STATE NUMBER EXPIRATION DATE

HAIR COLOR: EYE COLOR: HEIGHT: WEIGHT:

RACE: SEX (Circle one): MALE or FEMALE
A-Asian/ B-African American/ H- Latin American/ I-American Indian or Alaskan Indian/ W-Caucasian/ O- Other

CURRENT OCCUPATION/EMPLOYER & PHONE: /

PURPOSE FOR REQUESTING FACILITY ACCESS: /

I HEREBY AFFIRM THE ABOVE INFORMATION IS TRUE: Signature /

OFFICIAL USE ONLY

Step 1 AGENCY MANAGER/SUPERVISOR REQUESTING RECORDS CHECK (Must be completed): PRINT OR TYPE
NAME: UNIT/TITLE: FAX:

Step 2 PPDS LEDS NCIC CLASS CCH DMV SWIS
SIGNATURE & DPSST OF STAFF COMPLETING RECORDS CHECK / TITLE/UNIT / DATE

Step 3 APPROVED DENIED
SIGNATURE OF F.A.C./ FACILITY COMMANDER/UNIT MANAGER / TITLE/UNIT / DATE

EXHIBIT E.1

INSURANCE PROVISIONS PHASE 1: PRECONSTRUCTION PHASE SERVICES

INSURANCE PROVISIONS

Phase I Insurance Requirements

The table below reflects the minimum insurance required of CM/GC to provide services in Phase I. **REQUIRED INSURANCE.** CM/GC shall obtain the insurance specified in this Exhibit E.1 prior to performing Preconstruction Phase Services under this Contract, and shall maintain it in full force throughout the duration of Phase 1 of this Contract. Cost of liability insurance is a reimbursable expense.

Type of Insurance	Per Occurrence	Aggregate
Professional Liability	\$5,000,000	\$5,000,000
Commercial Gen Liability	\$1,000,000	\$2,000,000
Commercial Auto Liability	\$1,000,000	\$2,000,000
Workers Compensation	Required	

a) **WORKERS COMPENSATION.** All employers, including CM/GC, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless the employers meet the requirement for an exemption under ORS 656.126(2). CM/GC shall require and ensure that each of CM/GC's Subcontractors complies with these requirements.

b) **ADDITIONAL INSURED.**

The Commercial General Liability insurance required under this Contract must include Multnomah County and the officers, employees and agents of Multnomah County as Additional Insureds but only with respect to CM/GC's activities to be performed under this Contract. Coverage must be primary and non- contributory with any other insurance and self-insurance.

c) **"TAIL" COVERAGE.**

If any of the required professional liability insurance is on a "claims made" basis, CM/GC shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or

EXHIBIT E.1

before the effective date of this Contract, for a minimum of 24 months following the later of (i) CM/GC's completion and Multnomah County's acceptance of all Services required under this Contract, or (ii) The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if CM/GC elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then CM/GC shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. CM/GC shall provide to Multnomah County, upon Multnomah County's request, certification of the coverage required.

d) NOTICE OF CANCELLATION OR CHANGE.

CM/GC may not cause or allow the insurance required under this Contract to be cancelled or changed materially, may not exhaust or potentially exhaust the aggregate limits for the insurance policy or fail to renew insurance coverage without 30 days' written notice from CMGC or CM/GC's insurer(s) to Multnomah County. Any failure to comply with the foregoing provisions of this clause constitutes a material breach of this Contract and is grounds for Multnomah County to terminate this Contract immediately.

e) CERTIFICATE(S) OF INSURANCE.

CM/GC shall provide to Multnomah County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees).

EXHIBIT E.2

**INSURANCE PROVISIONS PHASE II: CONSTRUCTION PHASE
SERVICES**

Phase II Insurance Requirements

Final insurance requirements will be subject to negotiation between, and mutual agreement of the parties prior to entering Phase II of the Project.

Type of Insurance	Per Occurrence	Aggregate
Commercial Gen Liability	\$5,000,000	\$10,000,000
Commercial Auto Liability	\$5,000,000	\$5,000,000
Professional Liability	\$5,000,000	\$5,000,000
Contractor's Pollution Liability	\$5,000,000	\$10,000,000
Workers Compensation	Required	

- a) **EXCESS/UMBRELLA INSURANCE.** The CM/GC may obtain insurance for the limits described in this Exhibit E.2 by using excess or umbrella policies.
- b) **PROFESSIONAL LIABILITY.** The CM/GC will determine the necessary levels of Professional Liability insurance carried by its Subcontractors, depending on the risk of design work they are performing. The CM/GC will be responsible for insuring its Subcontractors provide proof of insurance and will be liable for its Subcontractors if any claims exceed the amount of Professional Liability Insurance carried by the Subcontractors.
- c) **ADDITIONAL INSURED.** (See SG-28) Multnomah County, as the Owner and the officers, employees, and agents of Multnomah County are Additional Insureds with respect to the CM/GC's activities to be performed under this Contract. Coverage must be primary and non-contributory with any other insurance and self-insurance.
- d) **CERTIFICATE(S) OF INSURANCE.** The CM/GC shall provide to Multnomah County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the

EXHIBIT E.2

policy as Additional Insureds (or Loss Payees).

e) NOTICE OF CANCELLATION OR CHANGE. The CM/GC may not cause or allow the insurance required under this Contract to be cancelled or changed materially, may not exhaust or potentially exhaust the aggregate limits for the insurance policy or fail to renew insurance coverage without 30 days' written notice from the CM/GC or the CM/GC's insurer(s) to the Owner. Any failure to comply with the reporting provisions of this clause constitutes a material breach of this Contract and is grounds for the Owner to terminate this Contract immediately.