

DESIGN-BUILD AGREEMENT

INTRODUCTION

THIS AGREEMENT IS BETWEEN:

Yamhill County, a political subdivision of the State of Oregon, acting by and through its Public Works Department

And

Haworth, Inc., an Oregon corporation

Name, Title: Vince Haworth, President

Address: 13500 SW Highway 99W

City, State Zip: McMinnville, OR 97128

Phone: (503) 472-2452

E-mail: vince@haworthinc.net

CCB# 33407

The Project is: Yamhill County Public Works Shop and Offices Building

DBC's Representative is:

Vince Haworth, President

PW's Representatives are:

John F. Phelan, Director

Russ Heath, Shop Supervisor

PW SHOP AND OFFICE BUILDING PROJECT DESIGN BUILD AGREEMENT

THIS AGREEMENT ("Design-Build Agreement") is between Yamhill County, a political subdivision of the State of Oregon, acting by and through its Public Works Department ("PW") and Haworth, Inc., an Oregon corporation located at 13500 SW Hwy 99W McMinnville, OR 97128, referred to as "DBC" in this Design-Build Agreement for the project known as the Public Works Shop and Office Building Project for which proposals were opened on April 11, 2017 (referred to in this Design-Build Agreement as the "Project")

WHEREAS, through the Solicitation Documents (as defined herein) PW has developed certain Design-Build Criteria, a Scope of Work (as defined herein), and other specifications for the Project which, in summary, requires design and construction of the following:

Design and construction of a 20,550 sq. ft. pre-engineered, framed building to house a mechanics' shop, restrooms, offices and storage.

PWs' minimum requirements for the Project have been further set forth in the Solicitation Documents and Conceptual Drawings. The Project is to include: all associated accessories including but not limited to flashing, trim and closures; doors and frames including hardware; framed openings designed to accept specified window furnishing and installing the specified windows; cabinetry, finishes; gutters and downspouts; installation of electrical service, lighting, telecommunications, water, gas and sewer service as indicated in the proposal documents; installation of plumbing fixtures, domestic water distribution piping and water heating systems; installation of gas heating equipment, fans ductwork and diffusers/grills and cooling systems as an alternate and controls for HVAC equipment; site work including clearing, grading, paving and installation of utilities.

WHEREAS, PW requires final completion of the Project and full and unrestricted use and occupation of the new building and grounds no later than 5:00 PM PST on the 365th day after Design Work Product acceptance and issuance of the Notice to Proceed (Construction).

WHEREAS, "DBC" was selected by PW as the successful proposer under the Solicitation Documents and DBC agrees to perform all design and construction work necessary for completion of the Project within the time specified and in accordance with PW's design and performance requirements and other terms and conditions of the Design-Build Agreement described herein; and

WHEREAS, the DBC is prepared to complete the Project and all such related Work (as defined herein) within the time allotted and under the terms and conditions set forth in this Design-Build Agreement;

NOW THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration described herein, PW and the DBC (each a "Party" and collectively the "Parties") agree as follows:

AGREEMENT

ARTICLE 1

GENERAL PROVISIONS

1.1 Incorporation of Recitals. The foregoing Recitals are incorporated herein as additional promises, representations and warranties of the Parties as though set forth fully herein.

1.2 Design-Build Agreement and Contract Documents. The agreement between the Parties pertaining to the Project consists of this Design-Build Agreement and the related documents listed in Article 15, which are incorporated herein by this reference (collectively, the "Contract Documents").

1.3 This Design-Build Agreement is intended to reflect the entire understanding of the Parties as to their respective rights and responsibilities concerning the Project. There are no understandings, agreements, representations or inducements, oral or written, not incorporated herein. The Design-Build Agreement shall become effective on the date on which every Party has signed this Design-Build Agreement (the "Effective Date").

1.4 Defined Terms. Unless defined in this Section 1.4 or elsewhere in the body of this Design-Build Agreement, capitalized terms shall have the meaning set forth in Section A.1 of the General Conditions, attached hereto as Exhibit A and incorporated herein by this reference.

1.4.1 "Allowances" shall mean the allowance amounts shown in the Supporting Documents, together with such

further allowances as may be developed by the Parties as the Project progresses.

1.4.2 "Authority" or "Authorities" means a government or quasi-governmental unit(s) or political subdivision(s) having jurisdiction over the Project, the Site, or the Work.

1.4.3 "Construction Documents" or "Construction Document" means the plans and specifications describing the requirements for construction of the Project, all of which must comply with the Design-Build Criteria and applicable Legal Requirements. Also referred to herein as the "Plans and Specifications".

1.4.4 "Construction Services" means all services identified in Section 2.3 of this Design-Build Agreement, as more fully described in the Design-Build Criteria and elsewhere in the Contract Documents.

1.4.5 "Consultants" mean individuals performing design and professional services for the DBC on the Project with the approval of PW.

1.4.6 "Contract Time" means the amount of time allowed under the Design-Build Agreement to complete the Work or any portion of the Work, calculated from the date of issuance of the Notice to Proceed (Design), and established in the Project Schedule (as defined in Section 2.1.3).

1.4.7 "DBC" is named above and means the "Contractor" wherever that term is used in the Design-Build Agreement. .

1.4.8 "DBC's Representative" or "DBC Representative" means the individual identified in writing by the DBC to act on behalf of the DBC for this Project, and to give and receive all notices and communications required under the Design-Build Agreement.

1.4.9 "Design" means the preliminary design development to be used as the basis for the Design Work Product to be provided by DBC to PW pursuant to Section 5.3 of this Design Build Agreement.

1.4.10 "Design Fee" is the amount stated in Attachment A of the Solicitation Documents and labeled as such, which is a maximum fee range and not a fixed fee.

1.4.11 "Design Phase" means the period of time between issuance of the Notice to Proceed (Design) and the Notice to Proceed (Construction) during which the DBC shall perform all Design Services.

1.4.12 "Design Services" means all services identified in Section 2.2 of this Design-Build Agreement, as more fully described in the Design-Build Criteria and elsewhere in the Contract Documents.

1.4.13 "Design Work Product" means the written submission to PW by DBC, including the Supporting Documents, in accordance with Section 5.3 of this Agreement.

1.4.14 "Design-Build Agreement" or "Agreement" means this document entitled, "Design-Build Agreement," including exhibits and material incorporated herein by reference.

1.4.15 "Design-Build Criteria" means the Project Specifications(as defined under 1.4.23) and including PW's Minimum Requirements as provided in the Solicitation Documents.

1.4.16 "Early Work" shall mean Construction Services authorized by Change Order that the Parties agree should be performed in advance of PW's final approval of the Design Work Product. Permissible Early Work shall be limited to: early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities; and any other advance work related to critical components of the Project for which performance prior to PW's final approval of the Design Work Product will materially affect the critical path schedule of the Project.

1.4.17 "Early Work Change Order" shall mean a Change Order executed by and between the Parties to authorize Early Work.

1.4.18 "General Conditions" means the General Conditions, as modified and included in this Design-Build Agreement as part of the Contract Documents. Any reference in the General Conditions to "State of Oregon" or "State" as PW of the Project or as the public contracting entity shall be deemed to refer to PW.

1.4.19 "General Contractor" means the DBC.

1.4.20 "Legal Requirements" or "Law" means all applicable Federal, State and local laws, codes, ordinances, rules, regulations, orders, permits, and decrees of any government or quasi-governmental unit or political subdivision having jurisdiction over the Project, the Site, or the Work.

1.4.21 "Notice to Proceed (Construction)" means PW's written directive to the DBC to proceed with Construction Services (other than those authorized by an Early Work Change Order).

1.4.22 "Notice to Proceed (Design)" means PW's written directive to the DBC to initiate the Design Phase and to perform those Design Services necessary to prepare and produce the Design Work Product

1.4.23 "PW" means Yamhill County, a political subdivision of the State of Oregon, acting by and through its Public Works Department.

1.4.24 RESERVED

1.4.25 "Project Site" or "Site" means the geographical dimensions of the real property within the boundaries of which the Work is to be performed; including designated contiguous staging areas, if any.

1.4.26 "Project Specifications" means the specifications which are included in the Design- Build Criteria, together with all specifications developed subsequently by DBC and approved by PW.

1.4.27 "Proposal" means the DBC's offer to perform Project Services in response to the RFP, which is attached hereto as Exhibit E and incorporated herein by this reference.

1.4.28 "Record Documents" mean the as-built Plans, Plans and Specifications, product data, samples, shop drawings, Change Orders, and other documents listed in the RFP.

1.4.29 "Request for Proposals" or "RFP" means the Solicitation Document or Solicitation Documents.

1.4.30 "Scope of Work" includes the Design-Build Criteria, and all Work reasonably inferable there from. When DBC is developing the Design Work Product and the Construction Documents, DBC shall conform the Design Work Product and the Construction Documents with the concepts outlined in the Scope of Work.

1.4.31 "Services" means all Work required to be performed under the Design-Build Agreement, portions of which are sometimes herein designated as either "Design Services" or "Construction Services."

1.4.32 "Supporting Documents" are defined in Section 5.3 of this Design-Build Agreement.

1.4.33 "Value Engineering" means alterations in design, materials, methods, finishes, or techniques jointly agreed upon by PW and the DBC regarding the design or construction of the Project and resulting in cost savings, improved efficiency, or sustainability, including any green energy technology requirements under ORS 279C.527 and 528..

ARTICLE 2

DESIGN AND CONSTRUCTION SERVICES

2.1 General Standards and Terms of Performance for the Design Services and Construction Services. Concerning the general standards and terms of performance for all Design Services identified in Section 2.2 of this Design-Build Agreement and all Construction Services identified in Section 2.3 of this Design-Build Agreement, the Parties agree as follows:

2.1.1 All Services constituting the practice of architecture shall be provided by a duly qualified and Oregon-licensed architect either employed by the DBC or hired by the DBC to act as a Consultant. All Services, if any, constituting the practice of engineering shall be provided by a duly-qualified and Oregon-registered engineer either employed by the DBC or hired by the DBC to act as a Consultant. Because the expertise of the DBC's designated architect and engineer was a material factor in PW's selection of the DBC, the DBC agrees that it shall not substitute its architect or engineer without PW's

prior written consent. The DBC also agrees to support PW's efforts to create a collaborative and cooperative team between the DBC, its design professionals and Consultants, and PW's Representative. The DBC, however, shall remain solely liable to PW for proper completion and timely delivery of all Design Services and Construction Services required under the Design-Build Agreement.

2.1.2 The DBC shall provide and perform all Design Services and all Construction Services in good faith and as expeditiously as is consistent with the highest professional skill, care and the orderly progress of the Work.

2.1.3 Within seven (7) Days of issuance of Notice to Proceed (Design), the DBC shall submit for PW's approval the detailed and finalized schedule for the performance of Design Services (the "Design Schedule"), which shall include Allowances for periods of time required for PW's review and for approval of submittals by the Authorities. Once PW has accepted it, the DBC shall not exceed the time limits established in the Design Schedule.

Within seven (7) Days after PW accepts the Design Schedule, the DBC shall submit for PW's review the detailed and finalized schedule for the performance of the Construction Services (the "Construction Schedule"). Once PW has accepted it, the DBC shall not exceed the time limits established in the Construction Schedule. (The Design and Construction Schedules are collectively referred to hereafter from time to time as the "Project Schedule"). Both the Design Schedule and the Construction Schedule shall automatically be incorporated into the Design-Build Agreement upon their acceptance by PW.

2.1.4 The DBC's Representative shall be reasonably available to PW's Representative for the duration of the Project, and shall have the expertise and experience required to supervise the Work. The DBC's Representative shall communicate regularly with PW's Representative, and shall have the authority to act on behalf of the DBC in all things relating to performance of the Design-Build Agreement. The DBC's Representative may not be replaced prior to Design-Build Agreement completion without PW's prior written consent.

2.1.5 Within seven (7) Days of execution of the Design-Build Agreement, PW and the DBC will hold a pre-design conference to review PW's requirements, the Design-Build Agreement, and conditions affecting the Project and the Work. The conference will also cover:

1. The roles of the personnel for PW, architects, engineers, Consultants and General Contractor,
2. The procedures to be followed for handling the administrative details, including applications for payment,
3. The procedures to be followed for resolving design questions, scheduling reviews, and communicating approvals,
4. The Project Schedule,
5. Confirmation of the scope of Services outlined in the Design-Build Agreement, and
6. Such other matters as the Parties may wish to address. The location for the pre-design conference will be at a place designated by PW.

2.1.6 Subsequent to the pre-design conference, the DBC shall meet with PW at least once each week for the duration of the Design-Build Agreement, to participate in progress meetings to discuss:

1. The Project Schedule,
2. Design and construction questions, concerns and comments,
3. Document submittal status,
4. Design, construction and as-built drawings and record documents, and
5. Any and all questions that arise.

2.1.7 At the progress meetings, the DBC shall be prepared to discuss the progress of the Work, including the following:

1. Whether the Work is proceeding according to the Project Schedule;
2. Whether any discrepancies, conflicts, or ambiguities exist among the Design-Build Agreement, or within any particular Contract Document, that require resolution;
3. All safety issues relating to the Project;
4. Any other matter that requires resolution to ensure timely and cost-effective completion of the Work. At least four working days prior to the scheduled meeting, the DBC shall submit to PW a comprehensive list of:
 - a. matters that require resolution,
 - b. matters that require PW's approval, and
 - c. proposed deviations from the Project Schedule, if any, together with reasons or causes therefor, and
 - d. proposed issues of value engineering or deviation from the Design-Build Criteria.

2.1.8 PW's review or approval of, and response to, any of the matters presented at PW/DBC meetings shall not relieve the DBC of its sole responsibility for design or of its obligation to complete the Work within the Contract Time and within the interim deadlines established in the Project Schedule, and shall not be construed as relieving the DBC of its complete and exclusive control over the means, methods, and sequences for Project work execution.

2.1.9 Notwithstanding any other term or provision in the Design-Build Agreement, DBC shall perform all functions and obligations ascribed to an Architect or Engineer by the Design-Build Agreement when such Architect or Engineer would be retained directly by PW, other than those functions and obligations which comprise the practice of architecture according to ORS Chapter 671, the practice of engineering according to ORS Chapter 672, or any other regulated services. If the DBC is not a licensed architect or a registered engineer, nothing herein or in any of the Contract Documents shall be deemed to require or allow DBC to provide or perform any regulated architecture, engineering or other regulated service. Also, nothing in this provision relieves the DBC of the obligation to retain appropriate Consultants to perform Design Services in connection with the Project.

2.2 Design Services. The DBC agrees to provide all Design Services necessary to enable the DBC to complete the Work in accordance with the Design-Build Agreement and the following standards, and in compliance with the following requirements:

2.2.1 The Construction Documents: The DBC shall provide such additional Specifications as may be necessary that comply with and implement the Design-Build Criteria and Legal Requirements, and shall provide Plans based on the approved Design Work Product, which shall set forth all details necessary for construction of the Project and ancillary structures, and location and installation of utilities on the Project Site, including but not limited to the architectural, structural, mechanical and electrical details. The DBC shall be deemed to have complete control over and charge of acts or omissions of the design professionals, Consultants, the construction contractors, subcontractors, and their agents or employees, and of all other persons performing portions of the Construction Services.

(a) The DBC shall provide PW with catalog cuts of all specified materials, product data, shop drawings, samples, manufacturers' test certifications, warranties and such other documentation as may be necessary to confirm compliance of the materials proposed for incorporation into the Project with the Design-Build Agreement and all Legal Requirements. Any deviation from the specified materials and/or manufacturers requires the submission to and approval by PW.

(b) After review and approval of the Design Work Product by PW and issuance of the Notice to Proceed (Construction) by PW, the DBC shall continue with preparation of the Construction Documents, including final Specifications for all Work, and shall incorporate into the Construction Documents the comments and any modifications or changes desired by PW, and any modifications required for compliance with all Legal Requirements and the Design-Build Criteria. The resulting final Construction

Document submittal is to be a complete, fully coordinated, integrated package, without any significant addenda or further clarifications required. All submittals shall be made in accordance with timelines established in the Project Schedule.

- (c) The DBC shall provide PW with an analysis of Legal Requirements, including a code analysis pertaining to the Project, by the date established in the Design Schedule.
- (d) The DBC shall provide PW with copies of Construction Documents as they are completed during construction, as well as the Record Documents following completion of construction.

2.2.2 The DBC shall provide professional services, which constitute the practice of architecture and engineering. Such services include the following:

- (a) In consultation with PW, and in compliance with the Design-Build Criteria, identification of applicable building codes, administrative, and permit processing requirements relevant to the Project.
- (b) In consultation with PW, evaluate the Design-Build Criteria and, with appropriate data and graphics, propose a series of improvements, if any, deemed necessary and desirable to satisfy the Design-Build Criteria, including space needs, budget, availability and adequacy of utilities, effect of codes and ordinances, safety and energy requirements, handicapped access to all spaces, etc.
- (c) Development of Design documents for PW's approval;
- (d) Submission to PW of the following documents, information and other data:
 - (1) A Design Schedule delineating the schedule for development, submittal, review, and approval of all phases of design development documents and the Construction Documents;
 - (2) Recommendations by Consultants (structural, mechanical, electrical) of the technical requirements necessary to implement the revised Project Specifications and Design-Build Criteria and to comply with all Laws;
 - (3) Preliminary plans, elevations, and other drawings necessary to describe the entire scope of the Project.
- (e) Preparation of Plans to fix and describe the size and character of the entire Project as to architectural, structural, mechanical, acoustical, voice data and security systems, and electrical systems, materials and appearances, and such other essentials as may be applicable to the Project or required by or for compliance with governing codes and ordinances and other Laws; and
- (f) Assurance that the Project complies with the Americans with Disabilities Act Accessibility Guidelines (ADAAG), latest version, as interpreted and required by PW or appropriate local jurisdiction during the permit process.

2.2.3 During development of the Design Work Product and prior to final approval of such documents, the DBC and PW will collaborate on identifying, evaluating and implementing Value Engineering options that will have the effect of making the Project more cost-effective, efficient, or sustainable for PW. Approval of the Design Work Product and finalization of Construction Documents shall not preclude further identification and implementation by the DBC and PW of additional Value Engineering options during construction.

2.3 Construction Services. Upon completion and approval of the Design Services applicable to each portion of the Project, the DBC shall perform the Construction Services, including installation of all utilities, described in the Design-Build Agreement and Contract Documents. The DBC shall provide all necessary Construction Services, permits, labor, equipment, tools, materials, and incidentals necessary to complete the Project and furnish to PW a complete, fully functional shop building consisting of a pre-engineered building, capable of being legally occupied and fully used for the purposes described herein, and installed utilities sufficient to support the shop building, including redundancy requirements. The DBC shall perform the Construction Services as follows:

2.3.1 The DBC shall have complete control over and charge of, and shall be solely responsible for,

construction means, methods, techniques, sequences and procedures, and for development and implementation of all safety procedures and a safety program in connection with the Work. The DBC shall be responsible for maintaining the Construction Schedule and for any failure to carry out the Work in accordance with the Design-Build Agreement and Contract Documents. The DBC shall be deemed to have complete control over and charge of acts or omissions of the design professionals, Consultants, the construction contractors, subcontractors, and their agents or employees, and of all other persons performing portions of the Construction Services.

- 2.3.2 The DBC's responsibility to provide the Construction Services under the Design-Build Agreement commences with the issuance of the Notice to Proceed (Construction) and terminates upon the DBC's completion of all obligations set forth in the Design-Build Agreement, including those post-construction responsibilities enumerated in the RFP and in Section K of the General Conditions.
- 2.3.2 The DBC shall supervise and administer all construction activities in performance of the Work.
- 2.3.3 The DBC's duties, responsibilities and scope of authority as set forth in the Design-Build Agreement cannot be modified except by written Change Order executed by the Parties hereto, and including all required approvals by the Yamhill County Board of Commissioners, if any.
- 2.3.4 Except as may be otherwise provided in the Design-Build Agreement and Contract Documents, PW shall direct all its communications to the DBC regarding Construction Services through the DBC's Representative.
- 2.3.5 At its own expense, the DBC shall correct Construction Services which do not conform to the Design-Build Criteria, Construction Documents, or Legal Requirements.
- 2.3.6 The DBC warrants to PW that materials and equipment incorporated in the Work, and all Work performed in furtherance of the Construction Services will be of good quality, free from faults and defects, and in conformance with the Design-Build Agreement and Contract Documents.
- 2.3.7 The DBC shall comply with all Laws relating to the Project, including but not limited to ORS 455.010 through ORS 455.897, as amended, and rules adopted pursuant to those statutes.
- 2.3.8 The DBC shall keep the Project Site free from accumulation of waste materials or rubbish caused by the DBC's operations. At the completion of the Construction Services, the DBC shall remove from and about the Project Site all of the DBC's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.
- 2.3.9 The DBC shall prepare Change Order proposals for PW's approval and execution, and shall obtain PW's written approval, in the form of a Change Order or PW's directive for any changes, whether minor or material, in the design or construction of the Project after the Construction Documents have been approved.
- 2.3.10 The Record Documents shall be delivered to PW on compact disk or thumb drive, and in paper format upon completion of the Construction Services and as a condition to final payment. The DBC acknowledges that it bears sole responsibility to PW for the accuracy of the information upon which the Record Documents are based.
- 2.3.11 In addition to constituting a "public improvement," the Project construction shall be deemed a "public works" project for the purposes of the prevailing wage rate laws set forth at ORS 279C.800 through 279C.870. As required by ORS 279C.830(1)(c), all workers on the Project shall be paid not less than the specified minimum hourly rate of wage. A copy of the Oregon Bureau of Labor's current listings applicable to the Project of the prevailing rates of wage for the areas where Work will be performed have been provided to the DBC and are incorporated herein by this reference; prevailing wage rates are also available on line at: "<http://www.oregon.gov/boli/WHD/PWR/Pages/index.aspx>". The DBC shall pay to the Commissioner of the Bureau of Labor and Industries the fee required by ORS 279C.800 to ORS 279C.870 in compliance with ORS 279C.825 as more particularly described in Section C of the General Conditions.

- 2.3.12 The DBC shall take reasonable precautions to ensure the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- 1) employees of PW, employees of the DBC, and other persons who may be present on the Project Site or in a position to be affected by construction activities;
 - 2) the Project Site, and all materials and equipment to be incorporated into the Project; and
 - 3) other property at or adjacent to the Project Site.

2.3.13 The DBC shall be liable for injury to persons and damage or loss to property caused by the negligence, gross negligence, recklessness, willful, intentional, or otherwise wrongful acts or omissions of the DBC, anyone directly or indirectly employed by the DBC, its Consultants, subcontractors, and agents, in performance of both Design and Construction Services under the Design-Build Agreement. This subparagraph shall in no way affect the applicability or diminish the scope of coverage of the bonds and insurance required under the General Conditions of this Design-Build Agreement, or diminish the scope or allocation of responsibility or the indemnity provided for under the General Conditions.

2.3.14 In addition to the requirements of the Supplemental General Conditions of this Design-Build Agreement, including the Performance Specifications, which are attached hereto as Exhibit B and incorporated herein by this reference, the DBC shall include language in all subcontracts that the "General Conditions and Supplemental General Conditions, including the Performance Specifications, to the extent not inconsistent with the Design-Build Agreement, shall apply to the work of the subcontractor."

2.3.15 Construction Documents. Upon notification of PW's approval of the Design Work Product and upon the issuance of the Notice to Proceed (Construction), the DBC, in compliance with the Design-Build Criteria and Legal Requirements, shall prepare the Construction Documents that:

- 1) Comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) latest version, as interpreted and required by the appropriate local jurisdiction and Authorities during the permit process;
- 2) Comply with all applicable Laws; and
- 3) Set forth the specific requirements for construction of the Project, including, but not limited to, descriptions of materials and equipment, methods of installation, standards of workmanship and, in the appropriate section of the Specifications, a complete listing of all warranties.

2.4 Construction Services Responsibility-Specific Construction Services. Upon issuance of the Notice to Proceed (Construction), the DBC shall:

- 2.4.1 Attend a pre-construction conference at a site to be determined by PW;
- 2.4.2 Provide general administration of the Construction Services;
- 2.4.3 Upon completion of the Construction Services, and at no additional cost to PW, update CAD drawings and submit the appropriate compact disks - compatible with most current AutoCAD version, along with one set of full size bond copy and 1 half- size bond set. Full size copy of drawings will be similar in size to the Construction Documents, but in no event larger than 30" x 40", reflecting significant changes in the Construction Services made during construction based on marked-up prints, drawings and other data obtained by the DBC; and
- 2.4.4 Perform all other Construction Services otherwise specified in this Design-Build Agreement.

2.5 Reimbursement for Extra Design Services or Work. In addition to Construction Services Change Order Work paid for pursuant to other provisions of this Design-Build Agreement, PW will reimburse the DBC for expenses associated with Design Services under the following circumstances, and no other:

- 2.5.1 PW requests reproduction of documents in excess of the number required herein, reimbursement to be limited to the DBC's reproduction costs only.

- 2.5.2 PW requests Design Services in excess of those identified or necessarily implied in the Design-Build Agreement and Contract Documents, but within the scope of the Solicitation Documents. Provided, however, PW and the DBC must execute a Change Order and obtain all necessary approvals before such Work shall be performed, or any payments made.

ARTICLE 3

RELATIONSHIP AND ROLES OF THE PARTIES

3.1 Independent Contractor. The DBC is an independent contractor under this Design-Build Agreement and not an officer, employee, or agent of PW as those terms are used in ORS 30.265. The DBC will furnish all of the materials, supplies, tools, equipment, labor and other services necessary for the design, construction and completion of the Project as described in the Design-Build Agreement and Contract Documents.

3.2 PW's Representative. PW's Representative is PW's exclusive representative to the DBC with respect to the Project and this Design-Build Agreement, unless PW designates another representative and notifies the DBC in writing of that designation. All communications from PW to the DBC will be issued or made through PW's Representative. PW's Representative shall have the authority to establish procedures, consistent with the Design-Build Agreement, to be followed by the DBC and to call periodic conferences to be attended by the DBC throughout the term of the Design-Build Agreement. PW's Representative shall have no authority to amend the Design-Build Agreement, however, outside the Change Order process that is set forth in Section C of the Supplemental General Conditions.

3.3 DBC's Representative. The DBC's Representative shall be the DBC's exclusive representative to PW with respect to the Project and this Design-Build Agreement, unless the DBC designates another representative and notifies PW in writing of that designation. Provided, the DBC's Representative shall not be replaced during the Project without the written permission of PW, which shall not be unreasonably withheld. All communications from the DBC to PW will be issued or made through the DBC's Representative. The DBC's Representative shall have the authority to execute Change Orders on behalf of the DBC.

3.4 DBC's Key Personnel. The DBC's personnel, as identified in their proposal, shall be considered unique, key personnel and shall not be replaced during the Project without the written permission of PW, which shall not be unreasonably withheld. If the DBC intends to substitute key personnel, a request must be given to PW at least 30 Days prior to the intended time of substitution. When PW has approved replacements, the DBC shall provide a transition period of at least 15 working days during which the original and replacement personnel shall be working on the Project concurrently.

3.5 The DBC's Consultants. The DBC's Consultants identified in DBC's proposal shall be considered unique, and shall not be replaced during the Project without the written permission of PW. If the DBC intends to substitute a Consultant, it must submit a request to PW at least 30 Days prior to the intended time of substitution, and include the identity of the proposed replacement. PW shall be deemed to have consented to the employment of such Consultant unless PW objects to the employment of such Consultant in writing within such 30-Day period; provided that if PW subsequently discovers information which leads PW to reasonably believe a Consultant selected by the DBC and approved by PW is unqualified to perform the Work, the DBC shall replace such Consultant upon the request of PW.

3.6 The DBC's Architect. If the DBC intends to substitute its architect, the DBC must submit a written request to PW at least 30 Days prior to the intended date of substitution. Upon PW's approval, the original and replacement architects shall work concurrently during a transition period of at least 10 working days. PW has sole discretion to approve subsequent replacements.

ARTICLE 4

DATE OF COMMENCEMENT AND COMPLETION OF THE DESIGN SERVICES AND THE CONSTRUCTION SERVICES

4.1 Commencement of Services. The DBC shall commence the Work contemplated by this Design-Build Agreement upon complete execution of this Design-Build Agreement and receipt of Notice to Proceed (Design).

4.2 Completion of Project. The DBC will complete the Design Work Product and Construction Documents (the permit

set) on or before the dates set therefor in the Project Schedule accepted by PW. The DBC shall achieve Substantial Completion and Final Completion of the Construction Services by no later than the dates set therefor in the Project Schedule accepted by PW.

4.3 Notices to Proceed. PW will issue its Notice to Proceed (Design) at time of Design-Build Agreement execution. PW will authorize the DBC's commencement of the Construction Services following the issuance of the Notice to Proceed (Construction) and after completion of Construction Documents sufficient to enable construction based thereon.

4.4 Time is of the Essence. All time limits stated in this Design-Build Agreement and the Contract Documents are of the essence. No provision of the Design-Build Agreement shall preclude recovery of actual damages for delay by the DBC. It is agreed that any delay in the completion of the Project would cause PW to suffer substantial damages, but that those damages would be extremely difficult and impracticable to precisely compute, and therefore the parties have agreed that a reasonable measure of such damages is the sum of \$500.00 per Day, which sum the DBC will pay to PW for each Day of delay in achieving Substantial Completion of the Project that is not excused by an extension of time granted by PW under the provisions of this Design-Build Agreement. This amount is estimated by PW and the DBC to be a reasonable approximation of PW's actual damages in the event of a delay, and is agreed to as liquidated damages and not as a penalty.

4.5 Time for Performance. This Design-Build Agreement shall take effect on the Effective Date and the DBC shall perform this Design-Build Agreement through Final Completion, in accordance with the Project Schedule.

ARTICLE 5

CONTRACT SUM

5.1 Contract Sum. If a Notice to Proceed (Construction) is issued, PW shall pay the DBC, as payment for the completed and accepted Work, the "Contract Sum" which shall equal the sum of the Design Fee, as defined below, plus the actual Cost of the Work, as defined in Article 7. Cost of the Work in excess of the Contract Sum shall be paid by the DBC without reimbursement from PW. Changes to the Contract Sum shall only be authorized by Change Order that includes any necessary approvals by PW, including any approvals by PW's board.

5.2 Design Fee. The Design Fee shall be payable to DBC on a cost reimbursement basis up to a maximum sum of Ninety-Six Thousand Eight Hundred Twelve Dollars and 00/100 (\$96,812.00). The Design Fee shall cover constructability review, value engineering, cost estimating, identification of cost effective energy conservation measures, including but not limited to green energy technologies, program refinement, Design development, and all other services necessary to develop the Design Work Product, as described in this Article 5. If the DBC's costs for provision of Design Services during the Design Phase exceed the maximum sum above, the DBC shall pay such additional cost without reimbursement. The DBC shall not be entitled to any added DBC Fee or markup upon the maximum sum above.. PW shall pay the actual Design Fee on a cost-reimbursement basis following receipt, review and approval of each application for payment up to the time the Notice to Proceed (Construction) is issued. No Design Fee or other related fees, costs, compensation or reimbursement for Design Services shall be payable to DBC after issuance of the Notice to Proceed (Construction).

5.3 The Design Work Product.

5.3.1 The DBC shall deliver to PW all Supporting Documents and any proposed adjustment in the Design Fee (collectively "the Design Work Product") at the completion of the Design Phase. If any actual subcontract offers are available at the completion of the Design Phase, the DBC shall include those subcontract offers in the Design Work Product.

5.3.2 As the Plans and Specifications may not be developed to the stage of biddable design documents at the time the Design Work Product is prepared, the DBC shall provide, in the Design Work Product, for further development of the Plans and Specifications by the design team that is consistent with this Design-Build Agreement and the Contract Documents and reasonably inferable therefrom. Such further development shall not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, may only be incorporated by Change Order.

- 5.3.3 The DBC shall include with the Design Work Product a written statement of its basis (the "Supporting Documents"), which shall include:
- (a) A list of the Plans and Specifications, including all addenda thereto and the conditions of this Design-Build Agreement, which were used in preparation of the Design Work Product.
 - (b) A list of Allowances and a statement of their basis.
 - (c) A list of the clarifications and assumptions made by the DBC in the preparation of the Design Work Product to supplement the information contained in the Plans and Specifications.
 - (d) Any proposed adjustment in the Design Fee or the Cost of the Work, including a statement of the estimated cost organized by trade categories, Allowances, DBC contingency (as defined below), and other items and the associated fees that comprise the Design Fee and Cost of the Work including the proposed adjustment.
 - (e) The date of Substantial Completion, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.
- 5.3.4 The DBC shall meet with PW to review the Design Work Product and the written statement of its basis. If PW discovers any inconsistencies or inaccuracies in the Design Work Product, PW shall promptly notify the DBC, who shall make appropriate adjustments to the Design Work Product, its basis or both.
- 5.3.5 Prior to PW's acceptance of the DBC's Design Work Product and the issuance of the Notice to Proceed (Construction), the DBC shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in any Early Work Change Order.
- 5.3.6 The Cost of the Work shall include the DBC's contingency, a sum established by PW and the DBC to cover additional development of Plans and Specifications and unforeseen costs which the Parties agree are properly reimbursable as Cost of the Work but which are not the basis for a Change Order("DBC's Contingency").
- 5.3.7 The DBC shall work with PW to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project.
- 5.3.8 Notwithstanding the level of detail represented in the Supporting Documents, the DBC shall represent and warrant, at the time that it submits the Design Work Product that the Cost of the Work includes the entire cost of all components and systems required for a complete, fully functional Project.
- 5.3.9 In developing the Design Work Product, the DBC shall include and identify such contingencies within the Cost of the Work as may be necessary to pay for unforeseen elements that are required for a complete, fully functional Project.

5.4 Failure to Furnish an Acceptable Design Work Product. If the DBC does not furnish a Design Work Product acceptable to PW, or if PW determines at any time in its sole discretion that the Parties will fail to reach a timely agreement on a Design Work Product acceptable to PW, PW may terminate this Design-Build Agreement without liability, and the DBC shall not receive additional compensation beyond the amount of the Design Fee previously approved under this Design-Build Agreement and sums due under any Early Work Change Order, through the date of termination. Termination under this provision shall proceed under Section J.5 of the General Conditions as a termination for PW's convenience. The DBC further agrees that PW shall not be liable for any damages whether actual, consequential or otherwise for termination of the Design-Build Agreement under this provision.

5.5 Renegotiation of Cost of the Work. If PW is satisfied with the non-monetary aspects of the Design Work Product, but believes that a deductive adjustment in the Cost of the Work is appropriate, PW shall so notify the DBC, and the DBC covenants to negotiate in good faith with PW to attempt to reach agreement on an appropriate reduction in the Cost of the Work. If such agreement is achieved, the parties shall execute a Change Order confirming the reduced Cost of the Work and PW shall thereupon issue a Notice to Proceed (Construction). If the parties cannot agree on an adjustment to the Cost of the Work, PW at its option may either issue a Notice to Proceed (Construction) based upon the unadjusted Cost of the Work or terminate this Design-Build Agreement in accordance with Section 5.4 above.

5.6 Acceptance of Design Work Product. Upon acceptance of the Design Work Product by PW, PW shall issue a Notice to Proceed (Construction).

ARTICLE 6

CHANGES IN THE WORK

6.1 Price Adjustments. Adjustments to the Cost of the Work due to changes in the Construction Services portion of the Work shall be determined in accordance with the Supplemental General Conditions.

6.2 Adjustments to Cost of the Work. Adjustments to the Cost of the Work after issuance of the Notice to Proceed (Construction) may be made only

(1) in the event of a change in the Scope of Work or

(2) as otherwise expressly provided in this Design-Build Agreement, and then only in accordance with the following procedure:

6.2.1 The DBC shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of the DBC, they result in a change to the Scope of Work so that it can be determined if an adjustment to the Cost of the Work is warranted.

6.2.2 Changes to the Cost of the Work shall be initiated by written notice by one party to the other ("Cost of the Work Change Request"). The DBC shall deliver any such Cost of the Work Change Request to PW's Authorized Representative within seven (7) calendar days after becoming aware of any change to the Scope of Work if, in the DBC's opinion, it constitutes grounds for adjustment of the Cost of the Work. Any Cost of the Work Change Request shall include a proposal as to the appropriate adjustment with respect to the change to the Scope of Work at issue.

6.2.3 The DBC shall submit its Cost of the Work Change Requests as soon as possible, and the DBC shall not be entitled to claim a Cost of the Work increase unless the DBC submitted a Cost of the Work Change Request to PW's Authorized Representative within the earlier of

(a) seven (7) days after the DBC 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 the DBC intends to claim a change to the Scope of Work; or

(c) in any event, prior to the DBC's signing of a Change Order for the change to the Scope of Work.

6.2.4 PW may, at any time, submit a Cost of the Work Change Request requesting a reduction of the Cost of the Work, which shall include PW's basis for such request, which may include, for example, reduction of the DBC's Contingency after further development of the Plans and Specifications that form the basis for the Design Work Product, or unused Allowances.

6.2.5 The DBC shall work with PW to reconcile all differences in the DBC's Cost of the Work Change Request within seven days from the date of submission of the Cost of the Work Change Request. "Reconciled" means that the DBC and PW have verified that their assumptions about the various categories are the same, and that identifies the reason for differences in the Cost of the Work Change Request and PW's position. The DBC shall submit the Reconciled Cost of the Work Change Request to PW, which submission shall be a condition to any DBC claim for a Cost of the Work increase.

6.2.6 If the Reconciled Cost of the Work Change Request is not acceptable to PW, the DBC agrees to work with PW to provide a Cost of the Work Change Request that is acceptable to PW.

6.2.7 The DBC agrees to make all records, calculations, drawings and similar items relating to any Cost of the Work Change Request available to PW and to allow PW access and opportunity to view such documents at DBC's offices. Upon PW's reasonable notice, the DBC shall deliver two (2) copies of

such documents to PW at any regular meeting or at the Site.

6.2.8 Cost of the Work increases, if any, shall not exceed the increased Cost of the Work arising from the change to the Scope of Work (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 Cost of the Work increase, plus or minus the Design Fee applicable (if any) to such change in the Cost of the Work.

6.2.9 Except as provided in this Article 6.2, adjustments to the Cost of the Work shall be reconciled in accordance with Section C.3.3 of the Supplemental General Conditions.

6.3 Execution by PW. Only the duly authorized personnel of PW have authority to execute Change Orders.

ARTICLE 7

COST OF THE WORK (To be reimbursed)

7.1 **Cost of the Work.** The term "Cost of the Work" shall mean the following costs. The Cost of the Work shall include only those items necessarily and reasonably incurred by the DBC in the proper performance of the Construction Services portion of the Work and specifically identified and agreed to below in this Design-Build Agreement, and only to the extent that they are directly related to the Project. Provided, however, unless approved in a Cost of Work Change Request pursuant to Article 6, or as otherwise provided herein in a writing signed by both parties, the Cost of the Work shall not exceed Two Million Ninety-One Thousand Seven Hundred Thirty Two Dollars and 00/100 (\$2,091,732.00)

7.2 **Labor Costs.** Wages of construction workers directly employed by the DBC to perform the Construction Services portion of the Work at the Site.

7.3 **Subcontract Costs.** No amount paid by or payable to any 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 PW.

7.4 Costs of Materials and Equipment Incorporated in the Work or Stored On Site.

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

7.4.2 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 PW at the completion of the Work or, at PW's option, shall be sold by the DBC. Any sale shall be commercially reasonable and the DBC shall provide accounting for such a sale within 15 Days of the transaction. Net amounts realized, if any, from such sales shall be credited to PW as a deduction from the Cost of the Work.

Costs of Miscellaneous Equipment and Other Items

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

7.4.4 Costs of removal of debris from the Site.

7.4.5 That portion of the travel and subsistence expenses of the DBC's personnel determined by PW to be

reasonable and necessary incurred while traveling in discharge of duties connected with the Work. DBC's main office staff travel shall not be reimbursed unless approved in advance by PW.

7.5 Other Costs.

- 7.5.1 Fees and assessments for the building permit and for other permits, licenses and inspections for which the DBC is required by the Design-Build Agreement and Contract Documents to pay.
- 7.5.2 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by PW.
- 7.5.3 Repairs to Damaged, Defective or Nonconforming Work. The Cost of the Work shall also include costs which are incurred by the DBC in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

ARTICLE 8

COSTS EXCLUDED FROM THE WORK (Not To Be Reimbursed)

8.1 Costs Excluded from Cost of Work. The following shall not be included in the Cost of the Work:

- 8.1.1 Salaries and other compensation of the DBC's personnel stationed at the DBC's principal office or offices other than the site office.
- 8.1.2 Expenses of the DBC's principal office and offices other than the site office.
- 8.1.3 Any overhead and general expenses, except as may be expressly included in Article 7.
- 8.1.4 The DBC's capital expenses, including interest on the DBC's capital employed for the Work.
- 8.1.5 Rental cost of machinery and equipment.
- 8.1.6 Any cost associated with the Project not specifically and expressly described herein.
- 8.1.7 Costs due to the fault or negligence of the DBC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- 8.1.8 The cost of correction of any repair work, nonconforming or defective work, or warranty work.
- 8.1.9 Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith.
- 8.1.10 Fines and penalties.
- 8.1.11 Except for Early Work, the cost of Design Phase Services.
- 8.1.12 Any costs in excess of the Contract Sum.

ARTICLE 9

DISCOUNTS, REBATES AND REFUNDS

9.1 Discounts, Rebates and Refunds. Cash discounts obtained on payments made by the DBC shall accrue to PW. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to PW, and the DBC shall make provisions so that they can be secured

9.2 Amounts Credited to PW. Amounts which accrue to PW in accordance with the provisions of Article 9.1 shall be credited to PW as a deduction from the Cost of the Work.

ARTICLE 10

INSURANCE PROVISIONS

During the term of the Design-Build Agreement the DBC is required, pursuant to Section G.3 of the General Conditions, to maintain certain insurance in full force, at its own expense, from companies licensed to do business in Oregon. All insurance required by this Article 10 and by Section G.3 of the General Conditions (as modified herein) shall be obtained from and maintained with companies with an A.M. Best rating of "A-" or better. Certain subsections of Section G.3 are modified as follows:

10.1 Employers' Liability. The DBC shall carry employers' liability insurance coverage with combined single limit per occurrence of not less than \$2,000,000, and annual aggregate limits of not less than \$4,000,000.

10.2 General Liability. The DBC shall secure Commercial General Liability insurance with a combined single limit of not less than \$2,000,000 each occurrence, \$4,000,000 annual aggregate, for bodily injury and property damage. It shall include personal injury coverage, Products and Completed Operations, and contractual liability coverage for the indemnity provided under the Design-Build Agreement.

10.3 Builder's All-Risk/Direct Risk of Physical Damage. During the term of the Design-Build Agreement, the DBC shall maintain in force, at its own expense, Builder's Risk insurance on an all risk/direct risk of physical damage form, including earthquake and flood, for an amount equal to the full amount payable under the Design-Build Agreement. Any deductible shall not exceed \$50,000 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 be endorsed/amended to include PW as an additional insured, as their interests may appear (the DBC shall provide PW with a copy of any endorsement to the policy to confirm this requirement.)

10.4 Automobile Liability. The DBC shall secure Automobile Liability insurance with a combined single limit of not less than \$1,000,000 aggregate, \$3,000,000 annual aggregate for bodily injury and property damage, including coverage for all owned, hired, or non-owned vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance.

10.5 Professional Liability/Errors & Omissions. The DBC shall provide PW with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by any negligent error, omission, or any act in furtherance of Design Services for the Project, whether performed by an architect or engineer under the Design-Build Agreement. The policy may be either a practice based policy or a policy pertaining to the specific Project; in either event, the policy must cover PW as "PW." Professional Liability insurance to be provided shall have a combined single limit of not less than \$2,000,000 per occurrence/\$4,000,000 annual aggregate. The DBC shall execute such documents and agreements and obtain such insurer consents, endorsements, and acknowledgments as shall be necessary to provide PW with direct access to the coverage afforded under each professional liability/errors & omissions policy covering the Design Services to be performed pursuant to the Design-Build Agreement.

10.6 Certificate of Insurance. Prior to the signature by PW to this Design Build Agreement, the DBC shall furnish to PW Certificates of Insurance as evidence of the insurance coverage required under the Design-Build Agreement. The certificate(s) shall provide that the insurance policies have been endorsed/amended so that the insurance company or companies shall give a 30-Day notice (without reservation) to PW if the applicable policy is canceled or materially changed, or if the aggregate limits have been reduced. The certificate(s) shall state specifically that the insurance is provided for this Project and Design-Build Agreement.

10.7 Additional Insureds. The Certificate of Insurance, except for Workers' Compensation and Professional Liability/Errors & Omissions, shall provide that the policies have been endorsed/amended so that PW and DBC are additional Insureds with respect to the DBC's Services/Work to be provided under the Design-Build Agreement. The DBC shall provide PW with copies of all policy endorsements/amendments confirming the status of PW and DBC as additional Insured, as required by the Design-Build Agreement.

10.8 Prohibited Terms. No insurance required by the Design-Build Agreement shall at any time (including without limitation any renewal thereof) contain any exclusion, exception or otherwise not provide or limit coverage because of any of the following:

(a). Except for professional liability diminishing limits, by which any coverage provided is limited, excluded, reduced or otherwise diminished by attorney fees or any other costs of defense or otherwise;

- (b). Deductibles of greater than \$1,000 per occurrence or claim or \$5,000 for any reason, unless authorized in writing in advance of policy issuance by PW.
- (c). The nature, type, quality or kind of labor, materials, equipment or services used, intended to be used or consumed or intended to be consumed in the design, construction, use, maintenance or operation of the project;
- (d). The nature, type, quality or kind of maintenance, operation or use of the project;
- (e). Modification of the "your work" or similar exclusion or exception which limits, excludes, diminishes or reduces coverage for work not performed (or failed to be performed) by the insured but by the insured's subcontractors, agents, independent contractors or consultants (of any tier);
- (f). Because the coverage is limited to time on loss or other time-related claims, it shall be the understanding and agreement that the insured shall be obligated to pay all sums under its policy and shall not be permitted to prorate or otherwise limit, exclude or reduce its obligations for any reason, including but not limited to the DBC's failure to renew or maintain insurance or the existence of other potential policies or insurers who may provide coverage or may be obligated to provide a defense or indemnity upon any claim;
- (g). Any contractual relationship between the DBC and PW.

10.9 PW-Contractor Relationship. Further, notwithstanding anything to the contrary, the DBC agrees that it has a special relationship with PW because, in part, of the design-build obligations of the DBC, and that PW is placing its potential monetary liability in the DBC's hands and has authorized the DBC to exercise independent judgment on behalf of PW. DBC shall exercise such own independent judgment to further PW's economic interests and PW shall, without limiting PW's claims, be entitled to commence, maintain and recover on not only contract but tort-based claims against the DBC for all aspects of the DBC's obligations hereunder.

10.10 Proof of Insurance. In addition to the certificates of insurance required by Section 10.6 above, DBC shall at all times and at no cost to PW provide entire copies of all insurance policies it is obligated to provide or procure hereunder to PW, including but not limited to all renewals and all policies on which PW is an additional insured. Providing certificates of insurance is not sufficient unless such certificates shall state explicitly that they control and override the terms of any policy referenced on the certificate and that PW need not review or reference the actual policy because the certificate certifies that the all coverages required by this contract are provided. Further, by receiving such copies, PW shall never be estopped or deemed to have waived any claim if such policies do not provide any of the required coverages.

10.11 Duration of Coverage. The DBC shall maintain all of the required insurance coverage's in full force and effect for one (1) year after final completion of the Project, or until the applicable statute of ultimate repose has expired, whichever is later.

10.12 Limitation Period. Notwithstanding any other provision in the Contract Documents or any provision of applicable law, the DBC expressly agrees and acknowledges that the limitation period applicable to a claim by or on behalf of PW against the DBC arising from or related to the Design-Build Agreement or the Project (including but not limited to any design or supervisory function) is as provided by ORS 12.135(1) in effect as of the execution of the Design-Build Agreement.

ARTICLE 11

OWNERSHIP AND USE OF WORK PRODUCT

11.1 Ownership of Design-Build Agreement Documents. Copies of the Contract Documents, Design and Construction documents, Plans, Specifications, reports, or other materials required elsewhere in the Design-Build Agreement to be delivered to PW, including without limitation materials identified as "instruments of service" in any agreement between the DBC and any of its Consultants or Subcontractors ("Work Product" or "Work Products") shall be the exclusive property of PW. PW and the DBC intend that such Work Product be deemed "work made for hire," for which PW shall be deemed the author. If for any reason such Work Products are not deemed "work made for hire," the DBC hereby irrevocably assigns to PW all of its right, title and interest in and to any and all of such Work Products, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or

doctrine. The DBC shall ensure and shall confirm to PW that the DBC's agreements with its Consultants, Subcontractors, employees and agents conform to the requirements of this section, and agrees further to execute such further documents and instruments as PW may reasonably request in order to fully vest such rights in PW. The DBC forever waives, for itself, its Consultants, Subcontractors, employees and agents, any and all rights relating to such Work Product, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use of subsequent modifications.

11.2 Right of Use. The DBC, despite other conditions of this Article, shall have the right to use such Work Product in its brochures or other literature that it may employ for its sales and in addition, unless specifically otherwise prohibited, the DBC may use standard line drawings, specifications and calculations on other unrelated projects.

ARTICLE 12

ACCOUNTING RECORDS

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

ARTICLE 13

PAYMENTS

13.1 Schedule of Payments. PW shall make payments to the DBC on the dates listed below:

- 13.1.1 **Design Services.** On the first (1st) day of each month following execution of the Design-Build Agreement, the DBC shall submit its application for payment to PW for Design Services performed during the prior month. Any application for payment submitted by the DBC after the first day of a calendar month shall be deemed received by PW on the first day of the following calendar month. PW will make payment of the amount rightfully due and payable to the DBC within 30 Days of receipt, review and approval of an application for payment. Provided, however, no retainage shall be withheld from payments for Design Services.
- 13.1.2 **Construction Services.** On the first (1st) day of each month following commencement of Construction Services, the DBC shall submit its application for payment to PW for Construction Services performed during the prior month in compliance with the terms and conditions of Section E of the General Conditions. Any application for payment submitted by the DBC after the first day of a calendar month shall be deemed received by PW on the first day of the following calendar month. PW will make payment of the amount rightfully due and payable to the DBC within 30 Days of receipt, review and approval of each application for payment.
- 13.1.3 **Retainage.** PW shall withhold retainage in the amount of 5% from all payments relating to Construction Services in accordance with the provisions of Section E.5 of the General Conditions.
- 13.1.4 **Draft Application for Payment.** At least ten (10) days prior to the first (1st) day of each month following commencement of Design Services, and thereafter throughout the Project until final payment, the DBC shall submit to PW's Representative a draft application for payment containing the DBC's best approximation of the contents and amount of the pay application which will follow. The final pay application will be submitted to PW for payment by the 10th of the month.

ARTICLE 14

TERMINATION OR SUSPENSION

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

14.1 PW's Termination.

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

14.1.2 Funding/Authority. PW may terminate the Design-Build Agreement, in whole or in part, immediately upon notice to the DBC, or at such later date as PW may establish in such notice, upon:

(a) PW's failure to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the DBC's Design Services or Construction Services; or

(b) Modification or interpretation of Federal or state laws, regulations or guidelines in such a way that either the Design Services or Construction Services performed under the Design-Build Agreement are prohibited or PW is prohibited from paying for such Design Services or Construction Services from the planned funding source.

(c) DBC may terminate the Design-Build Agreement for cause in the event PW has failed to make timely payments of amounts not in dispute in accordance with Section E of the General Conditions, following notice as provided below and 10 Days' opportunity to cure.

14.1.3 For Cause. PW may terminate the Design-Build Agreement, in whole or in part, immediately upon notice to the DBC, or at such later date as PW may establish in such notice, in the event:

(a) The DBC or its Consultants no longer hold any license or certificate that is required to perform the Work; or

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

14.1.4 PW reasonably believes that sufficient funds are anticipated to pay all amounts due hereunder and hereby covenants and agrees that it will use its best efforts to obtain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in the budget submitted for the purpose of obtaining funds and using its best efforts to have such budget approved. It is PW's intention to make all undisputed payments due hereunder if funds are legally available therefor and in that regard PW represents and warrants to the DBC that the Design-Build Agreement is important to PW's efficient and economic operation. If, despite the above, PW is not allotted sufficient funds for the next succeeding fiscal period by appropriation, appropriation limitation, grant, or other funds source lawfully available to it for such purposes to continue the Project and make payments hereunder, PW may terminate the Design-Build Agreement by notice to the DBC without penalty, effective at the end of the current fiscal period for which funds have been allocated, and if not so terminated PW will remain fully obligated for all undisputed amounts owing hereunder. Such termination shall not constitute an event of default under any other provision of the Design-Build Agreement, but PW shall be obligated to pay all undisputed charges incurred through the end of such fiscal period. PW shall give the DBC notice of such non-availability of funds within thirty (30) Days after it received notice of such non-availability.

14.2 DBC's Termination.

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

(a) Issuance of an order of a court or other public authority having jurisdiction; or

(b) An act of government, such as a declaration of national emergency, making material unavailable.

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

14.3 Payment upon termination. Payment upon termination shall be governed by Section E of the General Conditions. Notwithstanding the foregoing, neither Party shall be entitled to consequential damages, exemplary damages, compensation for lost opportunity, or lost profits. This provision does not impair or otherwise affect PW's entitlement to recover liquidated damages in accordance with Section 4.4 of this Agreement.

ARTICLE 15

ENUMERATION OF CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

The Contract Documents incorporated into this Design-Build Agreement are listed below and are intended to be complementary. In the case of an inconsistency between any Contract Documents or within a single Contract Document that is not clarified by Change Order, the better quality or greater quantity of Work shall be provided by the DBC in accordance with PW's or PW's Representative's written interpretation. However, in the event of conflicts or discrepancies among the Contract Documents that cannot be reconciled by the procedure in the preceding sentence, interpretation will be based on the descending order of precedence in which the Contract Documents are listed below:

Change Orders, with those of a later date having precedence over those of an earlier date.

Construction Change Directives (as defined in C.3 of the Supplemental General Conditions), with those of a later date having precedence over those of an earlier date.

This Design-Build Agreement, minus all exhibits and material incorporated herein by reference.

Construction Plans and Specifications to be prepared by DBC.

Permits and Orders issued by any Authority, government or quasi-governmental unit or political subdivision having jurisdiction over the Project, the Site, or the Work

Project Schedule

Solicitation Documents

General Conditions

Supplemental General Conditions and Performance Specifications

Remaining documents incorporated into the Design-Build Agreement by reference.

ARTICLE 16

PROJECT SCHEDULE

The Design Schedule and the Construction Schedule (collectively the "Project Schedule") shall establish the deadlines for performance and milestones for completion of Design and Construction Services under the Design-Build Agreement and shall generally be in conformance with the requirements of the RFP. The Project Schedule shall include a designation of those activities and events which comprise the "critical path" for the Project, in a form acceptable to PW's Representative.

ARTICLE 17

MISCELLANEOUS PROVISIONS

17.1 Governing Law; Jurisdiction; Venue. This Design-Build Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between PW and the DBC that arises from or relates to the Design-Build Agreement shall be brought and conducted solely and exclusively within the Circuit Court of the State of Oregon for Yamhill County; provided, however, if a Claim must be brought in a Federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for District of Oregon. In no event shall this Section be construed as a waiver by PW of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. DBC, by execution of this Design-Build Agreement, consents to the Personal Jurisdiction of such courts.

17.2 Notices. Except as otherwise expressly provided in the Design-Build Agreement, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, e-mail, or mailing the same, postage prepaid, to the DBC or PW at the addresses or numbers provided on the first page of this Design-Build Agreement or as either party may hereafter indicate pursuant to this Section. Any notice to PW must be given simultaneously to PW's Representative. Any notice so addressed and mailed shall be deemed to be given five (5) calendar days after the date of mailing. Any notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against PW, such facsimile transmission must be confirmed by telephone notice to PW's Representative. Any notice delivered by e-mail shall be deemed to be given when the sender receives electronic confirmation of delivery. To be effective against PW, such e-mail message must be confirmed by telephone notice to PW's Representative. Any notice by personal delivery shall be deemed to be given when actually delivered. Regular, day-to-day communications may be transmitted through one of the methods set forth above, in person, by e-mail, or by other similar electronic transmission.

17.3 Disclosure of Tax Identification Number. The DBC shall provide its Federal Tax ID number to PW. This number is required pursuant to ORS 305.385. The Tax Identification Number provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

17.4 Severability. The Parties agree that if any term or provision of the Design-Build Agreement is declared by a court of competent jurisdiction to be illegal, in conflict with any law, or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Design-Build Agreement did not contain the particular term or provision held to be invalid.

17.5 Waiver. The failure of PW to enforce any provision of the Design-Build Agreement shall not constitute a waiver by PW of that provision, or any other provision of the Design-Build Agreement.

17.6 Media Contacts; Confidentiality. The DBC shall provide no news release, press release, or any other statement to a member of the news media regarding this Project, without PW's prior written authorization. Furthermore, except in the case where PW specifically authorizes disclosure of PW's confidential information in writing, the DBC shall maintain the confidentiality of PW's information pertaining to the Project, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the DBC from establishing a claim or defense in an adjudicatory proceeding. The DBC shall require all of its Subcontractors to maintain a similar level of confidentiality of PW's information.

17.7 Conflict of Interest. Except with PW's prior written consent, the DBC shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise the DBC's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

17.8 Merger Clause. THE DESIGN-BUILD AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED THEREIN. THE TERMS OF THE DESIGN-BUILD AGREEMENT CANNOT BE WAIVED, ALTERED, MODIFIED, SUPPLEMENTED, OR AMENDED, IN ANY MANNER WHATSOEVER, EXCEPT BY WRITTEN INSTRUMENT SIGNED BY THE PARTIES AND CONTAINING ALL REQUIRED PW APPROVALS. ANY SUCH WAIVER, ALTERATION, MODIFICATION, SUPPLEMENTATION, OR AMENDMENT, 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, REGARDING THE DESIGN-BUILD AGREEMENT EXCEPT AS CONTAINED, INCORPORATED OR

REFERENCED THEREIN. DBC, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, SECTION 00500 — 27 HEREBY ACKNOWLEDGES THAT IT HAS READ THE DESIGN-BUILD AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. THE DESIGN-BUILD AGREEMENT MAY BE EXECUTED IN SEVERAL COUNTERPARTS, EACH OF WHICH SHALL BE AN ORIGINAL, AND ALL OF WHICH SHALL CONSTITUTE BUT ONE AND THE SAME INSTRUMENT.

THIS DESIGN-BUILD AGREEMENT is executed in three originals, of which one is to be delivered to the DBC, one to PW and one to PWs Representative. By signature on this Design-Build Agreement, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of the DBC and has authority and knowledge regarding the payment of taxes, and that the DBC is, to the best of the undersigned's knowledge, 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 and ORS chapters 118, 314, 316, 317, 318, 320, 321 and 323; and 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

17.9 Attorney Fees and Costs. In the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement, each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any nonjudicial action.

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

Contractor
By: [Signature]
Title: President
Date: 7/28/17
Federal ID #: 93-1078712

Public Works
By: [Signature]
John F. Phelan
Title: Director
Date: _____

By: [Signature]
Board of Commissioners
Title: Chair
Date: 8-10-17

By: [Signature]
Board of Commissioners
Title: _____
Date: 8-10-17

By: [Signature]
Board of Commissioners
Title: Commissioner
Date: 8-10-2017

By: [Signature]
Approved as to Form
Title: County Counsel
Date: 8/11/17

Accepted by Yamhill County Board of Commissioners on 8-10-17 by Board Order # 17-318

EXHIBIT A

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
GENERAL CONDITIONS OF THE CONTRACT

TABLE OF SECTIONS

SECTION A **GENERAL PROVISIONS**

A.1	DEFINITION OF TERMS
A.2	SCOPE OF WORK
A.3	INTERPRETATION OF CONTRACT DOCUMENTS
A.4	EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE
A.5	INDEPENDENT CONTRACTOR STATUS
A.6	RETIREMENT SYSTEM STATUS AND TAXES
A.7	GOVERNMENT EMPLOYMENT STATUS

SECTION B **ADMINISTRATION OF THE CONTRACT**

B.1	PW'S ADMINISTRATION OF THE CONTRACT
B.2	CONTRACTOR'S MEANS AND METHODS
B.3	MATERIALS AND WORKMANSHIP
B.4	PERMITS
B.5	COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS
B.6	SUPERINTENDENCE
B.7	INSPECTION
B.8	SEVERABILITY
B.9	ACCESS TO RECORDS
B.10	WAIVER
B.11	SUBCONTRACTS AND ASSIGNMENT
B.12	SUCCESSORS IN INTEREST
B.13	PW'S RIGHT TO DO WORK
B.14	OTHER CONTRACTS
B.15	GOVERNING LAW
B.16	LITIGATION
B.17	ALLOWANCES
B.18	SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES
B.19	SUBSTITUTIONS
B.20	USE OF PLANS AND SPECIFICATIONS
B.21	FUNDS AVAILABLE AND AUTHORIZED
B.22	NO THIRD PARTY BENEFICIARIES

1
B.O. 17319
Exhibit "A"

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

SECTION C **WAGES AND LABOR**

- C.1 MINIMUM WAGES RATES ON PUBLIC WORKS
- C.2 PAYROLL CERTIFICATION AND FEE REQUIREMENTS
- C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS
- C.4 PAYMENT FOR MEDICAL CARE
- C.5 HOURS OF LABOR

SECTION D **CHANGES IN THE WORK**

- D.1 CHANGES IN THE WORK
- D.2 DELAYS
- D.3 CLAIMS REVIEW PROCESS

SECTION E **PAYMENTS**

- E.1 SCHEDULE OF VALUES
- E.2 APPLICATIONS FOR PAYMENT
- E.3 PAYROLL CERTIFICATION REQUIREMENT
- E.4 DUAL PAYMENT SOURCES
- E.5 RETAINAGE
- E.6 FINAL PAYMENT

SECTION F **JOB SITE CONDITIONS**

- F.1 USE OF PREMISES
- F.2 PROTECTION OF WORKERS, PROPERTY AND THE PUBLIC
- F.3 CUTTING AND PATCHING
- F.4 CLEANING UP
- F.5 ENVIRONMENTAL CONTAMINATION
- F.6 ENVIRONMENTAL CLEAN-UP
- F.7 FORCE MAJEURE

SECTION G **INDEMNITY, BONDING AND INSURANCE**

- G.1 RESPONSIBILITY FOR DAMAGES/INDEMNITY
- G.2 PERFORMANCE AND PAYMENT SECURITY
- G.3 INSURANCE

SECTION H **SCHEDULE OF WORK**

- H.1 CONTRACT PERIOD
- H.2 SCHEDULE
- H.3 PARTIAL OCCUPANCY OR USE

SECTION I **CORRECTION OF WORK**

- I.1 CORRECTIONS OF WORK BEFORE FINAL PAYMENT
- I.2 WARRANTY WORK

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

- J.1 PW'S RIGHT TO SUSPEND THE WORK
- J.2 CONTRACTOR'S RESPONSIBILITIES
- J.3 COMPENSATION FOR SUSPENSION

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

- J.4 PW'S RIGHT TO TERMINATE CONTRACT
- J.5 TERMINATION FOR CONVENIENCE
- J.6 ACTION UPON TERMINATION

SECTION K *CONTRACT CLOSE-OUT*

- K.1 RECORD DOCUMENTS
- K.2 OPERATION AND MAINTENANCE MANUALS
- K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS
- K.4 COMPLETION NOTICES
- K.5 TRAINING
- K.6 EXTRA MATERIALS
- K.7 ENVIRONMENTAL CLEAN-UP
- K.8 CERTIFICATE OF OCCUPANCY
- K.9 OTHER CONTRACTOR RESPONSIBILITIES
- K.10 SURVIVAL

SECTION L *LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC*

- L.1 LAWS TO BE OBSERVED
 - L.2 FEDERAL AGENCIES
 - L.3 STATE AGENCIES
 - L.4 LOCAL AGENCIES
-

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

SECTION A GENERAL PROVISIONS

A.1 DEFINITION OF TERMS

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

A.1.1 ARCHITECT/ENGINEER, means the Person appointed by DBC to make drawings and specifications and, to provide contract administration of the Work contemplated by the Design-Build Agreement to the extent provided herein or by supplemental instruction of PW (under which PW may delegate responsibilities of PW's Authorized Representative to the Architect/Engineer), in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted thereunder.

A.1.2 CHANGE ORDER, means a written order issued by PW's Authorized Representative to the DBC requiring a change in the Project or Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.1 in administering the Design-Build Agreement, including PW's written change directives as well as changes reflected in a writing executed by the parties to this Design-Build Agreement and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work.

A.1.3 CLAIM, means a demand or assertion by DBC seeking, as a matter of right, adjustment or interpretation of Design-Build Agreement terms, payment of money, extension of Contract Time or other relief pursuant to Section D.3.

A.1.4 CONTRACT, means the written Design-Build Agreement between PW and the Contractor comprised of the Contract Documents which describe the Work to be done and the obligations between the parties.

A.1.5 CONTRACT DOCUMENTS, means the Solicitation Document and addenda thereto The Design Build Agreement, General Conditions, Supplemental General Conditions and Performance Specifications, if any, the accepted Offer, Plans, Specifications, amendments and Change Orders.

A.1.6 CONTRACT PERIOD, as set forth in the Contract Documents, means the total period of time beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

A.1.7 CONTRACT PRICE, means the total of the awarded Offer amount, as increased or decreased by the price of approved alternates and Change Orders and shall be equal to the Contract Sum as defined in the Design-Build Agreement.

A.1.8 CONTRACT TIME, means any incremental period of time allowed under the Design-Build Agreement to complete any portion of the Work as reflected in the Project Schedule.

A.1.9 DAY or DAYS, are calendar days, including weekdays, weekends and holidays, unless otherwise specified.

A.1.10 DBC means the Person awarded the Design-Build Agreement for the Work contemplated.

A.1.11 DIRECT COSTS, means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance; bond premiums, rental cost of equipment, and machinery required for execution of the Project and the Work; and the additional costs of field personnel directly attributable to the Project and the Work.

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

A.1.12 FINAL COMPLETION, means the final completion of all requirements under the Design-Build Agreement, including Contract Closeout as described in Section K but excluding Warranty Work as described in Section I.2, and the final payment and release of all retainage, if any, released.

A.1.13 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 Design-Build Agreement who is asserting Force Majeure.

A.1.14 NOTICE TO PROCEED, means the official written notice from PW stating that the DBC is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, DBC shall not be authorized to proceed with the Project or the Work until all initial Design-Build Agreement requirements, including the Design Build Agreement, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to PW in a suitable form.

A.1.15 OFFER, means a bid in connection with an invitation to bid and a proposal in connection with a request for proposals.

A.1.16 OFFEROR, means a bidder in connection with an invitation to bid and a proposer in connection with a request for proposals.

A.1.17 OVERHEAD, means those items which may be included in the DBC's markup (general and administrative expense and profit) but shall not include items such as wages or salary of personnel working at the job site (including supervisory personnel above the level of foreman such as superintendents and project managers stationed at the job site), expenses of the DBC's temporary job site office (including personnel staffing that office), or other items that are charged as Direct Cost of the Work.

A.1.18 PW, means Yamhill County, acting by and through its Public Works Department.

A.1.19 PW'S AUTHORIZED REPRESENTATIVE, means those individuals identified in writing by PW to act on behalf of PW for this Project. PW may elect, by written notice to DBC, to delegate certain duties of PW'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.

A.1.20 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.

A.1.21 PLANS, means the drawings which show the location, type, dimensions, and details of the Project or Work to be done under the Design-Build Agreement.

A.1.22 PUNCHLIST, means the list of Project related Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Project pursuant to the Design-Build Agreement.

A.1.23 RECORD DOCUMENT, means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer to PW, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Work and services performed on the Project.

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

A.1.24 SOLICITATION DOCUMENT, or SOLICITATION DOCUMENTS means the Yamhill County Public Works Shop and office Project Request for Proposals, issued March 8, 2017

A.1.25 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 Design-Build Agreement. 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 Design-Build Agreement.

A.1.26 SUBCONTRACTOR, means a Person having a direct contract with the DBC, or another Subcontractor, to perform one or more items of the Work.

A.1.27 SUBSTANTIAL COMPLETION, means the date when PW accepts in writing the construction, of the Project or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.4.2.

A.1.28 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 PW's Authorized Representative. The decision of PW's Authorized Representative is final.

A.1.29 SUPPLEMENTAL GENERAL CONDITIONS AND PERFORMANCE SPECIFICATIONS, means those conditions that remove from, add to, or modify these General Conditions. Supplemental General Conditions and Performance Specifications may be included in the Solicitation Document or may be a separate attachment to the Design-Build Agreement.

A.1.30 WORK, means the furnishing of all materials, equipment, labor, transportation, services and incidentals necessary to successfully complete the Project and any individual item or the entire Design-Build Agreement and the carrying out of duties and obligations imposed by the Design-Build Agreement and Contract Documents.

A.2 SCOPE OF WORK

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

A.3 INTERPRETATION OF DESIGN-BUILD AGREEMENT AND CONTRACT DOCUMENTS

A.3.1 Unless otherwise specifically defined in the Design-Build Agreement, words which have well-known technical meanings or construction industry meanings are used in the Design-Build Agreement and Contract Documents in accordance with such recognized meanings. The Design-Build Agreement and 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 Design-Build Agreement and any of the Contract Documents, interpretations will be based on order of precedence provided in

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

Article 15 of this Design-Build Agreement.

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

A.3.3 If the DBC finds discrepancies in, or omissions from the Design-Build Agreement and Contract Documents, or if the DBC is in doubt as to their meaning, the DBC shall at once notify PW or PW's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Design-Build Agreement and Contract Documents will be decided by PW's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to DBC's requests for interpretation of the Design-Build Agreement and Contract Documents will be made in writing by PW's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of PW's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Design-Build Agreement and Contract Documents. DBC shall not proceed without direction in writing from PW's Authorized Representative (or Architect/Engineer).

A.3.4 References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE

A.4.1 It is understood that the DBC, before submitting an Offer, has made a careful examination of the Design-Build Agreement and 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. PW will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the DBC as a result of the DBC'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 PW, or with the Architect/Engineer either before or after the execution of this Design-Build Agreement, 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, DBC shall have the duty to make inquiry of PW and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Design-Build Agreement requirements.

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

A.4.4 If the DBC believes that additional cost or Contract Time is involved because of clarifications or instructions issued by PW's Authorized Representative (or Architect/Engineer) in response to the DBC's notices or requests for information, the DBC must submit a written request to PW's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Design-Build Agreement as soon as possible, but no later than thirty (30) Days after receipt by DBC of the clarifications or instructions issued. If the DBC does not concur with the decision of

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

PW's Authorized Representative regarding time and cost impacts of the clarifications or instructions, the DBC may proceed to file a Claim under Section D.3, Claims Review Process. If the DBC fails to perform the obligations of Sections A.4.1 to A.4.3, the DBC shall pay such costs and damages to PW as would have been avoided if the DBC had performed such obligations.

A.5 INDEPENDENT CONTRACTOR STATUS

The service or services to be performed under this Design-Build Agreement are those of an independent contractor. DBC represents and warrants that it is not an officer, employee or agent of PW as those terms are used in ORS 670.600.

A.6 RETIREMENT SYSTEM STATUS AND TAXES

DBC 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 Design-Build Agreement. Contractor will not be eligible for any benefits from these Design-Build Agreement payments of Federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual. Unless the DBC is subject to backup withholding, PW will not withhold from such payments any amount(s) to cover DBC's federal or state tax obligations.

A.7 GOVERNMENT EMPLOYMENT STATUS

A.7.1 If this payment is to be charged against Federal Funds, DBC represents and warrants that it is not currently employed by the Federal Government. This does not preclude the DBC from holding another contract with the Federal Government.

A.7.2 DBC represents and warrants that DBC is not an employee of PW for purposes of performing Work under this Design-Build Agreement.

SECTION B ADMINISTRATION OF THE DESIGN-BUILD AGREEMENT

B.1 PW'S ADMINISTRATION OF THE DESIGN-BUILD AGREEMENT

B.1.1 PW's Authorized Representative will provide administration of the Design-Build Agreement 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. PW's Authorized Representative will act on behalf of PW to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Design-Build Agreement. In performing these tasks, PW's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.

B.1.2 PW's Authorized Representative will visit the Site at intervals appropriate to the stage of the DBC's operations

- (1) to become generally familiar with and to keep PW informed about the progress and quality of the portion of the Work completed,
- (2) to endeavor to guard PW 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. PW's Authorized Representative will not make exhaustive or continuous on- site inspections to check the quality or quantity of the Work. PW's

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

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, PW and DBC shall endeavor to communicate with each other through PW's Authorized Representative or designee about matters arising out of or relating to the Design-Build Agreement. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the DBC. Communications by and with separate contractors shall be through PW's Authorized Representative.

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

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

B.2.1 The DBC shall supervise and direct the Work, using the DBC's best skill and attention. The DBC 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 Design-Build Agreement. If the Design-Build Agreement gives specific instructions concerning construction means, methods, techniques, sequences or procedures, the DBC 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 in compliance with the Design-Build Agreement, including the Contract Documents.

B.2.2 The DBC is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the Project, including those caused by authorized changes, which may affect cost, schedule, or quality.

B.2.3 The DBC is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the Project. The DBC shall enforce strict discipline and good order among DBC's employees and other persons carrying out the Work. The DBC shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.

B.3 MATERIALS AND WORKMANSHIP

B.3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Design-Build Agreement, DBC shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.

B.3.2 The DBC is responsible to perform the Work as required by the Design-Build Agreement and the Contract Documents. Defective Work shall be corrected at the DBC's expense.

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

B.3.4 DBC shall furnish adequate facilities, as required, for PW's Authorized Representative to have safe

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.

B.3.5 The DBC shall furnish Samples of materials for testing by PW's Authorized Representative and include the cost of the Samples in the Contract Price.

B.4 PERMITS

DBC shall obtain and pay for all necessary permits and licenses, except for those specifically excluded in the Supplemental General Conditions, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental Work, etc., as required for the Project. DBC shall be responsible for all violations of the law, in connection with the Project construction or caused by obstructing streets, sidewalks or otherwise. DBC shall give all requisite notices to public authorities. The DBC shall secure all permits and license necessary to complete the Work, and PW will pay the actual costs of the permits and licenses. The DBC shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, PW and its departments, divisions, members and employees.

B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS

B.5.1 DBC shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Design-Build Agreement. Failure to comply with such requirements shall constitute a breach of this Design-Build Agreement and shall be grounds for Design-Build Agreement termination. Without limiting the generality of the foregoing, DBC expressly agrees to comply with the following as applicable:

1. Title VI and VII of Civil Rights Act of 1964, as amended;
2. Section 503 and 504 of the Rehabilitation Act of 1973, as amended;
3. the Health Insurance Portability and Accountability Act of 1996;
4. the Americans with Disabilities Act of 1990, as amended;
5. ORS Chapter 659A; as amended
6. all regulations and administrative rules established pursuant to the foregoing laws; and all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. PW's performance under the Design-Build Agreement is conditioned upon DBC's compliance with the provisions of ORS Chapter 279C, which are incorporated by reference herein.

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

(a) DBC shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.035, in the awarding of subcontracts ORS 279A.110. In addition, in the hiring for performance of Work under this Design-Build Agreement, neither DBC, any subcontractor or person working on behalf of DBC, shall, by reason of race, religion, age, gender, color, creed or physical handicap, or sex or sexual orientation discriminate against a person who is qualified and available to perform Work or services to which employment relates.

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

B.5.3 Unless contrary to federal law, DBC shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS Chapter 701 under this Design-Build Agreement unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.021

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

to 701.114 at the time they submit their bids to the DBC.

B.5.4 Unless contrary to federal law, DBC shall certify that each landscape contractor, as defined in ORS Chapter 671, performing Work under this Design-Build Agreement holds a valid landscape contractor's license issued pursuant to ORS 671.590.

B.5.5 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952- 001-0100. You may obtain copies of the rules by calling the center at (503)232-1987 or at <http://digsafelyoregon.com>.

B.5.6 DBC certifies it shall comply with all applicable Public Contract laws to include ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and 279C.580(3) and (4), and as otherwise provided in the Solicitation Documents. ORS 2789B.200 through 279B.240 and ORS 279C.500 through 279C.545 and ORS 279C.580(3) and (4) are incorporated into this Design-Build Agreement by reference.

B.5.7 Failure to comply with any or all of the requirements of B.5.1 through B.5.6 shall be a breach of Design-Build Agreement and constitute grounds for Design-Build Agreement termination. Damages or costs resulting from such noncompliance shall be the responsibility of DBC.

B.6 SUPERINTENDENT

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

B.7 INSPECTION

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

B.7.2 Inspection of the Work will be made by PW's Authorized Representative at its discretion. PW's Authorized Representative will have authority to reject Work that does not conform to the Design-Build Agreement and Contract Documents. Any Work found to be not in conformance with the Design-Build Agreement and Contract Documents, in the discretion of PW's Authorized Representative, shall be removed and replaced at the DBC's expense.

B.7.3 DBC shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Design-Build Agreement and Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. Unless otherwise provided, the DBC shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to PW, or with the appropriate public authority.

(a) Inspections and approvals. Tests or inspections conducted pursuant to the Design-Build Agreement and Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The DBC shall give PW's Authorized Representative timely notice of when and where tests and inspections are to be made so that PW's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Agreement and Contract Documents, be secured by the DBC and promptly delivered to PW's Authorized Representative.

B.7.4 As required by the Design-Build Agreement and Contract Documents, Work done or material used without inspection or testing by PW's Authorized Representative may be ordered removed at the DBC's expense.

B.7.5 If directed to do so any time before the Work is accepted, the DBC shall uncover portions of the

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

completed Work for inspection. After inspection, the DBC shall restore such portions of Work to the standard required by the Design-Build Agreement. If the Work uncovered is unacceptable or was done without sufficient notice to PW's Authorized Representative, the uncovering and restoration shall be done at the DBC's expense. If the Work uncovered is acceptable and was done with sufficient notice to PW'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 Design-Build Agreement and Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for PW's Authorized Representative's and Architect/Engineer's services and expenses, shall be at the DBC's expense.

B.8 SEVERABILITY

If any provision of this Design-Build Agreement 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 Design-Build Agreement did not contain the particular provision held to be invalid.

B.9 ACCESS TO RECORDS

B.9.1 DBC shall keep, at all times on the work site, one record copy of the complete Design-Build Agreement and 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 PW's Authorized Representative access thereto.

B.9.2 DBC shall retain and PW and its duly authorized representatives shall have access to, for a period not less than six (6) years, all Record Documents, financial and accounting records, and other books, documents, papers and records of DBC which are pertinent to the Design-Build Agreement including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Design-Build Agreement is involved in litigation, DBC shall retain all such records until all litigation is resolved. PW and/or its agents shall continue to be provided full access to the records during litigation.

B.10 WAIVER

Failure of PW to enforce any provision of this Design-Build Agreement shall not constitute a waiver or relinquishment by PW of the right to such performance in the future nor of the right to enforce any other provision of this Design-Build Agreement.

B.11 SUBCONTRACTS AND ASSIGNMENT

B.11.1 DBC shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the DBC all of the obligations and responsibilities which the DBC assumes toward PW 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 DBC and approved in writing by PW. Where appropriate, DBC shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.

B.11.2 At PW's request, DBC shall submit to PW prior to their execution either DBC's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If PW disapproves such form, DBC shall not execute the form until the matters disapproved are resolved to PW's satisfaction. PW's review,

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

comment upon or approval of any such form shall not relieve DBC of its obligations under this Design-Build Agreement or be deemed a waiver of such obligations of DBC..

B.11.3 DBC shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Design-Build Agreement, in whole or in part, without the prior written approval of PW. No such written approval shall relieve DBC of any obligations of this Design-Build Agreement, and any transferee shall be considered the agent of the DBC and bound to perform in accordance with the Contract Documents. DBC shall remain liable as between the original parties to the Design-Build Agreement as if no assignment had occurred.

B.12 SUCCESSORS IN INTEREST

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

B.13 PW'S RIGHT TO DO WORK

PW reserves the right to perform other or additional work at or near the project site with other forces than those of the DBC. If such work takes place within or next to the Project Site, DBC 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. PW's Authorized Representative will resolve any disagreements that may arise between or among DBC and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, PW'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, PW has the right to execute other contracts related to or unrelated to the Work of this Design-Build Agreement. The DBC of this Design-Build Agreement will fully cooperate with any and all other contractors without additional cost to PW in the manner described in section B.13.

B.15 GOVERNING LAW

This Design-Build Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

B.16 LITIGATION

Any Claim between PW and DBC that arises from or relates to this Design-Build Agreement and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill 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 within the United States District Court for the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. DBC BY EXECUTION OF THIS DESIGN-BUILD AGREEMENT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

B.17 ALLOWANCES

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

B.17.1 The DBC shall include in the Design-Build Agreement Price all allowances stated in the Design-Build Agreement and Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as PW may direct.

B.17.2 Unless otherwise provided in the Design-Build Agreement and Contract Documents:

(a) when finally reconciled, allowances shall cover the cost to the DBC of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

(b) DBC'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 Design-Build Agreement Price but not in the allowances;

(c) whenever costs are more than or less than allowances, the Design-Build Agreement Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect

(1) the difference between actual costs and the allowances under Section B.17.2(a) and

(2) changes in DBC's costs under Section B.17.2(b).

(d) Unless PW requests otherwise, DBC shall provide to PW a proposed fixed price for any allowance work prior to its performance.

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

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

(a) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the DBC or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Work.

(b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the DBC 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 Design-Build Agreement the way by which the DBC proposes to conform to the information given and the design concept expressed in the Design-Build Agreement. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the DBC as required by the Design-Build Agreement and Contract Documents. The Architect/Engineer's review of the DBC's submittals shall not relieve the DBC of its obligations under the Design-Build Agreement and 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

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

responsive action may be so identified in the Design-Build Agreement and Contract Documents. Submittals which are not required by the Design-Build Agreement and Contract Documents may be returned by the Architect/Engineer without action.

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

B.18.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the DBC represents that the DBC 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 Design-Build Agreement.

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

B.18.6 The Work shall be in accordance with approved submittals except that the DBC shall not be relieved of responsibility for deviations from requirements of the Design-Build Agreement and Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the DBC has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and

(1) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or

(2) a Change Order has been executed by PW authorizing the deviation. The DBC 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 PW 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 PW on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by PW's Authorized Representative.

B.19 SUBSTITUTIONS

The DBC may make Substitutions only with the consent of PW, after evaluation by PW's Authorized Representative and only in accordance with a Change Order. Substitutions shall be subject to the requirements of the RFP documents. By making requests for Substitutions, the DBC represents that the DBC has personally investigated the proposed substitute product, represents that the DBC will provide the same warranty for the Substitution that the DBC would for the product originally specified unless approved otherwise, certifies that the cost data presented is complete and includes all related costs under this Design-Build Agreement 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 USE OF PLANS AND SPECIFICATIONS

Plans, Specifications and related Contract Documents furnished to DBC by PW or PW's Architect/Engineer shall be used solely for the performance of the Work under this Design-Build

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

Agreement. DBC 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 Design-Build Agreement, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by PW.

B.21 FUNDS AVAILABLE AND AUTHORIZED

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

B.22 NO THIRD PARTY BENEFICIARIES

PW and DBC are the only parties to this Design-Build Agreement and are the only parties entitled to enforce its terms. Nothing in this Design-Build Agreement 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 Design-Build Agreement.

SECTION C WAGES AND LABOR

C.1 MINIMUM WAGE RATES ON PUBLIC WORKS

DBC 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 the Contract Documents.

C.2 PAYROLL CERTIFICATION AND FEE REQUIREMENTS

C.2.1 In accordance with ORS 279C.845, the DBC and every subcontractor shall submit written certified statements to PW's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the DBC 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 Design-Build Agreement, which certificate and statement shall be verified by the oath of the DBC or the subcontractor that the DBC or subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the DBC or subcontractor's best knowledge and belief. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which the DBC or subcontractor has employed a worker on the Project shall be submitted once a month, by the fifth business day of the following month.

The DBC and subcontractors shall preserve the certified statements for a period of six (6) years from the date of completion of the Design-Build Agreement.

C.2.2 Pursuant to ORS 279C.800 to 279C.870 and in accordance with 279C.825 Sec. 8 administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, PW must pay a fee to the

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

Bureau of Labor and Industries equaling 1/10 of 1% of the Design-Build Agreement price, however, the fee shall not be less than \$250 nor more than \$7,500, regardless of the Design-Build Agreement price. The fee shall be paid on or before the first progress payment or sixty (60) Days from the date Work first began on the Design-Build Agreement, whichever comes first. The fee is payable to the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

Contract Fee Section Prevailing Wage Rate Unit Bureau of Labor and Industries 800 N.E. Oregon Street,
#1045 Portland, Oregon 97232-2180

C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS

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

C.3.1.1 Make payment promptly, as due, to all persons supplying to DBC labor or materials for the prosecution of the Work provided for in this Design-Build Agreement.

C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such DBC or Subcontractor incurred in the performance of the Design-Build Agreement.

C.3.1.3 Not permit any lien or claim to be filed or prosecuted against PW on account of any labor or material furnished. DBC will not assign any claims that DBC has against PW, or assign any sums due by PW, 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 PW.

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

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

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

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

- (1) Demonstrate to the DBC that it has a Qualifying Employee Drug Testing Program for the Subcontractor's Subject Employees, and represent and warrant to the DBC that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or
- (2) Require that the Subcontractor's Subject Employees participate in the DBC'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 PW's performance hereunder, DBC agrees:

C.3.2.1 If DBC fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the DBC or a Subcontractor by any person in connection with the Project as such claim becomes due, the proper officer(s) representing PW may pay the claim and charge the amount of the

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

payment against funds due or to become due DBC under this Design-Build Agreement. Payment of claims in this manner shall not relieve the DBC or the DBC's surety from obligation with respect to any unpaid claims.

C.3.2.2 If the DBC or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) days after receipt of payment from PW or a contractor, the DBC or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580(5)(b). The rate of interest charged to the DBC or first-tier Subcontractor on the amount due 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 the date when payment was received from PW or from the DBC, but the rate of interest shall not exceed thirty (30) percent. The amount of interest may not be waived.

C.3.2.3 If the DBC or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Design-Build Agreement, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580(5)(b). Every contract related to this Design-Build Agreement shall contain a similar clause.

C.3.3 Pursuant to ORS 279C.580(3), DBC shall include in each subcontract for property or services entered into by the DBC and a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates the DBC to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the DBC by PW under the Design-Build Agreement;

(b) An interest penalty clause that obligates the DBC if payment is not made within thirty (30) days after receipt of payment from PW, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection. DBC or first-tier Subcontractor SECTION shall not be obligated to pay an interest penalty if the only reason that the DBC or first-tier Subcontractor did not make payment when payment was due is that the DBC or first-tier Subcontractor did not receive payment from PW or DBC when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and shall be computed at the rate specified in ORS 279C.515 (2).

(c) A clause which requires each of DBC's Subcontractor's 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 subsections (a) and (b), 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 DBC, that employ subject workers who work under this Design-Build Agreement 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. DBC shall ensure that each of its Subcontractors complies with these requirements.

C.4 HOURS OF LABOR

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

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

Pursuant to ORS 279C.520 and as a condition to PW's performance hereunder, no person shall be employed to perform Work under this Design-Build Agreement 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, DBC shall pay the employee at least time and a half pay:

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

This section C.5 will not apply to DBC's Work under this Design-Build Agreement if DBC is currently a party to a collective bargaining agreement with any labor organization.

This Section C.5 shall not excuse DBC from completion of the Work within the time required under this Design-Build Agreement.

SECTION D CHANGES IN THE WORK

D.1 CHANGES IN WORK

D.1.1 The terms of this Design-Build Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of PW'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 Design-Build Agreement and all approvals required by public contracting laws have been obtained.

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

- (a) Modification of specifications and design.
- (b) Increases or decreases in quantities.
- (c) Increases or decreases to the amount of Work.
- (d) Addition or elimination of any Work item.
- (e) Change in the duration of completion or scope of the Project.
- (f) Acceleration or delay in performance of Work.
- (g) Deductive changes.

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

Adjustments in compensation shall be made under the provisions of D.1.3, in which costs for deductive changes shall be based upon the percentages for labor, equipment, material and Subcontractor mark-ups specified therein, unless otherwise agreed to by PW.

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

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

(a) Unit pricing may be utilized at PW's option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Design-Build Agreement on the parties covering the terms and conditions of the additional Work.

(b) If PW 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 Design-Build Agreement, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3(c) shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by PW without adequate justification. Cost and price data relating to Change Orders shall be supplied by DBC to PW upon request, but PW 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 DBC's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the DBC's or Subcontractor's own forces:

D.1.3.1 The cost to which this Fee is to be applied shall be determined in accordance with this section as well as 00500 Article 7 and 00650 Article C.

If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction.

Payments made to the DBC shall be complete compensation for Overhead, profit, and all costs that were incurred by the DBC or by other forces furnished by the DBC, including Subcontractors, for Change Order Work. PW 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 PW. DBC shall not be required to complete such Change Order Work without additional authorization.

D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless PW's Authorized Representative authorizes DBC to start the Work before agreement on Contract Time adjustment. DBC shall submit any request for additional compensation (and additional Contract Time if DBC 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 DBC's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) day time limit, DBC'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 DBC's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by PW. If DBC and PW's Authorized Representative cannot agree on additional compensation or additional Contract Time needed to perform Change Order Work, DBC may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.

D.1.5 If any Change Order Work under Section D.1.3 causes an increase or decrease in the DBC's cost

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

of, or the Contract Time required for the performance of, any other part of the Work under this Design-Build Agreement, the DBC must submit a written request to PW's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Design-Build Agreement as soon as possible, but no later than thirty (30) days after receipt of the Change Order by DBC.

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; DBC has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) day time limit, and including their requests with DBC's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the DBC in writing with full analysis and justification for the compensation and additional Contract Time requested. The DBC will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to DBC prior to including those requests and DBC's analysis and evaluation of those requests with DBC's requests for additional compensation or Contract Time that DBC submits to PW's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to DBC for inclusion with DBC's requests submitted to PW's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. PW's Authorized Representative and PW will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Design-Build Agreement. The consideration of such requests and claims under this section does not give any person, not a party to the Design-Build Agreement the right to bring a claim against the State of Oregon, whether in this claims process, in litigation, or in any dispute resolution process.

If the DBC does not concur with the decision of PW's Authorized Representative, the DBC may proceed to file a Claim under Section D.3, Claims Review Process.

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

D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The DBC is notified that numerous changes may be required and that there will be no compensation made to the DBC 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.

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

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

(a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the DBC or its Subcontractors.

(b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract Time.

(c) Do not impact activities on the accepted critical path schedule.

(d) Are associated with the reasonable interference of other contractors employed by PW 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 PW, PW's Authorized Representative, or any other employee or agent of PW, or by separate contractor employed by PW.

(b) Caused by any Site conditions which differ materially from what was represented in the Design-Build Agreement and Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Design-Build Agreement and Contract Documents. The DBC shall notify PW's Authorized Representative immediately of differing Site conditions before the area has been disturbed. PW'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 Design-Build Agreement. If DBC and PW's Authorized Representative agree that a differing Site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If the DBC does not concur with the decision of PW's Authorized Representative and/or believes that it is entitled to additional compensation or Contract Time, or both, the DBC may proceed to file a Claim under Section D.3, Claims Review Process.

(c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the DBC or its Subcontractors.

(d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the DBC, 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:

(1) 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.

(2) 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, DBC 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, DBC may be

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

entitled to the following:

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

(b) DBC may be entitled to additional Contract Time for Unavoidable Delays described in Section D.2.1.2(c) and (d).

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing Site conditions for which a review process is established under Section D.2.1.2 (b), DBC shall submit a written notification of the delay to PW's Authorized Representative within two (2) days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the Project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) days after the cause of the delay has been mitigated, or in no case more than thirty (30) days after the initial written notification, the DBC shall submit to PW's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the DBC does not concur with the decision of PW's Authorized Representative and/or believes that it is entitled to additional compensation, or additional Contract Time, or both, as applicable, the DBC may proceed to file a Claim under Section D.3, Claims Review Process. If DBC does not timely submit the notices required under this Section D.2.1.3 (b), then unless otherwise prohibited by law, DBC's Claim shall be barred.

D.3 CLAIMS REVIEW PROCESS

D.3.1 All DBC Claims shall be referred to PW's Authorized Representative for review. DBC's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by DBC to PW's Authorized Representative within five (5) days after DBC's initial request has been denied. Within thirty (30) days after the initial Claim, DBC shall submit to PW's Authorized Representative, a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.

D.3.2 The Detailed Notice of the Claim shall be submitted in writing by DBC and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Design-Build Agreement provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the DBC will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to PW's Authorized Representative. PW's Authorized Representative and PW will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Design-Build Agreement. DBC 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 PW.

D.3.3 PW's Authorized Representative will review all Claims and take one or more of the following preliminary actions within ten (10) days of receipt of the Detailed Notice of a Claim:

- (1) request additional supporting information from the DBC;
- (2) inform the DBC and PW 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

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

(5) propose an alternate resolution.

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

D.3.5 The decision of PW shall be final and binding unless the DBC delivers to PW its requests for mediation, which shall be a non-binding process, within fifteen (15) days of the date of PW's decision. The mediation process will be considered to have commenced as of the date the DBC 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 Design-Build Agreement. Both Parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) days of the commencement of the mediation through the mediation process set forth herein. In the event that a lawsuit must be filed within this sixty (60) day period in order to preserve a cause of action, the Parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the Parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.

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

D.3.7 Unless otherwise directed by PW's Authorized Representative, DBC shall proceed with the Work while any Claim of DBC is pending, including a Claim for additional compensation or additional Contract Time resulting from Change Order Work. Regardless of the review period or the final decision of PW's Authorized Representative, the DBC shall continue to diligently pursue the Work as identified in the Design-Build Agreement and Contract Documents. In no case is the DBC justified or allowed to cease Work without a written stop work order from PW or PW's Authorized Representative.

D.3.8 Unless otherwise directed by PW's Authorized Representative, DBC shall proceed with the 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 PW's Authorized Representative, this schedule shall be used as the basis for reviewing DBC's applications for payment. If objected to by PW's Authorized Representative, Contractor shall revise the schedule of values and resubmit the same for approval of PW's Authorized Representative.

SECTION E PAYMENTS

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

E.1 SCHEDULE OF VALUES

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

E.2 APPLICATIONS FOR PAYMENT

E.2.1 PW shall make progress payments on the Design-Build Agreement monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by PW's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. PW shall pay to DBC interest on the progress payment, not including retainage, due the DBC. The interest shall commence thirty (30) days after the receipt of invoice ("application for payment") from the DBC or fifteen (15) days after the payment is approved by PW'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 Design-Build Agreement or fifteen (15) days after the payment is approved by PW, whichever is the earlier date, but the rate of interest shall not exceed thirty (30) percent. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, PW shall so notify the DBC within fifteen (15) days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the DBC within seven (7) days of being notified by PW, 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 PW and the DBC.

E.2.2 DBC shall submit to PW'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. DBC shall include, in its application for payment, a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

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

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

- (a) The request for stored material shall be submitted at least thirty (30) days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- (b) The DBC 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 PW's Authorized Representative shall be

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.

(d) The DBC shall name PW as co-insured on the insurance policy covering the full value of the property while in the care and custody of the DBC until it is installed. A certificate noting this coverage shall be issued to PW.

(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 DBC.

(f) Within sixty (60) days of the application for payment, the DBC 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 Design-Build Agreement 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.2.4 PW 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 PW's opinion to protect PW from loss because of:

(a) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,

(b) third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to PW is provided by the DBC;

(c) failure of the DBC to make payments properly to Subcontractors or for labor, materials or equipment (in which case PW may issue checks made payable jointly to PW 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 PW or another contractor;

(f) reasonable evidence that the Work will not be completed within the Contract Time required by the Design-Build Agreement, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

(g) failure to carry out the Work in accordance with the Contract Documents; or

(h) assessment of liquidated damages, when withholding is made for offset purposes.

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

(a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to PW of changes in the Work, amounts not in the dispute may be included even though the Contract Price has not yet 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 PW pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

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

(c) Subtract the aggregate of previous payments made by PW; and

(d) Subtract any amounts for which PW's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

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

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

E.2.8 If DBC disputes any determination by PW's Authorized Representative with regard to any application for payment, DBC 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 DBC of any of its obligations hereunder.

E.3 PAYROLL CERTIFICATION REQUIREMENT

Payroll certification is required before payments are made on the Design-Build Agreement. Refer to Section C.2 for this information.

E.4 DUAL PAYMENT SOURCES

DBC shall not be compensated for Work performed under this Design-Build Agreement from any entity other than PW.

E.5 RETAINAGE

E.5.1 Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.570:

E.5.1.1 PW may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, PW may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Design-Build Agreement payments after 50 percent of the Work under the Design-Build Agreement is completed if, in PW's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the DBC, which application shall include written approval of DBC's surety; except that when the Work is 97-1/2 percent completed PW may, at its discretion and without application by the DBC, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the DBC, PW shall respond in writing within a reasonable time.

E.5.1.2 In accordance with the provisions of ORS 279C.560, OAR 125-249-0820 and

OAR 137-049-0820, DBC may request in writing:

(a) to be paid amounts which would otherwise have been retained from progress payments where DBC has deposited acceptable bonds and securities of equal value with PW or in a custodial account or other mutually-agreed account satisfactory to PW, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of PW;

(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 PW, with

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

earnings from such account accruing to the DBC; or

(c) that PW allow DBC to deposit a surety bond for the benefit of PW, in a form acceptable to PW, 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.570 and 279C.600 to 279C.625.

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

E.5.1.3 The retainage held by PW shall be included in and paid to the DBC as part of the final payment of the Contract Sum. PW shall pay to DBC interest at the rate of one and one-half percent per month on the final payment due DBC interest to commence thirty (30) days after the Work under the Design-Build Agreement has been completed and accepted and to run until the date DBC shall notify PW in writing when the DBC considers the Work complete and PW shall, within fifteen (15) days after receiving the written notice, either accept the Work or notify the DBC of Work yet to be performed on the Design-Build Agreement. If PW does not within the time allowed notify the DBC of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) days after the end of the 15-Day period.

E.5.1.4 In accordance with the provisions of ORS 279C.560(3), PW shall reduce the amount of the retainage if the DBC notifies the controller of PW that the DBC has deposited in an escrow account with a bank or trust company, in a manner authorized by PW's Authorized Representative, bonds and securities of equal value of a kind approved by PW's Authorized Representative.

E.5.1.5 DBC agrees that if DBC elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Subsection E.5 as apply to PW's retainage from any progress payment due to DBC.

E.6 FINAL PAYMENT

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

E.6.2 Neither final payment nor any remaining retained percentage shall become due until the DBC submits to PW's Authorized Representative:

(1) a notarized affidavit/release of liens and claims in a form satisfactory to PW that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which PW or PW's property might be responsible or encumbered (less amounts withheld by PW) have been paid or otherwise satisfied,

(2) a certificate evidencing that insurance required by the Design-Build Agreement and Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

to expire until at least thirty (30) days' prior written notice has been given to PW,

(3) a written statement that the DBC knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Agreement and Contract Documents,

(4) consent of surety, if any, to final payment and

(5), if required by PW, 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 Design-Build Agreement, to the extent and in such form as may be designated by PW. If a Subcontractor refuses to furnish a release or waiver required by PW, the DBC may furnish a bond satisfactory to PW to indemnify PW against such lien. If such lien remains unsatisfied after payments are made, the DBC shall refund to PW all money that PW may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

SECTION F JOB SITE CONDITIONS

F.1 USE OF PREMISES

DBC shall confine equipment, storage of materials and operation of Work to the limits indicated by Design-Build Agreement and Contract Documents, law, ordinances, permits or directions of PW's Authorized Representative. DBC shall follow PW's Authorized Representative's instructions regarding use of PW property and the Site, if any.

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

F.2.1 DBC shall maintain continuous and adequate protection of all of the Work from damage, and shall protect PW's Authorized Representative, PW's workers and property from injury or loss arising in connection with this Design-Build Agreement. DBC shall remedy acceptably to PW, any damage, injury, or loss, except such as may be directly due to errors in the Design-Build Agreement and Contract Documents or caused by authorized representatives or personnel of PW. DBC shall adequately protect adjacent property as provided by law and the Design-Build Agreement and Contract Documents.

F.2.2 DBC shall take all necessary precautions for the safety of all personnel on the job Site, and shall comply with the Design-Build Agreement and Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the Site where the Work is being performed. DBC 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. DBC 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 PW's Authorized Representative. PW's Authorized Representative has no responsibility for Work Site safety. Work Site safety is the responsibility of the DBC.

F.2.3 DBC shall not enter upon private property without first obtaining permission from the property PW or its duly authorized representative. DBC shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Design-Build Agreement and shall use every precaution necessary to prevent damage thereto. In the event the DBC damages any property, the DBC shall at once notify the property PW and make, or arrange to make, full restitution. DBC shall report, immediately in writing, to PW's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

F.2.4 DBC 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 DBC shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.

F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, the DBC, without special instruction or authorization from PW's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by PW's Authorized Representative. Any compensation claimed by the DBC on account of emergency work, if any, shall be determined in accordance with Section D.

F.3 CUTTING AND PATCHING

F.3.1 DBC 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 Design-Build Agreement and Contract Documents.

F.3.2 DBC 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 Design-Build Agreement and Contract Documents, then DBC shall be responsible for restoring such surfaces to the condition specified in the Design-Build Agreement and Contract Documents.

F.4 CLEANING UP

From time to time as may be ordered by PW the DBC shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. If DBC fails to do so within twenty-four (24) hours after notification by PW the work may be done by others and the cost charged to the DBC and deducted from payment due the DBC.

F.5 ENVIRONMENTAL CONTAMINATION

F.5.1 DBC will be held responsible for and shall indemnify, defend (with counsel of PW's choice) and hold harmless PW 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 Design-Build Agreement which occur as a result of, or are contributed by, the negligence or actions of DBC or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Design-Build Agreement and Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 shall limit DBC's responsibility for obtaining insurance coverages required under Section G.3 of these General Conditions, and DBC shall take no action that would void or impair such coverages

F.5.1.1 DBC agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of PW 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 PW and be performed by properly qualified personnel.

F.5.1.2 DBC shall obtain PW's written consent prior to bringing onto the Work Site any

(1) environmental pollutants or

(2) hazardous substances or materials, as the same or reasonably similar terms are used in any

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from PW, the DBC, 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 PW, such spills, releases, discharges, or leaks to PW's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

F.5.2 DBC shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities of environmental pollutants or hazardous substances or materials are as identified in the United States Code provisions pertaining to the Environmental Protection Agency (EPA), the provisions of the Code of Federal Regulations adopted by the EPA, the Oregon Revised Statutes provisions pertaining to the Department of Environmental Quality (DEQ), and the provisions of the Organ Administrative Rules adopted by the DEQ. Upon discovery, regardless of quantity, DBC must telephonically report all releases to PW. A written follow-up report shall be submitted to PW 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 DBC has had with members of the press or State officials other than PW.

(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 Design-Build Agreement, or was caused by the DBC (reference F.5 Environmental Contamination), DBC shall immediately notify PW of any hazardous substance(s) which DBC discovers or encounters during performance of the Work required by this Design-Build Agreement. "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 PW of any hazardous substance(s) discovered or encountered, DBC 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 DBC's or any Subcontractor's work force.

F.6.2 Upon being notified by DBC of the presence of hazardous substance(s) on the Project Site, PW

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

shall arrange for the proper disposition of such hazardous substance(s).

F.7 FORCE MAJEURE

A party to this Design-Build Agreement 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. PW may terminate this Design-Build Agreement upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Design-Build Agreement.

SECTION G INDEMNITY, BONDING, AND INSURANCE

G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY

G.1.1 DBC 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 Project or the Work to be done under this Design-Build Agreement, or from any act, omission or neglect of the DBC, its Subcontractors, personnel, or agents arising out of or relating to the Project or the Work done under this Design-Build Agreement.

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

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

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

G.2 PERFORMANCE AND PAYMENT SECURITY

G.2.1 When the Design-Build Agreement price is \$100,000 or more the DBC shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price,

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

and a separate payment bond also in a sum equal to the Contract Sum. The bonds may be required if the Contract Sum is less than \$100,000, if required by the Design-Build Agreement.

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

G.2.3 Public Works Bond. Before commencing work on the Project, the DBC shall have a public works bond as described in ORS 279C.836 filed with the Construction Contractors Board. DBC shall include a provision in any subcontract for the Project that the subcontractor shall have a public works bond filed with the Construction Contractors Board before commencing work on the Project.

G.3 INSURANCE

G.3.1 Primary Coverage: Insurance carried by DBC under this Design-Build Agreement shall be the primary coverage, and PW's insurance is excess and solely for damages or losses for which PW is responsible. The coverages indicated are minimums unless otherwise specified in the Design-Build Agreements and Contract Documents.

G.3.2 Workers' Compensation: All employers, including DBC, that employ subject workers who work under this Design-Build Agreement 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 \$100,000 for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the contractor certifies so in writing DBC shall ensure that each of its Subcontractors complies with these requirements. The DBC 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 the DBC or its Subcontractors.

G.3.3 Builder's Risk Insurance:

G.3.3.1 Builder's Risk: During the term of this Design-Build Agreement, for new construction the DBC shall maintain in force, at its own expense, Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Design-Build Agreement. 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 will include as loss payees PW, the DBC and its Subcontractors as their interests may appear.

G.3.3.2 Builder's Risk Installation Floater: For other than new construction the DBC shall obtain, at the DBC's expense, and keep in effect during the term of this Design-Build Agreement, a Builder's Risk Installation Floater for coverage of the DBC's labor, materials and equipment to be used for completion of the Work performed under this Design-Build Agreement. The minimum amount of coverage to be carried shall be equal to the full amount of the Design-Build Agreement. This insurance shall include as loss payees the PW, the DBC and its Subcontractors as their interests may appear.

G.3.3.3 Such insurance shall be maintained until PW has occupied the new shop building.

G.3.3.4 A loss insured under the Builder's Risk insurance shall be adjusted by PW and made payable to PW for the insureds, as their interests may appear. The DBC shall pay Subcontractors their just shares of insurance proceeds received by the DBC, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub- subcontractors in similar manner. PW shall have power to adjust and settle a loss with insurers.

G.3.4 Liability Insurance:

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

G.3.4.1 Commercial General Liability: DBC shall obtain, at DBC's expense, and keep in effect during the term of this Design-Build Agreement, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to PW. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Design-Build Agreement (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis. Combined single limit per occurrence shall not be less than \$2,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$4,000,000.

G.3.4.2 Automobile Liability: DBC shall obtain, at DBC's expense, and keep in effect during the term of this Design-Build Agreement, 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. Combined single limit per occurrence shall not be less than \$1,000,000.00, or the equivalent.

G.3.4.3 "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 Design-Build Agreement for a duration of 24 months or the maximum time period available in the marketplace if less than 24 months. DBC will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this Design-Build Agreement. This will be a condition of the final acceptance of Work or services and related warranty (if any).

G.3.5 Additional Insured: The liability insurance coverage, except Professional Liability if included, required for performance of this Design-Build Agreement shall include PW and DBC, as Additional Insureds but only with respect to the DBC's activities to be performed under this Design-Build Agreement. If DBC cannot obtain an insurer to name PW and DBC as Additional Insureds, DBC shall obtain at DBC's expense, and keep in effect during the term of this Design-Build Agreement, PWs and DBCs Protective Liability Insurance, naming PW and DBC as Named Insureds with not less than a \$2,000,000.00 limit per occurrence. This policy must be kept in effect for 12 months following Final Completion. As evidence of coverage, DBC shall furnish the actual policy to PW prior to its issuance of a Notice to Proceed.

G.3.6 Notice of Cancellation or Change: There shall be no cancellation, material change, potential exhaustion coverages without thirty (30) days written notice from the DBC or its insurer(s) to PW. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage's provided to PW and DBC.

G.3.7 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Design-Build Agreement, the DBC shall furnish certificate(s) of insurance to PW prior to its issuance of a Notice to Proceed. The certificate(s) will specify all of the parties who are Additional Insured's or Loss Payees. Insurance coverage required under this Design-Build Agreement shall be obtained from insurance companies or entities acceptable to PW 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 PW. The certificates will also specify that there shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverages without thirty (30) days written notice from the insurer(s) to PW. To the extent Certificates of Insurance contain words to the effect that DBC shall "endeavor to send notice of cancellation" or similar language, DBC shall require its insurer to send such notice by making sure that the words "endeavor to"

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

or similar words are removed from the Certificate. The DBC 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 PW in writing prior to issuance of a Notice to Proceed and is subject to PW's approval.

SECTION H SCHEDULE OF WORK

H.1 DESIGN-BUILD AGREEMENT PERIOD

H.1.1 Time is of the essence on this Design-Build Agreement. The DBC shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. DBC 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. PW 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 PW shall not waive any rights under the Design-Build Agreement by permitting the DBC to continue or complete the Work or any part of it after the date described in Section H.1.2 above.

H.2 SCHEDULE

H.2.1 DBC shall provide, by or before the pre-construction conference, a detailed schedule for review and acceptance by PW. 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 Design-Build Agreement 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 PW does not constitute agreement by PW, as to the DBC's sequencing, means, methods, or allocated Contract Time. Any positive difference between the DBC's scheduled completion and the Design-Build Agreement completion date is float owned by PW. PW reserves the right to negotiate the float if it is deemed to be in PW's best interest to do so. In no case shall the DBC make a claim for delays if the Work is completed within the Contract Time but after DBC's scheduled completion.

H.3 PARTIAL OCCUPANCY OR USE

H.3.1 PW may occupy or use any completed or partially completed portion of the Project at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided PW and DBC 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 or Project, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Agreement and Contract Documents with respect to such portion of the Work or Project. Approval by the DBC to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, PW and DBC shall jointly inspect the area to be occupied or portion of the Project to be used in order to determine and record the condition of the Work and Project. Partial occupancy or use of a portion or portions of the Project shall not constitute acceptance of Project or Work not complying with the requirements of the

Contract Documents.

SECTION I CORRECTION OF WORK

I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT

The DBC warrants to PW that materials and equipment furnished under the Design-Build Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work and the completed Project will be free from defects, and that the Work and completed Project will conform to the requirements of the Design-Build Agreement and Contract Documents. Work failing to conform to these requirements shall be deemed defective. DBC shall promptly remove from the Project premises and replace all defective materials and equipment as determined by PW's Authorized Representative, whether incorporated in the Project or Work or not. Removal and replacement of Work shall be without loss or expense to PW, and DBC 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 sixty (60) days for completion of defective (punch list) Project work, unless otherwise agreed. At the end of that period, or earlier if requested by the DBC, PW shall arrange for inspection of the Project and inspection of the Work by the Architect/Engineer. Should the Project and/or the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the DBC. If DBC fails to complete the punch list Project work within the above time period, without affecting DBC's obligations PW may perform such Project work and DBC shall reimburse PW all costs of the same within thirty (30) days after demand.

I.2 WARRANTY WORK

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

PW shall give DBC notice of Project defects with reasonable promptness. DBC shall perform such Project warranty work within a reasonable time after PW's demand. If DBC fails to complete the warranty work within such period as PW determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, without affecting DBC's obligations, PW may perform such work and DBC shall reimburse PW all costs of the same within thirty (30) Days after demand.

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 DBC's warranty, manufacturer's warranties shall pass to PW and shall not take effect until affected Work has been accepted in writing by PW's Authorized Representative.

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

I.2.5 Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations which the DBC might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific obligation of the

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

DBC to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the DBC's liability with respect to the DBC's obligations other than specifically to correct the Work.

I.2.6 If PW prefers to accept Work which is not in accordance with the requirements of the Contract Documents, PW 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 PW'S RIGHT TO SUSPEND THE WORK

J.1.1 PW and/or PW's Authorized Representative has the authority to suspend portions or all of the Work due to the following causes:

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

J.1.2 PW shall notify DBC and the DBC's Surety in writing of the effective date and time of the suspension and shall notify DBC and its surety in writing to resume Work.

J.2 DBC'S RESPONSIBILITIES

J.2.1 During the period of the suspension, DBC is responsible to continue maintenance at the Project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.

J.2.2 When the Work is recommenced after the suspension, the DBC shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the Project in every respect as though its prosecution had been continuous and without suspension.

J.3 COMPENSATION FOR SUSPENSION

J.3.1 Depending on the reason for suspension of the Work, the DBC or PW may be due compensation by the other party. If the suspension was required due to acts or omissions of DBC, PW may assess the DBC actual costs of the suspension in terms of administration, remedial work by PW'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 PW, the DBC shall be due compensation which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of the DBC or PW, neither party owes the other for the impact.

J.4 PW'S RIGHT TO TERMINATE CONTRACT

J.4.1 PW may, without prejudice to any other right or remedy, and after giving DBC seven (7) days written notice and an opportunity to cure, terminate the Design-Build Agreement in whole or in part under the following conditions:

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

- (a) If DBC should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and DBC as debtor-in-possession or the Trustee for the estate fails to assume the Design-Build Agreement within a reasonable time;
- (b) If DBC should make a general assignment for the benefit of DBC's creditors;
- (c) If a receiver should be appointed on account of DBC's insolvency;
- (d) If DBC 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 DBC should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of PW or its Authorized Representative; or
- (f) If DBC is otherwise in material breach of any part of the Design-Build Agreement.

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

J.5 TERMINATION FOR CONVENIENCE

J.5.1 PW may terminate the Design-Build Agreement in whole or in part whenever PW determines that termination of the Design-Build Agreement is in the best interest of the public.

J.5.2 PW will provide the DBC with seven (7) days prior written notice of a termination for public convenience. After such notice, the DBC shall provide PW with immediate and peaceful possession of the Project and the premises and materials located on and off the premises for which the DBC received progress payment under Section E. Compensation for Work terminated by PW under this provision will be according to Section E. In no circumstance shall DBC be entitled to reimbursement or repayment for any costs or 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 PW, DBC shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, DBC shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of PW, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.

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

SECTION K DESIGN-BUILD AGREEMENT CLOSE OUT

K.1 RECORD DOCUMENTS

As a condition of final payment (refer also to section E.6), DBC shall comply with the following: DBC shall provide to PW'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 PW's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

K.2 OPERATION AND MAINTENANCE MANUALS

As part of the Work, DBC shall submit two completed operation and maintenance manuals ("O & M Manuals") for review by PW'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 PW 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. PW'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, DBC shall deliver three (3) complete and approved sets of O & M Manuals to PW's Authorized Representative.

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

As a condition of final payment, the DBC shall submit to PW's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to PW, which states that all Subcontractors and suppliers have been paid in full, all disputes with property PWs have been resolved, all obligations on the Project have been satisfied, all monetary claims and indebtedness have been paid, and that, to the best of the DBC's knowledge, there are no claims of any kind outstanding against the Project. The DBC shall indemnify, defend (with counsel of PW's choice) and hold harmless PW from all claims for labor and materials finished under this Design-Build Agreement. The DBC shall furnish complete and valid releases or waivers, satisfactory to PW, of all liens arising out of or filed in connection with the Work.

K.4 COMPLETION NOTICES

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

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 PW's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable PW to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The DBC may request that a punch list be prepared by PW's Authorized Representative with submission of the request for the Substantial Completion notice.

K.5 EXTRA MATERIALS

As part of the Work, DBC 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 PW's Authorized Representative.

K.6 ENVIRONMENTAL CLEAN-UP

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the DBC shall notify PW that all environmental pollution clean-up which was performed as a part of this Design-Build Agreement has been disposed of in accordance with all

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

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.7 CERTIFICATE OF OCCUPANCY

The DBC shall not be granted Final Completion or receive final payment if PW 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 PW.

K.8 OTHER DBC RESPONSIBILITIES

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

K.9 SURVIVAL

All warranty and indemnification provisions of this Design-Build Agreement, and all of DBC's other obligations under this Design-Build Agreement that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Design-Build Agreement.

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 PW 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 Design-Build Agreement:

L.2 FEDERAL AGENCIES

- Agriculture, Department of
- Forest Service
- Soil Conservation Service
- Coast Guard
- Defense, Department of
- Army Corps of Engineers
- Energy, Department of
- Federal Energy Regulatory Commission
- Environmental Protection Agency
- Health and Human Services, Department of
- Housing and Urban Development, Department of
- Solar Energy and Energy Conservation Bank
- Interior, Department of
- Bureau of Land Management

Bureau of Indian Affairs
Bureau of Mines
Bureau of Reclamation
Geological Survey
Minerals Management Service
U.S. Fish and Wildlife Service
Labor, Department of
Mine Safety and Health Administration
Occupation Safety and Health Administration
Transportation, Department of
Federal Highway Administration
Water Resources Council

L.3 STATE AGENCIES

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

L.4 LOCAL AGENCIES

City Councils
County Commissioner, Board of
Planning Commissions
City of McMinnville

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE PROJECT
GENERAL CONDITIONS OF THE CONTRACT

EXHIBIT B

SUPPLEMENTAL GENERAL CONDITIONS
and
PERFORMANCE SPECIFICATIONS

A. DBC'S CONSTRUCTION SCHEDULES

- A.1 The DBC, promptly and within twenty (20) days after being awarded the Design-Build Agreement shall prepare and submit for PW's and PW's Representative's information a preliminary schedule for the Work consistent with the with the requirements of the Design-Build Agreement and Contract Documents. Prior to submitting its first Application for Payment, the DBC, after consultation with its subcontractors, shall submit three (3) hard copies and one (1) electronic copy of the Project Schedule consistent with the requirements of the Design-Build Agreement and Contract Documents. The schedule shall not exceed time limits current under the Design-Build Agreement and Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Agreement and Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Project Schedule shall not be changed without the prior written consent of PW.
- A.2 The DBC shall prepare and keep current, for review by PW's Representative, a schedule of submittals which is coordinated with the Project Schedule and allows PW and PW's Representative reasonable time to review in accordance with the Specifications and submittal procedures. The DBC should expect a response time of approximately 21 days from PW's Representative. Neither PW's Representative nor PW can represent or guarantee response times from governmental authorities, such as permitting agencies. Neither the DBC's preparation nor PW's Representative's receipt or review shall modify the DBC's responsibility to make required submittals or to do so in a timely manner.
- A.3 The DBC shall perform the Work in accordance with the most recent schedules submitted to PW and accepted by PW and shall promptly notify PW of any deviations from the schedule. Should the DBC fail to comply with the schedule, or in PW's opinion fail, refuse, or neglect to supply a sufficient amount of labor, materials, equipment or services in the prosecution of the Work, PW shall have the right to direct the DBC to furnish such additional labor, materials, equipment or services to comply with the schedule, and all costs thereof shall be borne by the DBC and shall not increase the Cost of the Work. All schedules submitted shall be in the form acceptable to PW using critical path methodology (CPM) clearly showing overall Project and specific items and tasks of construction activities, dependencies and durations as well as overall and specific commencement and completions dates. The critical path activities shall be highlighted, float and non-critical activities shall be shown and the start and stop times for each activity shall be listed. Float belongs to the benefit of the Project for PW's use and no float shall be used without PW's written approval. The DBC shall at all times monitor the progress of the Work for conformance with the CPM schedule accepted by PW and shall promptly advise PW and PW's Representative of any impacts or delays or potential impacts or delays. The DBC shall also update the construction schedule to reflect actual conditions and shall propose plans in order to avoid or

correct any impact or delays.

B. SUBCONTRACTORS

B.1 DEFINITIONS

The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor in privity with PW or subcontractors of a separate contractor.

B.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

The DBC shall not change a Subcontractor, person or entity previously selected if PW or PW's Representative makes reasonable objection to such substitute. The DBC shall require bids and contracts from Subcontractors to be submitted in a format which specifically sets for the amount of any credit that PW will ultimately be the benefit of, if all or any portion of any Subcontractor's Work is deleted. In no instance shall PW be obligated to pay any fee, profit or overhead for Work which is deleted from any Subcontractor's scope or from that of the DBC.

B.3 SUBCONTRACTUAL RELATIONS

The DBC shall be responsible to PW for acts and omissions of the DBC's employees, Subcontractors, of any tier, and their agents and employees, and any other persons or entities performing portions of the Work for or on behalf of the DBC or any Subcontractors of any tier and for any damages, losses, costs and expenses resulting from such acts or omissions. By appropriate agreement, written where legally required for validity, the DBC shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the DBC by terms of the Contract Documents, and to assume toward the DBC all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the DBC, by the Contract Documents, assumes toward PW or PW's Representative. Each subcontract agreement shall preserve and protect the rights of PW and PW's Representative under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the DBC shall require each Subcontractor to enter into similar agreements with other Subcontractors, either of the same tier or of a different tier. The DBC shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

B.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

B.4.1 Each subcontract agreement for a portion of the Work is assigned by the DBC to PW or to another contractor should PW so elect and consent, provided that:

- (a) assignment is effective only after termination of the Design-Build Agreement by PW and only for those subcontract agreements which PW accepts by notifying the Subcontractor and DBC in writing; and

(b) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Project.

B.4.2 Each subcontract shall specifically provide that PW (or other contractor) shall only be responsible to the Subcontractor for those obligations that accrue after PW's or other contractor's exercise of rights under the conditional assignment required hereby.

C. CHANGES IN THE WORK

C.1 GENERAL

- C.1.1 Changes in the Work may be accomplished after execution of the Design-Build Agreement, and without invalidating the Design-Build Agreement, solely by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Section C and elsewhere in the Contract Documents.
- C.1.2 A Change Order shall be based upon agreement among PW, DBC and PW's Representative; a Construction Change Directive requires agreement by PW and PW's Representative and may or may not be agreed to by the DBC; an order for a minor change in the Work may be issued by PW's Representative alone.
- C.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the DBC shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.
- C.1.4 Before effectuating a change in the Work, PW may request the DBC to propose the amount of change in the Contract Sum, if any, and the extent of change in the Contract Time, if any, arising from the proposed change in the Work. The DBC shall submit its responsive proposal as soon as possible and within 14 days and shall in good faith specify the components and amounts by which the Contract Sum and/or Contract Time would change. Labor, materials and equipment shall be limited to and itemized in the manner described in Paragraph C.5 for the DBC and major Subcontractors. If the DBC fails to respond within this time, PW may withhold some or all of a progress payment otherwise due until the tardy proposal is received. If PW accepts the proposal in writing, PW will be immediately bound, the change will be included in a future Change Order, and the change in the Work shall commence expeditiously. PW may reject the proposal, in which case PW may either not effectuate the change in the Work or may order the change through a Construction Change Directive or an order for a minor change in the Work. PW's Representative may confer directly with Subcontractors of any tier concerning any item proposed to PW under this Article.

C.2 CHANGE ORDERS

- C.2.1 A Change Order is a written instrument which may be prepared by PW's Representative and signed by PW and DBC and which may also be signed by PW's Representative, stating their agreement upon all of the following:
- (a) change in the Work;
 - (b) the amount of the adjustment, if any, in the Design-Build Agreement Sum; and
 - (c) the extent of the adjustment, if any, in the Contract Time.
- C.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section C.3.3. Agreement on a Change Order shall constitute full and final settlement of all issues and matters related to the change in Work which is subject to the

Change Order including, without limitation, any and all direct and indirect costs and all adjustments in the Contract Time and Sum. There shall be no fee due or to become due to the DBC related to deductive Change Orders.

C.3 CONSTRUCTION CHANGE DIRECTIVES

- C.3.1 A Construction Change Directive is a written order which may be prepared by PW's Representative and signed by PW, and which may also be signed by PW's Representative, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. PW may by Construction Change Directive, without invalidating the Design-Build Agreement, order changes in the Work within the general scope of the Design-Build Agreement consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
- C.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- C.3.3 If the Construction Change Directive provides for an adjustment in the Contract Sum, the adjustment shall be based on one of the following methods:
 - (a) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - (b) unit prices stated in the Design-Build Agreement and Contract Documents or subsequently agreed upon;
 - (c) cost to be determined in a manner agreed upon by the parties (accompanied by an itemized estimate of probable cost) and a mutually acceptable fixed or percentage fee; or
 - (d) as provided in Section C.3.6.
- C.3.4 Upon receipt of a Construction Change Directive, the DBC shall promptly proceed with the change in the Work involved. As soon as possible, and within seven (7) days of receipt, the DBC shall advise PW's Representative in writing of the DBC's agreement or disagreement with the proposed adjustment or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. The DBC's response shall reasonably specify the reasons for its disagreement and the adjustment or other terms that it proposes. Without such timely written response, the DBC shall conclusively be deemed to have accepted PW's adjustment. The DBC's disagreement shall not relieve the DBC of its obligations to comply promptly with any written notice issued by PW or PW's Representative. The adjustment shall then be determined by PW's Representative in accordance with the provisions of the Design-Build Agreement and Contract Documents.
- C.3.5 A Construction Change Directive signed by the DBC indicates the agreement of the DBC therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be incorporated into and be construed and interpreted as a Change Order.
- C.3.6 If the DBC does not respond promptly or disagrees with the method for adjustment in the Contract Sum, or if cost is to be determined under Section C.3.3(c), the DBC shall keep and present, itemized in the categories of Section C.5 and in such form as PW's Representative may prescribe, an itemized accounting together with appropriate supporting data. In order to facilitate checking of such quotations, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of costs, including labor, equipment,

YAMHILL COUNTY PUBLIC WORKS
DESIGN BUILD
SUPPLEMENTAL GENERAL CONDITIONS
SECTION 00650

material and subcontract costs. Labor, equipment and materials shall be itemized in the manner described in Section C.5. When major cost items arise from Subcontractors of any tier, these items shall also be similarly itemized. Approval may not be given without such itemization. Failure to provide data within 21 days of PW's request shall constitute waiver of any Claim for changes in the Contract Time or Contract Sum. The total cost of any change, including a Claim under Section D, shall be limited to the reasonable value, as determined by PW's Representative (subject to appeal through the dispute resolution procedure of Section D), of the items in Section

- C.3.7 The amount of credit to be allowed by the DBC to PW for a deletion or change which results in a net decrease in the Cost of the Work shall be the largest of
- (a) the reasonable and prevailing value of the deletion or change;
 - (b) the line item value in the Schedule of Values: or
 - (c) the actual net cost as confirmed by PW's Representative. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- C.3.8 Pending final determination of the total cost of a Construction Change Directive, any amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the Parties' agreement with part or all of such costs. If the DBC adds a reservation of rights that has not been initialed by PW, all the amounts for the Construction Change Directive shall be considered disputed unless costs are renegotiated or the reservation is withdrawn or changed in a manner satisfactory to PW.
- C.3.9 When PW and DBC agree with the determination made by PW's Representative concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

C.4 MINOR CHANGES IN THE WORK

C.4.1 PW's Representative and PW will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on PW and DBC. The DBC shall carry out any and all such written orders promptly. If at the option of PW, PW's Representative exercises any authority, right(s) or duty(ies) stated anywhere in this Design-Build Agreement or any other Contract Document as an authority, right or duty PW's Representative may perform, the DBC shall comply with, be bound by and respond therewith and thereto, including, but not limited to, the exercise of any authority, right(s) or duty(ies) related to minor Work.

C.5 PRICING COMPONENTS

C.5. Unless otherwise agreed in writing by PW, the cost shall not exceed the lower of the prevailing cost for the Work in the locality of the Project or the cost of the Work in the current edition of R.S. Means Company, Inc., Building Construction Cost Data as adjusted to local costs and conditions. PW's Representative and PW may communicate directly with Subcontractors concerning costs of any Work included in a Construction Change Directive. If the DBC disagrees with the method for the adjustment in the

YAMHILL COUNTY PUBLIC WORKS
DESIGN BUILD
SUPPLEMENTAL GENERAL CONDITIONS
SECTION 00650

Contract Time, the adjustment and method shall be referred to PW's Representative for determination, and any adjustment shall be limited to the change in the actual critical path of the Project Schedule directly caused thereby.

- C.5.1 The total cost of any changed Work or of any other increase or decrease in the Contract Sum, including a Claim, shall be limited to the following components:
- (a) Basic wages: The hourly wage (without markup, fringe benefits or labor burden) not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the changed Work on the site. The premium portion of overtime wages is not included unless pre-approved by PW.
 - (b) Fringe benefits: Fringe benefits paid by the DBC as established by the Oregon Bureau of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable. Costs paid or incurred by the DBC for vacations, per diem, bonuses, stock options, or discretionary payments to employees are not reimbursable.
 - (c) Workers' insurances: Direct contributions to the State of Oregon as industrial insurance; medical aid; and supplemental pension by class and rates established by the Oregon Bureau of Labor and Industries.
 - (d) Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).
- C.5.2 Direct material costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the change in the Work. The unit cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in advance by PW's Representative. Discounts and rebates based on prompt payment may be included, however, if the DBC offers but PW declines the opportunity.
- C.5.3 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment appropriate for the Work and rented by the DBC from an independent entity will be used solely on the change in the Work at the Site times the applicable rental cost as established by the lower of the local prevailing rate published in American Association of Equipment Dealers or the actual rate paid to an unrelated third party as evidenced by rental receipts. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Site solely for the change in the Work. If equipment is required for which a rental rate is not established by American Association of Equipment Dealers, an agreed rental rate shall be established for the equipment, which rate and use must be approved by PW's Representative prior to performing the Work. If more than one rate is applicable, the lowest rate will be utilized. The rates in effect at the time of the performance of the changed Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The

YAMHILL COUNTY PUBLIC WORKS
DESIGN BUILD
SUPPLEMENTAL GENERAL CONDITIONS
SECTION 00650

rate for equipment necessarily standing by for future use on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright.

C.5.4 Cost of change in insurance or bond premium. This is defined as:

- (a) DBCs' liability insurance: The cost (expressed as a percentage) of any changes in the DBC's liability insurance arising directly from the changed Work; and
- (b) Public works bond: The cost (expressed as a percentage) of the change in the DBC's premium for the DBC's bond arising directly from the changed Work.

Upon request, the DBC shall provide PW with supporting documentation from its insurer or surety of any associated cost incurred.

C.5.5 Subcontractor costs: These are payments the DBC makes to Subcontractors for changed Work performed by subcontractors. The Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section C.5.

C.5.6 Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including project manager, project engineers, project foreman, estimator, superintendent and their vehicles), taxes (except for sales tax), warranty, safety costs, quality control/assurance, purchasing, small or hand tool or expendable charges, preparation of as-built drawings, impact on unchanged Work, Claim preparation, and delay and impact costs of any kind, added to the total cost to PW of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. It shall be limited in all cases to the following schedule:

- (a) The DBC shall receive 15% of the cost of any materials supplied or work properly performed by the DBC's own forces.
- (b) The DBC shall receive 8% of the amount owed directly to a Subcontractor or Supplier for materials supplied or work properly performed by that Subcontractor or Supplier.
- (c) Each Subcontractor of any tier shall receive 12% of the cost of any materials properly supplied or work properly performed by its own forces.
- (d) Each Subcontractor of any tier shall receive 8% of the amount it properly incurs for materials supplied or work properly performed by its suppliers or subcontractors of any lower tier.
- (e) The cost to which this Fee is to be applied shall be determined in accordance with Sections C.5.1 through C.5.4.
- (f) The total summed Fee of the DBC and all Subcontractors of any tier shall not exceed 25%. None of the fee percentages authorized in this Section C.5.6 may be compounded with any other fee percentage or percentages authorized in this paragraph. If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction.

D. CLAIMS AND DISPUTES

YAMHILL COUNTY PUBLIC WORKS
DESIGN BUILD
SUPPLEMENTAL GENERAL CONDITIONS
SECTION 00650

- D.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Agreement. The term "Claim" also includes other disputes and matters in question between PW and DBC arising out of or relating to the Design-Build Agreement. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.
- D.1.2 Time Limits on Claims. Except as otherwise provided in the Design-Build Agreement, Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to PW's Representative and the other party.
- D.1.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as otherwise provided in the Design-Build Agreement, the DBC shall proceed diligently with performance of the Design-Build Agreement and PW shall continue to make payments in accordance with the Contract Documents.
- D.1.4 Claims for Concealed or Unknown Conditions. Except as otherwise provided herein, if conditions are encountered at the site which are:
- (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or
 - (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the DBC shall give written notice to PW and PW's Representative promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. PW's Representative may promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the DBC's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both, consistent with the requirements of the Contract Documents. If PW's Representative determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Design-Build Agreement is justified, PW's Representative may so notify PW and DBC in writing, stating the reasons. Any claim of the DBC arising from PW's Representative's determination shall be made in accordance with the dispute resolution procedures set forth in Sections D.2.4 through D.2.6. No adjustment in the Contract Time or Sum shall be permitted, however, if connection with any concealed or unknown condition which does not materially differ from those disclosed or which should have reasonably been discovered by the DBC's prior visits, observations, tests or for which the DBC assumed any responsibility to verify.
- D.1.5 Claims for Additional Cost. If the DBC wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work, and a Claim must be made in accordance with Sections D.2.4 through

YAMHILL COUNTY PUBLIC WORKS
DESIGN BUILD
SUPPLEMENTAL GENERAL CONDITIONS
SECTION 00650

D.2.6 or it will be deemed waived. Prior notice is not required for Claims relating to an emergency endangering life or property.

- D.1.6 If the DBC believes additional cost is involved for reasons including, but not limited to
- (1) a written interpretation from PW's Representative,
 - (2) an order by PW to stop the Work where the DBC was not at fault,
 - (3) a written order for a minor change in the Work issued by PW's Representative,
 - (4) failure of payment by PW,
 - (5) termination of the Design-Build Agreement by PW,
 - (6) PW's suspension or
 - (7) other reasonable grounds, a Claim shall be filed in accordance with this Section D.1. All Claims for additional costs shall include any and all costs, including, but not limited to, any and all direct and indirect costs thereof.

D.1.7 Claims for Additional Time

D.1.7.1 If the DBC wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given and a Claim shall be made as provided herein. The Contractor's Claim shall include an estimate of any cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If the delay was not caused by PW, the DBC, a Subcontractor of any tier, or PW's Representative, or anyone acting on behalf of any of them, the DBC shall be entitled only to an increase in the Contract Time, in accordance with the Contract Documents, but not a change in the Contract Sum. If the delay was caused by the DBC, a Subcontractor of any tier, or anyone acting on behalf of any of them, the DBC is not entitled to an increase in the Contract Time or in the Contract Sum.

D.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction, and that the Work was on schedule (or was not behind schedule through the fault of the DBC) at the time the adverse weather conditions occurred. Neither the Contract Time nor the Contract Sum will be adjusted for normal inclement weather. The DBC shall be entitled to a change in the Contract Time only if the DBC can substantiate to the reasonable satisfaction of PW and PW's Representative that there was materially greater than normal inclement weather considering the full term of the Contract Time and using a ten-year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale of the Project, and that the alleged abnormal inclement weather actually extended the critical path of the Work. If the total net accumulated number of calendar days lost due to inclement weather from commencement of the Work until Final Completion exceeds the total net accumulated number to be expected for the same period from the aforesaid data, and PW grants the Contractor a time extension, the Contract Time will be extended by the corresponding number of calendar days indicated on the critical path.

D.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Agreement

suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

- D.1.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to PW or the DBC, the applicable unit prices shall be equitably adjusted.
- D.1.10 Time is of the Essence. The parties agree that PW shall be entitled to all of its actual damages for each day or partial day that the Project is not completed and occupied as required by this Design-Build Agreement, or to liquidated damages as provided in the Design-Build Agreement, whichever amount is greater.

D.2 RESOLUTION OF CLAIMS AND DISPUTES

- D.2.1 In an effort to reduce the incidence and costs to all parties of extended disputes, all Claims, direct or indirect, arising out of, or relating to, the Contract Documents or the breach thereof, except claims which have been waived under the terms of the Contract Documents, shall be decided exclusively by the following alternative dispute resolution procedure unless the Parties mutually agree in writing otherwise.
- D.2.2 The DBC shall submit a written notice of any Claim to PW and PW's Representative within 14 days of the occurrence of the event giving rise to such Claim (unless a different period is specified in the Design-Build Agreement) and shall include a clear description of the event leading to or causing the Claim. The DBC shall submit a written Claim as provided herein within 30 days of the notice (unless a different period is specified in the Design-Build Agreement). Claims shall include a clear description of the Claim and any proposed change in the Contract Sum (showing all components and calculations) and/or Contract Time (showing cause of and analysis of the resultant delay in the critical path) resulting from the Claim and shall provide data fully supporting the Claim. Failure to properly submit the notice of Claim or the written Claim shall constitute waiver of the Claim. The Claim shall be deemed to include all changes, direct and indirect, in cost and in time to which the DBC (and Subcontractors of any tier) is entitled. Any claim of a Subcontractor of any tier may be brought only in the name of, and after review by, the DBC.
- D.2.3 Upon receipt of a Claim against the DBC or at any time thereafter, PW's Representative or PW may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a DBC's default, PW's Representative or PW may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.
- D.2.4 Within 30 days of PW's receipt of the written Claim, the DBC may require that an officer of the DBC, a principal of PW's Representative, and PW's Superintendent or designee (all with authority to settle) meet, confer, and attempt to resolve the Claim during the following 21 days. PW may continue the meeting to a time after it has assembled and

reviewed data. If the Claim is not resolved, the DBC may bring no claim against PW unless the Claim is first subject to nonbinding mediation as described in the following paragraph. This requirement cannot be waived except by an explicit written waiver.

- D.2.5 The DBC agrees that PW may join the DBC as a party to any litigation/arbitration involving the alleged fault of the DBC or a Subcontractor of any tier.

D.3 MEDIATION

- D.3.1 Any Claim arising out of or relating to the Design-Build Agreement except Claims relating to aesthetic effect and except those waived, shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either Party. This requirement cannot be waived except by an express written waiver.
- D.3.2 The Parties shall endeavor to resolve their claims by mediation, which unless the Parties mutually agree otherwise shall be in accordance with the Construction Industry Mediation Rule of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other Party to the Design-Build Agreement and with the American Arbitration Association. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation unless stayed for a longer period by agreement of the Parties or court order.
- D.3.3 The Parties to the mediation shall share the mediator's fee and any filing fees equally. The mediation shall be held in Yamhill County, Oregon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- D.3.4 An officer of the DBC and PW's Superintendent or designee must attend the mediation session with authority to settle the Claim. To the extent there are other parties in interest, such as PW's Representative or Subcontractors, such parties' representatives, also with the authority to settle the Claim, shall also attend the mediation session. Unless PW and the DBC mutually agree in writing otherwise, all unresolved Claims shall be considered at a single mediation session which shall occur prior to Final Acceptance by PW.

D.4 LITIGATION

- D.4.1 The DBC may bring no litigation on Claims unless such Claims have been properly raised and considered in accordance with the procedures required by Sections D.2.1 through D.2.3 above. All unresolved Claims of the DBC shall be deemed waived and released unless the DBC has complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) 120 days after the Date of Substantial Completion approved in writing by PW or (b) 60 days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by PW and the DBC. The pendency of a mediation shall toll these deadlines until the later of the mediator providing written notice to the Parties of impasse or 30 days after the date of the last mediation session. Neither the DBC nor a Subcontractor of any tier, whether claiming under a lien statute or otherwise, shall be entitled to attorneys' fees directly or indirectly from PW or PW's Representative.

END OF SECTION

PERFORMANCE SPECIFICATIONS

For the following performance specifications wherever a specific product is specified, Public Works will accept proposals with those specified products, or equivalent.

Division 1 – General Requirements

The 155' x 90' Shop must be a pre-engineered metal building.

The administrative area, which will wrap around the west end of shop building facing Lafayette Ave., may be either a pre-engineered metal structure, or a stick-built structure. PW is interested in hearing the DBC's opinion on which option would be more cost effective, while also considering long term upkeep and durability.

Shop walls will be 20' high with 3/12 pitch standing seam metal roof

Admin walls will be 14' tall.

Reception area will have a vaulted ceiling with exposed wood trusses as shown in drawing. The offices, breakrooms, conference rooms, bathrooms, hallways, and parts room all will have a 9 foot high ceiling.

As shown in the drawings there will be a 35' x 90' mezzanine open to the shop directly above the break rooms and parts room. Mezzanine will have one office and the rest will be utilized for storage. Storage area shall have a removable railing facing the shop for forklift access.

Entryway will have a 15' x 26' covered area supported by wood trusses as shown in drawings.

Division 3 – Concrete

Provide all labor and materials for concrete foundation, concrete, reinforcement, and formwork. All site flatwork will be 3000 psi, 6 sack minimum concrete content. The thickness will be 8" in the shop area, and 6" in the administrative area.

Foundation will be built on top of existing slab. Elevation change from existing slab to new slab will be approximately 1 foot higher.

Provide a concrete sidewalk between the front of the new building and the parking lot (4' wide x 120' long) as well as a 15'x26' concrete slab for the entryway. Design may require concrete stairs and an ADA wheel chair ramp.

Division 5 – Metals

Provide all labor and material for structural and metal fabrication as required, including but not limited to fabrications, bolts, anchors, straps, hangers, dowels, and other miscellaneous steel and iron shapes. All exterior metals shall be shop primed or galvanized to prevent rust. Any field cuts and fabrication shall be field primed with matching material.

Provide all labor and materials for flashings, trim, gutter and downspouts connections per SMACNA standards.

Division 6 – Wood, Plastics, and Composites

Rough Carpentry: Furnish and install all wood, nails, bolts, screws, anchors, and other rough hardware.

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
PERFORMANCE SPECIFICATION
DIVISIONS 3-33

Exterior wall framing shall be 2 x 6 nominal. Interior walls shall be 2 x 4 nominal unless required for mechanical coordination.

Joists shall be designed, fabricated and installed in accordance with applicable codes. Provide all stiffeners, braces and blocking and hangers as required.

Finish Carpentry: Provide all trim. Receive and carefully store all hollow metal work and finish hardware. Install doors in proper frames. Protect during installation and for the duration of contract work.

Install all toilet accessories and mirrors.

Provide Fiberglass Reinforced Panel (FRP) wainscot (84 -- inch high) in restrooms.

Division – 7 Thermal and Moisture Protection

Furnish and Install insulation, caulk and moisture barrier to provide a complete thermal envelope.

Insulation

Provide insulation in exterior walls, interior walls, and roof, that meets or exceeds state energy code requirements.

Provide wall moisture barrier over sheathing, Tyvek, by DuPont or Rufco, by Raven Industries or equivalent . Seal all joints and laps with specified tape.

Roofing shall be standing seam metal roofing, 24 gauge galvanized steel. Painted with Kynar™ fluorinated polymer or equivalent.

Division – 8 Openings

All doors shall be constructed in accordance with applicable code for fire assemblies and partitions into which the assemblies are being installed.

All man-door entrances to the building shall be set up with key card entry

Exterior doors to be hollow metal, insulated, commercial grade

All exterior doors to be factory primed. Smoke gasketing to be attached to door frame.

Front reception doors to be glass with a metal frame.

Interior doors to be solid core wood doors, colors to be discussed with PW.

Frames to be fully, profile welded, 16 gauge or as required to meet fire rating.

Provide commercial grade hardware for all doors.

All windows are to be low emissivity and to meet city code requirements for location.

Finish Hardware

Provide all labor, material, equipment, transportation and services to furnish hardware and related work for doors..

Keying schedule to be developed with PW.

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
PERFORMANCE SPECIFICATION
DIVISIONS 3-33

All door hardware (closers, panic devices, locksets, hinges, strikes, etc.) shall be commercial grade

Glass and Glazing by the applicable code

It is the responsibility of the DBC to furnish and install safety glass (tempered or laminated) at all locations required by the applicable code and local jurisdiction having authority.

Windows shall be 1/4"-inch thick, insulated units with 1/2-inch air space, with silicon dual seal. U-value ≤ 0.30 summer. Solar gain coefficient ≤ 0.4 . Visible Transmittance $\geq 70\%$.

Sectional Overhead Doors

Provide and install ten 16'Wx16'H insulated overhead steel doors with at least two rows of windows

Provide and install two 12'Wx16'H insulated overhead steel doors with at least two rows of windows.

All overhead doors must be power operated, as well as be hooked up to a carbon monoxide monitoring system that automatically triggers the doors to open whenever CO2 levels become dangerously high.

Division – 9 Finishes

Exterior of the administrative building shall have a 4' high decorative stone wall around it's perimeter. Exterior of the shop area will have a 4' high concrete wall around it's perimeter. See drawings and renderings for a better understanding.

Exterior siding shall be metal siding with baked on enamel finish. Wall panels to be 24-gauge painted Galvalume (or equivalent) aluminum-zinc alloy (approximately 55 percent aluminum, 45 percent zinc) Prime and paint with exterior colors 70 percent Kynar 500 (or equivalent) or Hylar 5000 fluoropolymer (PVDF) (or equivalent) coating. PVDF Coating Warranty shall warrant coating for 25 years.

Interior of administrative side shall have all walls of 5/8-inch gypsum wall board. Finish to be taped, textured, and primed & painted with commercial grade semi-gloss paint. Ceiling will be a 9 foot high suspended ceiling

Restrooms will have commercial grade tile coved 6" up the wall. Restroom walls will have a reinforced fiberglass panel wainscot to 84-inches. Restrooms will be provided with ADA compliant handicap grab bars and mirrors. Finish colors will be selected by PW from manufactures standard colors. All surfaces will receive a primer coat.

Flooring:

Area	Type
Shop/parts room (11,880 sq. ft)	Concrete
Reception/hallways (1,193 sq. ft)	Hardwood
Offices/Conference room (2,580 sq. ft)	Hardwood
Breakrooms (1,135 sq. ft)	Tile
Bathrooms (560 sq. ft)	Tile
Mezzanine (3,150 sq. ft)	Concrete

Division – 10 Specialties

Provide and install toilet accessories:

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
PERFORMANCE SPECIFICATION
DIVISIONS 3-33

Toilet Tissue Dispensers: One each toilet room, commercial grade.

Liquid Soap Dispenser: One each sink, commercial grade.

Toilet Seat-Cover Dispenser: One each toilet room, commercial grade.

Towel Dispensers: One at each sink, commercial grade.

Grab Bars, stainless steel, nonslip grasping surface finish. Push/Pull point load 250 point-force, minimum. Dimensions 1-1/4 inch outside diameter, minimum 0.05 inch wall thickness, exposed flange mounting, 1-1/2 inch clearance between wall and inside of grab bar. Length and configuration to meet ADA code.

Division – 12 Furnishings

Provide pre-manufactured cabinetry and appliances in both breakrooms and conference room

Conference Room: corner kitchenette with upper and lower cabinets, and space for a microwave, refrigerator, and sink. See drawings for approximate size. Countertop to be Dupont™ Corian® surface or similar.

Office Breakroom: corner kitchenette with upper and lower cabinets, and space for a microwave, refrigerator, sink, and oven with cooktop stove. Countertop to be laminate.

Shop Breakroom: corner kitchenette with upper and lower cabinets, and space for a microwave, refrigerator, and sink. Countertop to be laminate.

Appliances will be purchased separately by Public Works and contractor will be responsible for installation.

Division – 14 Conveying Equipment

The county will provide a 3 ton under-hung bridge crane with approximate dimensions of 25' x 60'. Contractor will be responsible for full installation of the crane. See crane location in the provided drawings.

Division – 21 Fire Suppression

The entire building will be fitted with a sprinkler system that meets City of McMinnville requirements.

Division – 22 Plumbing

Provide all materials, labor and equipment required to install a complete and operational plumbing system.

Provide a cold water connection to existing service. Connect 4" Sanitary waste into city sewer system which will be brought to within 10' of the building.

Provide 4 ADA restrooms complete with ADA accessible elongated toilets.

Wall hung lavatory.

Utility wash fountain. Bradley 42-38"H 4- Person wash fountain (#4DU61) or similar.
Drinking fountain, provide one Elkay drinking fountain/bottle filler or approved equal.

Provide all water and sewer connection to existing service as indicated on drawings. All drawings are diagrammatic and show general design, arrangement and extent of the systems.

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
PERFORMANCE SPECIFICATION
DIVISIONS 3-33

Division – 23 Heating, Ventilating, and Air Conditioning (HVAC)

Provide all materials, labor and equipment required for a complete HVAC system throughout the office area including: the break rooms, the parts room, and the upstairs office.

Exhaust for restrooms, controlled by light switch.

Shop heaters see Division 26 Electrical.

Division – 26 Electrical

DBC to coordinate with MW&L service to the building utilizing existing transformer. Service to building to be underground. Provide commercial duty electrical panel, panel size to accommodate load of equipment and office needs. An electrical panel to be 3-Phase/4 Wire as required for distribution of power and lighting.

All switches, plugs, and other devices to be commercial heavy duty.

Bath fan, sized per code.

Sufficient number of plug receptacles for each room in the admin building, minimum of 1 per wall per office.

Additionally, on the wall in between each garage bay in the shop there will be at least 4 - 110V outlets, and 2 – 220V outlets. On the exterior of the building there will be at least 1 – 110V outlet between each garage bay. As well as at least 8 outlets spread out along the front and sides of the admin section of the building.

Provide all materials, labor and equipment required to install a complete and operational electrical system.

Provide all power as required. All Panels and appliances shall be labeled.

Provide lighting, all fixtures shall be furnished complete with lamps, ballast and all accessories necessary to provide a complete operable fixture. Provide switching such that each bank can be independently controlled.

Provide exit lights with a battery backup,

Provide exterior LED lights above garage doors.

Division – 27 Communications

Provide all materials, labor and equipment required to install a complete and operational communication (Phone/data) system with connections in each office, conference room, and parts room.

Provide wall mounted network cabinet, with (1) 48 port patch panel, required power supply.

No splicing of unshielded pair cable is acceptable. All wired labeled both ends. All faceplates will be labeled.

Provide plenum rated cable where routed through plenum spaces.

Provide all tools and instruments to test the installed telecommunications signal wiring.

Provide fiber backbone connection to main building. Pathway to be underground.

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
PERFORMANCE SPECIFICATION
DIVISIONS 3-33

The phone/data system will be installed in house. This will require coordination between the County IT department and the contractor.

Division – 28 Electronic Safety and Security

Provide all materials, labor and equipment required to install a complete and operational fire and security system.

Fire and Security Alarm System: Provide new system to operate shop and office. System to match standardized systems used throughout Yamhill County agencies. System will use Stanley PAC entry systems, Bosch CCTV equipment, and Silent Knight systems for fire and intrusion. All work per IEEE C62.41, NFPA 70, NFPA 72, NFPA 101, and NFPA 601

All systems must be compatible with Stanley controls.

Division – 31 Earthwork

Provide all earthwork as required for the installation of the shop, utilities and site improvements as outlined in the Mandatory Pre-Proposal Conference. Provide all necessary erosion control as required by governing governmental agency. PW reserves the right to leave existing concrete slab in place.

Division – 33 Utilities

Coordinate and install all utilities necessary for a complete operating system, Water, Sanitary to city sewer. Provide all materials, labor and equipment for cutting, excavation, connection, back-fill, compaction and restoration. All services will be brought to within ten feet of the building, contractor will be responsible for connecting into them the rest of the way to the building.

END OF DIVISIONS 1 – 33

EXHIBIT C

SOLICITATION DOCUMENTS

(see attached)

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
PERFORMANCE SPECIFICATION
DIVISIONS 3-33

EXHIBIT D

PROPOSAL

(see attached)

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
PERFORMANCE SPECIFICATION
DIVISIONS 3-33

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
PERFORMANCE SPECIFICATION
DIVISIONS 3-33

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
PERFORMANCE SPECIFICATION
DIVISIONS 3-33

YAMHILL COUNTY PUBLIC WORKS SHOP BUILDING PROPOSAL

Bid provided by Haworth Inc. 13500 SW Hwy 99W
McMinnville, OR

BID DATE:
APRIL 11TH 2017
2:00 P.M.

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
DESIGN BUILD - REQUEST FOR PROPOSALS

ATTACHMENT A
PROPOSAL CERTIFICATION STATEMENT

DATE: 4/10/2017

LEGAL NAME OF PROPOSER: Haworth Inc.

To: John F. Phelan,
Yamhill County Public Works
2060 NE Lafayette Ave
McMinnville, OR 97128

The undersigned, having examined the RFP Documents, including the Request for Proposals, sample Design-Build Agreement and related Project Requirements, Conceptual Drawings, the General Conditions, the Supplemental General Conditions and any technical Specifications as prepared by PW, as well as the Project premises and conditions affecting the Project work, hereby proposes and agrees to perform, within the time stipulated, the Project work, including all its component parts, and everything required to be performed, and to provide and furnish all labor, material, tools, expendable equipment, transportation and all other services required to perform the Project work and complete the Project in a workmanlike manner ready for use, as required by and in strict accordance with these Documents for the sums computed as follows:

DESIGN COST RANGE

Ninety-Six Thousand Eight
\$ 96,812.00 - \$ Hundred Twelve DOLLARS (\$) Design Phase of Pre-Engineered Shop and Custom Office Building

CONSTRUCTION COST RANGE

Two Million Ninety-One Thousand
\$ 2,091,732.00 - \$ Seven Hundred Thirty-Two DOLLARS (\$) Construction Phase of Pre-Engineered Shop and Custom Office Building

TIME OF COMPLETION

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

ADDITIONAL REQUIREMENTS

1. Should this proposal not be accepted within forty five (45) calendar days after the date and time of proposal opening, or if the undersigned executes the Design-Build Agreement and delivers the required performance and payment bonds, the Bid Bond shall be returned.
2. Proposer's State of Oregon Contractors License Registration Number. 82433
3. Receipt of Addenda's #1 is hereby acknowledged. Vince Haworth
4. The undersigned certifies that the proposer is a Resident proposer as defined in ORS 279A.120. ("Resident" or "Non-Resident", to be filled in by proposer)
5. Bond Agent: Payne West Insurance

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
DESIGN BUILD - REQUEST FOR PROPOSALS

Contact Information: Address: PO Box 30638
Billings, MT 59107
Phone: (406) - 777-5005

SIGNATURES

Legal Name of Proposer's Firm:
By: 
Title: President

Address: 13500 SW Hwy 99W McMinnville, OR 97128
Telephone: (503) 472-2452

State of Incorporation, if Corporation:

Oregon

Names of Partners, if Partnership

N/A



Signed by

Haworth Inc.

Name of Proposer/Firm Submitting Proposal

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
DESIGN BUILD – REQUEST FOR PROPOSALS

Attachment B

**YAMHILL COUNTY PUBLIC WORKS SHOPS AND ADMINISTRATIVE OFFICES
DESIGN AND CONSTRUCTION
COST RANGE SHEET**

Item	Description	Cost Range
1	DESIGN FEE - DESIGN SUBMITTAL AND REVIEW PROCESS, PERMITS	\$96,812.00
2	FLOOR SLAB CONSTRUCTION INCLUDING PLUMBING TO SLAB ELEVATION AND STEM WALL	\$257,180.00
3	BUILDING ERECTION INCLUDING ELECTRICAL TO BUILDING MAIN AND SUB-MAIN PANELS	\$790,762.00
4	INTERIOR WALLS, FLOORING AND FINISHES INCLUDING INTERIOR ELECTRICAL, INTERIOR PLUMBING, ALL PLUMBING AND ELECTRICAL FIXTURES AND CABINETS	\$754,894.00
5	DESIGN SERVICES DURING CONSTRUCTION - PRODUCT SUBMITTAL REVIEW, CHANGE ORDERS, ETC.	\$ 18,049.00
6	OTHER CONSTRUCTION SERVICES	\$270,847.00

Note: Please review all project plans and RFP documents for detail on expected work for each bid item.

YAMHILL COUNTY PUBLIC WORKS
SHOP AND OFFICE BUILDING PROJECT
DESIGN BUILD – REQUEST FOR PROPOSALS

Project Total \$2,188,544.00

F:/common/BillG/Shop Drawings/Proposed Bid Sheet

ADDENDUM #1 to Request For Proposals

YAMHILL COUNTY PUBLIC WORKS SHOP AND
OFFICE BUILDING PROJECT

2060 NE Lafayette Ave., MCMINNVILLE, OREGON

[IMPORTANT: Every Offeror must return entire Request for Proposal, including Addendum.]

DATE: March 27, 2017

TO: Prospective Proposers for Yamhill County Public Works Shop and Office Building Project

SUBJECT: Addendum No. 1 to Request For Proposal for Yamhill County Public Works Shop and Office Building Project at 2060 NE Lafayette Ave., McMinnville, OR 97128

ACKNOWLEDGEMENT OF RECEIPT OF THIS ADDENDUM:

A Proposal for this project will not be considered unless accompanied by this Addendum, signed below:

I the undersigned, a person authorized to sign the Proposal for this project, hereby acknowledge receipt of this Addendum, and certify that any Design Build Proposal submitted will reflect full consideration of the information contained herein.

Company Name: Haworth INC.

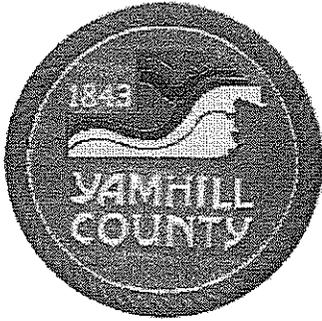
Chris Haworth
Signature

3-27-17
Date

Under IV (B)(1)(a) [pg 12, Detailed Proposal Requirements], the following change has been requested and made:

a. Proposers must show recent experience in both the design and construction of a major (15,000 square feet or greater of floor area or greater than \$1 million in cost) Design/Build pre-engineered shop and office facility or buildings of like size and types of finishes as this Project. Please provide a brief description of at least three (3) like type facilities that the proposer has designed and constructed within the past ten (10) years.

The balance of this subsection remains unchanged.



Yamhill County
Public Works Department
2060 Lafayette Avenue, McMinnville, OR 97128
Ph. 503.434.7515 Fax 503.472.4068 E-mail pubwork@co.yamhill.or.us
TTY 1-800-235-2900

John F. Phelan **Roy Panschow** **Russ Heath** **Catherine Lindberg**
Director Road Supervisor Shop Supervisor Office Administrator

Bid Documents Checklist for the Public Works Shop

Contractor Name: Haworth Inc.

- Attended the pre-proposal conference.
- Proposer is licensed by the Construction Contractors Board of Oregon.
- Description of proposer's experience with details about 3 similar projects that have been successfully completed by the proposer.
- Overview of the proposer's company, along with answers to each of the questions defined in the proposal requirements.
- Performance/preliminary drawings of the proposed project if significantly different from PW's conceptual designs.
- Detailed construction schedule via a flow chart.
- Project organization chart showing proposer's staff for the project including resumes for each staff member.
- Detailed description of the proposer's approach to the project in regards to the design, construction, and construction management aspects.
- Detailed outline of cost monitoring for both the design and construction phases, including information on the fee structure as well as hourly rates of personnel who will be committed to the project plus the overhead markup for those personnel.
- Description of safety programs and Mod factor for workers compensation insurance.
- Bid bond of 10% of the total amount of the proposal maximum price range is included with the proposal documents.
- Assurance that the proposer will be able to provide a 100% performance bond and a 100% payment bond if selected for the project.

BID BOND

Travelers Casualty and Surety Company of America Hartford, Connecticut 06183

CONTRACTOR:
(Name, legal status and address)

Haworth Inc.
13500 SW Hwy 99W
McMinnville, OR 97128

SURETY:
(Name, legal status and principal place of business)

Travelers Casualty and Surety Company of America
One Tower Square
Hartford, CT 06183

OWNER:
(Name, legal status and address)

Yamhill County Public Works
2060 NE Lafayette Ave.
McMinnville, OR 97128

BOND AMOUNT: 10% Ten Percent of Amount Bid

PROJECT:
(Name, location or address, and Project number, if any)

Yamhill County Public Works Shop and Office Building Project

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 11th day of April, 2017

Carla Haworth
(Witness)

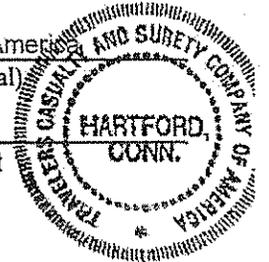
Haworth Inc. *Vince Haworth*
(Principal) (Seal)

By: *President*
(Title)

Rae Ann Chant
(Witness)

Travelers Casualty and Surety Company of America
(Surety) (Seal)

By: *Kelly L. Tehold*
(Title) Kelly L. Tehold Attorney-in-Fact





POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Surety Bond No. Bid Bond

Principal: Haworth Inc.

OR

Project Description: Yamhill County Public Works Shop and Office Building Project

Obligee: Yamhill County Public Works

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint Kelly L. Tenold of the City of , State of , their true and lawful Attorney-in-Fact, to sign, execute, seal and acknowledge the surety bond(s) referenced above.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 24th day of June, 2016.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut

City of Hartford ss.

By:

Handwritten signature of Robert L. Raney, Senior Vice President

On this the 24th day of June, 2016, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2021.



Handwritten signature of Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

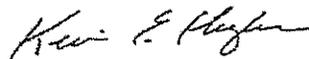
FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 11th day of April, 2017.



Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

TABLE OF CONTENTS

Proposal Certification Statement

1. Experience & Qualifications
2. Company Overview
3. Safety Program & Workers Comp Info
4. Staffing & Staff Qualifications
5. Project Approach
6. Estimated Design Cost Range & Construction Cost Range
7. General Conditions Work
8. Flow Chart
9. Public Works Shop Plans & Elevations (as provided by PW)

EXPERIENCE & QUALIFICATIONS

A. Below please see our references for similar size Design/Build Projects

1. **Carlton Fire Station**

Project Contact: Terry Lucich (503)852-6233

Engineer – Varz Lazdins (503) 297-8238

Contractor – Haworth Inc. – Troy Haworth/Vince Haworth (503) 472-2452

Project Location – 209 N. Kutch St. Carlton, OR 97111

Project Total Costs - \$1,042,000 (Includes (6) C.O. of \$14,009)

This project consisted of 2400 sq.ft wood framed single story Administration and Training Rooms. 4,813 sq.ft. of pre-engineered building consisting of (6) single engine apparatus bays. Improvements to Hwy 47 and the construction of Roosevelt Street consisting of 800 feet of new 10" water main, 350 ft. of new sanitary sewer main, all power, street lights, curbs, walks and AC Paving. There were no problems or claims on this project.



2. **Yamhill County Heritage Center Museum**

Project Contact – Cliff Watts (503) 435-9700

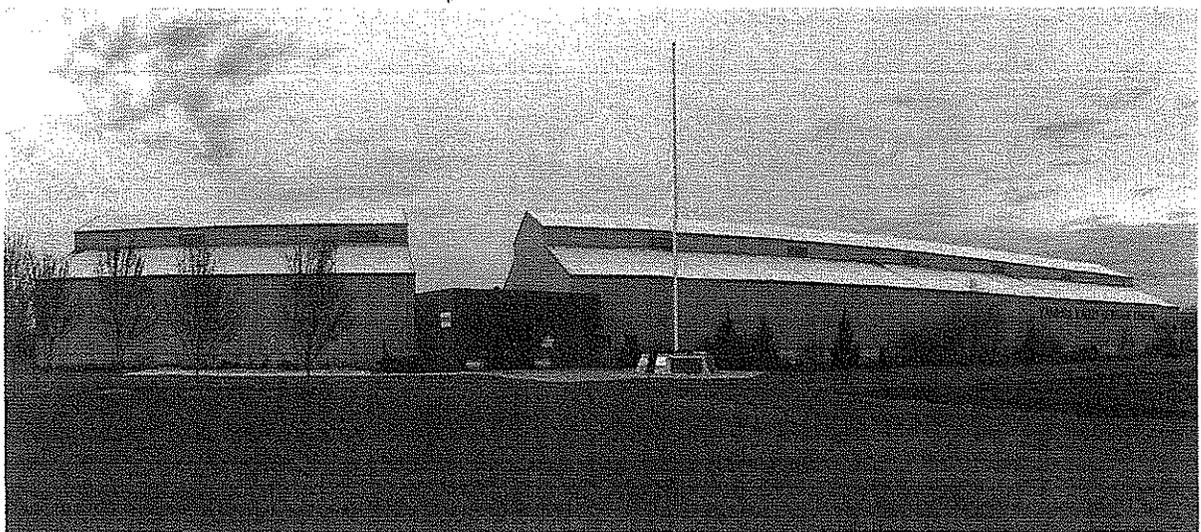
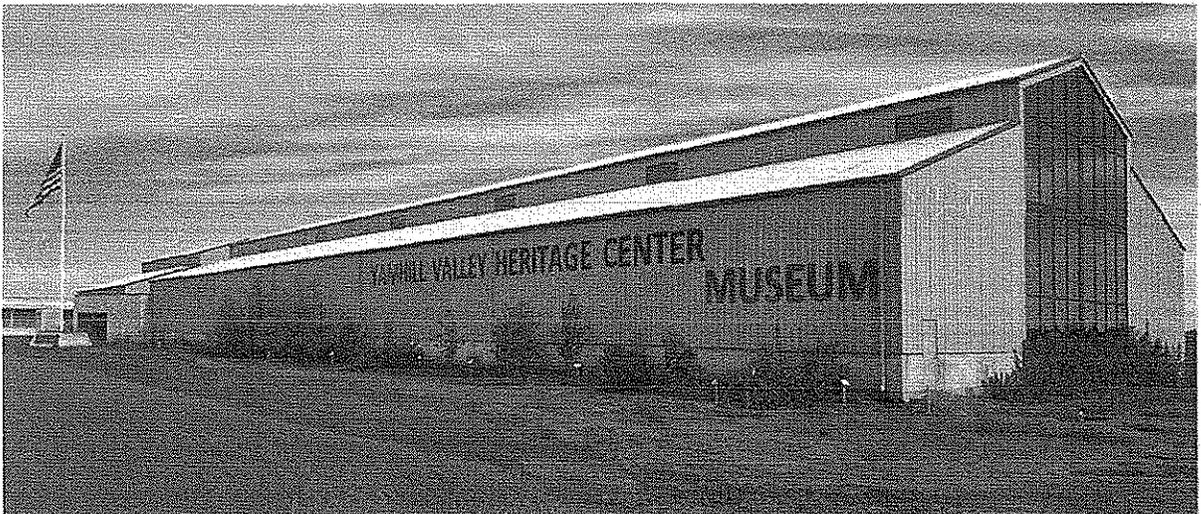
Engineer – Dodds Engineering (503) 472-8885

Contractor – Haworth Inc. – Troy Haworth/Vince Haworth (503) 472-2452

Project Location – 11275 SW Durham Ln. McMinnville, OR 97128

Project Total Costs - \$2,023,000 (No Change Orders)

This project consisted of a 53,600 sq.ft. steel building consisting of 29,000 sq. ft. of exhibit area. 5,000 sq.ft. of Office, Restrooms and some exhibit area. 10,000 sq.ft. Shop for restoration with viewing and additional 13,600 sq.ft. for storage of revolving exhibits and projects in process. This project also included a glass curtain wall that is 40' in width and 42' in height (1680 sq.ft.) and an underground 55,000-gallon concrete water reservoir for sprinkler system which was designed and built by Haworth Inc. There were no problems or claims on this project.



3. **Textile Graphics Building**

Project Contact – Bob Squires (503) 472-2740

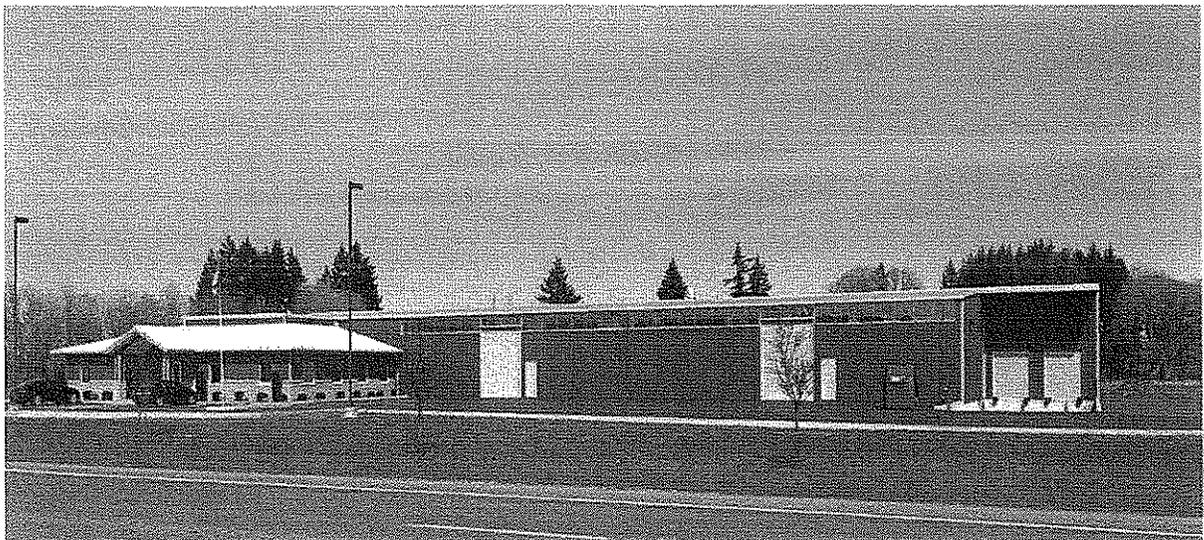
Engineer – Dodds Engineering (503) 472-8885

Contractor – Haworth Inc. – Troy Haworth/Vince Haworth (503) 472-2452

Project Location – 3555 Squires Way McMinnville, OR 97128

Project Total Costs - \$,1383,000 (No Change Orders)

This project consisted of a 17,000 sq.ft. Steel Building used for Manufacturing area with an additional 3,000 sq.t. of Office area and Restrooms fully sprinkled.



4. Buchanan Cellers Warehouse

Project Contact – Jay Legard (503) 835-0770

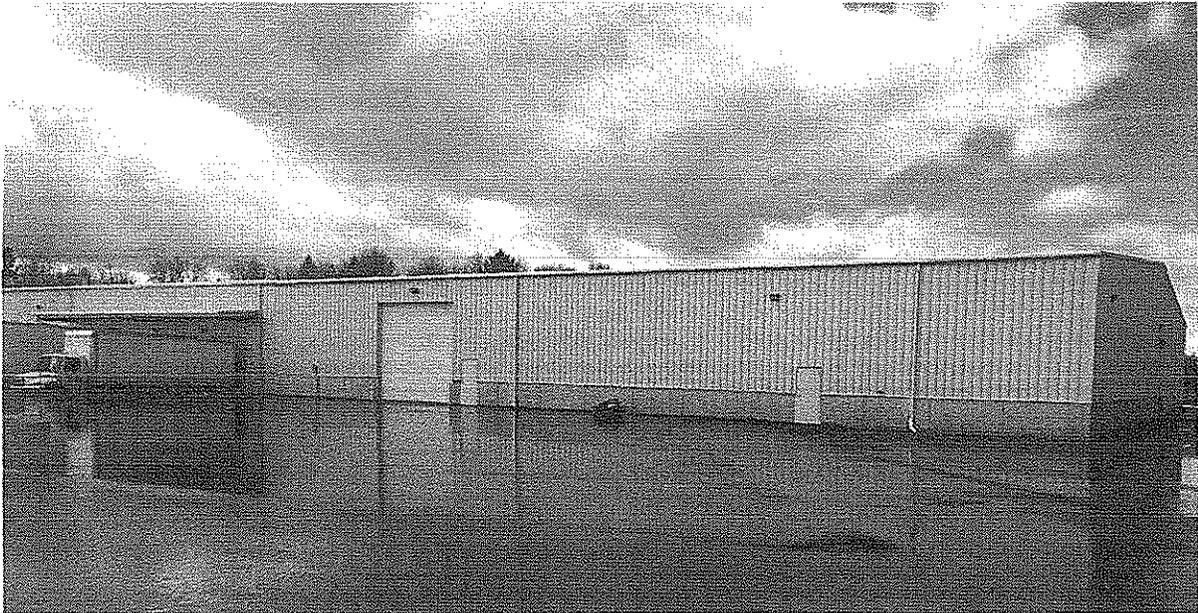
Engineer – BKE Engineers (503) 607-0481

Contractor – Haworth Inc. – Troy Haworth/Vince Haworth (503) 472-2452

Project Location – 13800 SW Hwy 99 W McMinnville, OR 97128

Project Total Cost - \$1,500,000 (No Change Orders)

This project consisted of a 35,640 sq.ft. pre-engineered steel warehouse building with (4) recessed loading docks and AC Paving



COMPANY OVERVIEW

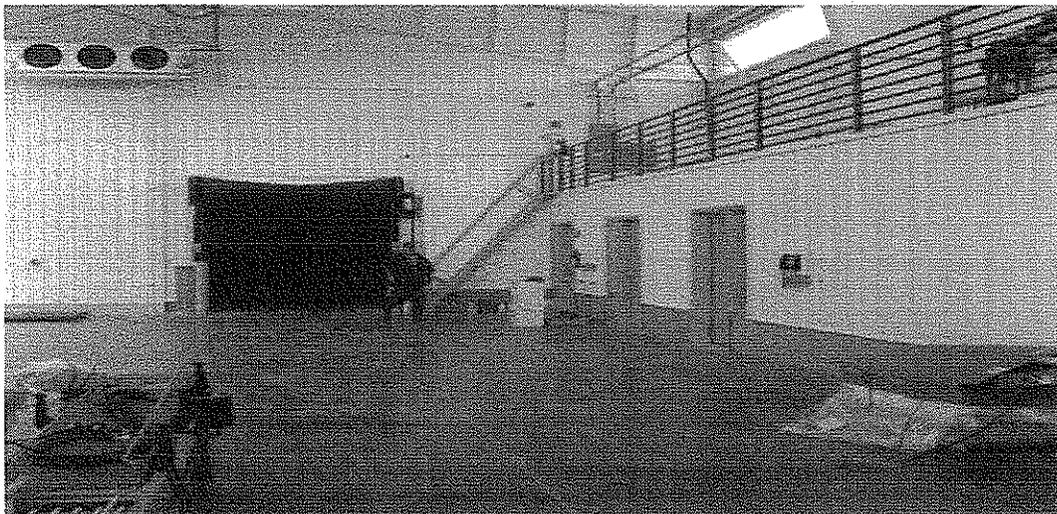
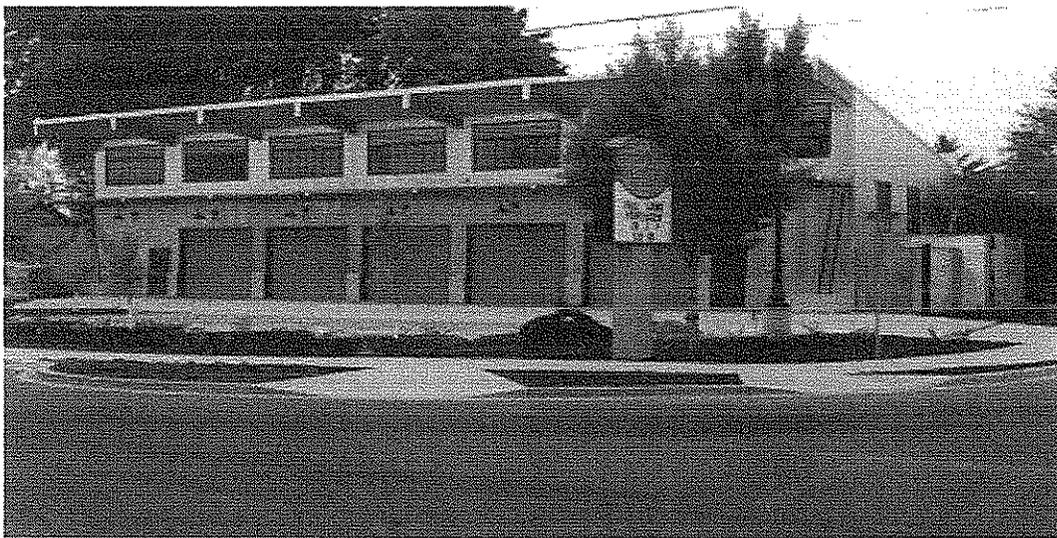
- a. Haworth Inc. is a locally based corporation located at 13500 SW Hwy 99W McMinnville OR owned by Vincent S. Haworth and Antoinette I. Haworth. Haworth Inc. has been serving Yamhill County as a General Contractor specializing in Commercial and Industrial new construction and remodeling for the past 25 years. WE are involved in every step of the projects from the planning and development stages through to the completed final product. Our projects range in size from \$20,000 to \$3 million.

Our firm has completed several Public Works projects with many different City and State agencies. These agencies would include the City of McMinnville, City of Hubbard, City of Salem, City of West Linn, City of Scappoose, Port of St. Helens, Forest Grove School District #40, Oregon Department of Transportation and the Oregon Military Department.

- b. Haworth Inc. was established in Oregon in 1992. Our Contractors Board Number is #82433.
- c. Haworth Inc. has been a Design/Build Contractor for the past 20 years.
- d. Yes, Haworth Inc. holds a current and valid Commercial Contractors License in the state of Oregon that has never been revoked or suspended.
- e. Yes, Haworth Inc. holds a current Oregon Public Works Bond in the amount of \$30,000
- f. Yes, Vincent S. Haworth previously owned "Haworth Construction Inc." Licensed in 1980 with the Oregon Construction Contractors Board License #33407.
- g. No, Haworth Inc. and its Owners are not connected with any other organizations as a subsidiary, parent, holding or affiliate.
- h. Haworth Inc. has completed (6) like projects of at least 1 Million in actual construction cost in the past ten years. Please see below:
- a. **Carlton Fire Station**
 - b. **Yamhill County Heritage Center Museum**
 - c. **Yamhill County Transit Station**
 - d. **Dayton Fire Station**
 - e. **Gingerich Farms**
 - f. **Buchanan Cellers**

- i. No, Haworth Inc. has never failed to enter into a contract after being selected for a construction or modernization project.
- j. No, Haworth Inc. has not ever failed to complete a construction project in the past five years.
- k. No, Haworth Inc. has not ever failed to complete a contract within the authorized contract time.
- l. No, Haworth Inc. has not ever been assessed liquidated damages.
- m. No, Haworth Inc. has not ever been disqualified from submitting a proposal or bid on a State of Oregon, city, county, special district or other local government project or public works project.
- n. Haworth Inc. Has a bonding capacity of \$3 Million.
- o. Haworth Inc. currently has a bonding capacity of \$3 Million
- p. No, Haworth Inc. has not been denied a bond or been unable to obtain one in the last five years.
- q. No, Haworth Inc. has never defaulted on any contract and has never defaulted on a contract that forced a surety to suffer a loss.
- r. No, Haworth Inc. has not been denied bond credit by a surety company nor has there ever been a period of time when we had no surety bond in place during a public construction project.
- s. No, Haworth Inc. has not ever declared Bankruptcy
- t. No, Haworth Inc. has not received a Notice of Default of Termination of a Public Works Project.
- u. No, Haworth Inc. has not had a project terminated or canceled by a public entity in the past five years.
- v. No, Haworth Inc. is not currently involved in dispute resolution, arbitration or litigation related to a construction project.
- w. No, Haworth Inc. has not in the past 5 years been involved in any dispute resolution of any kind.
- x. No, there are currently liens/stop notices for labor and/or materials filed against Haworth Inc.
- y. There have never been any lien, bond claim or enforcement lawsuits filed against Haworth Inc.
- z. There have been zero construction related claims, complaints, and/or cross complaints filed in court in the last seven years by Haworth Inc.
- aa. Zero claims have been mediated or arbitrated in the last seven years.
- bb. Zero unresolved change orders resulted in a claim filed by Haworth Inc. in the past five years.
- cc. No, there have not been any complaints filed with the CCB in the past seven years.
- dd. No, there has not been any occasion during the last seven years in which Haworth Inc. was required to pay back wages or penalties.

- ee. No, there has not been any action or administrative proceedings for back wages, penalties or other sanctions filed against Haworth Inc. ever.
- ff. No, there has not been any refusal of insurance of any kind to Haworth Inc. in the last five years.
- gg. No, Haworth Inc. or any of its Officers have ever been found liable or found guilty in a criminal action of any kind to any public agency or private entity.
- hh. No, Haworth Inc. or any of its Officers have ever been convicted of a crime involving any federal, state or local law related to construction.
- ii. No, Haworth Inc. or any of its Officers have ever been convicted of a federal or state crime of fraud, theft or any other act of dishonesty.



SAFETY PROGRAM & WORKERS COMP EXPERIENCE

- a. Haworth Inc.’s safety policy uses education, training and monitoring of its employees in order to avoid the hazards associated with work in the construction industry.

FALL PROTECTION	OVERHEAD HAZARDS	CHEMICAL HAZARDS	EXCAVATION HAZARDS	TOOL & EQUIPMENT HAZARDS
Ladder Safety	Hard Hats	Understanding of	Trench Barricading	Licensing and
Scaffolding Safety	Controlled Access Zones	MSDS	Benching & Sloping	Certification
Aerial Lift Safety	Material & Tool Security	Identification	of open excavations	Operation
Working at heights		Storage		Maintenance
Fall Arrest Systems		Handling	Timber Shoring	Safe Clearances
Guard Rail Systems		PPE	Hydraulic Shoring	PPE
			Box Shoring	
			Soil Identification & Monitoring	

Other: SAIF and OSHA compliant safety programs
 Alcohol and Drug Random testing
 Weekly Tailgate safety meetings w/ subcontractors
 Monthly Safety oversight committee meetings

Copies of Haworth Inc.’s Safety Loss and Control program, Drug and Alcohol Policy and Trenching and Excavation Program, are available upon request.

Security of job sites is an important issue to Haworth Inc. Securing job sites reduces theft, accidents, vandalism, and protects the property owner’s interests.

Security of job sites would include but not be limited to:

- Fencing with locked gates
- Exterior and interior lighting
- Secured job site trailers

- b. Haworth Inc. has a Workers Comp Insurance policy with SAIF Corp. Our Policy number is #488787. We currently have MOD rating of .72 and an average MOD rating over the past five years of .74.

STAFFING & STAFF QUALIFICATIONS

Project Organization Chart

Vince Haworth - Project Manager

- Develop & Review final cost estimates & schedule
- Lead submittal development, review final submission & corrections required
- Review schematic design work, check engineering & code compliance issues.
- Personally assist with any special safety training for this project
- Review all subcontracts issued by Haworth Inc.
- Review subcontractor paper work, including safety training
- Assist in preparation of monthly project billings.

Bruce Kenny - BKE Inc. - Engineer

- Provide Structural Engineering on Project - Resume on Pages #13 & 14)

Troy Haworth - Job Superintendent

- Help mobilize the project, getting all equipment & company resources at the project site to get started with installation
- Supervise project site foreman, be the immediate resource person for project site foreman including allocation of company resources, manpower, equipment & subcontractors.
- Weekly/Daily inspects of work and project site. Quality assurance and work measurement against established budgets
- Coordinate material & equipment deliveries with foreman
- Weekly goes over updated budget and labor information with foreman.
- Assist if necessary with monthly progress billings

Todd Haworth - Job Foreman

- Provide daily job reports to Supervisor
- Weekly goes over updated budget and labor information with Superintendent, tracking progress against schedule and budget
- Participates in weekly project meetings
- Daily organizes and supervises all aspects of project site work.
- Conducts weekly safety meeting for Haworth Inc. personnel
- Responsible to keep ahead of all expectations for completion of work
- As company Safety Officer, responsible for project site safety implementation, any require UA testing for employees, review of the weekly site safety issues and review of subcontractor safety issues.

Cassandra Haworth - Job Cost Accountant

- Prepares monthly progress billings
- Prepares Payroll and Certified Payroll Reports
- Verify with Superintendent and Project Manager that all Subcontractor invoices are correct and accurately reflect current percent of job completion
- Verify with Superintendent and Project Manager that all suppliers invoices are correct and accurately reflect supplies that have been delivered to the job site.

Resumes of Key Team Members

VINCENT S. HAWORTH

Title President, Haworth Inc.
Project Manager

Education and Training

- Graduated Dallas High School 1960
- University of Oregon 1960-1961
- Columbus College 1961-1962
- Worked in construction field as Carpenter 1963-1968
- Assistant Production Manager at Skyline Corp. 1969-1976
- Started Construction Company (Casteel & Haworth) 1976-1980
- Started Haworth Construction 1980-1992
- Reorganized to Haworth Inc in 1992-Present

Construction Related Organization

- Chairman of Yamhill County Homebuilders Association 1980-1985
- Metro Portland Home Builders Association Board of Directors 1978-1980

Project Management Experience Relevant to this Job

- Yamhill County Transit Center, McMinnville, OR
- Dayton Fire Station, Dayton , OR
- Carlton Fire Station, Carlton, OR
- Gingerich Farms Berry Packing Facility, McMinnville, OR
- Valley Feed & Supply, McMinnville, OR
- Yamhill Valley Heritage Center, McMinnville, OR
- Oregon Vineyard Supply, Hubbard and McMinnville

TROY HAWORTH

Title Project Superintendent, Haworth Inc.

Education and Training

- Graduated McMinnville High School 1984
- Haworth Construction as a Carpenter 1983-1989
- Entered into Chemeketa Fire Life & Safety Program 1986 - 1988
Completed training though EMT 3
- Pella Window and Door Company 1989-1991
Commercial and Residential Sales and Management
- Haworth Inc. 1991 to Present

Project Management Experience Relevant to this Job

- Yamhill County Transit Center, McMinnville, OR
- Dayton Fire Station, McMinnville, OR
- Carlton Fire Station, Carlton, OR
- Larsen Motors, McMinnville, OR
- Gingerich Farms Berry Packing Facility, McMinnville, OR
- Buchanan Cellers, McMinnville, OR
- Yamhill Valley Heritage Center, McMinnville, OR

TODD HAWORTH

Title Project Foreman & Safety Committee Chairman
Haworth Inc.

Education and Training

- Graduated McMinnville High School 1985
- Oregon State University 1986-1991
- Bachelor of Science – Business Administrative Management
- Basics of Computer Aided Drafting
- SAIF Certified “Safety and the Supervisor”
- SAIF Certified “Safety Committees for the Work Place”
- 20 + years in the construction industry with Haworth Inc.
All phases of construction including wood, concrete and steel construction.

Project Management Experience Relevant to this Job

- Yamhill County Transit Center, McMinnville, OR
- Delphian School Business Offices, Sheridan, OR
- International Knife and Saw, McMinnville, OR
- Carlton Fire Station, Carlton, OR
- Ticor Title Buildings, McMinnville, OR
- Gingerich Farms Berry Packing Facility, McMinnville, OR
- Valley Feed & Supply, McMinnville, OR
- Yamhill Valley Heritage Center, McMinnville, OR

- c.** Our Project Team as reflected above has a great deal of previous experience in successfully completing projects of a similar scale and nature as the one proposed

BRUCE W. KENNY, ARCHITECT, S.E.

The firm was established in 1989. As a sole practitioner, Mr. Kenny has designed a wide variety of projects. Although primarily residential in nature, from single family residences to a 24,500 square foot memory care and senior apartment building, Mr. Kenny has designed office and retail buildings, as well as a winery. In 1992, he joined W.G. Berry Structural Engineers and later became a partner in BK Engineers, Inc. While continuing his own practice as an architect, he has also worked as a consulting structural engineer for other architects, developers, contractors, and home owners.

Registration

Registered architect, Oregon 1989

Registered structural engineer, Oregon 2004

Relevant projects

Addition and remodel to McMinnville High School (combination of concrete masonry, steel frame and wood frame construction)

Addition and remodel to Chuck Colvin Ford service and parts building (metal building structure).

Renovation of former Hewlett-Packard building to house Linfield College Facilities Management and Campus Security Offices (tilt-panel concrete and masonry building structure).

New office building and remodel of existing daylight basement level of the McMinnville Nazarene Church (wood frame with steel support structure).

Remodel and partial structural upgrade to upper floor of existing historic building in downtown McMinnville (un-reinforced masonry and wood frame structure).

New 11,600 square foot two story office building, Wood Village, Oregon, for multiple tenants (wood-framed).

Remodel tenant space and new office for A&E Security, McMinnville (un-reinforced masonry and wood frame structure).

BK Engineers, Inc.

BK Engineers came into existence in 1983 as W.G. Berry Structural Engineers. In 1992, Bruce Kenny joined the firm and the name was changed in 2006 to BK Engineers, Inc. The firm has grown from a one man practice to a staff of five engineers and three support personnel. Currently our office provides structural engineering services.

BK Engineers, Inc. has provided design services on a wide range of projects from house remodels to a 170,000 square foot steel framed building. This has included design services for several single story and multi-story wood framed and metal stud framed housing projects including assisted living facilities, Alzheimer facilities, and senior housing facilities (both apartments and stand-alone buildings). These structures ranged in size from 11,000 square feet to 100,000 square feet. We have provided design services for several public projects including libraries, city halls, fire stations, post offices, and a Public Works Operation Center. In addition, we have provided structural engineering design services for several wood framed office and retail buildings. Our office has provided design services on concrete and masonry structures. These have included commercial retail and industrial buildings that have ranged in size from 10,000 square feet to 100,000 square feet. BK Engineers has been involved in design of several steel framed structures ranging in size from one story to eight story (8,000 square feet to 170,000 square feet).

As part of our design philosophy we feel that it is important to develop open relationships with our clients and with the contractors that build the buildings that we design. Open and frank communication provides a better and more economical design and a better constructed product. Most of our clients have worked with us for ten or more years and a couple go back twenty years. This is an indication of the effort we put in to the product we produce.

PROJECT APPROACH

We feel that Public Works has provided an aesthetically pleasing and cost efficient preliminary design. There are a few structural design issues that we would like to address during the design phase but plan on utilizing the preliminary plans provided. The following outline is a brief summary of the methodology that our team will follow to execute the project.

During the construction phase of the project, we will provide all management and related services as necessary to adequately supervise, monitor and coordinate the work of all sub-contractors. Our Team will manage all conditions of the site work rules and will establish and monitor safety, security cleaning and other conditions. The following items are also critical to a successful construction project and will be provided by us at Haworth Inc.

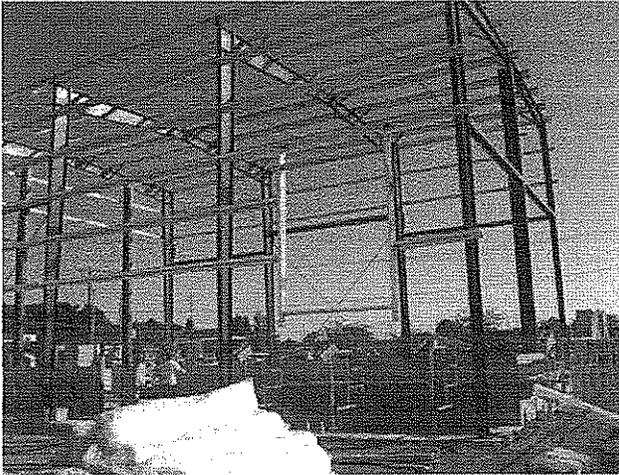
Our team will implement the following key activities that were developed during the pre-construction phase:

- Verification of project schedule
- Expedition of long lead items
- Expedition of purchasing and buyouts
- Verification of accelerated release of critical material
- Confirmation of each action reviewed in preconstruction
- Verification of the GMP record keeping and audit trails

General Management and On-Site Staff

- The Haworth Inc. Team will assign a Project Team at the jobsite for the coordination and initiation of the work.
- Our Team will establish lines of authority in order to execute the project on a coordinated and efficient basis and will prepare a chart graphically indicating those lines of authority.
- Our Team is accustomed to dealing with the upper management of subcontractors whether it is in the field or at an off-site fabrication plant. By obtaining the commitment of the senior management of our subcontractors, our Team will ensure the Client of having its work done by the finest personnel and having personalized attention dedicated to the project by each subcontractor.
- Our Team will establish, implement and maintain procedures to assure coordination among the architect, consultants, subcontractors, and all local municipal authorities, governmental agencies, utility companies, etc., who may be involved in the project.

- Our Team will prepare and develop an on-site record keeping system, which will be sufficient in detail to satisfy an audit by the owner. Such records shall include, but will not be limited to, daily logs, progress schedules, manpower breakdowns (daily by trade), financial reports,



quantities, material lists, shop drawing logs, etc.

In the event that an interpretation of the meaning and intent of the contract documents becomes necessary during construction, our Team will ascertain the Architect/Engineer's interpretation and transmit such information to the appropriate subcontractor(s).

- Our Team will hold weekly job meetings with the owner's representatives, subcontractors, engineer/architect and other necessary parties to discuss procedures, progress, problems, scheduling and open times.
- Our Team will constantly review the adequacy of each subcontractor's supervision, personnel, equipment and the availability of necessary materials and supplies. When inadequate, our team will direct the necessary action to be taken by the subcontractor involved.
- Our Team will assist the Owner in obtaining the general building permits and Certificates of Occupancy as required, and will coordinate the obtaining of all legally required permits, licenses and certificates. We will assemble these documents from the contractors and deliver them at the completion of the work.
- Our Team will coordinate all work until final completion and acceptance of the project by the Owner, including a comprehensive final inspection to ensure that the materials furnished and work performance are in accordance with the contract documents.



Coordinate Testing and Inspection

Haworth Inc. will develop and enforce a quality control system in order to ensure that the highest required standards of construction are met. Our Team will develop a checking and testing procedure to ensure that all systems are adequately tested and balanced prior to their acceptance.

Our Team will coordinate all testing provided by others, as required by the technical sections of the specifications, and as required by the building code. Our Team will keep an accurate record of all tests, inspections conducted and test reports.

Coordinate Shop Drawings Submissions

Haworth Inc. will receive and review for compliance with the contract documents; all shop drawings, materials and other items submitted by the subcontractors. Requests for approval from subcontractors, delivery schedules, materials, material lists, shop drawings, samples, plus more, will be commented upon and submitted to the engineer/architect and owner for concurring approval.

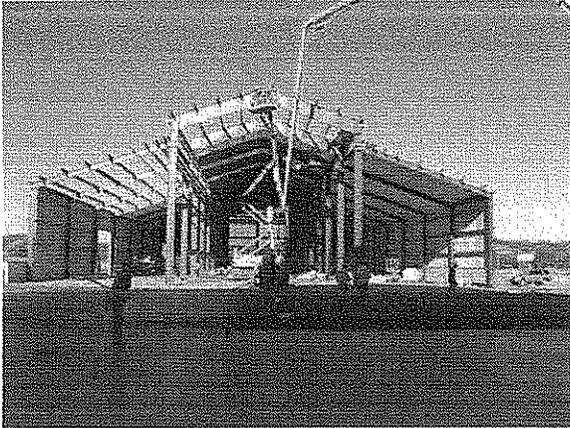
Approvals of technical adequacy of shop drawings and samples will remain the duty of the engineer/architect. We will oversee the submission of all shop drawings, composite shop and coordination drawings, brochures and material samples, and instruct the subcontractors that submission shall comply with project requirements.

Comprehensive Safety Program

Haworth Inc. will review the safety program developed by each subcontractor and will prepare and submit to the owner a recommended comprehensive Safety Program, which complies with the requirements of Oregon Occupational Safety and Health (OR OSHA), as amended. During construction, our Team will monitor compliance by each subcontractor with its contractual safety requirements, and in collaboration with the project personnel charged with monitoring fire and safety regulations, will correct any deficiencies.

Changes in Work

Haworth Inc. will establish and implement procedures for controlling and processing change orders that will satisfy the owner's requirements. Our Team will maintain adequate cost accounting records with respect to portions of work, if any, performed on a time and material, unit cost or similar basis which requires the keeping of records and computations.



General Conditions Items

Haworth Inc. will provide general conditions items as required by the project for cleanup, hoisting, temporary facilities, and protective field offices. Our Team will provide adequate personnel to supervise those items and will constantly track and report on General Conditions Expenses.

Proactive Scheduling

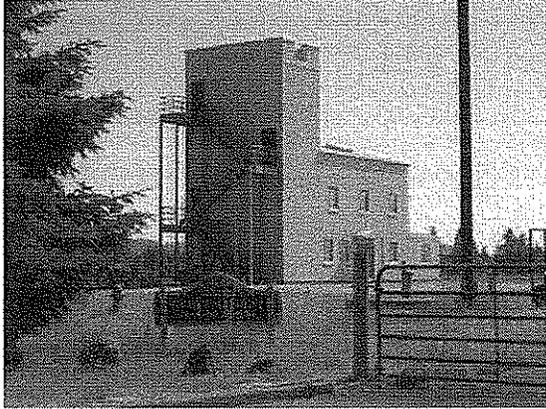
The schedule will be used as a tool to discuss deliveries and installation sequences. Any problems or issues will be addressed accordingly and the schedule will be adjusted to reflect the changes, if necessary. We will update the current schedule and review it against the baseline schedule to identify potential conflicts or impacts due to the latest adjustments. The schedule will then be discussed with the Owner and Subcontractors reviewing possible solutions to minimize the impacts and take proactive steps necessary to insure that the project will be delivered on time and within budget.

Our team will implement the following key activities that were developed during the pre-construction phase:

- Verification of project schedule
- Expedition of long lead items
- Expedition of purchasing and buyouts
- Verification of accelerated release of critical material
- Confirmation of each action reviewed in preconstruction
- Verification of the GMP record keeping and audit trails

Closing out the Project

At the proper time our Team will coordinate with the architect the preparation of a punch list indicating the items of work remaining to be accomplished and will ensure that these items are completed in an expeditious manner. Our Team will prepare certificates of substantial and final completion, as required, and will assemble all guarantees, warranties, etc. as required by the contract documents, and will forward them to the owner, certifying that they are complete and cover all work as required.



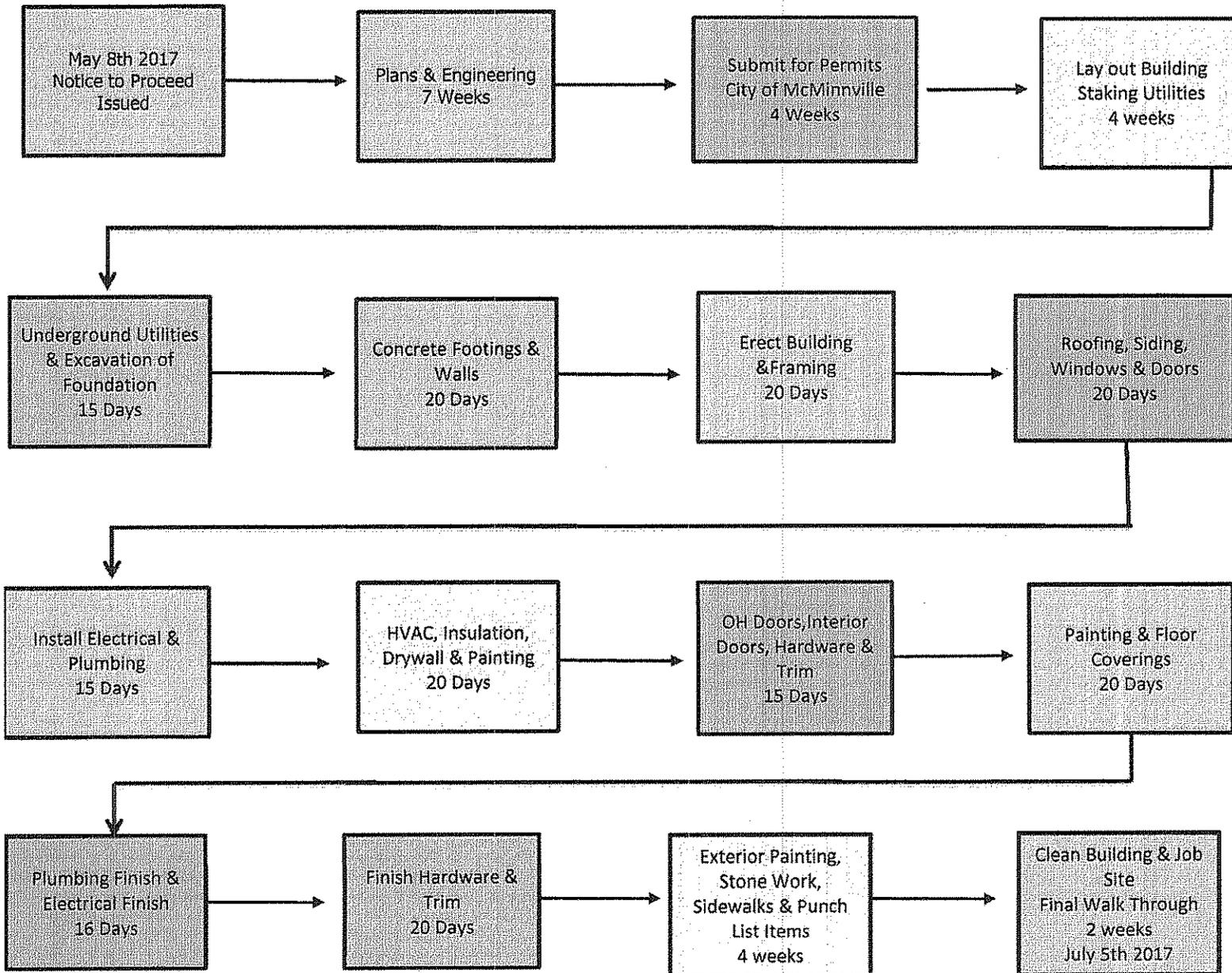
Our team will coordinate and expedite the preparation by the subcontractors of operating manuals and similar instructions. Our Team will obtain the engineer/architect's approval to ensure that they are sufficiently comprehensive and will forward them to appropriate personnel.

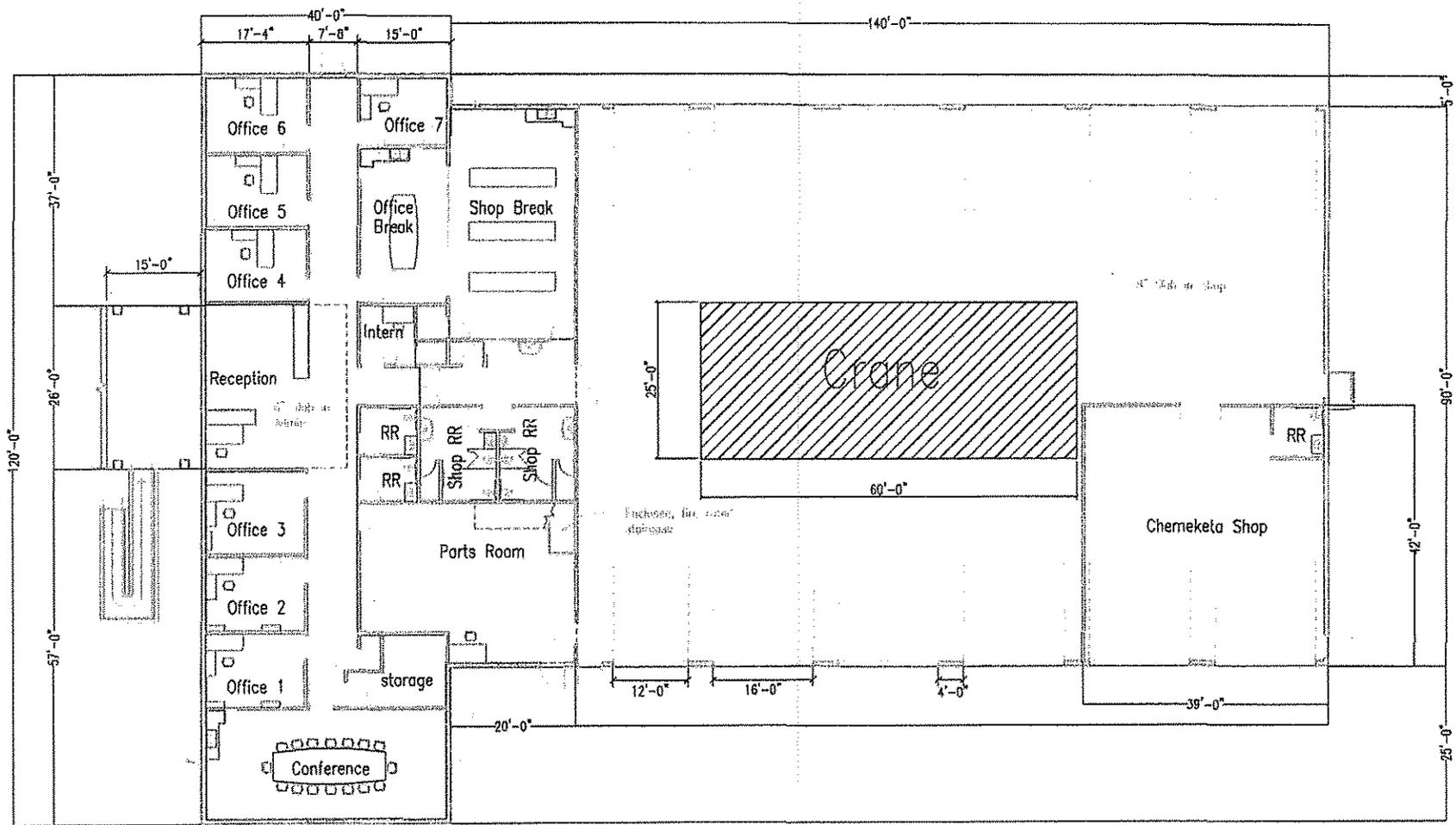
Haworth Inc. will closely with all project personnel relative to start-up following project completion. This not only includes maintenance personnel, but also personnel who need to have a working understanding of the building to do their job properly. This provides the owner with the comfort of knowing our Team is still available, if needed, to oversee repairs or replacements of specific construction related items.

Whether a large project or a small one, Haworth Inc. follows a meticulous methodology that provides the Client with a step by step process outlining each of its many tasks necessary to the successful completion of the project. The ultimate goal is the commitment of our Team to do whatever is required to make the construction of your project a consummate success.



Yamhill County Public Works - Shop and Office Building Project
FLOW CHART

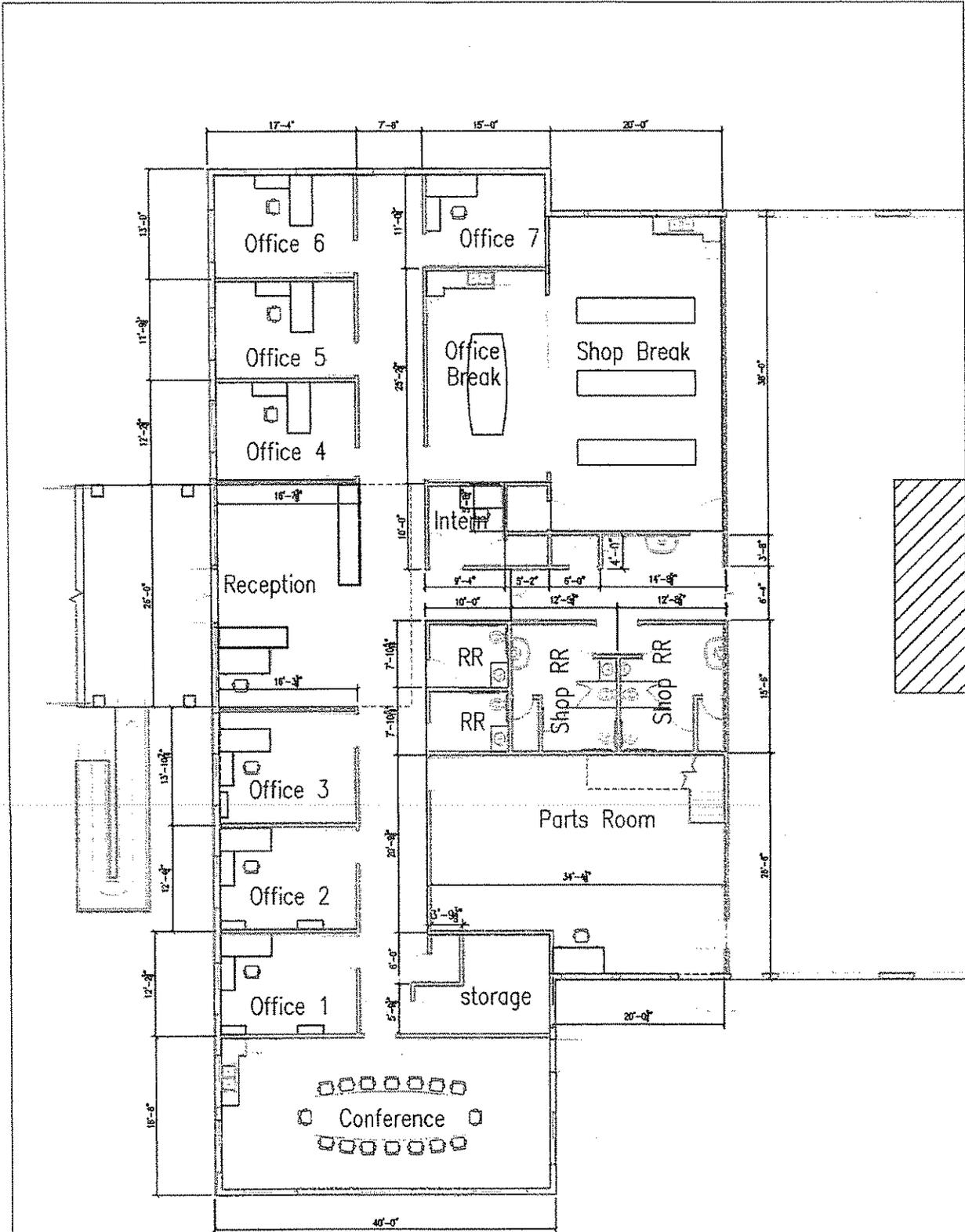




1. Shop
 2. Break
 3. RR
 4. RR
 5. RR
 6. RR
 7. RR

*Note: All drawings and renderings are for conceptual design purposes only.

	Public Works Shop		REV —
	First Floor		
—	SIZE 11x17	DWG. FILE New Shop 1.8.dwg	—
—	SCALE: 1/16"=1'	DRAWN BY: Caleb Cox	SHEET: 1 / 4

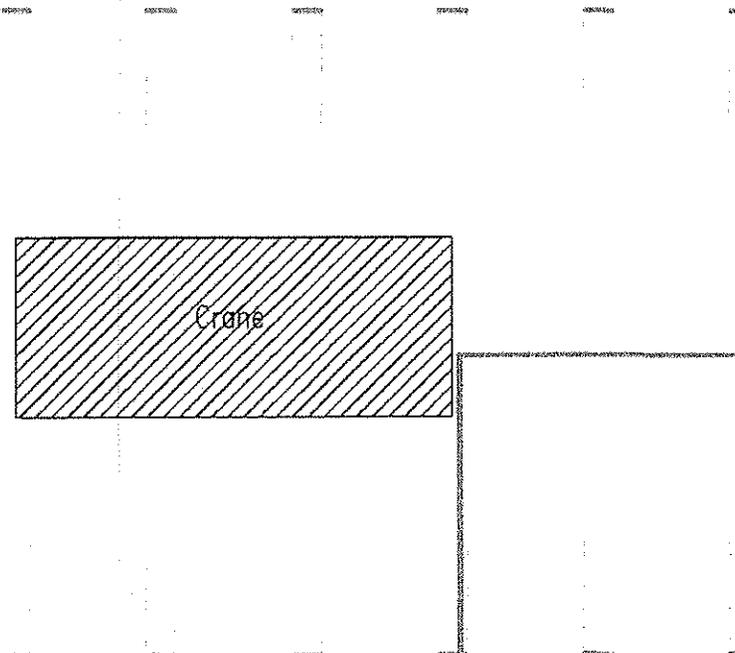
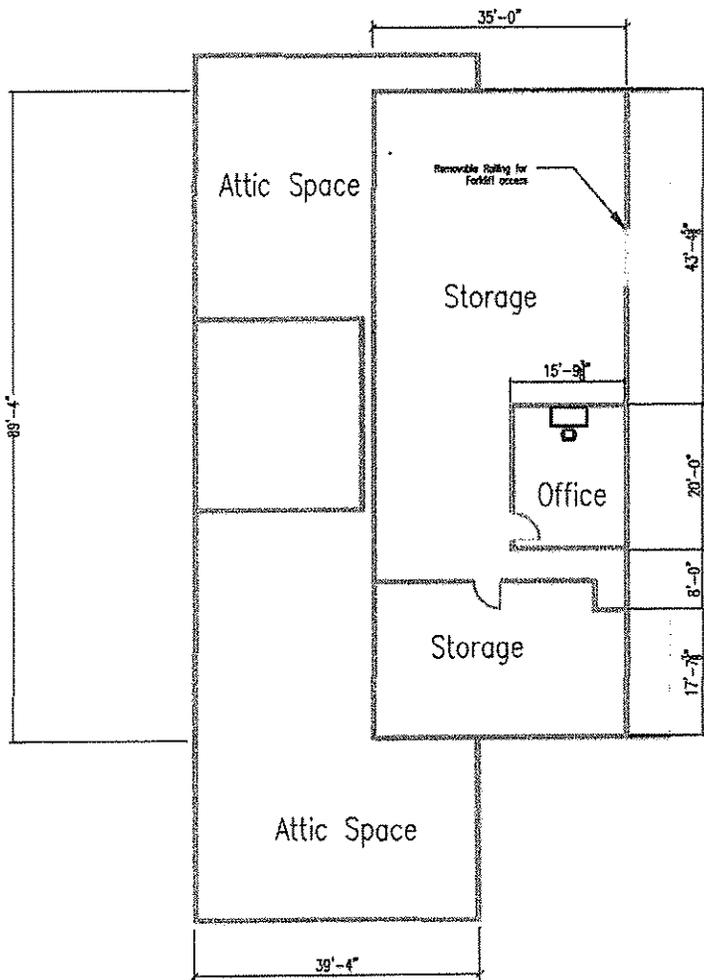


*Note: All drawings and renderings are for conceptual design purposes only.



Public Works Shop
Administrative Area

SIZE	DWG. FILE	REV
11x17	New Shop 1.8.dwg	-
SCALE: 3/32"=1'	DRAWN BY: Caleb Cox	SHEET: 2/4

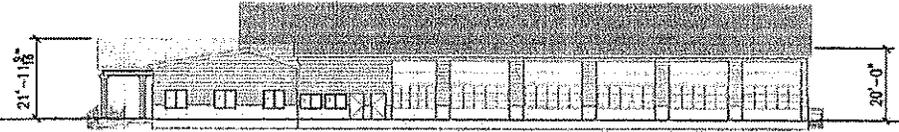


	Public Works Shop	
	Second Floor	
—	SIZE 11x17	DWG. FILE New Shop 1.8.dwg
—	SCALE: 1/32"=1'	DRAWN BY: Caleb Cox
		REV —
		SHEET: 3/4

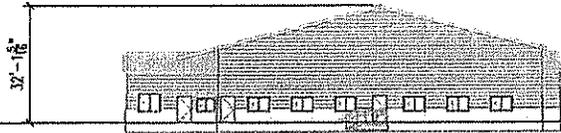
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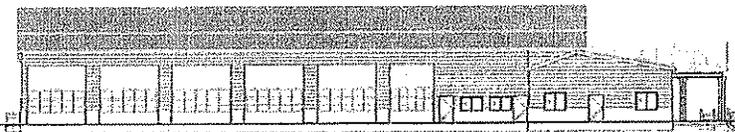
East Elevation



North Elevation



West Elevation



South Elevation



Public Works Shop
Elevations

SIZE	DWG. FILE	REV
11x17	New Shop 1.8.dwg	—
SCALE: 1/32"=1'	DRAWN BY: Caleb Cox	SHEET 4/4

*Note: All drawings and renderings are for conceptual design purposes only.

B.O. (h-818)
 EXHIBIT 'A'